

CODE OF VIRGINIA



Popular Names

Administrative Process Act

§2.2-4000. Short title; purpose.

A. This chapter may be cited as the "Administrative Process Act."

B. The purpose of this chapter is to supplement present and future basic laws conferring authority on agencies either to make regulations or decide cases as well as to standardize court review thereof save as laws hereafter enacted may otherwise expressly provide. This chapter shall not supersede or repeal additional procedural requirements in such basic laws.

1975, c. 503, §§ 9-6.14:1. 9-6.14:3; 1977, c. 647; 1984, c. 5; 2001, c. [844](#).

§2.2-4001. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency" means any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases.

"Agency action" means either an agency's regulation or case decision or both, any violation, compliance, or noncompliance with which could be a basis for the imposition of injunctive orders, penal or civil sanctions of any kind, or the grant or denial of relief or of a license, right, or benefit by any agency or court.

"Basic law" or "basic laws" means provisions of the Constitution and statutes of the Commonwealth authorizing an agency to make regulations or decide cases or containing procedural requirements therefor.

"Case" or "case decision" means any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ [2.2-4007.01](#) and [2.2-4019](#) and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § [2.2-4009](#) in connection with the making of regulations or (ii) a similar

right of private parties or requirement of public agencies as provided in § [2.2-4020](#) in connection with case decisions.

"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § [2.2-4024](#).

"Public assistance and social services programs" means those programs specified in § [63.2-100](#).

"Registrar" means the Registrar of Regulations appointed as provided in § [2.2-4102](#).

"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws.

"Subordinate" means (i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf.

"Virginia Register of Regulations" means the publication issued under the provisions of Article 6 (§ [2.2-4031](#) et seq.).

"Virginia Regulatory Town Hall" means the website operated by the Department of Planning and Budget, which has online public comment forums and displays information about regulatory actions under consideration in the Commonwealth and sends this information to registered public users.

1975, c. 503, § 9-6.14:4; 1977, cc. 377, 381; 1979, c. 613; 1984, c. 187; 1985, cc. 67, 602; 1997, c. [11](#); 2001, c. [844](#); 2002, c. [747](#); 2007, cc. [873](#), [916](#); 2011, cc. [241](#), [315](#); 2017, c. [488](#).

§2.2-4002. Exemptions from chapter generally.

A. Although required to comply with § [2.2-4103](#) of the Virginia Register Act (§ [2.2-4100](#) et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ [2.2-4024](#), [2.2-4030](#), and 2.2-4031:

1. The General Assembly.
2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ [29.1-200](#) et seq.), 3 (§ [29.1-300](#) et seq.), 4 (§ [29.1-400](#) et seq.), 5 (§ [29.1-500](#) et seq.), and 7 (§ [29.1-700](#) et seq.) of Title 29.1.
4. The Virginia Housing Development Authority.
5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.
6. Educational institutions operated by the Commonwealth, provided that, with respect to § [2.2-4031](#), such educational institutions shall be exempt from the publication requirements only with respect to regulations that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion and disciplining of faculty and employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of students.
7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.
8. The Virginia Resources Authority.
9. Agencies expressly exempted by any other provision of this Code.
10. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § [2.2-1164](#).
11. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § [23.1-207](#).
12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § [3.2-6002](#) and in adopting regulations pursuant to § [3.2-6023](#).
13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and D of § [3.2-3601](#), subsection B of § [3.2-3701](#), § [3.2-4002](#), subsections B and D of § [3.2-4801](#), §§ [3.2-5121](#) and [3.2-5206](#), and subsection A of § [3.2-5406](#).
14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its

adnexa for TPA-certification of optometrists pursuant to Article 5 (§ [54.1-3222](#) et seq.) of Chapter 32 of Title 54.1.

15. The Commissioner of the Department of Veterans Services in adopting regulations pursuant to § [2.2-2001.3](#).

16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § [22.1-203.2](#).

17. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the Commission.

18. The Virginia Small Business Financing Authority.

19. The Virginia Economic Development Partnership Authority.

20. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § [59.1-156](#).

21. The Insurance Continuing Education Board pursuant to § [38.2-1867](#).

22. The Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § [32.1-35](#) and in adopting, amending or repealing regulations pursuant to subsection C of § [35.1-14](#) that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food service.

23. The Commissioner of the Marine Resources Commission in setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § [28.2-1000.2](#).

24. The Board of Pharmacy when specifying special subject requirements for continuing education for pharmacists pursuant to § [54.1-3314.1](#).

25. The Virginia Department of Veterans Services when promulgating rules and regulations pursuant to § [58.1-3219.7](#).

26. The Virginia Department of Criminal Justice Services when developing, issuing, or revising any training standards established by the Criminal Justice Services Board under § [9.1-102](#), provided such actions are authorized by the Governor in the interest of public safety.

B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.
2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
3. The location, design, specifications or construction of public buildings or other facilities.
4. Grants of state or federal funds or property.
5. The chartering of corporations.
6. Customary military, militia, naval or police functions.
7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
8. The conduct of elections or eligibility to vote.
9. Inmates of prisons or other such facilities or parolees therefrom.
10. The custody of persons in, or sought to be placed in, mental health facilities or penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
11. Traffic signs, markers or control devices.
12. Instructions for application or renewal of a license, certificate, or registration required by law.
13. Content of, or rules for the conduct of, any examination required by law.
14. The administration of pools authorized by Chapter 47 (§ [2.2-4700](#) et seq.).
15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the Virginia Lottery Board, and provided that such regulations are published and posted.
16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ [28.2-803](#) et seq.) of Chapter 8 of Title 28.2.
17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § [32.1-283.1](#) and any operating procedures for

review of adult deaths developed by the Adult Fatality Review Team pursuant to § [32.1-283.5](#).

18. The regulations for the implementation of the Health Practitioners' Monitoring Program and the activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1.

19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ [51.5-178](#) et seq.) of Chapter 14 of Title 51.5.

20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ [10.1-1197.1](#) et seq.) of Chapter 11.1 of Title 10.1.

21. The Virginia Breeders Fund created pursuant to § [59.1-372](#).

22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.

23. The administration of medication or other substances foreign to the natural horse.

24. Any rules adopted by the Charitable Gaming Board for the approval and conduct of game variations for the conduct of raffles, bingo, network bingo, and instant bingo games, provided that such rules are (i) consistent with Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2 and (ii) published and posted.

C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act (§ [2.2-4100](#) et seq.), made by the Virginia Code Commission pursuant to § [30-150](#), shall be exempt from the provisions of this chapter.

1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793; 1993, cc. 537, 669, 898; 1994, cc. [237](#), [577](#), [649](#), [740](#), [743](#), [801](#); 1995, cc. [103](#), [499](#), [516](#); 1996, cc. [51](#), [152](#), [158](#), [189](#), [205](#), [279](#), [320](#), [345](#), [573](#), [590](#), [598](#), [638](#), [705](#), [735](#), [818](#), [1012](#); 1997, cc. [87](#), [88](#), [109](#), [212](#), [390](#), [439](#), [567](#), [624](#), [785](#), [806](#), [845](#), [850](#), [861](#), [868](#); 1998, cc. [39](#), [619](#), [784](#); 1999, cc. [412](#), [421](#), [433](#), [603](#); 2000, cc. [382](#), [400](#), [924](#), [1011](#); 2001, cc. [465](#), [523](#), [688](#), [820](#), [844](#); 2003, cc. [639](#), [695](#); 2004, c. [802](#); 2006, c. [442](#); 2007, cc. [41](#), [870](#), [932](#); 2008, c. [672](#); 2009, c. [472](#); 2010, cc. [65](#), [178](#), [480](#), [728](#); 2012, cc. [476](#), [507](#), [594](#), [803](#), [835](#); 2013, cc. [59](#), [234](#), [760](#), [780](#); 2014, c. [225](#); 2015, c. [108](#); 2017, cc. [266](#), [584](#).

§2.2-4003. Venue.

In all proceedings under § [2.2-4019](#) or [2.2-4020](#) venue shall be in the city or county where the administrative agency maintains its principal office or as the parties may otherwise agree. In all proceedings under § [2.2-4026](#), venue shall be as specified in subdivision 1 of § [8.01-261](#).

1975, c. 503, § 9-6.14:5; 1977, c. 624; 2001, c. [844](#); 2007, cc. [873](#), [916](#).

§2.2-4004. Severability.

The provisions of regulations adopted under this chapter or the application thereof to any person or circumstances that are held invalid shall not affect the validity of other regulations, provisions or applications that can be given effect without the invalid provisions or applications. The provisions of all regulations are severable unless (i) the regulation specifically provides that its provisions are not severable or (ii) it is apparent that two or more regulations or provisions must operate in accord with one another.

1987, c. 55, § 9-6.14:5.1; 2001, c. [844](#).

§2.2-4005. Review of exemptions by Joint Legislative Audit and Review Commission; Joint Commission on Administrative Rules.

A. The Joint Legislative Audit and Review Commission shall conduct a review periodically of the exemptions authorized by this chapter. The purpose of this review shall be to assess whether there are any exemptions that should be discontinued or modified.

B. Beginning November 1, 2017, the Joint Commission on Administrative Rules shall conduct a review of the exemptions authorized by this chapter on a schedule established by the Joint Commission on Administrative Rules. The purpose of this review shall be to assess whether any such exemption should be discontinued or modified.

C. Beginning August 1, 2017, each agency having an exemption authorized by this chapter, other than the courts, any agency of the Supreme Court, and any agency that by the Constitution of Virginia is expressly granted any of the powers of a court of record, shall submit a written report to the Joint Commission on Administrative Rules on or before August 1, 2017, which report shall include the date the exemption was enacted, a summary of the necessity for the exemption, and a summary of any rule or regulation adopted pursuant to the exemption in the immediately preceding two fiscal years, if any. Every two years thereafter, each such agency shall submit a

written report to the Joint Commission on Administrative Rules that summarizes any rule or regulation adopted pursuant to the exemption in the immediately preceding two fiscal years, if any.

D. In the event that an agency having an exemption authorized by this chapter fails to submit the report required pursuant to subsection C, the Joint Commission on Administrative Rules shall recommend to the Governor and the General Assembly that such agency's exemption be discontinued.

1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793; 1993, cc. 537, 669, 898; 1994, cc. [237](#), [577](#), [649](#), [740](#), [743](#), [801](#); 1995, cc. [103](#), [499](#), [516](#); 1996, cc. [51](#), [152](#), [158](#), [189](#), [205](#), [279](#), [320](#), [345](#), [573](#), [590](#), [598](#), [638](#), [705](#), [735](#), [818](#), [1012](#); 1997, cc. [87](#), [88](#), [109](#), [212](#), [390](#), [439](#), [567](#), [624](#), [785](#), [806](#), [845](#), [850](#), [861](#), [868](#); 1998, cc. [39](#), [619](#), [784](#); 1999, cc. [412](#), [421](#), [433](#), [603](#); 2000, cc. [382](#), [400](#), [924](#), [1011](#); 2001, c. [844](#); 2017, c. [678](#).

§2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § [2.2-4103](#) of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.
2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.
3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.
4. Regulations that are:
 - a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date;
 - b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

5. Regulations of the Board of Agriculture and Consumer Services adopted pursuant to subsection B of § [3.2-3929](#) or clause (v) or (vi) of subsection C of § [3.2-3931](#) after having been considered at two or more Board meetings and one public hearing.

6. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants.

7. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ [45.1-161.82](#) and [45.1-161.292:55](#).

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ [10.1-1300](#) et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ [62.1-44.2](#) et seq.), Chapter 24 (§ [62.1-242](#) et seq.) of Title 62.1 and Chapter 25 (§ [62.1-254](#) et seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Dam Safety Act (§ [10.1-604](#) et seq.), and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § [28.2-1307](#), if the respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § [2.2-4007.01](#), (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § [2.2-4007.03](#), and (iv) conducts at least one public hearing on the proposed general permit.

9. The development and issuance by the Board of Education of guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools pursuant to § [22.1-202](#).

10. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § [23.1-704](#).

11. Regulations of the Marine Resources Commission.

12. Regulations adopted by the Board of Housing and Community Development pursuant to (i) Statewide Fire Prevention Code (§ [27-94](#) et seq.), (ii) the Industrialized Building Safety Law (§ [36-70](#) et seq.), (iii) the Uniform Statewide Building Code (§ [36-97](#) et seq.), and (iv) § [36-98.3](#), provided the Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of § [2.2-4007.01](#), (b) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § [2.2-4007.03](#), and (c) conducts at least one public hearing as provided in §§ [2.2-4009](#) and [36-100](#) prior to the publishing of the proposed regulations. Notwithstanding the provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the provisions of § [2.2-4007.06](#) concerning public petitions, and §§ [2.2-4013](#) and [2.2-4014](#) concerning review by the Governor and General Assembly.

13. Amendments to regulations of the Board to schedule a substance pursuant to subsection D or E of § [54.1-3443](#).

14. Waste load allocations adopted, amended, or repealed by the State Water Control Board pursuant to the State Water Control Law (§ [62.1-44.2](#) et seq.), including but not limited to Article 4.01 (§ [62.1-44.19:4](#) et seq.) of the State Water Control Law, if the Board (i) provides public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary response to written comments; and (iv) conducts at least one public meeting. Notwithstanding the provisions of this subdivision, any such waste load allocations adopted, amended, or repealed by the Board shall be subject to the provisions of §§ [2.2-4013](#) and [2.2-4014](#) concerning review by the Governor and General Assembly.

15. Regulations of the Workers' Compensation Commission adopted pursuant to § [65.2-605](#), including regulations that adopt, amend, adjust, or repeal Virginia fee schedules for medical services, provided the Workers' Compensation Commission (i) utilizes a regulatory advisory panel constituted as provided in subdivision F 2 of § [65.2-605](#) to assist in the development of such regulations and (ii) provides an opportunity for public comment on the regulations prior to adoption.

B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this section shall be in accordance with the provisions of § [2.2-4015](#), except in the case of emergency regulations, which shall become effective as provided in subsection B of § [2.2-4012](#).

C. A regulation for which an exemption is claimed under this section or § [2.2-4002](#) or [2.2-4011](#) and that is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793; 1993, cc. 537, 669, 898; 1994, cc. [237](#), [577](#), [649](#), [740](#), [743](#), [801](#); 1995, cc. [103](#), [499](#), [516](#); 1996, cc. [51](#), [152](#), [158](#), [189](#), [205](#), [279](#), [320](#), [345](#), [573](#), [590](#), [598](#), [638](#), [705](#), [735](#), [818](#), [1012](#); 1997, cc. [87](#), [88](#), [109](#), [212](#), [390](#), [439](#), [567](#), [624](#), [785](#), [806](#), [845](#), [850](#), [861](#), [868](#); 1998, cc. [39](#), [619](#), [784](#); 1999, cc. [412](#), [421](#), [433](#), [603](#); 2000, cc. [382](#), [400](#), [924](#), [1011](#); 2001, c. [844](#); 2003, c. [436](#); 2005, c. [102](#); 2006, cc. [632](#), [719](#); 2007, cc. [873](#), [916](#); 2010, c. [65](#); 2011, c. [464](#); 2012, cc. [803](#), [835](#); 2013, cc. [756](#), [793](#); 2014, cc. [202](#), [674](#), [719](#); 2016, cc. [221](#), [279](#), [290](#); 2017, cc. [416](#), [432](#).

§2.2-4007. Petitions for new or amended regulations; opportunity for public comment.

A. Any person may petition an agency to request the agency to develop a new regulation or amend an existing regulation. The petition shall state (i) the substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections, and (ii) reference to the legal authority of the agency to take the action requested.

B. Within 14 days of receiving a petition, the agency shall send a notice identifying the petitioner, the nature of the petitioner's request and the agency's plan for disposition of the petition to the Registrar for publication in the Virginia Register of Regulations in accordance with the provisions of subsection B of § [2.2-4031](#).

C. A 21-day period for acceptance of written public comment on the petition shall be provided after publication in the Virginia Register. The agency shall issue a written

decision to grant or deny the petitioner's request within 90 days following the close of the comment period. However, if the rulemaking authority is vested in an entity that has not met within that 90-day period, the entity shall issue a written decision no later than 14 days after it next meets. The written decision issued by the agency shall include a statement of its reasons and shall be submitted to the Registrar for publication in the Virginia Register of Regulations. Agency decisions to initiate or not initiate rulemaking in response to petitions shall not be subject to judicial review.

1984, c. 5, § 9-6.14:7.1; 1985, c. 602; 1989, c. 71; 1991, c. 488; 1993, cc. 898, 944; 1994, c. [938](#); 1995, cc. [25](#), [677](#), [717](#), [790](#); 1997, c. [87](#); 2001, c. [844](#); 2002, cc. [241](#), [391](#), [747](#); 2003, c. [224](#); 2005, cc. [619](#), [682](#); 2007, cc. [873](#), [916](#).

§2.2-4007.01. Notice of intended regulatory action; public hearing.

A. In the case of all regulations, except those regulations exempted by § [2.2-4002](#), [2.2-4006](#), [2.2-4011](#), or [2.2-4012.1](#), an agency shall (i) provide the Registrar of Regulations with a Notice of Intended Regulatory Action that describes the subject matter and intent of the planned regulation and (ii) allow at least 30 days for public comment, to include an on-line public comment forum on the Virginia Regulatory Town Hall, after publication of the Notice of Intended Regulatory Action.

Whenever a Virginia statutory change necessitates a change to, or repeal of, all or a portion of a regulation or the adoption of a new regulation, the agency shall file a Notice of Intended Regulatory Action with the Registrar within 120 days of such law's effective date.

An agency shall not file proposed regulations with the Registrar until the public comment period on the Notice of Intended Regulatory Action has closed.

B. Agencies shall state in the Notice of Intended Regulatory Action whether they plan to hold a public hearing on the proposed regulation after it is published. Agencies shall hold such public hearings if required by basic law. If the agency states an intent to hold a public hearing on the proposed regulation in the Notice of Intended Regulatory Action, then it shall hold the public hearing. If the agency states in its Notice of Intended Regulatory Action that it does not plan to hold a hearing on the proposed regulation, then no public hearing is required unless, prior to completion of the comment period specified in the Notice of Intended Regulatory Action, (i) the Governor directs the agency to hold a public hearing or (ii) the agency receives requests for a public hearing from at least 25 persons.

2007, cc. [873](#), [916](#); 2011, c. [464](#).

§2.2-4007.02. Public participation guidelines.

A. Public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted, and used by each agency pursuant to the provisions of this chapter. The guidelines shall set out any methods for the identification and notification of interested parties and any specific means of seeking input from interested persons or groups that the agency intends to use in addition to the Notice of Intended Regulatory Action. The guidelines shall set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers the panels or consultation appropriate and intends to make use of the panels or consultation.

B. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency, to include an online public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate and (ii) be accompanied by and represented by counsel or other representative. However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments.

2007, cc. [873](#), [916](#); 2012, c. [795](#).

§2.2-4007.03. Informational proceedings; effect of noncompliance.

A. In the case of all regulations, except those regulations exempted by § [2.2-4002](#), [2.2-4006](#), or [2.2-4011](#), the proposed regulation and general notice of opportunity for oral or written submittals as to that regulation shall be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations in accordance with the provisions of subsection B of § [2.2-4031](#). In addition, the agency may, in its discretion, (i) publish the notice in any newspaper and (ii) publicize the notice through press releases and such other media as will best serve the purpose and subject involved. The Register and any newspaper publication shall be made at least 60 days in advance of the last date prescribed in the notice for such submittals. All notices, written submittals, and transcripts and summaries or notations of oral

presentations, as well as any agency action thereon, shall be matters of public record in the custody of the agency.

B. If an agency wishes to change a proposed regulation before adopting it as a final regulation, it may choose to publish a revised proposed regulation, provided the latter is subject to a public comment period of at least 30 additional days and the agency complies in all other respects with this section.

C. In no event shall the failure to comply with the requirements of this section be deemed mere harmless error for the purposes of § [2.2-4027](#).

2007, cc. [873](#), [916](#).

§2.2-4007.04. Economic impact analysis.

A. Before delivering any proposed regulation under consideration to the Registrar as required in § [2.2-4007.05](#), the agency shall submit on the Virginia Regulatory Town Hall a copy of that regulation to the Department of Planning and Budget. In addition to determining the public benefit, the Department of Planning and Budget in coordination with the agency shall, within 45 days, prepare an economic impact analysis of the proposed regulation, as follows:

1. The economic impact analysis shall include but need not be limited to the projected number of businesses or other entities to which the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected by the regulation; the projected number of persons and employment positions to be affected; the impact of the regulation on the use and value of private property, including additional costs related to the development of real estate for commercial or residential purposes; and the projected costs to affected businesses, localities, or entities of implementing or complying with the regulations, including the estimated fiscal impact on such localities and sources of potential funds to implement and comply with such regulation. A copy of the economic impact analysis shall be provided to the Joint Commission on Administrative Rules; and

2. If the regulation may have an adverse effect on small businesses, the economic impact analysis shall also include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation

on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. As used in this subdivision, "small business" has the same meaning as provided in subsection A of § [2.2-4007.1](#).

B. In the event the Department cannot complete an economic impact statement within the 45-day period, it shall advise the agency and the Joint Commission on Administrative Rules as to the reasons for the delay. In no event shall the delay exceed 30 days beyond the original 45-day period.

C. Agencies shall provide the Department with such estimated fiscal impacts on localities and sources of potential funds. The Department may request the assistance of any other agency in preparing the analysis. The Department shall deliver a copy of the analysis to the agency drafting the regulation, which shall comment thereon as provided in § [2.2-4007.05](#), a copy to the Registrar for publication with the proposed regulation, and an electronic copy to each member of the General Assembly. No regulation shall be promulgated for consideration pursuant to § [2.2-4007.05](#) until the impact analysis has been received by the Registrar. For purposes of this section, the term "locality, business, or entity particularly affected" means any locality, business, or entity that bears any identified disproportionate material impact that would not be experienced by other localities, businesses, or entities. The analysis shall represent the Department's best estimate for the purposes of public review and comment on the proposed regulation. The accuracy of the estimate shall in no way affect the validity of the regulation, nor shall any failure to comply with or otherwise follow the procedures set forth in this subsection create any cause of action or provide standing for any person under Article 5 (§ [2.2-4025](#) et seq.) or otherwise to challenge the actions of the Department hereunder or the action of the agency in adopting the proposed regulation.

D. In the event the economic impact analysis completed by the Department reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period. The Joint Commission on Administrative Rules shall review such rule or regulation and issue a statement containing the Commission's findings in accordance with § [30-73.3](#).

E. The Department shall revise and reissue its economic impact analysis within the time limits set forth for the Department's review of regulations at the final stage pursuant to the Governor's executive order for executive branch review if any of the following conditions is present that would materially change the Department's analysis:

1. Public comment timely received at the proposed stage indicates significant errors in the economic impact analysis; or
2. There is significant or material difference between the agency's proposed economic impact analysis and the anticipated negative economic impacts to the business community as indicated by public comment.

The determination of whether a condition is present under this subsection shall be made by the Department and shall not be subject to judicial review.

2007, cc. [316](#), [561](#), [873](#), [916](#); 2015, c. [608](#); 2017, cc. [483](#), [493](#), [599](#).

§2.2-4007.04:01. Notice required of certain departments.

A. At or prior to the time a new regulation is posted to the Virginia Regulatory Town Hall, the Department of Medical Assistance Services shall provide direct notice to stakeholders affected by the new regulatory change that such change has been initiated. At the time that the final stage of a regulation is posted to the Virginia Regulatory Town Hall, the Department shall provide direct notice to stakeholders affected by the regulatory change that such final stage has been posted.

B. At the time a change to a provider manual is being developed, the Department of Medical Assistance Services shall provide direct notice to stakeholders affected by the provider manual change that such change has been initiated. The Department shall post a notice of such change to the Virginia Regulatory Town Hall, to include a public comment forum, for a period of 30 days. Such notice shall include a description of the change and provide contact information for the Department's designated contact person.

C. At or prior to the time a new regulation relating to licensed providers is posted to the Virginia Regulatory Town Hall, the Department of Behavioral Health and Developmental Services shall provide direct notice to licensed providers affected by the new regulatory change that such change has been initiated.

D. At the time that the final stage of a regulation is posted to the Virginia Regulatory Town Hall, the Department of Behavioral Health and Developmental Services shall

provide direct notice to licensed providers affected by the regulatory change that such final stage has been posted.

E. At the time any change to guidance documents related to licensure requirements is being developed, the Department of Behavioral Health and Developmental Services shall provide direct notice to licensed providers affected by the change that such change has been initiated. The Department shall post the proposed change to the Virginia Regulatory Town Hall, to include a public comment forum, for a period of 30 days. Such notice shall include a description of the change and provide contact information for the Department's designated contact person. If it is anticipated that the change shall have an impact on staffing or payment matters for the affected stakeholders, the direct notice to stakeholders shall note this fact and request specific comments regarding an appropriate time frame for the implementation of such changes.

2017, c. [599](#).

§2.2-4007.05. Submission of proposed regulations to the Registrar.

Before promulgating any regulation under consideration, the agency shall deliver a copy of that regulation to the Registrar together with a summary of the regulation and a separate and concise statement of (i) the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed; (ii) the purpose of the regulation, defined as the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety, or welfare; (iii) the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation that make changes to the current status of the law; (iv) the issues of the regulation, defined as the primary advantages and disadvantages for the public, and as applicable for the agency or the state, of implementing the new regulatory provisions; and (v) the agency's response to the economic impact analysis submitted by the Department of Planning and Budget pursuant to § [2.2-4007.04](#). Any economic impact estimate included in the agency's response shall represent the agency's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in no way affect the validity of the regulation. Staff as designated by the Code Commission shall review proposed regulation submission packages to ensure that the requirements of this subsection are met prior to publication of the proposed regulation in the Register. The summary; the statement of the basis, purpose, substance, and

issues; the economic impact analysis; and the agency's response shall be published in the Virginia Register of Regulations and be available on the Virginia Regulatory Town Hall, together with the notice of opportunity for oral or written submittals on the proposed regulation.

2007, cc. [873](#), [916](#).

§2.2-4007.06. Changes between proposed and final regulations.

If one or more changes with substantial impact are made to a proposed regulation from the time that it is published as a proposed regulation to the time it is published as a final regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral and written submittals on the changes to the regulation. If the agency receives requests from at least 25 persons for an opportunity to submit oral and written comments on the changes to the regulation, the agency shall (i) suspend the regulatory process for 30 days to solicit additional public comment and (ii) file notice of the additional 30-day public comment period with the Registrar of Regulations, unless the agency determines that the changes made are minor or inconsequential in their impact. The comment period, if any, shall begin on the date of publication of the notice in the Register. Agency denial of petitions for a comment period on changes to the regulation shall be subject to judicial review.

2007, cc. [873](#), [916](#).

§2.2-4007.07. State Air Pollution Control Board; variances.

The provisions of §§ [2.2-4007](#) through [2.2-4007.06](#) shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

2007, cc. [873](#), [916](#).

§2.2-4007.1. Regulatory flexibility for small businesses; periodic review of regulations.

A. As used in this section, "small business" means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.

B. In addition to the requirements of §§ [2.2-4007](#) through [2.2-4007.06](#), prior to the adoption of any proposed regulation, the agency proposing a regulation shall prepare a regulatory flexibility analysis in which the agency shall consider utilizing alternative regulatory methods, consistent with health, safety, environmental, and

economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small businesses. The agency shall consider, at a minimum, each of the following methods of reducing the effects of the proposed regulation on small businesses:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
5. The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

C. Prior to the adoption of any proposed regulation that may have an adverse effect on small businesses, each agency shall notify the Joint Commission on Administrative Rules, through the Virginia Regulatory Town Hall, of its intent to adopt the proposed regulation. The Joint Commission on Administrative Rules shall advise and assist agencies in complying with the provisions of this section.

D. In addition to other requirements of § [2.2-4017](#), all regulations shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law. When a regulation has undergone a comprehensive review as part of a regulatory action that included the solicitation of public comment on the regulation, a periodic review shall not be required until four years after the effective date of the regulatory action.

E. The regulatory review required by this section shall include consideration of:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the regulation from the public;
3. The complexity of the regulation;

4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and

5. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

F. Prior to commencement of the regulatory review required by subsection D, the agency shall publish a notice of the review in the Virginia Register of Regulations and post the notice on the Virginia Regulatory Town Hall. The agency shall provide a minimum of 21 days for public comment after publication of the notice. No later than 120 days after close of the public comment period, the agency shall publish a report of the findings of the regulatory review in the Virginia Register of Regulations and post the report on the Virginia Regulatory Town Hall.

2005, cc. [619](#), [682](#); 2007, cc. [873](#), [916](#); 2011, cc. [241](#), [315](#).

§2.2-4007.2. Regulations requiring the submission of documents or payments.

A. On or after January 1, 2010, each agency having regulations promulgated in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) that require the submission of documents or payments, including fees and fines, shall (i) examine such regulations to determine whether the submission of the required documents or payments may be accomplished by electronic means, and (ii) if so, consider amending the regulation that is being promulgated to offer the alternative of submitting the documents or payments by electronic means. If an agency chooses to amend the regulation to provide the alternative of submitting required documents or payments by electronic means, such action shall be exempt from the operation of Article 2 (§ [2.2-4006](#) et seq.) of Chapter 40 of Title 2.2 provided the amended regulation is (a) adopted by December 31, 2010, and (b) consistent with federal and state law and regulations.

B. Nothing in this section shall be construed to create an independent or private cause of action to enforce its provisions.

C. Unless otherwise exempt, any amendments to an agency's regulations pursuant to this section made after December 31, 2010, shall be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.).

D. For the purposes of this section,

"Agency" and "regulations" mean the same as those terms are defined in § [2.2-4001](#).

"Electronic" means the same as that term is defined in § [59.1-480](#).

2009, cc. [85](#), [624](#).

§2.2-4008. Repealed.

Repealed by Acts 2017, c. [488](#), cl. [2](#).

§2.2-4009. Evidentiary hearings on regulations.

Where an agency proposes to consider the exercise of authority to promulgate a regulation, it may conduct or give interested persons an opportunity to participate in a public evidentiary proceeding; and the agency shall always do so where the basic law requires a hearing. Evidentiary hearings may be limited to the trial of factual issues directly related to the legal validity of the proposed regulation in any of the relevant respects outlined in § [2.2-4027](#).

General notice of the proceedings shall be published as prescribed in § [2.2-4007.03](#). In addition, where the proposed regulation is to be addressed to named persons, the latter shall (i) also be given the same notice individually by mail or otherwise if acknowledged in writing and (ii) be entitled to be accompanied by and represented by counsel or other representative. The proceedings may be conducted separately from, and in any event the record thereof shall be separate from, any other or additional proceedings the agency may choose or be required to conduct for the reception of general data, views, and argument pursuant to § [2.2-4007.02](#) or otherwise. Any probative evidence may be received except that the agency shall as a matter of efficiency exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, and may deny rebuttal, or cross-examination. Testimony may be admitted in written form provided those who have prepared it are made available for examination in person.

The agency or one or more of its subordinates specially designated for the purpose shall preside at the taking of evidence and may administer oaths and affirmations. The proceedings shall be recorded verbatim and the record thereof shall be made available to interested persons for transcription at their expense or, if transcribed by or for the agency, for inspection or purchase at cost.

Where subordinates preside at the taking of the evidence, they shall report their recommendations and proposed findings and conclusions that shall be made available upon request to the participants in the taking of evidence as well as other interested persons and serve as a basis for exceptions, briefs, or oral argument to the

agency itself. Whether or not subordinates take the evidence, after opportunity for the submittal of briefs on request and such oral argument as may be scheduled, the agency may settle the terms of the regulation and shall promulgate it only upon (a) its findings of fact based upon the record of evidence made pursuant to this section and facts of which judicial notice may be taken, (b) statements of basis and purpose as well as comment upon data received in any informational proceedings held under § [2.2-4007.03](#) and (c) the conclusions required by the terms of the basic law under which the agency is operating.

1975, c. 503, § 9-6.14:8; 1985, c. 602; 2001, c. [844](#); 2007, cc. [873](#), [916](#); 2012, c. [795](#).

§2.2-4010. Pilot programs for regulations imposing local government mandates.

Where an agency proposes to consider the exercise of authority to promulgate a regulation that will impose a statewide mandate on the Commonwealth's localities, the agency shall consider, where appropriate, implementing the regulation on a limited basis with a representative number of localities. An agency may use such a pilot program to determine the effectiveness or impact of proposed regulations prior to statewide adoption.

1993, c. 168, § 9-6.14:8.1; 2001, c. [844](#).

§2.2-4011. Emergency regulations; publication; exceptions.

A. Regulations that an agency finds are necessitated by an emergency situation may be adopted by an agency upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor.

B. Agencies may also adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment and the regulation is not exempt under the provisions of subdivision A 4 of § [2.2-4006](#). In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt the regulations. Pursuant to § [2.2-4012](#), such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations.

C. All emergency regulations shall be limited to no more than 18 months in duration. During the 18-month period, an agency may issue additional emergency regulations

as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the 18-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the 18-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with this article. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be filed with the Registrar within 60 days of the effective date of the emergency regulation and published as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within 180 days after the effective date of the emergency regulation and published as soon as practicable.

D. In the event that an agency concludes that despite its best efforts a replacement regulation cannot be adopted before expiration of the 18-month period described in subsection C, it may seek the prior written approval of the Governor to extend the duration of the emergency regulation for a period of not more than six additional months. Any such request must be submitted to the Governor at least 30 days prior to the scheduled expiration of the emergency regulation and shall include a description of the agency's efforts to adopt a replacement regulation together with the reasons that a replacement regulation cannot be adopted before the scheduled expiration of the emergency regulation. Upon approval of the Governor, provided such approval occurs prior to the scheduled expiration of the emergency regulation, the duration of the emergency regulation shall be extended for a period of no more than six months. Such approval shall be in the sole discretion of the Governor and shall not be subject to judicial review. Agencies shall notify the Registrar of Regulations of the new expiration date of the emergency regulation as soon as practicable.

E. Emergency regulations shall be published as soon as practicable in the Register.

F. The Regulations of the Marine Resources Commission shall be excluded from the provisions of this section.

1975, c. 503, § 9-6.14:9; 1977, cc. 450, 459; 1981, c. 387; 1982, c. 425; 1983, c. 295; 1984, c. 5; 1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 71, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793, 829; 1993, cc. 537, 669, 898; 1994, cc. [237](#), [577](#), [649](#), [740](#), [743](#), [801](#), [938](#); 1995, cc. [103](#), [499](#), [516](#); 1996, cc. [51](#), [152](#), [158](#), [189](#), [205](#), [279](#), [320](#), [345](#), [573](#), [590](#), [598](#), [638](#), [705](#), [735](#), [818](#), [1012](#); 1997, cc. [87](#), [88](#),

[109](#), [212](#), [390](#), [439](#), [567](#), [624](#), [785](#), [806](#), [845](#), [850](#), [861](#), [868](#); 1998, cc. [39](#), [619](#), [784](#); 1999, cc. [412](#), [421](#), [433](#), [603](#); 2000, cc. [382](#), [400](#), [924](#), [1011](#); 2001, c. [844](#); 2007, cc. [873](#), [916](#); 2013, c. [629](#).

§2.2-4012. Purpose; adoption; effective date; filing; duties of Registrar of Regulations.

A. The purpose of the regulatory procedures shall be to provide a regulatory plan that is predictable, based on measurable and anticipated outcomes, and is inclined toward conflict resolution.

B. Subject to the provisions of §§ [2.2-4013](#) and [2.2-4014](#), all regulations, including those that agencies, pursuant to § [2.2-4002](#), [2.2-4006](#), or [2.2-4011](#), may elect to dispense with the public procedures provided by §§ [2.2-4007.01](#) and [2.2-4009](#), may be formally and finally adopted by the signed order of the agency so stating. No regulation except an emergency regulation or a noncontroversial regulation promulgated pursuant to § [2.2-4012.1](#) shall be effective until the expiration of the applicable period as provided in § [2.2-4015](#). In the case of an emergency regulation filed in accordance with § [2.2-4011](#), the regulation shall become effective upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. The originals of all regulations shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies. They, or facsimiles thereof, shall be made available for public inspection or copying. Full and true copies shall also be additionally filed, registered, published, or otherwise made publicly available as required by other laws.

C. Prior to the publication for hearing of a proposed regulation, copies of the regulation and copies of the summary and statement as to the basis, purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget and the agency's response thereto as required by § [2.2-4007.04](#) shall be transmitted to the Registrar of Regulations, who shall retain these documents.

D. All regulations adopted pursuant to this chapter shall contain a citation to the section of the Code of Virginia that authorizes or requires the regulations and, where the regulations are required to conform to federal law or regulation in order to be valid, a citation to the specific federal law or regulation to which conformity is required.

E. Immediately upon the adoption by any agency of any regulation in final form, a copy of (i) the regulation, (ii) a then current summary and statement as to the basis,

purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget, and (iii) the agency's summary description of the nature of the oral and written data, views, or arguments presented during the public proceedings and the agency's comments thereon shall be transmitted to the Registrar of Regulations, who shall retain these documents as permanent records and make them available for public inspection. A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

1975, c. 503, § 9-6.14:9; 1977, cc. 450, 459; 1981, c. 387; 1982, c. 425; 1983, c. 295; 1984, c. 5; 1989, c. 71; 1992, c. 829; 1993, c. 898; 1994, c. [938](#); 2001, c. [844](#); 2003, c. [224](#); 2007, cc. [873](#), [916](#).

§2.2-4012.1. Fast-track rulemaking process.

Notwithstanding any other provision, rules that are expected to be noncontroversial may be promulgated or repealed in accordance with the process set out in this section. Upon the concurrence of the Governor, and after written notice to the applicable standing committees of the Senate of Virginia and the House of Delegates, and to the Joint Commission on Administrative Rules, the agency may submit a fast-track regulation without having previously published a Notice of Intended Regulatory Action. The fast-track regulation shall be published in the Virginia Register of Regulations and posted on the Virginia Regulatory Town Hall, along with an agency statement setting out the reasons for using the fast-track rulemaking process. Such regulations shall be subject to the requirements set out in §§ [2.2-4007.03](#), [2.2-4007.04](#), and [2.2-4007.05](#), except that the time for receiving public comment need not exceed 30 days after (i) publication of the regulation in the Virginia Register of Regulations and (ii) a public comment forum opens on the Virginia Regulatory Town Hall. The time for preparation of the economic impact analysis shall not exceed 30 days. If an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action. Otherwise, the regulation will become effective or shall be repealed as appropriate, 15 days after

the close of the comment period, unless the regulation or repeal is withdrawn or a later effective date is specified by the agency.

2003, c. [224](#); 2007, cc. [873](#), [916](#).

§2.2-4013. Executive review of proposed and final regulations; changes with substantial impact.

A. The Governor shall adopt and publish procedures by executive order for review of all proposed regulations governed by this chapter by June 30 of the year in which the Governor takes office. The procedures shall include (i) review by the Attorney General to ensure statutory authority for the proposed regulations; and (ii) examination by the Governor to determine if the proposed regulations are (a) necessary to protect the public health, safety and welfare and (b) clearly written and easily understandable. The procedures may also include review of the proposed regulation by the appropriate Cabinet Secretary.

The Governor shall transmit his comments, if any, on a proposed regulation to the Registrar and the agency no later than fifteen days following the completion of the public comment period provided for in § [2.2-4007.03](#). The Governor may recommend amendments or modifications to any regulation that would bring that regulation into conformity with statutory authority or state or federal laws, regulations or judicial decisions.

Not less than fifteen days following the completion of the public comment period provided for in § [2.2-4007.03](#), the agency may (i) adopt the proposed regulation if the Governor has no objection to the regulation; (ii) modify and adopt the proposed regulation after considering and incorporating the Governor's objections or suggestions, if any; or (iii) adopt the regulation without changes despite the Governor's recommendations for change.

B. Upon final adoption of the regulation, the agency shall forward a copy of the regulation to the Registrar of Regulations for publication as soon as practicable in the Register. All changes to the proposed regulation shall be highlighted in the final regulation, and substantial changes to the proposed regulation shall be explained in the final regulation.

C. If the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he may require the agency to provide an additional thirty days to solicit additional public comment on the changes by transmitting

notice of the additional public comment period to the agency and to the Registrar within the 30-day final adoption period described in subsection D, and publishing the notice in the Register. The additional public comment period required by the Governor shall begin upon publication of the notice in the Register.

D. A 30-day final adoption period for regulations shall commence upon the publication of the final regulation in the Register. The Governor may review the final regulation during this 30-day final adoption period and if he objects to any portion or all of a regulation, the Governor may file a formal objection to the regulation, suspend the effective date of the regulation in accordance with subsection B of § [2.2-4014](#), or both.

If the Governor files a formal objection to the regulation, he shall forward his objections to the Registrar and agency prior to the conclusion of the 30-day final adoption period. The Governor shall be deemed to have acquiesced to a promulgated regulation if he fails to object to it or if he fails to suspend the effective date of the regulation in accordance with subsection B of § [2.2-4014](#). The Governor's objection, or the suspension of the regulation, or both if applicable, shall be published in the Register.

A regulation shall become effective as provided in § [2.2-4015](#).

E. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

1984, c. 5, § 9-6.14:9.1; 1993, cc. 551, 772, 898; 1995, cc. [25](#), [736](#); 2001, c. [844](#); 2007, cc. [873](#), [916](#); 2015, cc. [29](#), [450](#).

§2.2-4014. Legislative review of proposed and final regulations.

A. After publication of the Register pursuant to § [2.2-4031](#), the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable or the Joint Commission on Administrative Rules may meet and, during the promulgation or final adoption process, file with the Registrar and the promulgating agency an objection to a proposed or final adopted regulation. The Registrar shall publish any such objection received by him as soon as practicable in the Register. Within 21 days after the receipt by the promulgating agency of a legislative objection, that agency shall file a response with the Registrar, the objecting legislative committee or the Joint Commission on Administrative Rules, and the Governor. If a legislative objection is filed within the final adoption period, subdivision A 1 of § [2.2-4015](#) shall govern.

B. In addition or as an alternative to the provisions of subsection A, the standing committee of both houses of the General Assembly to which matters relating to the content are most properly referable or the Joint Commission on Administrative Rules may suspend the effective date of any portion or all of a final regulation with the Governor's concurrence. The Governor and (i) the applicable standing committee of each house or (ii) the Joint Commission on Administrative Rules may direct, through a statement signed by a majority of their respective members and by the Governor, that the effective date of a portion or all of the final regulation is suspended and shall not take effect until the end of the next regular legislative session. This statement shall be transmitted to the promulgating agency and the Registrar within the 30-day final adoption period, or if a later effective date is specified by the agency the statement may be transmitted at any time prior to the specified later effective date, and shall be published in the Register.

If a bill is passed at the next regular legislative session to nullify a portion but not all of the regulation, then the promulgating agency (i) may promulgate the regulation under the provision of subdivision A 4 a of § [2.2-4006](#), if it makes no changes to the regulation other than those required by statutory law or (ii) shall follow the provisions of §§ [2.2-4007.01](#) through [2.2-4007.06](#), if it wishes to also make discretionary changes to the regulation. If a bill to nullify all or a portion of the suspended regulation, or to modify the statutory authority for the regulation, is not passed at the next regular legislative session, then the suspended regulation shall become effective at the conclusion of the session, unless the suspended regulation is withdrawn by the agency.

C. A regulation shall become effective as provided in § [2.2-4015](#).

D. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

1984, c. 5, § 9-6.14:9.2; 1993, cc. 551, 772; 2001, c. [844](#); 2002, c. [677](#); 2003, c. [212](#); 2004, c. [777](#); 2007, cc. [873](#), [916](#); 2015, cc. [29](#), [450](#).

§2.2-4015. Effective date of regulation; exception.

A. A regulation adopted in accordance with this chapter and the Virginia Register Act (§ [2.2-4100](#) et seq.) shall become effective at the conclusion of the thirty-day final adoption period provided for in subsection D of § [2.2-4013](#), or any other later date specified by the agency, unless:

1. A legislative objection has been filed in accordance with § [2.2-4014](#), in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the expiration of the applicable twenty-one-day extension period provided in § [2.2-4014](#);
2. The Governor has exercised his authority in accordance with § [2.2-4013](#) to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the period for which the Governor has provided for additional public comment;
3. The Governor and (i) the appropriate standing committees of each house of the General Assembly or (ii) the Joint Commission on Administrative Rules have exercised their authority in accordance with subsection B of § [2.2-4014](#) to suspend the effective date of a regulation until the end of the next regular legislative session; or
4. The agency has suspended the regulatory process in accordance with § [2.2-4007.06](#), or for any reason it deems necessary or appropriate, in which event the regulation, unless withdrawn by the agency, shall become effective in accordance with subsection B.

B. Whenever the regulatory process has been suspended for any reason, any action by the agency that either amends the regulation or does not amend the regulation but specifies a new effective date shall be considered a readoption of the regulation for the purposes of appeal. If the regulation is suspended under § [2.2-4007.06](#), such readoption shall take place after the thirty-day public comment period required by that subsection. Suspension of the regulatory process by the agency may occur simultaneously with the filing of final regulations as provided in subsection B of § [2.2-4013](#).

When a regulation has been suspended, the agency must set the effective date no earlier than fifteen days from publication of the readoption action and any changes made to the regulation. During that fifteen-day period, if the agency receives requests from at least twenty-five persons for the opportunity to comment on new substantial changes, it shall again suspend the regulation pursuant to § [2.2-4007.06](#).

C. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

1984, c. 5, § 9-6.14:9.3; 1993, cc. 551, 772, 898; 1995, c. [25](#); 2001, c. [844](#); 2002, cc. [391](#), [677](#); 2004, c. [777](#); 2007, cc. [873](#), [916](#).

§2.2-4016. Withdrawal of regulation.

Nothing in this chapter shall prevent any agency from withdrawing any regulation at any time prior to the effective date of that regulation. A regulation may be repealed after its effective date only in accordance with the provisions of this chapter that govern the adoption of regulations.

1984, c. 5, § 9-6.14:9.4; 1985, c. 602; 2001, c. [844](#).

§2.2-4017. Periodic review of regulations.

Each Governor shall mandate through executive order a procedure for periodic review during that Governor's administration of regulations of agencies within the executive branch of state government. The procedure shall include (i) a review by the Attorney General to ensure statutory authority for regulations and (ii) a determination by the Governor whether the regulations are (a) necessary for the protection of public health, safety and welfare and (b) clearly written and easily understandable.

The Governor may require each agency (i) to review all regulations promulgated by that agency to determine whether new regulations should be adopted and old regulations amended or repealed, and (ii) to prepare a written report summarizing the agency's findings about its regulations, its reasons for its findings and any proposed course of action.

1984, c. 5, § 9-6.14:25; 2001, c. [844](#).

§2.2-4018. Exemptions from operation of Article 3.

The following agency actions otherwise subject to this chapter shall be exempted from the operation of this article.

1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.
2. The award or denial of claims for workers' compensation.
3. The grant or denial of public assistance or social services.
4. Temporary injunctive or summary orders authorized by law.
5. The determination of claims for unemployment compensation or special unemployment.

6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.

7. The determination of accreditation or academic review status of a public school or public school division or approval by the Board of Education of a school division corrective action plan required by § [22.1-253.13:3](#).

1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793; 1993, cc. 537, 669, 898; 1994, cc. [237](#), [577](#), [649](#), [740](#), [743](#), [801](#); 1995, cc. [103](#), [499](#), [516](#); 1996, cc. [51](#), [152](#), [158](#), [189](#), [205](#), [279](#), [320](#), [345](#), [573](#), [590](#), [598](#), [638](#), [705](#), [735](#), [818](#), [1012](#); 1997, cc. [87](#), [88](#), [109](#), [212](#), [390](#), [439](#), [567](#), [624](#), [785](#), [806](#), [845](#), [850](#), [861](#), [868](#); 1998, cc. [39](#), [619](#), [784](#); 1999, cc. [412](#), [421](#), [433](#), [603](#); 2000, cc. [382](#), [400](#), [924](#), [1011](#); 2001, c. [844](#); 2002, c. [747](#); 2004, c. [965](#).

§2.2-4019. Informal fact finding proceedings.

A. Agencies shall ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings unless the named party and the agency consent to waive such a conference or proceeding to go directly to a formal hearing. Such conference-consultation procedures shall include rights of parties to the case to (i) have reasonable notice thereof, which notice shall include contact information consisting of the name, telephone number, and government email address of the person designated by the agency to answer questions or otherwise assist a named party; (ii) appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case; (iii) have notice of any contrary fact basis or information in the possession of the agency that can be relied upon in making an adverse decision; (iv) receive a prompt decision of any application for a license, benefit, or renewal thereof; and (v) be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case.

B. Agencies may, in their case decisions, rely upon public data, documents or information only when the agencies have provided all parties with advance notice of an intent to consider such public data, documents or information. This requirement shall not apply to an agency's reliance on case law and administrative precedent.

1975, c. 503, § 9-6.14:11; 1986, c. 615; 1989, c. 601; 1993, c. 898; 1994, c. [748](#); 1995, c. [398](#); 2001, c. [844](#); 2016, c. [39](#).

§2.2-4020. Formal hearings; litigated issues.

A. The agency shall afford opportunity for the formal taking of evidence upon relevant fact issues in any case in which the basic laws provide expressly for decisions upon or after hearing and may do so in any case to the extent that informal procedures under § [2.2-4019](#) have not been had or have failed to dispose of a case by consent.

B. Parties to formal proceedings shall be given reasonable notice of the (i) time, place, and nature thereof; (ii) basic law under which the agency contemplates its possible exercise of authority; (iii) matters of fact and law asserted or questioned by the agency; and (iv) contact information consisting of the name, telephone number, and government email address of the person designated by the agency to respond to questions or otherwise assist a named party. Applicants for licenses, rights, benefits, or renewals thereof have the burden of approaching the agency concerned without such prior notice but they shall be similarly informed thereafter in the further course of the proceedings whether pursuant to this section or to § [2.2-4019](#).

C. In all such formal proceedings the parties shall be entitled to be accompanied by and represented by counsel, to submit oral and documentary evidence and rebuttal proofs, to conduct such cross-examination as may elicit a full and fair disclosure of the facts, and to have the proceedings completed and a decision made with dispatch. The burden of proof shall be upon the proponent or applicant. The presiding officers at the proceedings may (i) administer oaths and affirmations, (ii) receive probative evidence, exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttal, or cross-examination, rule upon offers of proof, and oversee a verbatim recording of the evidence, (iii) hold conferences for the settlement or simplification of issues by consent, (iv) dispose of procedural requests, and (v) regulate and expedite the course of the hearing. Where a hearing officer presides, or where a subordinate designated for that purpose presides in hearings specified in subsection F of § [2.2-4024](#), he shall recommend findings and a decision unless the agency shall by its procedural regulations provide for the making of findings and an initial decision by the presiding officers subject to review and reconsideration by the agency on appeal to it as of right or on its own motion. The agency shall give deference to findings by the presiding officer explicitly based on the demeanor of witnesses.

D. Prior to the recommendations or decisions of subordinates, the parties concerned shall be given opportunity, on request, to submit in writing for the record (i) proposed findings and conclusions and (ii) statements of reasons therefor. In all cases, on request, opportunity shall be afforded for oral argument (a) to hearing officers or subordinate presiding officers, as the case may be, in all cases in which they make such recommendations or decisions or (b) to the agency in cases in which it makes the original decision without such prior recommendation and otherwise as it may permit in its discretion or provide by general rule. Where hearing officers or subordinate presiding officers, as the case may be, make recommendations, the agency shall receive and act on exceptions thereto.

E. All decisions or recommended decisions shall be served upon the parties, become a part of the record, and briefly state or recommend the findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the agency is operating together with the appropriate order, license, grant of benefits, sanction, relief, or denial thereof.

1975, c. 503, § 9-6.14:12; 1986, c. 615; 1991, c. 584; 1993, c. 898; 1995, c. [398](#); 2001, c. [844](#); 2016, cc. [39](#), [694](#).

§2.2-4020.1. Summary case decisions.

A. Any person who has (i) applied for a permit, certificate, or license from an agency or (ii) received written notice of a potential violation from an agency may request a summary case decision from the agency. The request for a summary case decision shall be in writing, signed by or on behalf of the requestor, and be submitted to the agency secretary as defined by the Rules of the Supreme Court of Virginia. The request shall include:

1. A statement that no material facts are in dispute;
2. A proposed stipulation of all such undisputed material facts concerning the application or notice;
3. A clear and concise statement of the questions of law to be decided by summary case decision; and
4. A statement that the requestor waives his right to any other administrative proceeding provided in this article by the agency on the questions of law to be decided by summary case decision.

B. Within 21 days of receipt of a complete request for summary case decision, the agency shall determine whether the matter in dispute properly may be decided by summary case decision and shall promptly notify the requestor of its determination in writing. If a request for summary case decision is not complete, the agency may request additional specific information from the requestor. The agency shall decide the matter by summary case decision if it determines that there are no disputed issues of material fact. However, if (i) an informal fact-finding proceeding as provided in § [2.2-4019](#), a formal hearing as provided in § [2.2-4020](#), or other proceeding authorized by the agency's basic law concerning the application or notice has been scheduled, the requestor has been notified, and the issues that are the subject of such proceeding or hearing include questions that are the subject of the request for summary case decision or (ii) the matter must be decided through any public participation requirements under this chapter or the agency's basic law, the agency shall not be required to decide the matter by summary case decision.

C. Denial of a request for summary case decision shall not be subject to judicial review in accordance with this chapter and the Rules of the Supreme Court of Virginia, and shall not prejudice any rights the requestor has or may have under this chapter or the agency's basic law. Nothing in this article shall prevent an agency from consolidating the summary case decision proceeding into, or proceeding with, a separate informal fact-finding proceeding, formal hearing, or other proceeding authorized by the agency's basic law concerning the matter in question.

D. Upon granting a request for summary case decision, the agency shall establish a schedule for the parties to submit briefs on the questions of law in dispute and may, by agreement of the parties, provide for oral argument.

E. All decisions or recommended decisions shall be served on the requestor, become a part of the record, and briefly state or recommend the findings, conclusions, reasons, or basis therefor upon the evidence contained in the record and relevant to the basic law under which the agency is operating, together with the appropriate order, license, grant of benefits, sanction, relief, or denial thereof.

2006, c. [702](#).

§2.2-4020.2. Default.

A. Unless otherwise provided by law, if a party without good cause fails to attend or appear at a formal hearing conducted in accordance with § [2.2-4020](#), or at an

informal fact-finding proceeding conducted pursuant to § [2.2-4019](#), the presiding officer may issue a default order.

B. A default order shall not be issued by the presiding officer unless the party against whom the default order is entered has been sent the notice that contains a notification that a default order may be issued against that party if that party fails without good cause to attend or appear at the hearing or informal fact-finding proceeding that is the subject of the notice.

C. If a default order is issued, the presiding officer may conduct all further proceedings necessary to complete the adjudication without the defaulting party and shall determine all issues in the adjudication, including those affecting the defaulting party.

D. A recommended, initial, or final order issued against a defaulting party may be based on the defaulting party's admissions or other evidence that may be used without notice to the defaulting party. If the burden of proof is on the defaulting party to establish that the party is entitled to the agency action sought, the presiding officer may issue a recommended, initial, or final order without taking evidence.

E. Not later than 15 days after notice to a party subject to a default order that a recommended, initial, or final order has been rendered against the party, the party may petition the presiding officer to vacate the recommended, initial, or final order. If good cause is shown for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If good cause is not shown for the party's failure to appear, the presiding officer shall deny the motion to vacate.

F. The provisions of this section shall not apply to any administrative hearings process that is governed by § [32.1-325.1](#) relating to provider appeals.

2015, c. [638](#).

§2.2-4021. Timetable for decision; exemptions.

A. In cases where a board or commission meets to render (i) an informal fact-finding decision or (ii) a decision on a litigated issue, and information from a prior proceeding is being considered, persons who participated in the prior proceeding shall be provided an opportunity to respond at the board or commission meeting to any summaries of the prior proceeding prepared by or for the board or commission.

B. In any informal fact-finding, formal proceeding, or summary case decision proceeding in which a hearing officer is not used or is not empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within 90 days from the date of the informal fact-finding, formal proceeding, or completion of a summary case decision proceeding, or from a later date agreed to by the named party and the agency. If the agency does not render a decision within 90 days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision shall be deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) the State Water Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act, (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Air Act, or (iii) the Virginia Soil and Water Conservation Board or the Department of Conservation and Recreation to the extent necessary to comply with the federal Clean Water Act. An agency shall provide notification to the named party of its decision within five days of the decision.

C. In any informal fact-finding, formal proceeding, or summary case decision proceeding in which a hearing officer is empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within 30 days from the date that the agency receives the hearing officer's recommendation. If the agency does not render a decision within 30 days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision is deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) the State Water Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act, (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Air Act, or (iii) the Virginia Soil and Water Conservation Board or the Department of Conservation and Recreation to the extent necessary to comply with the federal Clean Water Act. An agency shall provide notice to the named party of its decision within five days of the decision.

D. The provisions of subsection B notwithstanding, if the board members or agency personnel who conducted the informal fact-finding, formal proceeding, or summary

case decision proceeding are unable to attend to official duties due to sickness, disability, or termination of their official capacity with the agency, then the timeframe provisions of subsection B shall be reset and commence from the date that either new board members or agency personnel are assigned to the matter or a new proceeding is conducted if needed, whichever is later. An agency shall provide notice within five days to the named party of any incapacity of the board members or agency personnel that necessitates a replacement or a new proceeding.

1975, c. 503, §§ 9-6.14:11, 9-6.14:12; 1986, c. 615; 1989, c. 601; 1991, c. 584; 1993, c. 898; 1994, c. [748](#); 1995, c. [398](#); 2001, c. [844](#); 2005, c. [102](#); 2006, c. [702](#).

§2.2-4022. Subpoenas, depositions and requests for admissions.

The agency or its designated subordinates may, and on request of any party to a case shall, issue subpoenas requiring testimony or the production of books, papers, and physical or other evidence. Any person so subpoenaed who objects may, if the agency does not quash or modify the subpoena at his timely request as illegally or improvidently granted, immediately procure by petition a decision on the validity thereof in the circuit court as provided in § [2.2-4003](#); and otherwise in any case of refusal or neglect to comply with an agency subpoena, unless the basic law under which the agency is operating provides some other recourse, enforcement, or penalty, the agency may procure an order of enforcement from such court. Depositions de bene esse and requests for admissions may be directed, issued, and taken on order of the agency for good cause shown; and orders or authorizations therefor may be challenged or enforced in the same manner as subpoenas. Nothing in this section shall be taken to authorize discovery proceedings.

1975, c. 503, § 9-6.14:13; 2001, c. [844](#).

§2.2-4023. Final orders.

The terms of any final agency case decision, as signed by it, shall be served upon the named parties by mail unless service otherwise made is duly acknowledged by them in writing. The signed originals shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies; and they, or facsimiles thereof, together with the full record or file in every case shall be made available for public inspection or copying except (i) so far as the agency may withhold the same in whole or part for the purpose of protecting individuals mentioned from personal embarrassment, obloquy, or disclosures of a private nature including statements respecting the physical, mental, moral, or financial condition of such individuals or

(ii) for trade secrets or, so far as protected by other laws, other commercial or industrial information imparted in confidence. Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the agency head or his designee.

1975, c. 503, § 9-6.14:14; 2001, c. [844](#); 2009, c. [797](#).

§2.2-4023.1. Reconsideration.

A. A party may file a petition for reconsideration of an agency's final decision made pursuant to § [2.2-4020](#). The petition shall be filed with the agency not later than 15 days after service of the final decision and shall state the specific grounds on which relief is requested. The petition shall contain a full and clear statement of the facts pertaining to the reasons for reconsideration, the grounds in support thereof, and a statement of the relief desired. A timely filed petition for reconsideration shall not suspend the execution of the agency decision nor toll the time for filing a notice of appeal under Rule 2A:2 of the Rules of Supreme Court of Virginia, unless the agency provides for suspension of its decision when it grants a petition for reconsideration. The failure to file a petition for reconsideration shall not constitute a failure to exhaust all administrative remedies.

B. The agency shall render a written decision on a party's timely petition for reconsideration within 30 days from receipt of the petition for reconsideration. Such decision shall (i) deny the petition, (ii) modify the case decision, or (iii) vacate the case decision and set a new hearing for further proceedings. The agency shall state the reasons for its action.

C. If reconsideration is sought for the decision of a policy-making board of an agency, such board may (i) consider the petition for reconsideration at its next regularly scheduled meeting; (ii) schedule a special meeting to consider and decide upon the petition within 30 days of receipt; or (iii) notwithstanding any other provision of law, delegate authority to consider the petition to either the board chairman, a subcommittee of the board, or the director of the agency that provides administrative support to the board, in which case a decision on the reconsideration shall be rendered within 30 days of receipt of the petition by the board.

D. Denial of a petition for reconsideration shall not constitute a separate case decision and shall not on its own merits be subject to judicial review. It may, however, be considered by a reviewing court as part of any judicial review of the case decision itself.

E. The agency may reconsider its final decision on its own initiative for good cause within 30 days of the date of the final decision. An agency may develop procedures for reconsideration of its final decisions on its own initiative.

F. Notwithstanding the provisions of this section, (i) any agency may promulgate regulations that specify the scope of evidence that may be considered by such agency in support of any petition for reconsideration and (ii) any agency that has statutory authority for reconsideration in its basic law may respond to requests in accordance with such law.

2016, c. [694](#).

§2.2-4024. Hearing officers.

A. In all formal hearings conducted in accordance with § [2.2-4020](#), the hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to informal fact-finding proceedings conducted pursuant to § [2.2-4019](#) may agree at the outset of the proceeding to have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent. The Executive Secretary may promulgate rules necessary for the administration of the hearing officer system and shall have the authority to establish the number of hearing officers necessary to preside over administrative hearings in the Commonwealth.

Prior to being included on the list, all hearing officers shall meet the following minimum standards:

1. Active membership in good standing in the Virginia State Bar;
2. Active practice of law for at least five years; and
3. Completion of a course of training approved by the Executive Secretary of the Supreme Court. In order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer shall be assigned to a proceeding before that agency.

B. On request from the head of an agency, the Executive Secretary shall name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer appointed in accordance with this section shall be subject to disqualification as provided in § [2.2-4024.1](#). If the hearing officer denies a petition for disqualification pursuant to § [2.2-4024.1](#), the petitioning party may request reconsideration of the denial by filing a written request with the Executive Secretary along with an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

The issue shall be determined not less than 10 days prior to the hearing by the Executive Secretary.

D. Any hearing officer empowered by the agency to provide a recommendation or conclusion in a case decision matter shall render that recommendation or conclusion within 90 days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency. If the hearing officer does not render a decision within 90 days, then the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no decision is made within 30 days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after written notice and an opportunity for a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request to the Executive Secretary for reconsideration, followed by judicial review in accordance with this chapter.

F. (Effective until January 15, 2018) This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the Alcoholic Beverage Control Board, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission, the Department of Motor Vehicles under Title 46.2 (§ [46.2-100](#) et seq.), § 58.1-2409, or Chapter 27 (§ [58.1-2700](#) et seq.) of Title 58.1, or the Motor Vehicle Dealer Board under Chapter 15 (§ [46.2-1500](#) et seq.) of Title 46.2; or (iii) any panel of a health regulatory board convened pursuant to § [54.1-2400](#), including any panel

having members of a relevant advisory board to the Board of Medicine. All employees hired after July 1, 1986, pursuant to §§ [65.2-201](#) and [65.2-203](#) by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A. Agency employees who are not licensed to practice law in the Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) shall participate in periodic training courses.

F. (Effective January 15, 2018) This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the Virginia Alcoholic Beverage Control Authority, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission, the Department of Motor Vehicles under Title 46.2 (§ [46.2-100](#) et seq.), § 58.1-2409, or Chapter 27 (§ [58.1-2700](#) et seq.) of Title 58.1, or the Motor Vehicle Dealer Board under Chapter 15 (§ [46.2-1500](#) et seq.) of Title 46.2; or (iii) any panel of a health regulatory board convened pursuant to § [54.1-2400](#), including any panel having members of a relevant advisory board to the Board of Medicine. All employees hired after July 1, 1986, pursuant to §§ [65.2-201](#) and [65.2-203](#) by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A. Agency employees who are not licensed to practice law in the Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) shall participate in periodic training courses.

G. Notwithstanding the exemptions of subsection A of § [2.2-4002](#), this article shall apply to hearing officers conducting hearings of the kind described in § [2.2-4020](#) for the Department of Game and Inland Fisheries, the Virginia Housing Development Authority, the Milk Commission, and the Virginia Resources Authority pursuant to their basic laws.

1986, c. 615, § 9-6.14:14.1; 1988, c. 865; 1990, c. 219; 1991, c. 214; 1992, c. 659; 1993, c. 898; 1995, cc. [744](#), [776](#), [803](#), [805](#); 1996, cc. [189](#), [205](#), [639](#), [658](#); 2001, c. [844](#); 2002, cc. [448](#), [698](#); 2009, c. [806](#); 2012, cc. [803](#), [835](#); 2015, cc. [38](#), [636](#), [730](#).

§2.2-4024.1. Disqualification.

A. An individual who has served as investigator, prosecutor, or advocate at any stage in a contested case or who is subject to the authority, direction, or discretion of an individual who has served as investigator, prosecutor, or advocate at any stage in a

contested case may not serve as the presiding officer or hearing officer in the same case. An agency head who has participated in a determination of probable cause or other preliminary determination in an adjudication may serve as the presiding officer in the adjudication unless a party demonstrates grounds for disqualification under subsection B.

B. A presiding officer or hearing officer is subject to disqualification for any factor that would cause a reasonable person to question the impartiality of the presiding officer or hearing officer, which may include bias, prejudice, financial interest, or ex parte communications; however, the fact that a hearing officer is employed by an agency as a hearing officer, without more, is not grounds for disqualification. The presiding officer or hearing officer, after making a reasonable inquiry, shall disclose to the parties all known facts related to grounds for disqualification that are material to the impartiality of the presiding officer or hearing officer in the proceeding. The presiding officer or hearing officer may self-disqualify and withdraw from any case for reasons listed in this subsection.

C. A party may petition for the disqualification of the presiding officer or hearing officer promptly after notice that the person will preside or, if later, promptly on discovering facts establishing a ground for disqualification. The petition must state with particularity the ground on which it is claimed that a fair and impartial hearing cannot be accorded or the applicable rules of ethics that require disqualification. The petition may be denied if the party fails to promptly request disqualification after discovering a ground for disqualification.

D. A presiding officer not appointed pursuant to the provisions of § [2.2-4024](#), whose disqualification is requested shall decide whether to grant the petition and state in a record the facts and reasons for the decision. The decision to deny disqualification by a hearing officer appointed pursuant to § [2.2-4024](#) shall be reviewable according to the procedure set forth in subsection C of § [2.2-4024](#). In all other circumstances, the presiding officer's or hearing officer's decision to deny disqualification is subject to judicial review in accordance with this chapter, but is not otherwise subject to interlocutory review.

2015, c. [636](#).

§2.2-4024.2. Ex parte communications.

A. Except as otherwise provided in this section, while a formal hearing conducted in accordance with § [2.2-4020](#) is pending, the hearing officer shall not communicate

with any person concerning the hearing without notice and opportunity for all parties to participate in the communication.

B. A hearing officer may communicate about a pending formal hearing conducted in accordance with § [2.2-4020](#) with any person if the communication is authorized by law or concerns an uncontested procedural issue. A hearing officer may communicate with any person on ministerial matters about a pending formal hearing conducted in accordance with § [2.2-4020](#) if the communication does not augment, diminish, or modify the evidence in the record.

C. If a hearing officer makes or receives a communication prohibited by this section, the hearing officer shall make a part of the hearing record: (i) a copy of the communication or, if it is not written, a memorandum containing the substance of the communication; (ii) the response thereto; and (iii) the identity of the person who made the communication.

D. If a communication prohibited by this section is made, the hearing officer shall notify all parties of the prohibited communication and permit the parties to respond not later than 15 days after the notice is given. For good cause, the hearing officer may permit additional evidence in response to the prohibited communication.

E. If necessary to eliminate any prejudicial effect of a communication made that is prohibited by this section, a hearing officer may (i) be disqualified under § [2.2-4024.1](#); (ii) seal the parts of the record pertaining to the communication by protective order; or (iii) grant other appropriate relief, including an adverse ruling on the merits of the case.

2016, c. [478](#).

§2.2-4025. Exemptions operation of this article; limitations.

A. This article shall not apply to any agency action that (i) is placed beyond the control of the courts by constitutional or statutory provisions expressly precluding court review, (ii) involves solely the internal management or routine of an agency, (iii) is a decision resting entirely upon an inspection, test, or election save as to want of authority therefor or claim of arbitrariness or fraud therein, (iv) is a case in which the agency is acting as an agent for a court, or (v) encompasses matters subject by law to a trial de novo in any court.

B. The provisions of this article, however, shall apply to case decisions regarding the grant or denial of Temporary Assistance for Needy Families, Medicaid, food stamps,

general relief, auxiliary grants, or state-local hospitalization. However, no appeal may be brought regarding the adequacy of standards of need and payment levels for public assistance and social services programs. Notwithstanding the provisions of § [2.2-4027](#), the review shall be based solely upon the agency record, and the court shall be limited to ascertaining whether there was evidence in the agency record to support the case decision of the agency acting as the trier of fact. If the court finds in favor of the party complaining of agency action, the court shall remand the case to the agency for further proceedings. The validity of any statute, regulation, standard or policy, federal or state, upon which the action of the agency was based shall not be subject to review by the court. No intermediate relief shall be granted under § [2.2-4028](#).

1975, c. 503, §§ 9-6.14:4.1, 9-6.14:15, 9-6.14:16; 1986, c. 615; 1989, cc. 677, 734; 2001, c. [844](#); 2002, c. [747](#).

§2.2-4026. Right, forms, venue; date of adoption or readoption for purposes of appeal.

A. Any person affected by and claiming the unlawfulness of any regulation or party aggrieved by and claiming unlawfulness of a case decision and whether exempted from the procedural requirements of Article 2 (§ [2.2-4006](#) et seq.) or 3 (§ [2.2-4018](#) et seq.) shall have a right to the direct review thereof by an appropriate and timely court action against the agency or its officers or agents in the manner provided by the Rules of Supreme Court of Virginia. Actions may be instituted in any court of competent jurisdiction as provided in § [2.2-4003](#), and the judgments of the courts of original jurisdiction shall be subject to appeal to or review by higher courts as in other cases unless otherwise provided by law. In addition, when any regulation or case decision is the subject of an enforcement action in court, it shall also be reviewable by the court as a defense to the action, and the judgment or decree therein shall be appealable as in other cases.

B. In any court action under this section by a person affected by and claiming the unlawfulness of any regulation on the basis that an agency failed to follow any procedure for the promulgation or adoption of a regulation specified in this chapter or in such agency's basic law, the burden shall be upon the party complaining of the agency action to designate and demonstrate the unlawfulness of the regulation by a preponderance of the evidence. If the court finds in favor of the party complaining of the agency action, the court shall declare the regulation null and void and remand the case to the agency for further proceedings.

C. Notwithstanding any other provision of law or of any executive order issued under this chapter, with respect to any challenge of a regulation subject to judicial review under this chapter, the date of adoption or readoption of the regulation pursuant to § [2.2-4015](#) for purposes of appeal under the Rules of Supreme Court shall be the date of publication in the Register of Regulations.

1975, c. 503, § 9-6.14:16; 1986, c. 615; 1989, cc. 677, 734; 2001, c. [844](#); 2014, c. [699](#); 2016, c. [359](#).

§2.2-4027. Issues on review.

The burden shall be upon the party complaining of agency action to designate and demonstrate an error of law subject to review by the court. Such issues of law include: (i) accordance with constitutional right, power, privilege, or immunity, (ii) compliance with statutory authority, jurisdiction limitations, or right as provided in the basic laws as to subject matter, the stated objectives for which regulations may be made, and the factual showing respecting violations or entitlement in connection with case decisions, (iii) observance of required procedure where any failure therein is not mere harmless error, and (iv) the substantiality of the evidentiary support for findings of fact. The determination of such fact issue shall be made upon the whole evidentiary record provided by the agency if its proceeding was required to be conducted as provided in § [2.2-4009](#) or [2.2-4020](#) or, as to subjects exempted from those sections, pursuant to constitutional requirement or statutory provisions for opportunity for an agency record of and decision upon the evidence therein.

In addition to any other judicial review provided by law, a small business, as defined in subsection A of § [2.2-4007.1](#), that is adversely affected or aggrieved by final agency action shall be entitled to judicial review of compliance with the requirements of subdivision A 2 of § [2.2-4007.04](#) and § [2.2-4007.1](#) within one year following the date of final agency action.

When the decision on review is to be made on the agency record, the duty of the court with respect to issues of fact shall be to determine whether there was substantial evidence in the agency record to support the agency decision. The duty of the court with respect to the issues of law shall be to review the agency decision de novo. The court shall enter judgment in accordance with § [2.2-4029](#).

Where there is no agency record so required and made, any necessary facts in controversy shall be determined by the court upon the basis of the agency file, minutes, and records of its proceedings under § [2.2-4007.01](#) or [2.2-4019](#) as augmented, if need

be, by the agency pursuant to order of the court or supplemented by any allowable and necessary proofs adduced in court except that the function of the court shall be to determine only whether the result reached by the agency could reasonably be said, on all such proofs, to be within the scope of the legal authority of the agency.

Whether the fact issues are reviewed on the agency record or one made in the review action, the court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.

1975, c. 503, § 9-6.14:17; 1989, c. 601; 2001, c. [844](#); 2005, cc. [619](#), [682](#); 2007, cc. [873](#), [916](#); 2013, c. [619](#).

§2.2-4028. Intermediate relief.

When judicial review is instituted or is about to be, the agency concerned may, on request of any party or its own motion, postpone the effective date of the regulation or decision involved where it deems that justice so requires. Otherwise the court may, on proper application and with or without bond, deposits in court, or other safeguards or assurances as may be suitable, issue all necessary and appropriate process to postpone the effective dates or preserve existing status or rights pending conclusion of the review proceedings if the court finds the same to be required to prevent immediate, unavoidable, and irreparable injury and that the issues of law or fact presented are not only substantial but that there is probable cause for it to anticipate a likelihood of reversible error in accordance with § [2.2-4027](#). Actions by the court may include (i) the stay of operation of agency decisions of an injunctive nature or those requiring the payment of money or suspending or revoking a license or other benefit and (ii) continuation of previous licenses in effect until timely applications for renewal are duly determined by the agency.

1975, c. 503, § 9-6.14:18; 2001, c. [844](#).

§2.2-4029. Court judgments.

Unless an error of law as defined in § [2.2-4027](#) appears, the court shall dismiss the review action or affirm the agency regulation or decision. Otherwise, it may compel agency action unlawfully and arbitrarily withheld or unreasonably delayed except that the court shall not itself undertake to supply agency action committed by the basic law to the agency. Where a regulation or case decision is found by the court not to be in accordance with law under § [2.2-4027](#), the court shall suspend or set it aside and

remand the matter to the agency for further proceedings, if any, as the court may permit or direct in accordance with law.

1975, c. 503, § 9-6.14:19; 2001, c. [844](#).

§2.2-4030. Recovery of costs and attorney fees from agency.

A. In any civil case brought under Article 5 (§ [2.2-4025](#) et seq.) or § [2.2-4002](#), [2.2-4006](#), [2.2-4011](#), or [2.2-4018](#), in which any person contests any agency action, such person shall be entitled to recover from that agency, including the Department of Game and Inland Fisheries, reasonable costs and attorney fees if such person substantially prevails on the merits of the case and (i) the agency's position is not substantially justified, (ii) the agency action was in violation of law, or (iii) the agency action was for an improper purpose, unless special circumstances would make an award unjust. The award of attorney fees shall not exceed \$25,000.

B. Nothing in this section shall be deemed to grant permission to bring an action against an agency if the agency would otherwise be immune from suit or to grant a right to bring an action by a person who would otherwise lack standing to bring the action.

C. Any costs and attorney fees assessed against an agency under this section shall be charged against the operating expenses of the agency for the fiscal year in which the assessment is made and shall not be reimbursed from any other source.

1981, c. 446, § 9-6.14:21; 1997, c. [692](#); 2001, c. [844](#); 2016, c. [625](#).

§2.2-4031. Publication of Virginia Register of Regulations; exceptions; notice of public hearings of proposed regulations.

A. The Registrar shall publish every two weeks a Virginia Register of Regulations that shall include (i) proposed and final regulations; (ii) emergency regulations; (iii) executive orders; (iv) notices of all public hearings on regulations; and (v) petitions for rulemaking made in accordance with § [2.2-4007](#). The entire proposed regulation shall be published in the Register; however, if an existing regulation has been previously published in the Virginia Administrative Code, then only those sections of regulations to be amended need to be published in the Register. If the length of the regulation falls within the guidelines established by the Registrar for the publication of a summary in lieu of the full text of the regulation, then, after consultation with the promulgating agency, the Registrar may publish only the summary of the regulation.

In this event, the full text of the regulation shall be available for public inspection at the office of the Registrar and the promulgating agency.

If a proposed regulation is adopted as published or, in the sole discretion of the Registrar of Regulations, the only changes that have been made are those that can be clearly and concisely explained, the adopted regulation need not be published at length. Instead, the Register shall contain a notation that the proposed regulation has been adopted as published as a proposed regulation without change or stating the changes made. The proposed regulation shall be clearly identified with a citation to the issue and page numbers where published.

A copy of all reporting forms the promulgating agency anticipates will be incorporated into or be used in administering the regulation shall be published with the proposed and final regulation in the Register.

B. Each regulation shall be prefaced with a summary explaining that regulation in plain and clear language. Summaries shall be prepared by the promulgating agency and approved by the Registrar prior to their publication in the Register. The notice required by § [2.2-4007.03](#) shall include (i) a statement of the date, time and place of the hearing at which the regulation is to be considered; (ii) a brief statement as to the regulation under consideration; (iii) reference to the legal authority of the agency to act; and (iv) the name, address and telephone number of an individual to contact for further information about that regulation. Agencies shall present their proposed regulations in a standardized format developed by the Virginia Code Commission in accordance with subdivision 2 of § [2.2-4104](#) of the Virginia Register Act (§ [2.2-4100](#) et seq.). Notwithstanding the exemptions allowed under § [2.2-4002](#), [2.2-4006](#) or [2.2-4011](#), the proposed and final regulations of all agencies shall be published in the Register. However, proposed regulations of the Marine Resources Commission and regulations exempted by subject from the provisions of this chapter by subsection B of § [2.2-4002](#) shall be exempt from this section.

C. The Virginia Register of Regulations shall be published by posting the Register on the Virginia Code Commission's website. The Virginia Code Commission may arrange for the printing of the Virginia Register as provided in § [30-146](#).

1984, c. 5, § 9-6.14:22; 1985, cc. 67, 602; 1986, c. 615; 1988, c. 364; 1989, c. 71; 1992, c. 216; 2001, c. [844](#); 2002, c. [241](#); 2003, c. [212](#); 2007, cc. [300](#), [873](#), [916](#); 2011, c. [800](#).

§2.2-4032. Repealed.

Repealed by Acts 2003, c. [212](#), cl. 2, effective March 16, 2003.

Agricultural and Forestal Districts Act

§15.2-4300. Short title.

This chapter shall be known and may be cited as the "Agricultural and Forestal Districts Act."

1977, c. 681, § 15.1-1506; 1997, c. 587.

§15.2-4301. Declaration of policy findings and purpose.

It is the policy of the Commonwealth to conserve and protect and to encourage the development and improvement of the Commonwealth's agricultural and forestal lands for the production of food and other agricultural and forestal products. It is also the policy of the Commonwealth to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes. It is the purpose of this chapter to provide a means for a mutual undertaking by landowners and localities to protect and enhance agricultural and forestal land as a viable segment of the Commonwealth's economy and as an economic and environmental resource of major importance.

1977, c. 681, § 15.1-1507; 1987, c. 552; 1997, c. 587.

§15.2-4302. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advisory committee" means the agricultural and forestal districts advisory committee.

"Agricultural products" means crops, livestock and livestock products, including but not limited to: field crops, fruits, vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

"Agricultural production" means the production for commercial purposes of crops, livestock and livestock products, and includes the processing or retail sales by the producer of crops, livestock or livestock products which are produced on the parcel or in the district.

"Agriculturally and forestally significant land" means land that has recently or historically produced agricultural and forestal products, is suitable for agricultural or forestal production or is considered appropriate to be retained for agricultural and forestal production as determined by such factors as soil quality, topography, climate, markets, farm structures, and other relevant factors.

"Application" means the set of items a landowner or landowners must submit to the local governing body when applying for the creation of a district or an addition to an existing district.

"District" means an agricultural, forestal, or agricultural and forestal district.

"Forestal production" means the production for commercial purposes of forestal products and includes the processing or retail sales, by the producer, of forestal products which are produced on the parcel or in the district. "Forestal products" includes, but is not limited to, saw timber, pulpwood, posts, firewood, Christmas trees and other tree and wood products for sale or for farm use.

"Landowner" or "owner of land" means any person holding a fee simple interest in property but does not mean the holder of an easement.

"Program administrator" means the local governing body or local official appointed by the local governing body to administer the agricultural and forestal districts program.

1977, c. 681, § 15.1-1508; 1979, c. 377; 1981, c. 54; 1987, c. 552; 1997, c. 587; 2011, cc. [344](#), [355](#).

§15.2-4303. Power of localities to enact ordinances; application form and fees; maps; sample form.

A. Each locality shall have the authority to promulgate forms and to enact ordinances to effectuate this chapter. The locality may charge a reasonable fee for each application submitted pursuant to this chapter; such fee shall not exceed \$500 or the costs of processing and reviewing an application, whichever is less.

B. The locality shall prescribe application forms for districts that include but need not be limited to the following information:

1. The general location of the district;
2. The total acreage in the district or acreage to be added to an existing district;

3. The name, address, and signature of each landowner applying for creation of a district or an addition to an existing district and the acreage each owner owns within the district or addition;

4. The conditions proposed by the applicant pursuant to § [15.2-4309](#);

5. The period before first review proposed by the applicant pursuant to § [15.2-4309](#); and

6. The date of application, date of final action by the local governing body and whether approved, modified or rejected.

C. The application form shall be accompanied by maps or aerial photographs, or both, prescribed by the locality that clearly show the boundaries of the proposed district and each addition and boundaries of properties owned by each applicant, and any other features as prescribed by the locality.

D. For each notice required by this chapter to be sent to a landowner, notice shall be sent by first-class mail to the last known address of such owner as shown on the application hereunder or on the current real estate tax assessment books or maps. A representative of the local planning commission or local governing body shall make affidavit that such mailing has been made and file such affidavit with the papers in the case.

1977, c. 681, § 15.1-1509; 1978, c. 604; 1979, c. 377; 1984, c. 20; 1987 c. 552; 1997, c. 587; 2005, c. [667](#); 2011, cc. [344](#), [355](#).

§15.2-4304. Agricultural and forestal districts advisory committee.

A. Upon receipt of the first agricultural and forestal districts application, the local governing body shall establish an advisory committee which shall consist of four landowners who are engaged in agricultural or forestal production, four other landowners of the locality, the commissioner of revenue or the local government's chief property assessment officer, and a member of the local governing body. The members of the committee shall be appointed by and serve at the pleasure of the local governing body. The advisory committee shall elect a chairman and a vice-chairman and elect or appoint a secretary who need not be a member of the committee. The advisory committee shall serve without pay but the locality may reimburse each member for actual and necessary expenses incurred in the performance of his duties. Any expenditures of the committee shall be within the amounts appropriated for such purpose by the local governing body. The committee shall advise the local planning

commission and the local governing body and assist in creating, reviewing, modifying, continuing or terminating districts within the locality. In particular, the committee shall render expert advice as to the nature of farming and forestry and agricultural and forestal resources within the district and their relation to the entire locality.

B. The local governing body may designate the planning commission to act for and in lieu of an agricultural and forestal districts advisory committee if the membership of the planning commission includes at least four landowners who are engaged in agricultural or forestal production.

1977, c. 681, § 15.1-1510; 1987, c. 552; 1989, c. 52; 1997, c. 587; 2011, cc. [344](#), [355](#).

§15.2-4305. Application for creation of district in one or more localities; size and location of parcels.

On or before November 1 of each year or any other annual date selected by the locality, any owner or owners of land may submit an application to the locality for the creation of a district or addition of land to an existing district within the locality. Each district shall have a core of no less than 200 acres in one parcel or in contiguous parcels. A parcel not part of the core may be included in a district (i) if the nearest boundary of the parcel is within one mile of the boundary of the core, (ii) if it is contiguous to a parcel in the district the nearest boundary of which is within one mile of the boundary of the core, or (iii) if the local governing body finds, in consultation with the advisory committee or planning commission, that the parcel not part of the core or within one mile of the boundary of the core contains agriculturally and forestally significant land. No land shall be included in any district without the signature on the application, or the written approval of all owners thereof. A district may be located in more than one locality, provided that (i) separate application is made to each locality involved, (ii) each local governing body approves the district, and (iii) the district meets the size requirements of this section. In the event that one of the local governing bodies disapproves the creation of a district within its boundaries, the creation of the district within the adjacent localities' boundaries shall not be affected, provided that the district otherwise meets the requirements set out in this chapter. In no event shall the act of creating a single district located in two localities pursuant to this subsection be construed to create two districts.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587; 1998, c. [833](#); 2011, cc. [344](#), [355](#).

§15.2-4306. Criteria for evaluating application.

Land being considered for inclusion in a district may be evaluated by the advisory committee and the planning commission through the Virginia Land Evaluation and Site Assessment (LESA) System or, if one has been developed, a local LESA System. The following factors should be considered by the local planning commission and the advisory committee, and at any public hearing at which an application that has been filed pursuant to § [15.2-4303](#) is being considered:

1. The agricultural and forestal significance of land within the district or addition and in areas adjacent thereto;
2. The presence of any significant agricultural lands or significant forestal lands within the district and in areas adjacent thereto that are not now in active agricultural or forestal production;
3. The nature and extent of land uses other than active farming or forestry within the district and in areas adjacent thereto;
4. Local developmental patterns and needs;
5. The comprehensive plan and, if applicable, the zoning regulations;
6. The environmental benefits of retaining the lands in the district for agricultural and forestal uses; and
7. Any other matter which may be relevant.

In judging the agricultural and forestal significance of land, any relevant agricultural or forestal maps may be considered, as well as soil, climate, topography, other natural factors, markets for agricultural and forestal products, the extent and nature of farm structures, the present status of agriculture and forestry, anticipated trends in agricultural economic conditions and such other factors as may be relevant.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587.

§15.2-4307. Review of application; notice; hearing.

Upon the receipt of an application for a district or for an addition to an existing district, the program administrator shall refer such application to the advisory committee.

The advisory committee shall review and make recommendations concerning the application or modification thereof to the local planning commission, which shall:

1. Notify, by first-class mail, adjacent property owners, as shown on the maps of the locality used for tax assessment purposes, and where applicable, any political subdivision whose territory encompasses or is part of the district, of the application. The notice shall contain (i) a statement that an application for a district has been filed with the program administrator pursuant to this chapter; (ii) a statement that the application will be on file open to public inspection in the office of the clerk of the local governing body; (iii) where applicable a statement that any political subdivision whose territory encompasses or is part of the district may propose a modification which must be filed with the local planning commission within thirty days of the date of the notice; (iv) a statement that any owner of additional qualifying land may join the application within thirty days from the date of the notice or, with the consent of the local governing body, at any time before the public hearing the local governing body must hold on the application; (v) a statement that any owner who joined in the application may withdraw his land, in whole or in part, by written notice filed with the local governing body, at any time before the local governing body acts pursuant to § [15.2-4309](#); and (vi) a statement that additional qualifying lands may be added to an already created district at any time upon separate application pursuant to this chapter;

2. Hold a public hearing as prescribed by law; and

3. Report its recommendations to the local governing body including but not limited to the potential effect of the district and proposed modifications upon the locality's planning policies and objectives.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587; 1998, c. [833](#); 2011, cc. [344](#), [355](#).

§15.2-4308. Repealed.

Repealed by Acts 2011, cc. [344](#) and [355](#), cl. 2.

§15.2-4309. Hearing; creation of district; conditions; notice.

A. The local governing body, after receiving the report of the local planning commission and the advisory committee, shall hold a public hearing as provided by law, and after such public hearing, may by ordinance create the district or add land to an existing district as applied for, or with any modifications it deems appropriate.

B. The governing body may require, as a condition to creation of the district, that any parcel in the district shall not, without the prior approval of the governing body, be

developed to any more intensive use or to certain more intensive uses, other than uses resulting in more intensive agricultural or forestal production, during the period which the parcel remains within the district. Local governing bodies shall not prohibit as a more intensive use, construction and placement of dwellings for persons who earn a substantial part of their livelihood from a farm or forestry operation on the same property, or for members of the immediate family of the owner, or divisions of parcels for such family members, unless the governing body finds that such use in the particular case would be incompatible with farming or forestry in the district. To further the purposes of this chapter and to promote agriculture and forestry and the creation of districts, the local governing body may adopt programs offering incentives to landowners to impose land use and conservation restrictions on their land within the district. Programs offering such incentives shall not be permitted unless authorized by law. Any conditions to creation of the district and the period before the review of the district shall be described, either in the application or in a notice sent by first-class mail to all landowners in the district and published in a newspaper having a general circulation within the district at least two weeks prior to adoption of the ordinance creating the district. The ordinance shall state any conditions to creation of the district and shall prescribe the period before the first review of the district, which shall be no less than four years but not more than ten years from the date of its creation. In prescribing the period before the first review, the local governing body shall consider the period proposed in the application. The ordinance shall remain in effect at least until such time as the district is to be reviewed. In the event of annexation by a city or town of any land within a district, the district shall continue until the time prescribed for review.

C. The local governing body shall act to adopt or reject the application, or any modification of it, no later than 180 days from (i) November 1 or (ii) the other date selected by the locality as provided in § [15.2-4305](#). Upon the adoption of an ordinance creating a district or adding land to an existing district, the local governing body shall submit a copy of the ordinance with maps to the local commissioner of the revenue, and the State Forester, and the Commissioner of Agriculture and Consumer Services for information purposes. The commissioner of the revenue shall identify the parcels of land in the district in the land book and on the tax map, and the local governing body shall identify such parcels on the zoning map, where applicable and shall designate the districts on the official comprehensive plan map each time the comprehensive plan map is updated.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587; 1998, c. [833](#); 2011, cc. [344](#), [355](#).

§15.2-4310. Additions to a district.

Additional parcels of land may be added to an existing district at any time by following the process and application deadlines prescribed for the creation of a new district.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587; 2011, cc. [344](#), [355](#).

§15.2-4311. Review of districts.

The local governing body may complete a review of any district created under this section, together with additions to such district, no less than four years but no more than ten years after the date of its creation and every four to ten years thereafter. If the local governing body determines that a review is necessary, it shall begin such review at least ninety days before the expiration date of the period established when the district was created. In conducting such review, the local governing body shall ask for the recommendations of the local advisory committee and the planning commission in order to determine whether to terminate, modify or continue the district. When each district is reviewed, land within the district may be withdrawn at the owner's discretion by filing a written notice with the local governing body at any time before it acts to continue, modify or terminate the district. The local planning commission or the advisory committee shall schedule as part of the review a public meeting with the owners of land within the district, and shall send by first-class mail a written notice of the meeting and review to all such owners. The notice shall state the time and place for the meeting; that the district is being reviewed by the local governing body; that the local governing body may continue, modify, or terminate the district; and that land may be withdrawn from the district at the owner's discretion by filing a written notice with the local governing body at any time before it acts to continue, modify or terminate the district. The local governing body shall hold a public hearing as provided by law. The governing body may stipulate conditions to continuation of the district and may establish a period before the next review of the district, which may be different from the conditions or period established when the district was created. Any such different conditions or period shall be described in a notice sent by first-class mail to all owners of land within the district and published in a newspaper having a general circulation within the district at least

two weeks prior to adoption of the ordinance continuing the district. Unless the district is modified or terminated by the local governing body, the district shall continue as originally constituted, with the same conditions and period before the next review as that established when the district was created.

If the local governing body determines that a review is unnecessary, it shall set the year in which the next review shall occur.

1977, c. 681, § 15.1-1511; 1979, c. 377; 1981, c. 546; 1984, c. 20; 1985, c. 13; 1987, c. 552; 1993, cc. 745, 761; 1997, c. 587.

§15.2-4312. Effects of districts.

A. Land lying within a district and used in agricultural or forestal production shall automatically qualify for an agricultural or forestal use-value assessment pursuant to Article 4 (§ [58.1-3229](#) et seq.) of Chapter 32 of Title 58.1, if the requirements for such assessment contained therein are satisfied. Any ordinance adopted pursuant to § [15.2-4303](#) shall extend such use-value assessment and taxation to eligible real property within such district whether or not a local ordinance pursuant to § [58.1-3231](#) has been adopted.

B. No local government shall exercise any of its powers to enact local laws or ordinances within a district in a manner which would unreasonably restrict or regulate farm structures or farming and forestry practices in contravention of the purposes of this chapter unless such restrictions or regulations bear a direct relationship to public health and safety. The comprehensive plan and zoning and subdivision ordinances shall be applicable within said districts, to the extent that such ordinances are not in conflict with the conditions to creation or continuation of the district set forth in the ordinance creating or continuing the district or the purposes of this chapter. Nothing in this chapter shall affect the authority of the locality to regulate the processing or retail sales of agricultural or forestal products, or structures therefor, in accordance with the local comprehensive plan or any local ordinances. Local ordinances, comprehensive plans, land use planning decisions, administrative decisions and procedures affecting parcels of land adjacent to any district shall take into account the existence of such district and the purposes of this chapter.

C. It shall be the policy of all agencies of the Commonwealth to encourage the maintenance of farming and forestry in districts and all administrative regulations and procedures of such agencies shall be modified to this end insofar as is consistent with the promotion of public health and safety and with the provisions of any federal

statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans or other funding.

D. No special district for sewer, water or electricity or for nonfarm or nonforest drainage may impose benefit assessments or special tax levies on the basis of frontage, acreage or value on land used for primarily agricultural or forestal production within a district, except a lot not exceeding one-half acre surrounding any dwelling or non-farm structure located on such land. However, such benefit assessment or special ad valorem levies may continue if imposed prior to the formation of the district.

1977, c. 681, § 15.1-1512; 1979, c. 377; 1987, c. 552; 1997, c. 587.

§15.2-4313. Proposals as to land acquisition or construction within district.

A. Any agency of the Commonwealth or any political subdivision which intends to acquire land or any interest therein other than by gift, devise, bequest or grant, or any public service corporation which intends to: (i) acquire land or any interest therein for public utility facilities not subject to approval by the State Corporation Commission, provided that the proposed acquisition from any one farm or forestry operation within the district is in excess of one acre or that the total proposed acquisition within the district is in excess of ten acres or (ii) advance a grant, loan, interest subsidy or other funds within a district for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities to serve nonfarm structures, shall at least ninety days prior to such action notify the local governing body and all of the owners of land within the district. Notice to landowners shall be sent by first-class or registered mail and shall state that further information on the proposed action is on file with the local governing body. Notice to the local governing body shall be filed in the form of a report containing the following information:

1. A detailed description of the proposed action, including a proposed construction schedule;
2. All the reasons for the proposed action;
3. A map indicating the land proposed to be acquired or on which the proposed dwellings, commercial or industrial facilities, or water or sewer facilities to serve nonfarm structures are to be constructed;

4. An evaluation of anticipated short-term and long-term adverse impacts on agricultural and forestal operations within the district and how such impacts are proposed to be minimized;

5. An evaluation of alternatives which would not require action within the district; and

6. Any other relevant information required by the local governing body.

B. Upon receipt of a notice filed pursuant to subsection A, the local governing body, in consultation with the local planning commission and the advisory committee, shall review the proposed action and make written findings as to (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and the policy of this chapter; (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district. If requested to do so by any owner of land that will be directly affected by the proposed action of the agency, corporation, or political subdivision, the Director of the Department of Conservation and Recreation, or his designee, may advise the local governing body on the issues listed in clauses (i), (ii) and (iii) of this subsection.

C. If the local governing body finds that the proposed action might have an unreasonably adverse effect upon either state or local policy, it shall (i) issue an order within ninety days from the date the notice was filed directing the agency, corporation or political subdivision not to take the proposed action for a period of 150 days from the date the notice was filed and (ii) hold a public hearing, as prescribed by law, concerning the proposed action. The hearing shall be held where the local governing body usually meets or at a place otherwise easily accessible to the district. The locality shall publish notice in a newspaper having a general circulation within the district, and mail individual notice of the hearing to the political subdivisions whose territory encompasses or is part of the district, and the agency, corporation or political subdivision proposing to take the action. Before the conclusion of the 150-day period, the local governing body shall issue a final order on the proposed action. Unless the local governing body, by an affirmative vote of a majority of all the members elected to it, determines that the proposed action is necessary to provide service to the public in the most economic and practical manner and will not have an

unreasonably adverse effect upon state or local policy, the order shall prohibit the agency, corporation or political subdivision from proceeding with the proposed action. If the agency, corporation or political subdivision is aggrieved by the final order of the local governing body, an appeal shall lie to the circuit court having jurisdiction of the territory wherein a majority of the land affected by the acquisition is located. However, if such public service corporation is regulated by the State Corporation Commission, an appeal shall be to the State Corporation Commission.

1977, c. 681, § 15.1-1512; 1979, c. 377; 1987, c. 552; 1997, c. 587; 1998, c. [833](#); 2000, c. [1069](#).

§15.2-4314. Withdrawal of land from a district; termination of a district.

A. At any time after the creation of a district within any locality, any owner of land lying in such district may file with the program administrator a written request to withdraw all or part of his land from the district for good and reasonable cause. The program administrator shall refer the request to the advisory committee for its recommendation. The advisory committee shall make recommendations concerning the request to withdraw to the local planning commission, which shall hold a public hearing and make recommendations to the local governing body. Land proposed to be withdrawn may be reevaluated through the Virginia or local Land Evaluation and Site Assessment (LESA) System. The landowner seeking to withdraw land from a district, if denied favorable action by the governing body, shall have an immediate right of appeal de novo to the circuit court serving the territory wherein the district is located. This section shall in no way affect the ability of an owner to withdraw an application for a proposed district or withdraw from a district pursuant to clause (v) of subdivision 1 of § [15.2-4307](#) or § [15.2-4311](#).

B. Upon termination of a district or withdrawal or removal of any land from a district created pursuant to this chapter, land that is no longer part of a district shall be subject to and liable for roll-back taxes as are provided in § [58.1-3237](#). Sale or gift of a portion of land in a district to a member of the immediate family as defined in § [15.2-2244](#) shall not in and of itself constitute a withdrawal or removal of any of the land from a district.

C. Upon termination of a district or upon withdrawal or removal of any land from a district, land that is no longer part of a district shall be subject to those local laws and ordinances prohibited by the provisions of subsection B of § [15.2-4312](#).

D. Upon the death of a property owner, any heir at law, devisee, surviving cotenant or personal representative of a sole owner of any fee simple interest in land lying within a district shall, as a matter of right, be entitled to withdraw such land from such district upon the inheritance or descent of such land provided that such heir at law, devisee, surviving cotenant or personal representative files written notice of withdrawal with the local governing body and the local commissioner of the revenue within two years of the date of death of the owner.

E. Upon termination or modification of a district, or upon withdrawal or removal of any parcel of land from a district, the local governing body shall submit a copy of the ordinance or notice of withdrawal to the local commissioner of revenue, the State Forester and the State Commissioner of Agriculture and Consumer Services for information purposes. The commissioner of revenue shall delete the identification of such parcel from the land book and the tax map, and the local governing body shall delete the identification of such parcel from the zoning map, where applicable.

F. The withdrawal or removal of any parcel of land from a lawfully constituted district shall not in itself serve to terminate the existence of the district. The district shall continue in effect and be subject to review as to whether it should be terminated, modified or continued pursuant to § [15.2-4311](#) of this chapter.

1977, c. 681, § 15.1-1513; 1979, c. 377; 1985, c. 13; 1987, c. 552; 1997, c. 587; 2000, c. [521](#); 2011, cc. [344](#), [355](#).

Appalachian Region Interstate Compact

§15.2-6900. Compact created.

The Appalachian Region Interstate Compact (the Compact) is hereby created and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I. Short Title.

This act shall be known and may be cited as the Appalachian Region Interstate Compact.

Article II. Compact Established.

Pursuant to Article I, Section 10 of the Constitution of the United States, the signatories hereby provide a mechanism for the creation of one or more authorities for the purpose of developing one or more facilities to enhance the regional economy that shall constitute instrumentalities of the signatories.

For purposes of this chapter, "Appalachian Region" means the areas included in "region" as defined in § [15.2-6400](#) and § 403 of the Appalachian Regional Development Act of 1965, as amended (40 U.S.C. § 14102(a)(1)).

Article III. Agreement.

The Commonwealth of Virginia may enter into agreement with one or more signatory states and, upon adoption of this compact, agree as follows:

1. To study, develop, and promote a plan for the design, construction, financing, and operation of interstate facilities of strategic interest to the signatory states;
2. To coordinate efforts to establish a common legal framework in all the signatory states to authorize and facilitate design, construction, financing, and operation of such facilities either as publicly operated facilities or through other structures authorized by law;
3. To advocate for federal and other public and private funding to support the establishment of interstate facilities of interest to all signatory states;
4. To make available to such interstate facilities funding and resources that are or may be appropriated and allocated for that purpose; and
5. To do all things necessary or convenient to facilitate and coordinate the economic and workforce development plans and programs of the Commonwealth of Virginia, and the other signatory states, to the extent such plans and programs are not inconsistent with federal law and the laws of the Commonwealth of Virginia or other signatory states.

Article IV. Compact Commission Established; Membership; Chairman; Meetings; and Report.

Each signatory state to the Compact shall establish a compact commission. In Virginia, the Appalachian Region Interstate Compact Commission (the Commission) shall be established as a regional instrumentality and agency of the Commonwealth of Virginia and the signatory states. The compact commissions of the signatory states shall be empowered to carry out the purposes of their respective Compacts.

The Appalachian Region Interstate Compact Commission shall consist of six members from the other signatory states to be appointed pursuant to the laws of the signatory states, and six members of the Virginia delegation to the Commission to be appointed as follows: two members to be appointed by the Senate Committee on Rules, and four members to be appointed by the Speaker of the House. Members of the Virginia delegation to the Compact Commission shall serve terms coincident with their terms of office if an elected state or local representative, and may be reappointed. The chairman of the Commission shall be elected by the members of the Commission from among its membership. The chairman shall serve for a term of two years, and the chairmanship shall rotate among the signatory states.

The Commission shall meet not less than twice annually; however, the Commission shall not meet more than once consecutively in the same state.

Article V. Powers and Duties of the Commission.

The Commission is vested with the powers of a body corporate, including the power to sue and be sued in its own name, plead and be impleaded, and adopt and use a common seal and alter the same as may be deemed expedient. In addition to the powers set forth elsewhere in this chapter, the Commission may:

1. Adopt bylaws, rules and regulations to carry out the provisions of this chapter;
2. Employ, either as regular employees or as independent contractors, consultants, engineers, architects, accountants, attorneys, financial experts, construction experts and personnel, superintendents, managers and other professional personnel, personnel, and agents as may be necessary in the judgment of the Commission, and fix their compensation;
3. Determine the locations of, develop, establish, construct, erect, repair, remodel, add to, extend, improve, equip, operate, regulate, and maintain facilities to the extent necessary or convenient to accomplish the purposes of the Compact;
4. Acquire, own, hold, lease, use, sell, encumber, transfer, or dispose of, in its own name, any real or personal property or interests therein;
5. Invest and reinvest funds of the Commission;
6. Enter into contracts of any kind, and execute all instruments necessary or convenient with respect to its carrying out the powers in this chapter to accomplish the purposes of the Compact;

7. Expend such funds as may be available to it for the purpose of developing facilities, including but not limited to (i) purchasing real estate; (ii) grading sites; (iii) improving, replacing, and extending water, sewer, natural gas, electrical, and other utility lines; (iv) constructing, rehabilitating, and expanding buildings; (v) constructing parking facilities; (vi) constructing access roads, streets, and rail lines; (vii) purchasing or leasing machinery and tools; and (viii) making any other improvements deemed necessary by the Commission to meet its objectives;
8. Fix and revise from time to time and charge and collect rates, rents, fees, or other charges for the use of facilities or for services rendered in connection with the facilities in accordance with applicable state and federal laws and as approved by the Commission;
9. Borrow money from any source for any valid purpose, including working capital for its operations, reserve funds, or interest; mortgage, pledge, or otherwise encumber the property or funds of the Commission; and contract with or engage the services of any person in connection with any financing, including financial institutions, issuers of letters of credit, or insurers;
10. Issue bonds the principal and interest on which are payable exclusively from the revenues and receipts of a specific facility in accordance with applicable laws;
11. Accept funds and property from the Commonwealth and other signatory jurisdictions, persons, counties, cities, and towns and use the same for any of the purposes for which the Commission is created;
12. Apply for and accept grants or loans of money or other property from any federal agency for any of the purposes authorized in this chapter and expend or use the same in accordance with the directions and requirements attached thereto or imposed thereon by any such federal agency;
13. Make loans or grants to, and enter into cooperative arrangements with, any person, partnership, association, corporation, business or governmental entity in furtherance of the purposes of this chapter, for the purposes of promoting economic and workforce development, provided that such loans or grants shall be made only from revenues of the Commission that have not been pledged or assigned for the payment of any of the Commission's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans, and any security there-

for. The word "revenues" as used in this subdivision includes grants, loans, funds and property, as set out in subdivisions 11 and 12;

14. Enter into agreements with political subdivisions of the Commonwealth for joint or cooperative action in accordance with § [15.2-1300](#);

15. Exercise any additional powers granted to it by subsequent legislation; and

16. Do all things necessary or convenient to carry out the purposes of this chapter.

Article VI. Funding and Compensation.

The Commission may utilize for its operation and expenses (i) funds that may be generated by borrowing, gifts and grants, (ii) funds appropriated to it for such purposes by the General Assembly of Virginia and the legislatures of the other signatory states, (iii) federal funds, and (iv) revenues collected for the use of any facility approved by the Commission.

Members of the Virginia delegation to the Commission shall not receive compensation but shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties to the Commission as provided in § [2.2-2825](#). All such expenses shall be paid from existing appropriations, gifts, grants, federal funds, or other revenues collected for the use of any facility approved by the Commission. Members of the Commission representing other signatory states shall receive compensation and reimbursement of expenses incurred in the performance of their duties to the Commission in accordance with the applicable laws of the respective signatory states.

2007, cc. [941](#), [947](#).

Automobile Repair Facilities Act

§59.1-207.1. Title of chapter.

This chapter may be cited as the Automobile Repair Facilities Act.

1979, c. 506.

§59.1-207.2. Definitions.

As used in this chapter:

1. "Motor vehicle" shall mean every vehicle which is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle and includes every device in, upon or by which any property is or can be transported or drawn upon a highway, whether or not required to be licensed by the Commonwealth, but shall not include devices moved by human or animal power or devices used exclusively upon stationary rails or tracks. Nor shall it include those parts of a manufactured home which do not affect the ability of the manufactured home to be safely upon a highway.

2. "Person" shall include any natural person, firm, partnership, association or corporation.

3. "Automobile repair facility" shall mean any person who for profit diagnoses or corrects malfunctions of, or damage to, a motor vehicle.

1979, c. 506; 1999, c. [77](#).

§59.1-207.3. Written estimate for repair work required upon request; charge in excess of estimate; conditions; display of sign required; limitations on liability for delay; exception.

A. Upon request by a customer, prior to the commencement of any repair work on a motor vehicle for which a customer may be charged more than \$25, every automobile repair facility doing business in the Commonwealth shall provide the customer a written statement of (i) the estimated cost of labor necessary to complete the work, (ii) the estimated cost of parts necessary to complete work, (iii) a description of the problem or work as described or authorized by the customer, and (iv) the estimated completion time. An automobile repair facility shall have no obligation to provide such written statements prior to 10:00 a.m. or after 4:00 p.m. during a working day.

B. Where a written estimate is requested, no repair work on the motor vehicle may be undertaken, other than such diagnostic work as may be necessary for the preparation of an estimate, until the written estimate has been provided the customer and the customer has authorized the work, either in writing or orally, and no charge for repair work in excess of the written estimate by more than 10 percent or, in the case of any motor vehicle which is at least 25 model years old, 20 percent or extension of the time for the work may be made unless the additional work represented by such excess charge or the time extension has been authorized, in writing or orally, by the customer.

C. An automobile repair facility may impose reasonable conditions for its obligations to provide written estimates to a customer, including the imposition of a reasonable fee for the preparation of a written estimate and related diagnostic work; provided that any such conditions shall be disclosed to the customer at the time of his request by writing or by sign conspicuously posted at the entrance of the automobile repair facility.

Each automobile repair facility shall display in a conspicuous place at any point where vehicles are normally received for repairs, a sign which states that:

1. The customer may receive a written estimate on request;
2. No repair work charge may exceed the written estimate by more than 10 percent unless the additional work represented by the excess charge has been authorized by the customer;
3. Any conditions imposed by the automobile repair facility in providing written estimates, such as the limited hours when written estimates will be prepared or the amount of the reasonable fee charged for preparing a written estimate and for related diagnostic work;
4. The facility shall offer to return all replaced parts except warranty, core charge or trade-in parts required to be returned to a manufacturer or distributor; and
5. Any complaints can be made to the Division of Consumer Counsel of the Department of Law.

The sign heading "Customer Rights" shall be in letters at least one and one-half inches high and the remaining print shall be in letters at least one-fourth inch high with spacing between letters, words and lines so as to be clearly legible.

D. An automobile repair facility shall not be liable for breach of the written estimated completion date for a repair if the delay is occasioned by (i) an act of God or (ii) an unexpected shortage of labor or parts or (iii) other causes beyond the control of the automobile repair facility.

E. Nothing in this section shall require an automobile repair facility to give a written estimate if the facility is unwilling to perform the requested repair work.

F. The provisions of this section shall not apply to the repair of any motor vehicle which is any car listed in the Official Judging Manual of the Antique Automobile Club of America.

1979, c. 506; 1995, c. [110](#); 2012, cc. [803](#), [835](#).

§59.1-207.4. Offer to return replaced parts required; customer's right to inspect parts.

An automobile repair facility shall offer at the time the repair work is authorized to return to the customer any parts which are removed from the motor vehicle and replaced during the process of repair; provided that any part which is required to be returned to a manufacturer or distributor under a warranty agreement, trade-in agreement or core charge agreement for a reconditioned part need not be returned to the customer. If the customer wishes the return of replaced parts subject to core charge or other trade-in agreements, customer agrees to pay the facility the additional core charge or other trade-in fee. The customer retains the right to inspect requested returned parts even if custody is refused.

1979, c. 506.

§59.1-207.5. Written invoice required upon completion of repair work.

Upon completion of any repair work on a motor vehicle, including work performed pursuant to any warranty, an automobile repair facility shall provide the customer a written invoice which clearly indicates the work performed and the charges for parts and labor, separately stated, and which separately identifies those parts provided under warranty and not under warranty, and identifies those parts, if any, which are used, rebuilt or reconditioned. The provisions of this section shall not apply to work performed which was done on an advertised single price basis.

1979, c. 506.

§59.1-207.5:1. Sale or installation of motor vehicle glass; prohibited conduct.

No person selling or engaged in the sale, installation, or replacement of motor vehicle glass shall advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a policy of motor vehicle insurance, as defined in § [38.2-124](#), unless such person charges no more than the prevailing market rate for such services.

2003, c. [707](#).

§59.1-207.6. Enforcement; penalties.

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § [59.1-200](#) and shall be subject to any and all of the enforcement provisions of Chapter 17 (§ [59.1-196](#) et seq.) of this title.

1979, c. 506.

Bank Franchise Tax

§58.1-1200. Title.

This chapter shall be known and may be cited as the "Virginia Bank Franchise Tax Act."

1984, c. 675.

§58.1-1201. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Bank" means any incorporated bank, banking association, savings bank that is a member of the Federal Reserve System, or trust company organized by or under the authority of the laws of the Commonwealth and any bank or banking association organized by or under the authority of the laws of the United States, doing business or having an office in the Commonwealth or having a charter which designates any place within the Commonwealth as the place of its principal office, and any bank which establishes and maintains a branch in this Commonwealth under Article 6 (§ [6.2-836](#) et seq.) of Title 6.2 or Article 7 (§ [6.2-849](#) et seq.) of Title 6.2, whether such bank or banking association is authorized to transact business as a trust company or not, and any joint stock land bank or any other bank organized by or under the authority of the laws of the United States upon which the Commonwealth is authorized to impose a tax. The term shall exclude all corporations organized under the laws of other states and doing business in the Commonwealth, corporations organized not as banks under the laws of the Commonwealth and all natural persons and partnerships.

"Bank holding company" means any corporation that is organized under the laws of Virginia, is doing business in the Commonwealth, and is a bank holding company under the provisions of the Federal Bank Holding Company Act of 1956.

Code 1950, §§ 58-485.01, 58-485.02; 1980, c. 578; 1984, c. 675; 1995, c. [301](#); 2002, c. [29](#).

§58.1-1202. Bank capital assessable.

Every bank or trust company shall pay an annual franchise tax measured by its net capital as defined in § [58.1-1205](#). Such tax shall be in lieu of all other taxes whatsoever for state, county or local purposes except the real estate and tangible personal property taxes enumerated in § [58.1-1203](#), retail sales and use taxes under Chapter 6 (§ [58.1-600](#) et seq.) of this title, recordation taxes under § [58.1-800](#) et seq., motor vehicle sales and use taxes under Chapter 24 (§ [58.1-2400](#) et seq.) of this title, watercraft sales and use taxes under Chapter 14 (§ [58.1-1400](#) et seq.) of this title, aircraft sales and use taxes under Chapter 15 (§ [58.1-1500](#) et seq.) of this title, taxes properly assessable upon users of utility services, and local license taxes in connection with the sale of tangible personal property sold by banks in connection with promotions or otherwise.

Code 1950, § 58-485.04; 1980, c. 578; 1981, c. 432; 1984, c. 675.

§58.1-1203. Real and leased tangible personal property of banks to be assessed as other real and personal property.

A. The real estate of all banks shall be assessed on the land books with the same taxes with which other real estate is assessed.

B. The tangible personal property of all banks which is leased for a consideration to customers or other lessees shall be assessed on the personal property books with the same taxes with which other tangible personal property held for lease is assessed.

Code 1950, § 58-485.05; 1980, c. 578; 1984, c. 675.

§58.1-1204. Rate of tax.

The franchise tax imposed under this chapter shall be at the rate of \$1 on each \$100 of net capital as hereinafter defined. The total tax liability per taxpayer under this chapter shall not exceed \$18 million annually. If at least five banks pay such maximum amount of franchise tax for three consecutive calendar years, beginning in 2017, as determined by the Department of Taxation, then such maximum amount shall increase to \$20 million beginning in the calendar year immediately following the third consecutive year. After two years at \$20 million, such maximum amount shall increase by three percent annually. There shall be no deduction in respect to shares owned by exempt institutions.

The Department of Taxation shall notify all bank and trust companies in the Commonwealth of the increase in the maximum annual tax liability no later than August 15 of the year immediately prior to the year of such increase.

Code 1950, § 58-485.06; 1980, c. 578; 1981, c. 432; 1984, c. 675; 2016, cc. [325](#), [755](#).

§58.1-1204.1. Proration for new banks.

Notwithstanding § [58.1-1204](#), any bank which did not operate for the entire twelve-month period preceding the January 1 assessment date provided for under § [58.1-1207](#) shall be entitled to a prorated tax rate as follows:

1. Transacting business as of March 31 of the preceding year, no proration shall be available and the tax rate shall be \$1 on each \$100 of net capital.
2. Transacting business as of June 30 of the preceding year but not before April 1, the tax rate shall be 75 cent(s) on each \$100 of net capital.
3. Transacting business as of September 30 of the preceding year but not before July 1, the tax rate shall be 50 cent(s) on each \$100 of net capital.
4. Transacting business as of December 31 of the preceding year but not before October 1, the tax rate shall be 25 cent(s) on each \$100 of net capital.

For purposes of this section, "transacting business" shall mean accepting deposits from customers in the regular course of doing business. A bank shall be eligible for the prorated tax rate provided for hereunder with respect to the first return it is required to file after accepting deposits; provided, that a bank shall not be eligible for the prorated tax rate if it was organized or created as part of a reorganization within the meaning of § 368(a) of the Internal Revenue Code .

1989, c. 64 .

§58.1-1205. Computation of net capital.

The net capital of any bank shall be ascertained by adding together its capital, surplus, undivided profits, and one half of any reserve for loan losses net of applicable deferred tax to obtain gross capital and deducting therefrom (i) the assessed value of real estate as provided in § [58.1-1206](#), (ii) the book value of tangible personal property under § [58.1-1206](#), (iii) the pro rata share of government obligations as set forth in § [58.1-1206](#), (iv) the capital accounts of any bank subsidiaries under § [58.1-1206](#), (v) the amount of any reserve for marketable securities valuation which is included in capital, surplus and undivided profits as defined hereinabove to the extent that such reserve reflects the difference between the book value and the market value of such marketable securities on December 31 next preceding the date for filing the bank's return under § [58.1-1207](#), and (vi) the value of goodwill described under subdivision A 5 of § [58.1-1206](#).

Code 1950, § 58-485.07; 1980, c. 578; 1984, c. 675; 1999, c. [84](#); 2002, c. [667](#).

§58.1-1206. Deductions from gross capital.

A. There shall be deducted from the gross capital otherwise ascertainable under § [58.1-1205](#):

1. The assessed value of real estate if otherwise taxed in this Commonwealth which is owned by such bank, or is used or occupied by such bank, if held in the name of a majority-owned subsidiary of the bank or of a bank holding company which owns a majority of the capital stock of such bank or of any wholly-owned subsidiary of the bank holding company which owns the majority of the capital stock of such bank and the assessed value, up to the amount of the unencumbered equity, of real estate in the nature of improvements which are owned by the bank, or used or occupied by the bank and held by a majority-owned subsidiary or a bank holding company or a wholly-owned subsidiary of a bank holding company, even if assessed in the name of some other person because of the ownership of the underlying land by such person. Real estate used or occupied by a subsidiary or originally conveyed as collateral for loans made by a subsidiary of the bank and reacquired upon foreclosure of mortgage loans will be deemed to be used or occupied by the bank. The deduction for assessed value of real estate shall be the most recent assessment made prior to January 1 of the current bank franchise tax year for real estate owned by the bank or affiliate on January 1 of the current year.
2. The book value of tangible personal property which shall be held for lease and is otherwise taxed which is owned by such bank or in the name of a majority-owned subsidiary of the bank. If the bank does not own all the stock of such subsidiary, it shall be entitled to deduct only such portion of the assessed value of the real estate and the value of such tangible personal property as the common stock it owns in such subsidiary bears to the whole issue of common stock of such corporation.
3. An amount which shall equal the same percentage of the gross capital account, defined as its capital, surplus and undivided profits as set forth in § [58.1-1205](#) at December 31 next preceding as the obligations of the United States bear to the total assets of the bank. Such percentage of U.S. obligations shall be determined as of the four most recent (or less in case of a new bank) Reports of Condition and the percentage obtained shall be averaged. For purposes of computing such percentage, total assets shall not include the goodwill described in subdivision 5. The obligations of the United States as used herein shall include all obligations of the United States

exempt from taxation under 31 U.S.C. § 3124, of the United States Constitution or any other statute, or any instrumentality or agency of the United States which obligations shall be exempt from state or local taxation under the United States Constitution or any statute of the United States.

4. The amount of retained earnings and surplus of subsidiaries to the extent included in the gross capital of the bank. In addition, any portion of the amount added to federal taxable income pursuant to subdivision B 9 of § [58.1-402](#) by a corporation that is for interest expenses and costs paid to the bank for a loan or other obligation made by the bank to such corporation shall be deducted from the gross capital of the bank provided that (i) at the time of payment of such portion to the bank, the bank was a related member of the corporation, and (ii) such portion has not otherwise been deducted from gross capital. For purposes of this subdivision, the terms "interest expenses and costs" and "related member" mean the same as those terms are defined in § [58.1-302](#).

5. Any amount equal to 90 percent of goodwill created in connection with any acquisition or merger occurring on or after July 1, 2001.

B. For purposes of this section, "goodwill" shall be determined using generally accepted accounting principles.

Code 1950, § 58-485.08; 1980, c. 578; 1981, c. 432; 1984, c. 675; 2002, c. [667](#); 2004, Sp. Sess. I, c. [3](#).

§58.1-1207. Filing of return and payment of tax.

Each bank as defined in § [58.1-1201](#) as of January 1 of each year shall prepare and file with the commissioner of the revenue or comparable assessing officer of the county, city or town where the principal office of the bank is located on or before March 1, a return in duplicate which shall set forth the tax on net capital as computed under this chapter. The return shall be in a form prescribed by the Department of Taxation. The commissioner of the revenue or comparable assessing officer shall certify a copy of the bank's return and schedules and shall forthwith transmit such certified copy to the Department of Taxation. Additionally, a copy of the real estate deduction schedules and the apportionment under § [58.1-1211](#) shall be filed with the appropriate assessing officer of each political subdivision imposing a tax on the filing bank. Such return shall set forth the tax on net capital owing to each such political subdivision as computed under this chapter and shall include the listing of the real estate, as assessed for the prior year, as well as a description of the total of the

obligations of the United States and the average percentage thereof on the four dates prescribed in subdivision 3 of § [58.1-1206](#). Every bank, on or before June 1 of each year, shall pay into the state treasury the state taxes assessed under this chapter and into the treasurer's office or other official of the local political subdivisions all taxes assessed by such political subdivision.

Code 1950, § 58-485.013; 1980, c. 578; 1984, c. 675.

§58.1-1208. City tax.

Any city in this Commonwealth in which is located any bank may, by ordinance, impose a tax not to exceed 80 percent of the state rate of taxation on each \$100 of the net capital of such bank located in such city. If such bank also has offices that are located outside the corporate limits of such city, the tax shall be apportioned as provided in § [58.1-1211](#).

Code 1950, § 58-485.09; 1980, c. 578; 1984, c. 675.

§58.1-1209. Town tax.

Any incorporated town in this Commonwealth in which is located a bank may, by ordinance, impose a tax not to exceed 80 percent of the state rate of taxation for each \$100 of the net capital of a bank located in such town. If such bank also has offices that are located outside the corporate limits of such town, the tax shall be apportioned as provided in § [58.1-1211](#).

Code 1950, § 58-485.010; 1980, c. 578; 1984, c. 675.

§58.1-1210. County tax.

Any county of this Commonwealth in which is located any bank outside any incorporated town therein may, by ordinance, impose a tax not to exceed 80 percent of the state rate of taxation for each \$100 of the net capital of the bank so located in such county outside the corporate limits of any town therein. If such bank also has offices that are located outside such county or within the corporate limits of any town therein, the tax shall be apportioned as provided in § [58.1-1211](#).

Code 1950, § 58-485.011; 1980, c. 578; 1984, c. 675.

§58.1-1211. Branch banks.

If any bank has offices located in two or more political subdivisions, which includes cities, towns and counties, the tax which may be imposed by any subdivision under §§ [58.1-1208](#), [58.1-1209](#) or § [58.1-1210](#) shall be imposed upon only such proportion of the taxable value of the net capital under § [58.1-1204](#) as the total deposits of such

bank, or offices located inside the taxing subdivision, bears to total deposits as of the end of the preceding year. For the purposes of this section, offices located within an incorporated town shall be deemed not within the county where such banks are located.

Code 1950, § 58-485.012; 1980, c. 578; 1984, c. 675.

§58.1-1212. Record of deposits through branches required.

Each bank in this Commonwealth that has as of the beginning of any tax year a bank located in any county, incorporated town or city other than the county, incorporated town or city wherein such bank's principal office is located, shall maintain a record of the deposits through each such branch as of the beginning of the tax year. Each bank shall also submit to the commissioner of the revenue or other assessing officer of the locality wherein such principal office is located a report of such deposits with the return required under § [58.1-1207](#).

Code 1950, § 58-485.014; 1980, c. 578; 1984, c. 675.

§58.1-1213. Credit against state tax for amounts paid cities, towns and counties.

Any bank paying any tax assessed by any city, incorporated town, or county within this Commonwealth shall be entitled to credit upon the state tax assessed against it for that year on account of any city, town or county franchise tax paid by such bank for that year. In no event, however, shall the credit exceed the amount of such city, incorporated town or county levies authorized by this chapter.

Code 1950, § 58-485.015; 1980, c. 578; 1984, c. 675; 1994, c. [186](#).

§58.1-1214. Auditing of returns.

The Department of Taxation may audit returns as the Commissioner deems necessary for the proper enforcement of the tax levied by this chapter. The Department shall correct all errors discovered by such audit and notify the bank concerned in each case. In case of an adjustment, it shall also notify every political subdivision imposing a tax against the bank for which the bank claimed a credit against the state tax under § [58.1-1213](#).

Code 1950, § 58-485.016; 1980, c. 578; 1984, c. 675.

§58.1-1215. Banks in liquidation.

When the affairs of any bank are being wound up under §§ [6.2-913](#), [6.2-916](#), and [6.2-1038](#) or the comparable sections of the National Banking Act, such bank will not be subject to tax under this chapter, except as provided in this section. Returns of such

assets on January 1 of each year shall be made by those having custody or control thereof. If any surplus remains after payment of all creditors and depositors, the liquidating officer shall ascertain the net capital of such bank, just prior to each year-end during the period of liquidation and cause to be paid an appropriate tax thereon before any distribution of any such surplus, but any such tax on the bank, even though paid late, shall not be subject to penalty.

Code 1950, § 58-485.017; 1980, c. 578; 1984, c. 675.

§58.1-1216. Penalty upon bank for failure to comply with chapter.

Any bank which fails to file a return or pay the state tax required by this chapter or fails to comply with any other provision of this chapter shall be subject to a penalty of five percent of the tax due. If the Commissioner is satisfied that such failure is due to providential or other good cause, such return and payment of tax shall be accepted exclusive of such penalty, but with interest determined in accordance with § [58.1-15](#).

Code 1950, § 58-485.018; 1980, c. 578; 1984, c. 675.

§58.1-1217. State banks and national banks treated the same in matter of taxation.

In the event that any state or local tax is held by a court of competent jurisdiction to be invalid in its application to national banks, as a class, such tax shall not thereafter be assessed against state banks.

Code 1950, § 58-485.03; 1980, c. 578; 1984, c. 675.

Beer Franchise Act

§4.1-500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a brewery and beer wholesaler pursuant to which the wholesaler has been authorized to distribute one or more of the brewery's brands of beer. The doing or accomplishment of any of the following acts shall constitute prima facie evidence of an agreement within the meaning of this definition:

1. The shipment, preparation for shipment or acceptance of any order by any brewery for any beer to a beer wholesaler within the Commonwealth.

2. The payment by a beer wholesaler and the acceptance of payment by any brewery for the shipment of an order of beer intended for sale in the Commonwealth.

"Beer wholesaler," "wholesaler," "beer distributor," and "distributor" mean any whole-sale beer licensee, including any successor-in-interest to such person, within the Commonwealth offering beer for sale or resale to retailers or other beer wholesalers without regard to whether the business of the person is conducted under the terms of an agreement with a licensed brewery.

"Brand" means any word, name, group of letters, symbol or combination thereof adopted and used by a brewery to identify a specific malt beverage product and to distinguish that product from other beers produced or marketed by that brewery or other breweries. The use of general corporate logos or symbols or the use of advertising messages, whether appearing on the product packaging or elsewhere, shall not be considered to be a brand, brand extension, or part thereof as these terms are used in this chapter.

"Brand extension" and "extension of a brand" mean any brand, which incorporates all or a substantial part of the unique features of a preexisting brand of the same brewery and which relies to a significant extent on the goodwill associated with such preexisting brand.

"Brewery" means every person, including any authorized representative of such person pursuant to § [4.1-218](#) which (i) is licensed as a brewery located within the Commonwealth, (ii) holds a beer importer's license and is not simultaneously licensed as a beer wholesaler, or (iii) manufactures any malt beverage, has title to any malt beverage products excluding licensed Virginia wholesalers and retailers or has the contractual right to distribute under its own brand any malt beverage product whether licensed in the Commonwealth or not, who enters into an agreement with any beer wholesaler licensed to do business in the Commonwealth.

"Dual distributorships" means the existence of agreements between a single brewery and more than one wholesaler in a given territory as the result of a purchase of another brewery.

"Nonsurviving brewery" means any brewery which is purchased by another brewery as provided in § [4.1-504](#) and, as a result, ceases to exist as an independent legal entity.

"Person" means a natural person, corporation, partnership, trust, agency, or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. "Person" also includes heirs, assigns, personal representatives and conservators.

"Purchase" includes, but is not limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

"Surviving brewery" means a brewery which purchases a nonsurviving brewery as provided in § [4.1-504](#).

"Territory" or "sales territory" means the area of sales responsibility within the Commonwealth expressly or impliedly designated by any agreement between any beer wholesaler and brewery for the brand or brands of any brewer.

1978, c. 579, § 4-118.4; 1985, c. 549; 1987, c. 247; 1991, c. 628; 1993, c. 866; 1997, c. [801](#).

§4.1-501. Applicability.

This chapter shall apply to all agreements in effect on or after January 1, 1978.

1978, c. 579, § 4-118.18; 1993, c. 866 .

§4.1-502. No inducement or coercion.

No brewery shall:

1. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to accept delivery of any beer or any other commodity which has not been ordered by the beer wholesaler.
2. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to do any illegal act by any means including, but not limited to, threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a brewery and beer wholesaler.
3. Require a beer wholesaler to assent to any condition, stipulation or provision limiting the wholesaler in his right to sell the product of any other brewery anywhere in the Commonwealth.

1978, c. 579, § 4-118.5; 1993, c. 866 .

§4.1-503. Sales territory.

Each brewery which enters into an agreement with a beer wholesaler shall designate a sales territory for that wholesaler which is applicable to the agreement. No brewery shall enter into any agreement with more than one beer wholesaler for the purpose of establishing more than one agreement for its brands of beer in any territory. However, the existence of more than one such agreement as a result of a sale of a brewery as contemplated by § [4.1-504](#) shall not be prohibited. Each brewery shall notify the Board in writing of all designations of sales territories, the identity of the wholesaler appointed to serve such territory and a statement of any variations which exist in such designated territory with regard to a particular brand. Redesignations shall be reported to the Board within thirty days.

1978, c. 579, § 4-118.6; 1985, c. 536; 1993, c. 866 .

§4.1-504. Sale of brewery.

A. Except for discontinuance of a brand or for good cause as provided in § [4.1-505](#), the purchaser of a brewery shall become obligated to all of the terms and conditions of the selling brewery's agreements with distributors in effect on the date of purchase. The purchaser of a brand from a brewery shall become obligated to all of the terms and conditions of the selling brewery's agreement with distributors concerning that brand. Whenever such a purchase of a brand results in the creation of a dual distributorship, the provisions of subdivisions 1 and 2 of subsection B will determine the distribution rights to such brand or any extension thereof. For the limited purpose of making such determination, the brewery selling such brand shall be a non-surviving brewery and the purchaser shall be a surviving brewery.

B. For purposes of this section, when a purchase of a brewery by or on behalf of another brewery causes the selling brewery to cease to exist as an independent legal entity, the selling brewery shall be regarded as a nonsurviving brewery and the brewery on whose behalf the purchase was made shall be regarded as a surviving brewery. The following rules shall apply in order to determine (i) the distribution rights to any brands which are first marketed in the Commonwealth by the surviving brewery on or after July 1, 1985, with respect to a dual distributorship created prior to July 1, 1985, and (ii) the distribution rights to any brands, regardless of when they were first marketed in the Commonwealth, with respect to a dual distributorship created on or after July 1, 1985:

1. If the surviving brewery distributes in the Commonwealth any brand or brands of the nonsurviving brewery which that brewery marketed in the Commonwealth at any

time during the one-year period ending on the day the purchase agreement was made, these brands shall be distributed through those beer wholesalers who were distributors in the Commonwealth for the nonsurviving brewery. Any brands which the surviving brewery had marketed in the Commonwealth prior to the purchase shall be distributed through those beer wholesalers who were wholesalers of the surviving brewery prior to the purchase.

2. If the surviving brewery decides to market in the Commonwealth a new brand which is clearly an extension of a brand already assigned to beer wholesalers in the Commonwealth, the new brand shall be distributed through those wholesalers who distribute the brand of which the new brand is an extension.

3. If the surviving brewery decides to introduce in the Commonwealth a new brand which was not marketed in the Commonwealth at any time during the one-year period ending on the date the purchase agreement was made and which is not a brand extension, the surviving brewery shall market the new brand either through a distributor of the nonsurviving brewery or through a distributor who was a distributor of the surviving brewery prior to the purchase, as the brewery may see fit in any territory.

C. Subsection B shall not apply to determine distributorship rights to any brands or brand extensions which were marketed in the Commonwealth prior to July 1, 1985, with respect to any dual distributorship created prior to July 1, 1985.

1985, c. 549, § 4-118.6:1; 1993, c. 866 .

§4.1-505. Cancellation.

Notwithstanding the terms, provisions or conditions of any agreement, no brewery shall unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a wholesaler to resign from an agreement, unless the brewery has first complied with § [4.1-506](#) and good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuation or causing a resignation. Good cause shall not include the sale or purchase of a brewery. Good cause shall include, but is not limited to, the following:

1. Revocation of the wholesaler's license to do business in the Commonwealth;
2. Bankruptcy or receivership of the wholesaler;

3. Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or

4. Failure by the wholesaler to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him in writing by the brewery, including, but not limited to, a substantial failure by a beer wholesaler to (i) maintain a sales volume of his brewery's brand or brands, (ii) render services comparable in quality, quantity or volume to the sales volumes maintained and services rendered by other wholesalers of the same brand or brands within the Commonwealth, or (iii) failure to obtain the consent of the brewery to a transfer of a wholesaler's business unless a determination has been made by the Board pursuant to § [4.1-507](#) that such consent was unreasonably withheld by the brewery. In any determination as to whether a wholesaler has failed to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the brewery, consideration shall be given to the relative size, population, geographical location, number of retail outlets and demand for the products applicable to the territory of the wholesaler in question and to comparable territories.

Good cause shall not be construed to exist without a finding of a material deficiency for which the wholesaler is responsible in any case in which good cause is alleged to exist based on circumstances not specifically set forth in subdivisions 1 through 4 of this section.

1978, c. 579, § 4-118.7; 1985, c. 549; 1987, c. 247; 1989, c. 272; 1993, c. 866; 1996, c. [3](#).

§4.1-506. Notice of intent to terminate.

A. Except as provided in subsection F, a brewery shall provide a wholesaler at least ninety days' prior written notice of any intent to amend, terminate, cancel or not renew any agreement. The notice, a copy of which shall be mailed at the same time to the Board, shall state all the reasons for the intended amendment, termination, cancellation or nonrenewal.

B. Where the reason relates to a condition or conditions which may be rectified by action of the wholesaler, he shall have sixty days in which to take such action and shall, within the sixty-day period, give written notice to the brewery if and when such action is taken. A copy of the notice shall be mailed at the same time to the

Board. If such condition has been rectified by action of the wholesaler, then the proposed amendment, termination, cancellation or nonrenewal shall be void and without legal effect. However, where the brewery contends that action on the part of the wholesaler has not rectified one or more of such conditions the brewery shall within fifteen days after the expiration of such sixty-day period request a hearing before the Board to determine if the condition has been rectified by action of the wholesaler.

C. Where the reason relates to a condition which may not be rectified by the wholesaler within the sixty-day period, the wholesaler may request a hearing before the Board to determine if there is good cause for the amendment, termination, cancellation or nonrenewal of the agreement.

D. Upon request in writing within the ninety-day period provided in subsection A from such brewery or wholesaler for a hearing, the Board shall, after notice and hearing, determine if the action of the wholesaler has rectified the condition or, as the case may be, if good cause exists for the amendment, termination, cancellation or nonrenewal of the agreement.

E. In any proceeding brought pursuant to this section in which the existence of good cause is an issue, the brewery shall have the burden of proving the existence of good cause. Where a petition is made to the Board in a timely manner for a determination, the agreement in question shall continue in effect pending the Board's decision and any judicial review thereof, except in any case in which the Board makes a finding that there is good cause, as defined in § [4.1-505](#), for the amendment, termination, cancellation, or nonrenewal, in which case the brewery may, unless otherwise ordered by a court of record, discontinue the agreement in question.

F. No notice shall be required and an agreement may be immediately amended, terminated, cancelled or allowed to expire if the reason for the amendment, termination, cancellation or nonrenewal is:

1. The bankruptcy or receivership of the wholesaler;
2. An assignment for the benefit of creditors or similar disposition of the assets of the business other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or
3. Revocation of the wholesaler's license.

1978, c. 579, § 4-118.8; 1985, c. 549; 1993, c. 866; 1997, c. [183](#).

§4.1-507. Transfer of business.

A. No brewery shall unreasonably withhold or delay consent to any transfer of the wholesaler's business, or transfer of the stock or other interest in the wholesalership, whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of its wholesalers. Whenever a transfer of a wholesaler's business occurs, the purchaser shall assume all the obligations imposed on and succeed to all the rights held by the selling wholesaler by virtue of any agreement between the selling wholesaler and one or more breweries entered into prior to the transfer.

B. Notwithstanding any provision in subsection A, no brewery shall withhold consent to, or in any manner retain a right of prior approval of, the transfer of the wholesaler's business to a member or members of the wholesaler's family. However, subsequent to such transfer, the rights and obligations of the wholesalership and its owners shall in all other respects be governed by the provisions of this chapter. As used in this subsection, "family" means the wholesaler's spouse, parents, siblings, children, stepchildren, and lineal descendants, including those by adoption.

1978, c. 579, § 4-118.9; 1985, c. 549; 1993, c. 866 .

§4.1-508. Remedies.

A. In addition to any other sanctions which the Board is empowered by law to impose, it may order that any act or practice constituting a violation of this chapter be ceased and, where necessary, corrective measures implemented. In addition, in any case in which a brewery is found to have attempted or accomplished an amendment, termination, cancellation, or refusal to continue or renew an agreement without good cause as defined in § [4.1-505](#), the Board shall, upon the request of the wholesaler involved, enter an order requiring that (i) the agreement remain in effect or be reinstated or (ii) the brewery pay the wholesaler reasonable compensation for the value of the agreement, which shall be determined in the manner provided for in subsection B. Reasonable compensation shall include, but is not limited to, the following:

1. The fair market value of the assets used by the wholesaler specifically for the purpose of distributing the brewery's products;
2. The cost of the wholesaler's inventory of the brewery's products calculated as the sum of the net price paid by the wholesaler for the inventory;

3. The amount of any taxes paid by the wholesaler in connection with purchasing the inventory;
4. The cost of transporting the inventory from the brewery to the wholesaler's warehouse, plus any handling costs; and
5. The goodwill of the wholesaler's business representing a value over and above the fair market value of the foregoing tangible assets.

The compensation for such assets shall be subject to offset for (i) any sums recovered by the wholesaler in liquidation of the assets and (ii) the value which the assets have to the wholesaler independent of their value for use in distributing the brewery's products.

B. In the event the brewery and the beer wholesaler are unable to agree on the reasonable compensation to be paid for the value of the agreement, the matter shall be submitted to a panel of three arbitrators. The brewery and the beer wholesaler shall each select one arbitrator and the two arbitrators selected shall appoint a third arbitrator who shall be a person qualified by experience to appraise the value of existing businesses. The decision of the arbitrators shall be rendered within ninety days from the time the matter is submitted to arbitration unless the Board, for good cause shown, allows for an extension of time not to exceed thirty days, or unless the parties agree to an extension of time. All of the costs of the arbitration shall be paid one-half by the wholesaler and one-half by the brewery. By entering into an agreement, the parties are deemed to have agreed to arbitration as provided in this subsection and, further, that such arbitration shall be governed by the provisions of Chapter 21 (§ [8.01-577](#) et seq.) of Title 8.01.

C. In addition to the foregoing remedies, in any case in which a brewery is found to have violated § [4.1-506](#), the Board may, upon request of the wholesaler involved, order the brewery to compensate the wholesaler for any losses proximately resulting from such violation, including but not limited to lost profits. Such losses shall be determined in the manner provided in subsection B and shall be calculated from the date of the violation by the brewery to the date the brewery initiates remedial action pursuant to Board order.

1978, c. 579, § 4-118.10; 1985, c. 549; 1987, c. 247; 1993, c. 866 .

§4.1-509. Board proceedings and appellate review.

A. The Board, upon petition by any beer wholesaler or brewery, or upon its own motion if it has reasonable grounds to believe a violation has or may have occurred, shall have the responsibility of determining whether a violation of any provision of this chapter has occurred. The Board may, if it finds that a brewery or beer wholesaler has acted in bad faith in violating any provision of this chapter or in seeking relief pursuant to this chapter, award reasonable costs and attorneys' fees to the prevailing party.

B. All proceedings under this chapter and any judicial review thereof shall be held in accordance with and governed by the Virginia Administrative Process Act (§ [2.2-4000](#) et seq.). Notwithstanding the foregoing, the Board may adopt regulations pertaining to proceedings under this chapter, including regulations authorizing or requiring the issuance of subpoenas for the production of documents, subpoenas for the attendance of witnesses, requests for admissions, interrogatories, and depositions, not inconsistent with Part 4 of the Rules of the Supreme Court of Virginia.

C. In all proceedings under this chapter the Board or the circuit court reviewing a Board order, for good cause, shall enter an order requiring that information relating to the sale, marketing or manufacturing practices or processes of the brewery or the wholesaler be filed with the Board or the court, as the case may be, in sealed envelopes and that the information contained therein remain available only to the brewery and wholesaler on condition that such information will not be disclosed by the Board, the brewery, or the wholesaler, or their respective agents and employees. Upon conclusion of the proceedings under this chapter, information supplied shall be returned to the party furnishing it or, in the alternative, the Board or the court may order that such information be sealed to be opened only by order of the Board or the court.

1978, c. 579, § 4-118.11; 1980, c. 299; 1981, c. 536; 1985, c. 549; 1987, c. 139; 1993, c. 866 .

§4.1-509.1. Board proceedings; contemplated actions by brewery or wholesaler.

A. For purposes of this section, "contemplated action" means an action proposed by a brewery or wholesaler that (i) if carried out would violate any provision of this chapter or subdivision 1 c (v) of § [4.1-225](#) and (ii) is demonstrated by a specific written statement authored by a brewery or an employee of a wholesaler who is specifically authorized by virtue of job title and responsibility to make such statement

and such other evidence as may be required by the Board pursuant to the facts of any given circumstance.

B. Subsequent to compliance with subsection D, any wholesaler may file a petition against a brewery, and any brewery may file a petition against a wholesaler, in which the petitioner alleges that the respondent named in the petition as a matter of past or present fact has contemplated action that if carried out would violate any provision of this chapter or subdivision 1 c (v) of § [4.1-225](#). Any such petition filed shall identify with specificity the alleged contemplated action, the document in which such contemplated action is described or authorized, and specify the provision of law or regulation that the contemplated action would violate if carried out. The petition shall include a statement that a controversy as to the lawfulness of the contemplated action exists. The statement shall be supported by evidence of the petitioner's good faith effort to resolve the controversy in accordance with subsection D. The petitioner shall have the burden of establishing that the contemplated actions identified in the petition, if carried out, would violate any provision of law or regulation enumerated in this subsection. The Board may, if it finds that a brewery or wholesaler has frivolously maintained a petition or defense to a proceeding pursuant to this chapter, award reasonable costs and attorney fees to the prevailing party.

C. Any petition filed by a brewery or wholesaler pursuant to this section shall be delivered to the Secretary of the Board. The Board shall promptly issue a written determination as to whether a violation or attempted violation as alleged in the petition has occurred. In addition, the Board shall promptly issue a written determination as to whether a violation alleged in the petition would occur if the contemplated action identified in the petition were to be carried out.

D. Prior to filing a petition, a party shall communicate with the party alleged to be considering a contemplated action and initiate a good faith attempt to resolve the issue in question. If within 21 days of initiating the communication required by this subsection, or such longer period of time if mutually agreed upon, there is no resolution, either party may proceed to file a petition in accordance with subsection B.

2013, c. [3](#).

§4.1-510. Price of product.

No brewery, whether by means of a term or condition of an agreement or otherwise, shall fix or maintain the prices at which the wholesaler shall sell any beer.

1978, c. 579, § 4-118.12; 1993, c. 866 .

§4.1-511. Increase of prices.

No brewery or beer importer shall increase the prices charged any wholesale beer licensee for beer except by written notice to the wholesaler signed by an authorized officer or agent of the brewery or beer importer, which notice shall contain the amount and effective date of the increase. A copy of the notice shall be sent to the Board and shall be treated as confidential information, except in relation to enforcement proceedings for violation of this section. No increase shall take effect prior to thirty calendar days following the date on which the notice is postmarked. The Board may authorize such price increases to take effect with less than the aforesaid thirty-calendar-day notice if a brewery or beer importer so requests and demonstrates good cause therefor.

1982, c. 122, § 4-118.12:1; 1993, c. 866 .

§4.1-512. Retaliatory action prohibited.

A brewery shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the brewery with the appropriate state or federal regulatory or judicial authority. Retaliatory action shall include, but is not limited to, refusal without good cause to continue the agreement, or a material reduction in the amount and quality of service or quantity of products available to the wholesaler under the agreement.

1978, c. 579, § 4-118.13; 1993, c. 866 .

§4.1-513. Management.

No brewery shall require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the brewery for all its wholesalers.

1978, c. 579, § 4-118.14; 1985, c. 549; 1993, c. 866 .

§4.1-514. Discrimination prohibited.

No brewery shall discriminate among its wholesalers in any business dealings including, but not limited to, the price of beer sold to the wholesaler, unless the classification among its wholesalers is based upon reasonable grounds.

1978, c. 579, § 4-118.15; 1993, c. 866 .

§4.1-515. Waiver prohibited; conflicts of laws.

A. No brewery shall require any wholesaler to waive compliance with any provision of this chapter. Any contract or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance. Nothing in this chapter shall limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

B. Any contract between a brewery and a beer wholesaler pursuant to which the wholesaler is to market the brewery's products in the Commonwealth shall be governed by the laws of the Commonwealth as the place of performance notwithstanding the fact that such contract may have been made in another state or the fact that such contract may provide that it is to be governed by the laws of another state.

1978, c. 579, § 4-118.16; 1989, c. 272; 1993, c. 866 .

§4.1-516. Right of free association.

No brewery or wholesaler shall restrict or inhibit the right of free association among breweries or wholesalers for any lawful purpose.

1978, c. 579, § 4-118.19; 1993, c. 866 .

§4.1-517. Reasonableness and good faith.

A. Every agreement entered into under this chapter shall impose on the parties the obligation to act in good faith.

B. This chapter shall impose on every term and provision of any agreement a requirement of reasonableness. Every term or provision shall be interpreted so that the requirements or obligations imposed therein are reasonable.

1985, c. 549, § 4-118.20:1; 1993, c. 866 .

Boiler and Pressure Vessel Safety Act

§40.1-51.5. Short title; definitions.

As used in this chapter, which may be cited as the Boiler and Pressure Vessel Safety Act, the following terms shall have the meanings set forth in this section unless the context requires a different meaning:

(a) "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels, or from

electricity or nuclear energy. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

1. "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than fifteen pounds per square inch gauge pressure.

2. "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding 160 pounds per square inch gauge pressure or temperatures exceeding 250 degrees Fahrenheit.

3. "Heating boiler" means a steam or vapor boiler operating at pressures not exceeding 15 pounds per square inch gauge pressure, or a hot water boiler operating at pressures not exceeding 160 pounds per square inch gauge pressure or temperature not exceeding 250 degrees Fahrenheit.

(b) "Unfired pressure vessel"

means a vessel in which the pressure is obtained from an external source or by the application of heat from an indirect source or from a direct source, other than those vessels defined in subdivision (a) of this section.

(c) "Certificate inspection" means an inspection, the report of which is used by the Chief Inspector to decide whether or not a certificate as provided by § [40.1-51.10](#) may be issued. This certificate inspection shall be an internal inspection when construction permits; otherwise, it shall be as complete an inspection as possible.

(d) "Board" means the Safety and Health Codes Board.

(e) "Owner-user inspection agency" means any person, firm, partnership or corporation registered with the Chief Inspector and approved by the Board as being legally responsible for inspecting pressure vessels which they operate in Virginia.

(f) "Examining Board" means persons appointed by the Chief Inspector to monitor examinations of inspectors.

(g) "Water heater" means a vessel used to supply (i) potable hot water or (ii) both space heat and potable water in combination which is directly heated by the combustion of fuels, by electricity or any other source and withdrawn for use external to the system at pressures not to exceed 160 pounds per square inch, or temperatures of 210 degrees Fahrenheit.

(h) "Contract fee inspector" means any certified boiler inspector contracted to inspect boilers or pressure vessels on an independent basis by the owner or operator of the boiler or pressure vessel.

1972, c. 237; 1974, c. 195; 1986, c. 211; 1993, c. 543; 1996, c. [294](#).

§40.1-51.6. Safety and Health Codes Board to formulate rules, regulations, etc.; cost of administration.

A. The Board is authorized to formulate definitions, rules, regulations and standards which shall be designed for the protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, maintenance and repair of boilers and pressure vessels in this Commonwealth.

In promulgating such rules, regulations and standards, the Board shall consider any or all of the following:

1. Standards, formulae and practices generally accepted by recognized engineering and safety authorities and bodies.
2. Previous experiences based upon inspections, performance, maintenance and operation.
3. Location of the boiler or pressure vessel relative to persons.
4. Provisions for operational controls and safety devices.
5. Interrelation between other operations outside the scope of this chapter and those covered by this chapter.
6. Level of competency required of persons installing, constructing, maintaining or operating any equipment covered under this chapter or auxiliary equipment.
7. Federal laws, rules, regulations and standards.

B. The Commissioner shall ensure that the costs of administering this chapter shall not exceed revenues generated from fees collected pursuant to the provisions of this chapter.

1972, c. 237; 1973, c. 425; 1985, c. 40.

§40.1-51.7. Installations, repairs and alterations to conform to rules and regulations; existing installations.

(a) No boiler or pressure vessel which does not conform to the rules and regulations of the Board governing new construction and installation and which has been

certified by the Board shall be installed or operated in this Commonwealth after twelve months from July 1, 1973. Prior to such date no boiler or pressure vessel shall be installed and operated unless it is in conformity with the rules and regulations established pursuant to this chapter which were in existence on July 1, 1972.

(b) This chapter shall not be construed as in any way preventing the use, sale or reinstallation of a boiler or pressure vessel constructed prior to July 1, 1972, provided it has been made to conform to the rules and regulations of the Board governing existing installations prior to its reinstallation or operation.

(c) Repairs and alterations shall conform to the rules and regulations set forth by the Board.

1972, c. 237; 1974, c. 195; 1986, c. 211.

§40.1-51.8. Exemptions.

The provisions of this article shall not apply to any of the following:

1. Boilers or unfired pressure vessels owned or operated by the federal government or any agency thereof;
2. Boilers or fired or unfired pressure vessels used in or on the property of private residences or apartment houses of less than four apartments;
3. Boilers of railroad companies maintained on railborne vehicles or those used to propel waterborne vessels;
4. Hobby or model boilers as defined in § [40.1-51.19:1](#);
5. Hot water supply boilers, water heaters, and unfired pressure vessels used as hot water supply storage tanks heated by steam or any other indirect means when the following limitations are not exceeded:
 - a. A heat input of 200,000 British thermal units per hour;
 - b. A water temperature of 210 degrees Fahrenheit;
 - c. A water-containing capacity of 120 gallons;
6. Unfired pressure vessels containing air only which are located on vehicles or vessels designed and used primarily for transporting passengers or freight;
7. Unfired pressure vessels containing air only, installed on the right-of-way of railroads and used directly in the operation of trains;

8. Unfired pressure vessels used for containing water under pressure when either of the following are not exceeded:

- a. A design pressure of 300 psi; or
- b. A design temperature of 210 degrees Fahrenheit;

9. Unfired pressure vessels containing water in combination with air pressure, the compression of which serves only as a cushion, that do not exceed:

- a. A design pressure of 300 psi;
- b. A design temperature of 210 degrees Fahrenheit; or
- c. A water-containing capacity of 120 gallons;

10. Unfired pressure vessels containing air only, providing the volume does not exceed eight cubic feet nor the operating pressure is not greater than 175 pounds;

11. Unfired pressure vessels having an operating pressure not exceeding fifteen pounds with no limitation on size;

12. Pressure vessels that do not exceed:

- a. Five cubic feet in volume and 250 pounds per square inch gauge pressure;
- b. One and one-half cubic feet in volume and 600 pounds per square inch gauge pressure; and
- c. An inside diameter of six inches with no limitations on gauge pressure;

13. Pressure vessels used for transportation or storage of compressed gases when constructed in compliance with the specifications of the United States Department of Transportation and when charged with gas marked, maintained, and periodically requalified for use, as required by appropriate regulations of the United States Department of Transportation;

14. Stationary American Society of Mechanical Engineers (ASME) LP-Gas containers used exclusively in propane service with a capacity that does not exceed 2,000 gallons if the owner of the container or the owner's servicing agent:

- a. Conducts an inspection of the container not less frequently than every five years, in which all visible parts of the container, including insulation or coating, structural attachments, and vessel connections, are inspected for corrosion, distortion, cracking, evidence of leakage, fire damage, or other condition indicating impairment;

- b. Maintains a record of the most recent inspection of the container conducted in accordance with subdivision a; and
 - c. Makes the records required to be maintained in accordance with subdivision b available for inspection by the Commissioner;
15. Unfired pressure vessels used in and as a part of electric substations owned or operated by an electric utility, provided such electric substation is enclosed, locked, and inaccessible to the public; or
16. Coil type hot water boilers without any steam space where water flashes into steam when released through a manually operated nozzle, unless steam is generated within the coil or unless one of the following limitations is exceeded:
- a. Three-fourths inch diameter tubing or pipe size with no drums or headers attached;
 - b. Nominal water containing capacity not exceeding six gallons; and
 - c. Water temperature not exceeding 350 degrees Fahrenheit.
- 1972, c. 237; 1977, c. 301; 1978, c. 355; 1986, c. 211; 1988, c. 289; 1990, c. 226; 1993, c. 543; 1999, c. [335](#); 2000, c. [898](#); 2012, c. [332](#); 2013, c. [171](#).

§40.1-51.9. Employment and appointment of inspectors and other personnel; inspections; reports.

The Commissioner is authorized to employ persons to enforce the provisions of this chapter and the regulations of the Board. He shall be authorized to require examinations or other information which he deems necessary to aid him in determining the fitness, competency, and professional or technical expertise of any applicant to perform the duties and tasks to be assigned.

The Commissioner is authorized to appoint a Chief Inspector and to certify special inspectors who shall meet all qualifications set forth by the Commissioner and the Board. Special inspectors shall be authorized to inspect specified premises and without cost or expense to the Commonwealth. Reports of all violations of the regulations or of this chapter shall be immediately made to the Commissioner. Other reports shall be made as required by the Commissioner.

1972, c. 237; 1974, c. 195; 1995, c. [97](#).

§40.1-51.9:1. Examination of inspectors; certificate of competency required.

A. All applicants for the position of inspector authorized by § [40.1-51.9](#) shall be required to have successfully completed an examination monitored by the Examining

Board and to have received a certificate of competency from the Commissioner prior to commencing their duties. A fee as set under subsection A of § [40.1-51.15](#) shall be charged each applicant taking the inspector's examination.

B. Each inspector holding a valid certificate of competency and who conducts inspections, as provided by this chapter, shall be required to obtain an identification card biennially, not later than June 30 of the year in which the identification card is required. Application for the identification card shall be made on forms furnished by the Department upon request. Each application shall be submitted to the Department, accompanied by a post-office money order or check drawn to the order of the Treasurer of Virginia in the amount as set under subsection A of § [40.1-51.15](#).

1974, c. 195; 1986, c. 266; 1997, c. [212](#).

§40.1-51.9:2. Financial responsibility requirements for contract fee inspectors.

A. Contract fee inspectors inspecting or certifying regulated boilers or pressure vessels in the Commonwealth shall maintain evidence of their financial responsibility, including compensation to third parties, for bodily injury and property damage resulting from, or directly relating to, an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

B. Documentation of financial responsibility, including documentation of insurance or bond, shall be provided to the Chief Inspector within thirty days after certification of the inspector. The Chief Inspector may revoke an inspector's certification for failure to provide documentation of financial responsibility in a timely fashion.

C. The Safety and Health Codes Board is authorized to promulgate regulations requiring contract fee inspectors, as a condition of their doing business in the Commonwealth, to demonstrate financial responsibility sufficient to comply with the requirements of this chapter. Regulations governing the amount of any financial responsibility required by the contract fee inspector shall take into consideration the type, capacity and number of boilers or pressure vessels inspected or certified.

D. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any other method approved by the Board, or any combination thereof, under the terms the Board may prescribe. A contract fee inspector whose financial responsibility is accepted by the Board under this subsection shall notify the Chief Inspector at least thirty days before the effective date of the change, expiration, or cancellation of any instrument of insurance, guaranty or surety.

E. Acceptance of proof of financial responsibility shall expire on the effective date of any change in the inspector's instrument of insurance, guaranty or surety, or the expiration date of the inspector's certification. Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days before the date of expiration.

F. The Chief Inspector, after notice and opportunity for hearing, may revoke his acceptance of evidence of financial responsibility if he determines that acceptance has been procured by fraud or misrepresentation, or a change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.

G. It is not a defense to any action brought for failure to comply with the requirement to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the owner or operator of an inspected boiler or pressure vessel possessed evidence of financial responsibility accepted by the Chief Inspector or the Board.

1996, c. [294](#).

§40.1-51.10. Right of access to premises; certification and recertification; inspection requirements.

A. The Commissioner, his agents or special inspectors shall have free access, during reasonable hours to any premises in the Commonwealth where a boiler or pressure vessel is being constructed, operated or maintained, or is being installed to conduct a variance review, an owner-user inspection agency audit, an emergency repair review, an accident investigation, a violation follow-up, and a secondhand or used boiler review for the purpose of ascertaining whether such boiler or pressure vessel is being constructed, operated or maintained in accordance with this chapter.

B. On and after January 1, 1973, no boiler or pressure vessel used or proposed to be used within this Commonwealth, except boilers or pressure vessels exempted by this chapter, shall be installed, operated or maintained unless it has been inspected by the Commissioner, his agents or special inspectors as to construction, installation and condition and shall be certified. A fee as set under subsection A of § [40.1-51.15](#) shall be charged for each inspection certificate issued. In lieu of such fees both for certification and recertification, an authorized owner-user inspection agency shall be charged annual filing fees as set under subsection A of § [40.1-51.15](#).

C. Recertification shall be required as follows:

1. Power boilers and high pressure, high temperature water boilers shall receive a certificate inspection annually and shall also be externally inspected annually while under pressure if possible;
2. Heating boilers shall receive a certificate inspection biennially;
3. Pressure vessels subject to internal corrosion shall receive a certificate inspection biennially;
4. Pressure vessels not subject to internal corrosion shall receive a certificate inspection at intervals set by the Board, but internal inspection shall not be required of pressure vessels, the content of which are known to be noncorrosive to the material of which the shell, heads or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, provided that such vessels are constructed in accordance with the rules and regulations of the Board;
5. Nuclear vessels within the scope of this chapter shall be inspected and reported in such form and with such appropriate information as the Board shall designate;
6. A grace period of two months beyond the periods specified in subdivisions 1, 2, 3 and 4 of this subsection may elapse between certificate inspections. The Chief Inspector may extend a certificate for up to three additional months beyond such grace period subject to a satisfactory external inspection of the object and receipt of a fee as set under subsection A of § [40.1-51.15](#) for each month of inspection beyond the grace period.

D. Inspection requirements for operating equipment shall be in accordance with generally accepted practice and compatible with the actual service conditions and shall include but not be limited to the following criteria:

1. Previous experience, based on records of inspection, performance and maintenance;
2. Location, with respect to personnel hazard;
3. Qualifications and competency of inspection and operating personnel;
4. Provision for related safe operation controls; and
5. Interrelation with other operations outside of the scope of this chapter.

E. Based upon documentation of such actual service conditions by the owner or user of the operating equipment, the Board may, in its discretion, permit variations in the inspection requirements as provided in this section.

F. If, at the discretion of the Commissioner, a hydrostatic test shall be deemed necessary, it shall be made by the owner or user of the boiler or pressure vessel.

G. All boilers, other than cast iron sectional boilers, and pressure vessels to be installed in this Commonwealth after the six-month period from the date upon which the rules and regulations of the Board shall become effective shall be inspected during construction as required by the applicable rules and regulations of the Board.

H. Ninety-one days after expiration of a certificate for any boiler or pressure vessel subject to this section, the Commissioner may assign an agent or special inspector to inspect such boiler or pressure vessel, and its owner or operator shall be assessed a fee for such inspection. The fee shall be established in accordance with subsection A of § [40.1-51.15](#).

1972, c. 237; 1974, c. 195; 1976, c. 288; 1986, c. 266; 1988, c. 289; 1992, c. 3; 1993, c. 544; 1995, c. [97](#); 1997, c. [212](#); 2005, c. [387](#).

§40.1-51.10:1. Issuance of certificates; charges.

The Commissioner may designate special inspectors and contract fee inspectors to issue inspection certificates for boilers and pressure vessels they have inspected. If no defects are found or when the boiler or pressure vessel has been corrected in accordance with regulations, the designated special inspector or contract fee inspector shall issue a certificate on forms furnished by the Department. The designated special inspector or contract fee inspector shall collect the inspection certificate fee required under § [40.1-51.10](#) at the time of the issuance of the certificate and forward the fee and a duplicate of the certificate to the chief inspector immediately.

Each designated special inspector or contract fee inspector may charge a fee as set under subsection A of § [40.1-51.15](#) for each certificate issued, but the charge shall not be mandatory. No charge shall be made unless the inspector has previously contracted therefor.

1997, c. [212](#).

§40.1-51.11. Suspension of inspection certificate; injunctive relief.

A. The Commissioner or his authorized representative may at any time suspend an inspection certificate when, in his opinion, the boiler or pressure vessel for which it

was issued, cannot be operated without menace to the public safety, or when the boiler or pressure vessel is found not to comply with the rules and regulations herein provided. Each suspension of an inspection certificate shall continue in effect until such boiler or pressure vessel shall have been made to conform to the rules and regulations of the Board, and until such inspection certificate shall have been reinstated. No boiler or pressure vessel shall be operated during the period of suspension.

B. Notwithstanding any other provision of this chapter to the contrary, in the event of violation of any provision of this chapter or the regulations promulgated thereunder, the Board or the Commissioner may petition any appropriate court of record for relief by injunction, without being compelled to allege or prove that an adequate remedy at law does not exist.

1972, c. 237; 1981, c. 39; 2000, c. [728](#).

§40.1-51.11:1. Owner-user inspection agencies.

Any person, firm, partnership or corporation operating pressure vessels in this Commonwealth may seek approval and registration as an owner-user inspection agency by filing an application with the chief inspector on forms prescribed and available from the Department, and request approval by the Board. Each application shall be accompanied by a fee as set under subsection A of § [40.1-51.15](#) and a bond in the penal sum of \$5,000 which shall continue to be valid during the time the approval and registration of the company as an owner-user inspection agency is in effect. Applicants meeting the requirements of the rules and regulations for approval as owner-user inspection agencies will be approved and registered by the Board. The Board shall withdraw the approval and registration as an owner-user inspection agency of any person, firm, partnership or corporation which fails to comply with all rules and regulations applicable to owner-user inspection agencies. Each owner-user inspection agency shall file an annual statement as required by the rules and regulations, accompanied by a filing fee as set under subsection A of § [40.1-51.15](#).

1974, c. 195; 1986, c. 266; 1997, c. [212](#).

§40.1-51.12. Violation for operating boiler or pressure vessel without inspection certificate; civil penalty.

A. After twelve months following July 1, 1972, it shall be unlawful for any person, firm, partnership or corporation to operate in this Commonwealth a boiler or pressure vessel without a valid inspection certificate. Any owner, user, operator or agent of any such person who actually operates or is responsible for operating such boiler

or pressure vessel thereof who operates a boiler or pressure vessel without such inspection certificate, or at a pressure exceeding that specified in such inspection certificate shall be in violation of this section and subject to a civil penalty not to exceed \$100. Each day of such violation shall be deemed a separate offense.

B. All procedural rights guaranteed to employers pursuant to § [40.1-49.4](#) shall apply to penalties under this section.

C. Investigation and enforcement for violations of this section shall be carried out by the Department of Labor and Industry. Civil penalties imposed for violations of this section shall be paid into the general fund.

1972, c. 237; 1995, c. [97](#).

§40.1-51.13. Posting of certificate.

Certificates shall be posted in the room containing the boiler or pressure vessel inspected. If the boiler or pressure vessel is not located within the building the certificate shall be posted in a location convenient to the boiler or pressure vessel inspected, or in any place where it will be accessible to interested parties.

1972, c. 237; 1990, c. 226 .

§40.1-51.14. When inspection certificate for insured boiler or pressure vessel invalid.

No inspection certificate issued for an insured boiler or pressure vessel based upon a report of a special inspector shall be valid after the boiler or pressure vessel for which it was issued shall cease to be insured by a company duly authorized to issue policies of insurance in this Commonwealth.

1972, c. 237.

§40.1-51.15. Fees.

A. The Safety and Health Codes Board shall establish fees required under this chapter. Following the close of any biennium, when the account for the Safety and Health Codes Board shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the Board, it shall revise the fees levied by it for licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses. Such revisions, and the underlying rationale, shall be included in the Department's Annual Report submitted pursuant to § [40.1-4.1](#).

B. The owner or user of a boiler or pressure vessel required by this chapter to be reviewed shall pay directly to the Commissioner, upon completion of inspection, fees in accordance with the following schedule:

1. Conducting or participating in reviews and surveys of boiler or pressure vessel manufacturers or repair organizations for the purpose of national accreditation, shall be charged a fee as set under subsection A per review or survey.

2. a. All other inspections, including variance reviews, emergency repair reviews, and reviews of secondhand or used boilers or pressure vessels made by the Commissioner or his appointed representative shall be charged a fee as set under subsection A.

b. "Secondhand" shall mean an object which has changed ownership and location after primary use.

C. The Commissioner shall transfer all fees so received to the State Treasurer for deposit into the general fund of the state treasury.

1972, c. 237; 1985, c. 40; 1986, c. 266; 1988, c. 289; 1993, c. 544; 1995, c. [97](#); 1997, c. [212](#).

§40.1-51.15:1. Only one inspection necessary.

Inspection under the provisions of this chapter shall constitute compliance with and shall be in lieu of any boiler or pressure vessel inspection required by Chapter 6 (§ [36-97](#) et seq.) of Title 36.

1980, c. 464; 1992, c. 3 .

§40.1-51.16. Appeals.

Any person aggrieved by an order or an act of the Board or Commissioner under this chapter may appeal such order or act to the Board pursuant to the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.). Final orders of the Board may be appealed pursuant to the Administrative Process Act.

1972, c. 237; 1986, c. 615; 1988, c. 289.

§40.1-51.17. Effect of chapter on local ordinances and regulations.

Nothing in this chapter shall be construed as repealing any valid local ordinance or regulation now in effect adopted pursuant to general law or charter provision; provided, however, that if any such ordinance or regulation is less strict than any standard rule or regulation promulgated or adopted by the Board, then such ordin-

ance or regulation shall be superseded by the applicable standard or regulation of the Board except as provided in § [40.1-51.19](#).

1972, c. 237.

§40.1-51.18. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§40.1-51.19. Variances.

Upon application pursuant to the provisions of subdivision (9) of § [40.1-6](#), the Commissioner may allow variances from a specific regulation provided the applicant proves by clear and convincing evidence his boiler or pressure vessel meets substantially equivalent operating criteria and standards.

1972, c. 237; 1990, c. 226 .

§40.1-51.19:1. Definitions.

As used in this article:

"Hobby boiler" means any boiler used solely for demonstration, exhibition, ceremonial or educational purposes, including but not limited to, historical artifacts such as portable and stationary show boilers, farm traction engines, and locomotives.

"Model boiler" means any boiler fabricated to demonstrate an original design or to reproduce or replicate a historic artifact, and used primarily for demonstration, exhibition, or educational purposes.

1999, c. [335](#); 2000, c. [898](#).

§40.1-51.19:2. Applicability.

Hobby and model boilers may continue in operation but shall be in compliance with the provisions of this article by July 1, 2000.

1999, c. [335](#); 2000, c. [898](#).

§40.1-51.19:3. Inspection and testing.

A. A hobby or model boiler shall be inspected every two years inclusive. It shall be the duty of the owner of any hobby or model boiler to obtain and display an inspection certificate. A hobby or model boiler can be placed in nonoperating status upon written notification to the chief inspector. Normal inspection procedures apply when reinstating the boiler.

B. The inspection of every hobby or model boiler shall include an examination of or for the following:

1. The fusible plug, if provided in the original design.
2. The safety valve or valves. Such valve or valves shall be (i) marked with an American Society of Mechanical Engineers (ASME) stamp, (ii) set at or below the maximum allowable working pressure, and (iii) sealed in a manner that does not allow tampering with the valve without destroying the seal. The requirement of clause (i) shall be waived for model boilers upon the passage of an accumulation test.
3. Internal corrosion.
4. Leakage.
5. The boiler power piping, up to and including the first valve.

C. A hobby or model boiler shall be subjected to nondestructive testing, at the owner's expense, to determine the maximum allowable working pressure in accordance with Boiler and Pressure Vessel Regulations ([16VAC25-50-10](#) et seq.).

D. All hobby and model boilers shall pass a hydrostatic test. The pressure shall be at one and one-quarter maximum allowable working pressure, as determined by the inspection certificate and as deemed necessary based on inspections or other evidence. A hobby or model boiler that does not meet the requirements of the ASME code and is not registered in the Commonwealth shall, at the owner's expense, be tested to one and one-half times the maximum allowable working pressure for hobby boilers and twice the maximum allowable working pressure for model boilers and, to be operated, shall have a successful (i) for lap seam and nonstandard welded boilers only, complete radiographic or ultrasonic examination of the long or longitudinal seam; (ii) ultrasonic examination for metal thickness, and for the purpose of calculating the maximum allowable working pressure, the thinnest reading shall be used; and (iii) for hobby boilers with lap seam construction, dye penetrant or magnetic particle examination for cracks with an ultrasonic or radiographic examination of areas where testing shows possible cracks.

The requirements of this subsection for hobby boilers only testing to one and one-half times the maximum allowable working pressure or full radiographic or ultrasonic examination may be waived after the initial inspection if the inspector finds that the general standards of subsection B are met and the safety valve or valves are set at the maximum allowable working pressure determined by the following: calculations from

the ultrasonic results or 100 pounds per square inch, whichever is lower. If a variance is requested for butt strap hobby boilers, the Commissioner shall not deny such variance request without a given, valid reason.

The requirements of this subsection for model boilers only for testing to twice the maximum allowable working pressure or full radiographic or ultrasonic examination may be waived after the initial inspection if the inspector finds that the general standards of subsection B are met and the safety valve or valves are set at the maximum allowable working pressure determined by the following: calculations from the ultrasonic results or 100 pounds per square inch, whichever is lower.

Any boiler which has been without a documented inspection within the past twenty years must have a two times maximum allowable working pressure hydro test prior to its operation.

E. Any hobby or model boiler holding a current out-of-state inspection certificate shall be accepted by the Commonwealth of Virginia, provided the inspection standards meet or exceed standards adopted by the Commonwealth.

1999, c. [335](#); 2000, cc. [879](#), [898](#).

§40.1-51.19:4. Operations and maintenance.

A. A hobby or model boiler must be attended by a person reasonably competent to operate such boiler when in operation. For the purposes of this section, a hobby or model boiler may be considered as not being in operation when all of the following conditions exist:

1. The water level is at least one-third of the water gauge glass;
2. The fire is banked and the draft doors closed or the fire is extinguished; and
3. The boiler pressure is at least twenty pounds per square inch below the lowest safety valve set pressure.

B. All welding performed on hobby or model boilers shall be done by an "R" stamp holder in accordance with the inspection code of the National Board of Boiler and Pressure Vessel Inspectors.

C. Repairs to longitudinal riveted joints are prohibited.

1999, c. [335](#); 2000, c. [898](#).

§40.1-51.19:4.1. Variances.

Upon application pursuant to the provisions of subdivision 9 of § [40.1-6](#), the Commissioner may allow variances from a specific statutory requirement of this article provided the applicant proves by clear and convincing evidence his hobby or model boiler meets substantially equivalent construction and operating criteria and standards.

2000, cc. [879](#), [898](#).

§40.1-51.19:5. Civil penalty.

A. It shall be unlawful for any person, firm, partnership or corporation to operate in the Commonwealth a hobby or model boiler without a valid certificate. Any such person shall be subject to a civil penalty as provided by § [40.1-51.12](#).

B. Any owner or user who leaves or causes to leave a hobby or model boiler unattended while in operation at an event to which members of the general public are invited shall be in violation of this article and subject to a civil penalty not to exceed \$5,000. Each instance of such violation shall be deemed a separate offense.

1999, c. [335](#); 2000, c. [898](#).

Business Opportunity Sales Act

§59.1-262. Short title.

This chapter shall be known and may be cited as the "Business Opportunity Sales Act."

1979, c. 523.

§59.1-263. Definitions.

A. For purposes of this chapter, "business opportunity" means the sale of any products, equipment, supplies or services which are sold to a purchaser upon payment of an initial required consideration exceeding \$500 for the purpose of enabling such purchaser to start a business, and in which the seller:

1. Represents that the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices, or currency-operated amusement machines or devices, on premises neither owned nor leased by the purchaser or seller; or

2. Represents that it will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser using in whole or in part the supplies, services or chattels sold by the seller to the purchaser; or

3. Guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid for the business opportunity, or that the seller will refund all or part of the price paid for the business opportunity, or repurchase any of the products, equipment, supplies or chattels supplied by the seller, if the purchaser is not satisfied with the business opportunity; or

4. Represents that the seller will provide a sales program or marketing program which will enable the purchaser to derive income from the business opportunity which exceeds the price paid for the business opportunity.

B. Exclusions. -- Such definition of "business opportunity" shall not include the following:

1. A security as defined by § [13.1-501](#); or

2. A franchise as defined in subsection A of § [13.1-559](#) or § [59.1-21.10](#); or

3. A license granted by a general merchandise retailer which allows the licensee to sell goods, equipment, supplies, products or services to the general public under the retailer's trademark, trade name or service mark, provided that such general merchandise retailer has been doing business in the Commonwealth continuously for five years prior to the granting of such license and such general merchandise retailer also sells the same goods, equipment, supplies, products or services directly to the general public; or

4. A newspaper distribution system; or

5. The sale of an on-going business. An "on-going business" as used herein is one which for at least twelve months previous to the sale: (i) has been operated from a specific location, (ii) has been open for business to the general public and (iii) has had all equipment and supplies necessary for operating the business located at such specific location; or

6. The sale of sales demonstration equipment and materials furnished at cost for use in making sales and not for resale; or

7. A contract or agreement by which a retailer of goods or services is granted the right to sell goods or services within, or appurtenant to, a retail business establishment as a department or division thereof.

1979, c. 523; 1985, c. 242.

§59.1-264. Written disclosure statement required.

A. At least forty-eight hours prior to the time the purchaser signs a business opportunity contract, or at least forty-eight hours prior to the receipt of any consideration therefor by the seller, whichever occurs first, the seller shall provide the prospective purchaser with a written document, the cover sheet of which is entitled in at least ten-point boldface capital letters "DISCLOSURES REQUIRED BY VIRGINIA LAW."

Under this title shall appear the following statement in at least ten-point type: "The Commonwealth of Virginia has not reviewed and does not approve, recommend, endorse or sponsor any business opportunity. The information contained in this disclosure has not been verified by the Commonwealth. If you have any questions about this investment, see an attorney before you sign a contract or agreement." Nothing except the title and required statement shall appear on the cover sheet. The disclosure document shall also contain the following:

1. The name of the seller; whether the seller is doing business as an individual, partnership, or corporation; the names under which the seller has done, is doing or intends to do business in Virginia; and the name of any parent or affiliated company which is legally obligated to engage in business transactions with purchasers.

2. The names, addresses and titles of the seller's officers, directors, trustees, general partners, general managers, principal executives, and any other person charged with responsibility for the seller's business activities relating to the sale of business opportunities.

3. The length of time the seller has:

a. Sold business opportunities;

b. Sold business opportunities involving the product, products, equipment, supplies, or services currently being offered to the purchaser.

4. A full and detailed description of the actual services that the business opportunity seller agrees to perform for the purchaser.

5. A copy of a financial statement of the seller, which shall not be older than thirteen months, which shall be updated to reflect any material changes in the seller's financial condition.

6. The following statement:

"If the seller fails to deliver the product, products, equipment or supplies necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify the seller in writing of your termination of the contract."

B. If training of any type is promised by the seller, the disclosure statement shall set forth a complete description of the training and the length of the training.

C. If the seller promises services to be performed in connection with the placement of the equipment, product, products, or supplies at any location or at various locations, the disclosure statement must set forth the full nature of those services as well as the nature of the agreements to be made with the owners or managers of the location or locations where the purchaser's equipment, product, products or supplies will be placed.

D. If the business opportunity seller is required to secure a bond or establish a trust deposit pursuant to § [59.1-265](#), the document shall state in at least ten-point type, either:

1. "As required by Virginia law, the seller has secured a bond issued by (name and address of surety company), a surety company authorized to do business in this State. Before signing a contract to purchase this business opportunity, you should check with the surety company to determine the bond's current status," or

2. "As required by Virginia law, the seller has established a trust account with (name and address of bank or savings institution). Before signing a contract to purchase this business opportunity, you should check with the bank or savings institution to determine the current status of the trust account."

E. If the seller makes any statement concerning sales or earnings or any range of sales or earnings that the purchaser may reasonably expect to be made through this business opportunity, the document shall disclose:

1. The total number of purchasers of business opportunities within the United States involving the product, products, equipment, supplies or services being offered who, to the seller's knowledge, have actually received earnings in the amount or range specified, within three years prior to the date of the disclosure statement, and
2. The total number of purchasers of business opportunities within the United States involving the product, products, equipment, supplies, or services being offered within three years prior to the date of the disclosure statement.

1979, c. 523.

§59.1-265. Seller required to obtain bond or establish escrow account; action for damages against bond or account; limitation on liability of surety or escrow agent.

Before the business opportunity seller makes any of the representations set forth in [§59.1-263](#), the seller shall either have obtained a surety bond issued by a surety company authorized to do business in this Commonwealth or have established an escrow account with any credit union or any licensed and insured commercial bank or savings institution located in the Commonwealth of Virginia. The amount of the bond or escrow account shall be an amount not less than \$50,000. Any person who is damaged by any violation of this chapter or by the business opportunity seller's breach of the contract for the business opportunity sale or of any obligation arising therefrom may bring an action against the bond or escrow account to recover damages suffered; provided, however, that the aggregate escrow liability of the surety or escrow agents under any such bond or escrow account shall be only for actual damages and in no event shall exceed the amount of the bond or escrow account.

1979, c. 523; 1996, c. [77](#).

§59.1-266. Prohibited acts.

No business opportunity seller shall:

1. Represent that the business opportunity provides income or earning potential of any kind unless the seller has documented data to substantiate the claims of income or earning potential and discloses such data to the prospective purchaser at the time such representations are made; or
2. Use the trademark, service mark, trade names, logotype, advertising or other commercial symbol of any business which does not either control the ownership interest in the seller or is not legally obligated for all representations made by the seller in

regard to the business opportunity, unless it is clear from the circumstances that the owner of the commercial symbol is not involved in the sale of the business opportunity; or

3. Make or authorize the making of any reference to its compliance with this chapter in any advertisement or other contact with prospective purchasers.

1979, c. 523.

§59.1-267. Contracts required to be in writing; contents.

A. Every business opportunity sales contract shall be in writing and a copy shall be given to the purchaser at the time he signs the contract.

B. Every contract for the sale of a business opportunity shall include the following:

1. The terms and conditions of payment;
2. A full and detailed description of the acts or services that the business opportunity seller undertakes to perform for the purchaser;
3. The seller's principal business address and the name and address of its agent in the Commonwealth of Virginia authorized to receive service of process;
4. A full and detailed description of any product, products, equipment or supplies the business opportunity seller is to deliver to the purchaser;
5. The approximate delivery date of any product, products, equipment, or supplies the business opportunity seller is to deliver to the purchaser.

1979, c. 523.

§59.1-268. Purchaser's remedies.

If a business opportunity seller (i) uses any untrue or misleading statements in the sale of a business opportunity, (ii) fails to give the proper disclosures in the manner required by § [59.1-264](#), or (iii) fails to deliver the equipment, supplies, product or products necessary to begin substantial operation of the business within forty-five days of the delivery date stated in the business opportunity contract, or if the contract does not comply with the requirements of § [59.1-267](#), then, within one year of the date of the contract, upon written notice to seller, the purchaser may void the contract and shall be entitled to receive from the business opportunity seller all sums paid to the business opportunity seller. Upon receipt of such sums, the purchaser shall make available to the seller at the purchaser's address or at the places at which they are located at the time such notice is given, all product, products, equipment

and supplies received by the purchaser. No purchaser shall be entitled to any unjust enrichment by exercise of the remedies provided in this subsection.

Any purchaser injured by (i) a violation of this chapter, (ii) the business opportunity seller's breach of a contract subject to this chapter, or (iii) by any obligation arising therefrom may bring a civil action for recovery of damages, including reasonable attorney's fees.

Upon complaint of any person that a business opportunity seller has violated the provisions of this chapter, the circuit court wherein the violation is alleged to have occurred shall have jurisdiction to enjoin such seller from further violations of this chapter.

The remedies provided herein shall be in addition to any other remedies provided for by law or in equity.

1979, c. 523.

§59.1-269. Penalty; limitation.

A. Any person who shall knowingly and willfully make, or cause to be made, any false statement in any disclosure statement or contract subject to the provisions of this chapter, or who shall knowingly and willfully commit any act prohibited by § [59.1-266](#) with the intent to defraud or to deceive a purchaser as to any material fact shall be guilty of a Class 4 felony.

B. Any person who shall knowingly make or cause to be made any false statement in any disclosure statement or contract subject to the provisions of this chapter or who shall commit any act prohibited by § [59.1-266](#) shall be guilty of a Class 1 misdemeanor.

C. No prosecution under this section shall be begun more than three years from the date of the alleged offense.

1979, c. 523.

BVU Authority Act

§15.2-7200. Short title.

This chapter shall be known and may be cited as the BVU Authority Act.

2010, cc. [117](#), [210](#).

§15.2-7201. Creation; public purpose.

There is hereby created a political subdivision of the Commonwealth known as the BVU Authority.

The BVU Authority is created for the express purpose of receiving, by operation of this chapter, the powers, assets, and debts of that separately managed and financed division of the City of Bristol, Virginia, heretofore known as Bristol Virginia Utilities and to provide the services Bristol Virginia Utilities has provided or may lawfully provide. The General Assembly therefore deems this to be an entity conversion and for all purposes the BVU Authority is the same entity as Bristol Virginia Utilities, which is hereby converted to the BVU Authority. The BVU Authority shall exercise the rights and duties as hereinafter set out to provide the various utility services it currently lawfully provides all subject to the limitations as are herein set forth or referenced.

2010, cc. [117](#), [210](#).

§15.2-7202. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authority" means the BVU Authority created by entity conversion of Bristol Virginia Utilities by this chapter.

"Board," "Authority Board," or "Board of Directors" means the governing body of the Authority.

"Bonds" means any bonds, notes, debentures, bond acceptance notes, or other evidence of financial indebtedness either issued or assumed by the Authority pursuant to this chapter.

"Bristol Virginia Utilities Board" means the Board of Directors of Bristol Virginia Utilities governing that entity until the Authority Board takes office on July 1, 2010.

"City" means the City of Bristol, Virginia.

"City Council" means the City Council of the City of Bristol, Virginia.

"Commission" means the Virginia State Corporation Commission.

"Commonwealth" means the Commonwealth of Virginia.

"Infrastructure" means all property, whether attached to real property or not, now used by Bristol Virginia Utilities and hereafter used by the Authority for the provision

of (i) electric, water, sewer, telecommunications, internet, and cable television services and (ii) all other utility services the Authority may lawfully provide.

"MLEC" means any city, county, or town certificated to provide local exchange and/or interexchange telecommunications services pursuant to § [56-265.4:4](#) and any authority granted such powers pursuant to § [15.2-7209](#).

"Political subdivision" means, when referring to an entity other than the Authority, a locality, authority, or other public body of the Commonwealth or of any state in which the Authority does business.

"Utility," "utilities," or "utility services" means and includes electric, water, sewer, and telecommunications, internet and cable television services, including all other services that might be lawfully rendered by use of its fiber optic system.

2010, cc. [117](#), [210](#); 2016, cc. [724](#), [725](#).

§15.2-7203. BVU Authority; operating name or names.

The name of the Authority shall be BVU Authority.

The BVU Authority is hereby authorized to operate under the names BVU, BVU OptiNet, CPC OptiNet, and BVU Focus. The name of the Authority and any division or operating name may be changed upon approval of a simple majority of the Board. The Board may adopt additional operating names in the future. The Authority shall comply with requisite fictitious name recording requirements for any areas in which it is doing business.

2010, cc. [117](#), [210](#); 2016, cc. [724](#), [725](#).

§15.2-7204. Divisions.

The Board may create such divisions of the Authority as it deems expedient to perform such services as are authorized by statute.

2010, cc. [117](#), [210](#).

§15.2-7205. (Contingent expiration date -- see note) Board of Directors; membership.

A. The powers of the Authority shall be vested in the Authority Board of Directors consisting of seven directors. The number of directors shall not be altered by the Authority Board.

B. The Authority Board will initially take office on July 1, 2010. However, beginning on July 1, 2016, the Authority Board shall be constituted as follows:

1. One director who is a citizen of the City of Bristol, Virginia, and is not a member of the Bristol City Council, appointed by the Speaker of the House of Delegates.
 2. One director who is a member of the Bristol City Council, appointed by the Bristol City Council to serve a four-year term coterminous with his term on the Council.
 3. One director who is a citizen of Washington County and is not a member of the Washington County Board of Supervisors, appointed by the Senate Committee on Rules.
 4. One director who is a citizen of the City of Bristol, Virginia, who is engaged in business and is not a member of the Bristol City Council, appointed by the Authority Board. However, the first such director shall be appointed by the Bristol City Council for a term that ends the sooner of July 1, 2016, or the date upon which the Authority Board appoints a director to this position to serve the remainder of the initial four-year term. The Authority Board shall appoint a director to this position thereafter.
 5. One director who is a member of the Washington County, Virginia, Board of Supervisors, appointed by the Washington County Board of Supervisors to serve a four-year term coterminous with his term on the Board of Supervisors.
 6. One director who is a member of the Abingdon Town Council, appointed by the Abingdon Town Council to serve a four-year term coterminous with his term on the Town Council.
 7. One director who is a Scott County citizen and is not a member of the Scott County Board of Supervisors, appointed by the Speaker of the House of Delegates.
- C. The four-year term of all directors shall begin July 1, 2016. The term of Authority Board membership for any director thereafter shall be four years.
- D. Each director who is a member of the Abingdon Town Council, Bristol City Council, or Washington County Board of Supervisors may serve as many terms as the appointing governing body decides as long as the appointee remains a member of the relevant governing body. The governing body may appoint a different member of the Council or Board of Supervisors at the end of any appointee's four-year Council or Board term or upon the exit of the member from the governing body. In the latter case, the new appointee shall serve for the remainder of the term vacated by an exiting member of the governing body.

E. If funds are available, each director may be reimbursed by the Authority for the amount of actual expenses incurred by him in the performance of his duties. Such expense allowance shall constitute a cost of operation and maintenance of such utility systems and shall be prorated among each of the systems it manages using the "Three-Factor" allocation method approved by the Commission. The three factors consist of the percentages that each division comprises of total plant in service, total operating revenues, and total customer accounts. Once each operating division's percentage of each of the three factors is calculated, the sum of the three factors divided by three results in the operating division's share of the total direct or indirect costs.

2010, cc. [117](#), [210](#); 2016, cc. [724](#), [725](#).

§15.2-7205. (Contingent effective date -- see notes) Board of Directors; membership.

A. The powers of the Authority shall be vested in the Authority Board of Directors consisting of five directors. The number of directors shall not be altered by the Authority Board.

B. The Authority Board shall be constituted as follows:

1. One director who is a citizen of the City of Bristol, Virginia, and is not a member of the Bristol City Council, appointed by the Speaker of the House of Delegates.
2. One director who is a member of the Bristol City Council, appointed by the Bristol City Council to serve a four-year term coterminous with his term on the Council.
3. One director who is a citizen of Washington County and is not a member of the Washington County Board of Supervisors, appointed by the Senate Committee on Rules.
4. One director who is a citizen of the City of Bristol, Virginia, who is engaged in business and is not a member of the Bristol City Council, appointed by the Authority Board. However, the first such director shall be appointed by the Bristol City Council for a term that ends the sooner of July 1, 2017, or the date upon which the Authority Board appoints a director to this position to serve the remainder of the initial four-year term. The Authority Board shall appoint a director to this position thereafter.
5. One director who is a member of the Washington County, Virginia, Board of Supervisors, appointed by the Washington County Board of Supervisors to serve a four-year term coterminous with his term on the Board of Supervisors.

C. The four-year term of all directors shall begin July 1, 2016. The term of Authority Board membership for any director thereafter shall be four years.

D. Each director who is a member of the Bristol City Council or Washington County Board of Supervisors may serve as many terms as the appointing governing body decides as long as the appointee remains a member of the relevant governing body. The governing body may appoint a different member of the Council or Board of Supervisors at the end of any appointee's four-year Council or Board term or upon the exit of the member from the governing body. In the latter case, the new appointee shall serve for the remainder of the term vacated by an exiting member of the governing body.

E. If funds are available, each director may be reimbursed by the Authority for the amount of actual expenses incurred by him in the performance of his duties. Such expense allowance shall constitute a cost of operation and maintenance of such utility systems and shall be prorated among each of the systems it manages using the "Three-Factor" allocation method approved by the Commission. The three factors consist of the percentages that each division comprises of total plant in service, total operating revenues, and total customer accounts. Once each operating division's percentage of each of the three factors is calculated, the sum of the three factors divided by three results in the operating division's share of the total direct or indirect costs.

2010, cc. [117](#), [210](#); 2016, cc. [724](#), [725](#).

§15.2-7206. (Contingent expiration date -- see note) Organization; compensation.

A. The following provisions apply to the Board of Directors:

1. Five of the directors shall constitute a quorum. No vacancy in the Board of Directors shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

2. The Board shall hold regular meetings at such times and places as may be established by its bylaws. The Board shall hold its meetings as provided in § [2.2-3707](#).

3. The Board shall hold its first organizational meeting on July 1, 2010.

4. The Board shall adopt bylaws governing the conduct of business by the Board and the Authority. Proposed bylaws shall be made available before being duly adopted at each annual meeting. The Board is authorized to adopt bylaws governing the amendment of bylaws at any time.

5. The Board shall annually elect a chairman and a vice-chairman from its membership and a secretary of the Board from either its membership or the staff of the Authority at its annual meeting. The terms of such officers shall be for one year.
6. The Board shall deal with Authority employees solely through the president. The Board shall not give orders to any of the subordinates of the president, either publicly or privately.
7. The Board shall not direct the appointment or removal of any Authority contractor or employee other than the president.
8. The Board may appoint committees from among its membership in accordance with its bylaws.
9. No Board member shall receive any financial compensation for service on the Board. The Board may reimburse members for reasonable expenses they incur while serving on the Board. Any member seeking reimbursement shall itemize and document by receipts such expenses pursuant to subsection E of § [15.2-7205](#).
10. The Board shall adopt a travel and expense policy that applies to Board members and Authority employees and addresses what expenditures are appropriate in furtherance of the activities of the Authority.
11. The Board shall adopt a conflict of interest policy addressing the acceptance by Board members or Authority employees of gifts of travel or entertainment from any vendor that seeks or maintains a contract with the Authority.
12. Each member of the Board shall file with the president a disclosure form containing a statement of economic interests as provided in § [2.2-3117](#) according to the schedule required by § [2.2-3115](#).

B. The following provisions apply to the president:

1. The Board shall continue to appoint and contract with a president to manage the operations of the Authority, and the contract with the president that is in effect as of January 1, 2016, shall continue in effect and be binding upon the Authority.
2. The term of the president's employment contract shall not exceed three years. The board may vote to renew the contract of the president for additional terms not to exceed three years each.
3. The president's employment contract shall not contain a severance payout upon termination amounting to more than 12 months of his base salary.

4. The president shall have the sole authority to hire, fire, and manage such staff and contractors as the president deems expedient to the operation of the Authority, subject to the availability of budgeted funds, and to assign such positions, titles, powers, and duties at such salaries as the president deems most effective for the efficient operation of the Authority.

5. The president shall not have the power to enter into an employment contract with any employee of the Authority unless the Board ratifies such contract by a majority vote in an open meeting. Such contract shall be subject to the term and severance payout restrictions applicable to the president's contract as provided in subdivisions 2 and 3.

6. The Board may appoint an employee as acting president during any period of vacancy. The Board shall advertise the vacancy of the presidency and accept applications from candidates interested in filling the vacancy.

C. The Board shall vote annually to retain outside legal counsel to advise the Authority on legal matters. The legal counsel shall be licensed to practice law in the Commonwealth, shall not be an employee of the Authority, and shall be separate from and independent of any legal counsel for the City of Bristol, Scott County, or Washington County. The legal counsel shall provide annual training to the Board on the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.).

D. The Board may authorize the position of executive vice-president, to be filled and managed by the president.

E. Notwithstanding the quorum requirement in subsection A, any decision of the Board related to the provision, use, operation, or maintenance of water or sewer systems shall be made by a majority vote of the three members of the Board representing the City of Bristol, Virginia, and the director who is a member of the Washington County Board of Supervisors.

2010, cc. [117](#), [210](#); 2016, cc. [724](#), [725](#).

§15.2-7206. (Contingent effective date -- see note) Organization; compensation.

A. The following provisions apply to the Board of Directors:

1. Three of the directors shall constitute a quorum. No vacancy in the Board of Directors shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

2. The Board shall hold regular meetings at such times and places as may be established by its bylaws. The Board shall hold its meetings as provided in § [2.2-3707](#).
 3. The Board shall hold its first organizational meeting on July 1, 2010.
 4. The Board shall adopt bylaws governing the conduct of business by the Board and the Authority. Proposed bylaws shall be made available before being duly adopted at each annual meeting. The Board is authorized to adopt bylaws governing the amendment of bylaws at any time.
 5. The Board shall annually elect a chairman and a vice-chairman from its membership and a secretary of the Board from either its membership or the staff of the Authority at its annual meeting. The terms of such officers shall be for one year.
 6. The Board shall deal with Authority employees solely through the president. The Board shall not give orders to any of the subordinates of the president, either publicly or privately.
 7. The Board shall not direct the appointment or removal of any Authority contractor or employee other than the president.
 8. The Board may appoint committees from among its membership in accordance with its bylaws.
 9. No Board member shall receive any financial compensation for service on the Board. The Board may reimburse members for reasonable expenses they incur while serving on the Board. Any member seeking reimbursement shall itemize and document by receipts such expenses pursuant to subsection E of § [15.2-7205](#).
 10. The Board shall adopt a travel and expense policy that applies to Board members and Authority employees and addresses what expenditures are appropriate in furtherance of the activities of the Authority.
 11. The Board shall adopt a conflict of interest policy addressing the acceptance by Board members or Authority employees of gifts of travel or entertainment from any vendor that seeks or maintains a contract with the Authority.
 12. Each member of the Board shall file with the president a disclosure form containing a statement of economic interests as provided in § [2.2-3117](#) according to the schedule required by § [2.2-3115](#).
- B. The following provisions apply to the president:

1. The Board shall continue to appoint and contract with a president to manage the operations of the Authority, and the contract with the president that is in effect as of January 1, 2016, shall continue in effect and be binding upon the Authority.
 2. The term of the president's employment contract shall not exceed three years. The board may vote to renew the contract of the president for additional terms not to exceed three years each.
 3. The president's employment contract shall not contain a severance payout upon termination amounting to more than 12 months of his base salary.
 4. The president shall have the sole authority to hire, fire, and manage such staff and contractors as the president deems expedient to the operation of the Authority, subject to the availability of budgeted funds, and to assign such positions, titles, powers, and duties at such salaries as the president deems most effective for the efficient operation of the Authority.
 5. The president shall not have the power to enter into an employment contract with any employee of the Authority unless the Board ratifies such contract by a majority vote in an open meeting. Such contract shall be subject to the term and severance payout restrictions applicable to the president's contract as provided in subdivisions 2 and 3.
 6. The Board may appoint an employee as acting president during any period of vacancy. The Board shall advertise the vacancy of the presidency and accept applications from candidates interested in filling the vacancy.
- C. The Board shall vote annually to retain outside legal counsel to advise the Authority on legal matters. The legal counsel shall be licensed to practice law in the Commonwealth, shall not be an employee of the Authority, and shall be separate from and independent of any legal counsel for the City of Bristol, Virginia, or Washington County. The legal counsel shall provide annual training to the Board on the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.).
- D. The Board may authorize the position of executive vice-president, to be filled and managed by the president.
- E. Notwithstanding the quorum requirement in subsection A, any decision of the Board related to the provision, use, operation, or maintenance of water or sewer systems shall be made by a majority vote of the three members of the Board rep-

representing the City of Bristol, Virginia, and the director who is a member of the Washington County Board of Supervisors.

2010, cc. [117](#), [210](#); 2016, cc. [724](#), [725](#).

§15.2-7207. Powers generally.

A. The Authority is hereby granted all powers reasonably necessary or appropriate to carry out the purposes of this chapter in order to provide electric, water, sewer, and telecommunication and related services, including without limitation, cable television internet, and all other services that might be lawfully rendered by use of the Authority's fiber optic system, subject to all applicable limitations and restrictions thereon. Such powers include, without limitation, except as set forth hereafter, the following:

1. To adopt bylaws for the regulation of its affairs and the conduct of its business;
2. To sue and be sued in the Authority's name;
3. To adopt a corporate seal and alter the same at its pleasure;
4. To maintain offices at such places as it may designate;
5. To appoint, employ, or engage such officers, employees, architects, engineers, attorneys, accountants, financial advisors, investment bankers, and other advisors, consultants, and agents as may be necessary or appropriate, and to fix their duties and compensation;
6. To establish personnel rules;
7. To make, assume, and enter into all contracts, leases, and arrangements necessary or incidental to the exercise of its powers, including contracts for the management or operation of all or any part of its facilities;
8. To borrow money, as hereinafter provided, and to borrow money for the purpose of meeting casual deficits in its revenues;
9. To provide electric, water, sewer, and telecommunication and related services, including without limitation, cable television, internet, and all other services that might be lawfully rendered by use of the Authority's fiber optic system as set forth in [§ 15.2-7208](#) subject to all applicable restrictions and limitations thereon;
10. To determine fees, rates, and charges for the services and products it provides, subject only to such state or federal regulation as the Tennessee Valley Authority

(TVA) or other cognizant state or federal agency may impose by order, rulemaking, contract or otherwise, including, without limitation, electric, water and sewer, and internet and cable television services, including all other services that might be rendered by use of its fiber optic system, furnished by the Authority. MLEC telephone service, including rates, is regulated by the Commission. All rate increases for services other than electric, which are set by the TVA, and telephone, which are set by the Commission and applicable law, shall require a favorable vote at two meetings, one of which must be a regular meeting of the BVU Authority Board;

11. To adopt, amend, and repeal rules and regulations for the use, maintenance, and operation of its facilities and utility services and governing the conduct of persons and organizations using its facilities or obtaining its utility services and to enforce such rules and regulations and all other rules, regulations, ordinances, and statutes relating to its facilities and services, as authorized by the enacting body of such rules, regulations, ordinances, and statutes. The civil penalty for violation of any such rules and regulations shall be set forth in the rules and may be enforced by the Authority by direct action in terminating services and by the imposition of monetary penalties to be billed to the customer. The Authority may request the governing body of each locality in which it does business to impose by ordinance such penal liability for violation of such rules and regulations as such body deems appropriate;

12. Subject to subdivision 20, to apply for and accept gifts or grants of money or gifts, grants or loans of other property or other financial assistance from the United States of America and agencies and instrumentalities thereof, this Commonwealth and political subdivisions, agencies and instrumentalities thereof, or any other person or entity, for or in aid of the construction, acquisition, ownership, operation, maintenance, or repair of its infrastructure or for the payment of principal of any indebtedness of the Authority, interest thereon, or other cost incident thereto, or for the operation of any of its services, or for any other purpose of the Authority, and to this end the Authority shall have the power to render such services, comply with such conditions, and execute such agreements and legal instruments as may be necessary, convenient or desirable or imposed as a condition to such financial aid;

13. Subject to subdivision 15 and all existing limitations and restrictions thereon, to acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate electric, water, sewer, telecommunications, internet and cable television services, including all other services that might be rendered by use of its fiber optic

system, and other infrastructure and facilities that are owned or managed by the Authority within the territorial areas in which it operates or provides services;

14. To construct, install, maintain, and operate facilities and infrastructure for managing its utility, consulting and operational management services. The Authority shall have the power and duty to manage and operate the electric, public lighting, water, sewerage, telecommunications, internet and cable television services, including all other services that might be rendered by use of its fiber optic system directly subject to all existing limitations and restrictions thereon, or it may subcontract such functions. The Authority shall construct, maintain, and operate all facilities necessary thereto; shall sell and distribute to the public electric power, light, water, sewer, telecommunications, internet and cable television, and other services as they now exist or may exist in the future subject to all existing limitations and restrictions thereon; and shall collect the rates and charges provided for all such services;

15. To own, purchase, lease, obtain options upon, acquire by gift, grant, or bequest or otherwise acquire any property, real or personal, or any interest therein, and in connection therewith to assume or take subject to any indebtedness secured by such property and dispose of any or all such properties as is deemed appropriate by the Board. The Authority shall have the power of eminent domain to acquire property and easements as needed for its electric power, light, water, and sewer services within the areas it provides or can provide such services. The power of eminent domain shall not include the power to acquire existing telecommunications, internet or cable facilities, which is expressly prohibited, and the Authority shall not accept or receive any telecommunications, internet or cable facilities from an entity that acquired such facilities by use of eminent domain for the purpose of conveying them to the Authority;

16. To purchase and maintain insurance or provide indemnification on behalf of any person who is or was a director, officer, employee, or agent of the Authority and on behalf of the Authority itself against any liability asserted against it or him or incurred by it or him in any such capacity or arising out of his status as such;

17. To establish and charge such fees as it deems appropriate for attachment to or inclusion in the Authority's infrastructure, including but not limited to its poles, conduits, and co-location sites, subject to all existing limitations and restrictions thereon;

18. To fund economic development projects and, in advance of economic development projects, to enter into contracts, to borrow money and to do all other such acts as will allow it to encourage and support economic development.

Before the Authority expends any funds for an economic development project that is funded in whole or in part by funds allocated by the Board pursuant to a power purchase agreement with the Tennessee Valley Authority, a determination shall be made that the electric system benefit is expected to be commensurate with the expenditure.

Within 30 days of the end of the Authority's fiscal year, the Authority shall publish on its website the details of any incentive awarded to an economic development project;

19. To have police powers on all of the properties of the Authority within the Commonwealth, exercised through appointment of an armed conservator of the peace. The president of the Authority may apply to the circuit court for any locality in which the Authority has property for the appointment of one or more special conservators of the peace under procedures specified by Chapter 2 (§ [19.2-12](#) et seq.) of Title 19.2 or any successor provisions. Any such special conservator of the peace shall have, within the lands and facilities controlled by the Authority, the powers, functions, duties, responsibilities, and authority of any other armed conservator of the peace. Nothing in this section shall be construed to prevent the conservator of the peace currently serving Bristol Virginia Utilities from continuing as an armed special conservator of the peace for the Authority during the remainder of his term, if not removed for cause; and

20. To build or facilitate the building of, as the first broadband priority of the Authority, wired broadband infrastructure to serve residents in the Authority's lawful service area who are not served by any wired broadband service provider. The president of the Authority shall annually provide the Board with a report detailing (i) the number of requests for broadband services received from residents in unserved areas, (ii) the number of such requests for which the Authority has provided a connection to broadband services, and (iii) the costs of providing such broadband service.

B. The Authority is authorized to (i) operate only in Virginia and Tennessee; (ii) offer broadband services only in Sullivan, Unicoi, and Washington Counties, Tennessee; the City of Bristol, Virginia; and Bland, Buchanan, Dickenson, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties in Virginia, together with any towns located in such counties; and (iii) offer cable television services or other video

services only within the electric utility service territory of Bristol Virginia Utilities as it existed on December 31, 2009, in the City of Bristol, Virginia, Scott County, and Washington County, including within the Town of Abingdon. Notwithstanding the geographic limitations of this subsection, the Authority shall have the right to sell any of its non-electric utility services at wholesale to an independent third party in which the Authority has no ownership or management interest and no economic interest apart from the sale of utility services, to allow such independent third party to distribute and sell the utility services at retail in areas outside of the Authority's geographic limitations.

C. Whenever any grant, loan, or application for such grant or loan includes or refers to funding for broadband deployment, the Authority shall ensure that (i) funds are allocated to the maximum extent possible to projects that expand broadband deployment to areas, residents, or businesses that are unserved by wired broadband; (ii) in any funding of grants for broadband deployment that include areas already served by wired broadband, such areas already served are incidental to and are crossed only for the purpose of reaching an unserved area; and (iii) any broadband network built will be operated on an open-access basis, available to multiple broadband providers, with dark fibers and capacity sufficient for competitive broadband providers to lease the same from the Authority at commercially reasonable rates.

D. The Authority shall not seek to become or establish a wireless service authority under the Virginia Wireless Service Authorities Act (§ [15.2-5431.1](#) et seq.) or contract for services with such an authority.

E. The Authority shall not solicit or contract with any locality or other entity possessing the power of eminent domain in order to cause such a third party to exercise its power of eminent domain to acquire any easements or other property where the Authority itself lacks such power.

F. The Authority shall not have the power to make charitable donations.

2010, cc. [117](#), [210](#); 2016, cc. [724](#), [725](#).

§15.2-7208. Powers.

Unless limited elsewhere in this chapter, the Authority shall have those powers possessed by the City of Bristol necessary and convenient for the provision of electric, water and sanitary sewer services, and those powers possessed by the Bristol Virginia Utilities Board and the division of the city known as Bristol Virginia Utilities as they

existed on July 1, 2001, in the Charter of the City of Bristol, Virginia, and the general laws of the Commonwealth. Unless limited elsewhere in this chapter, the Authority shall also possess all those powers, subject to the limitations and restrictions thereon, as granted to the City, the Bristol Virginia Utilities Board, and BVU by Chapter 479 of the Acts of Assembly of 2002, Chapters 539, 546, and 677 of the Acts of Assembly 2003, Chapter 586 of the Acts of Assembly of 2004, Chapter 258 of the Acts of Assembly of 2005, Chapters 607 and 682 of the Acts of Assembly of 2007, and Chapters 99 and 323 of the Acts of Assembly of 2008.

2010, cc. [117](#), [210](#); 2016, cc. [724](#), [725](#).

§15.2-7209. Authority deemed to be an MLEC.

A. The establishment of the BVU Authority is deemed to be an entity conversion and all assets of, tariffs on file with the Commission, and all certificates authorizing the furnishing of Local Exchange Telephone Service and the furnishing of interexchange telecommunications services, granted to and held by Bristol Virginia Utilities and the City of Bristol, Bristol Virginia Utilities Division are hereby deemed to be transferred to BVU Authority without further application by BVU Authority to the Commission. The Commission shall issue appropriate documentation to effectuate this transfer without further action on behalf of BVU Authority. It is further deemed that the Authority has met all conditions precedent to qualify for such certificates and the powers granted therein and the limitations, restrictions, and requirements set forth thereto continuing in full force and effect.

B. BVU Authority will be deemed to be an MLEC.

C. Upon enactment of this chapter, the Authority shall file a name change with the Commission.

D. No bond shall be required of BVU Authority by the Commission.

2010, cc. [117](#), [210](#).

§15.2-7210. Transfer of properties and debt.

All of the properties, infrastructure, and other assets used by Bristol Virginia Utilities for any of its utility services or otherwise, whether held in its name or in the name of the City of Bristol, Virginia, are hereby transferred to the Authority and declared to be held by the Authority as its property. The portion of the City's debt that was incurred for the benefit of Bristol Virginia Utilities is hereby declared to be the debt of the Authority. That debt will be the sole responsibility of the Authority. The

Authority will either assume that debt or issue new bonded indebtedness to pay it off as soon as practical and in accordance with all bond covenants in the BVU bonds on the City's financial statements.

2010, cc. [117](#), [210](#).

§15.2-7211. Reports.

The Authority shall keep minutes of its proceedings, which minutes shall be open to public inspection during normal business hours. It shall keep suitable records of all its financial transactions and shall arrange to have the same audited annually by an independent certified public accountant. Such audited financial reports will be provided to the Commonwealth Auditor of Public Accounts and to each participating political subdivision each year and shall be open to public inspection.

2010, cc. [11](#), [210](#).

§15.2-7212. Procurement.

All contracts that the Authority may let for professional services, nonprofessional services, or goods, materials, and equipment shall be subject to the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.). Nothing herein will be construed to prevent the Authority from adopting a small purchases policy in keeping with such Act. If the Authority is procuring pursuant to a federal grant or program that requires compliance with federal procurement law, then the Authority may procure in compliance with federal law. If the Authority in the exercise of its powers is procuring in another state for use in that state, the Authority may procure in compliance with that state's procurement law.

2010, cc. [117](#), [210](#).

§15.2-7213. Deposit and investment of funds.

All moneys of the Authority shall be deposited as soon as practicable in a separate account or accounts in one or more banks or trust companies organized under the laws of the Commonwealth or national banking associations having their principal offices in the Commonwealth. Such deposits shall be continuously secured in accordance with the Virginia Security for Public Deposits Act (§ [2.2-4400](#) et seq.).

Funds of the Authority not needed for immediate use or disbursement may, subject to the provisions of any contract between the Authority and the holders of its bonds or any contract between the Authority and TVA, be invested in securities that are considered lawful investments for fiduciaries.

2010, cc. [117](#), [210](#).

§15.2-7214. Authority to issue bonds.

The Authority shall have the power to issue bonds from time to time in its discretion, for any of its purposes, including the payment of all or any part of the cost of Authority infrastructure and facilities; including the payment or retirement of bonds previously issued by it and including the costs of the issuance of such bonds. The Authority may issue such types of bonds as it may determine, including, without limitation, bonds payable, both as to principal and interest: (i) from its revenues and receipts generally and (ii) exclusively from the revenues and receipts of certain designated operations or facilities whether or not they are financed in whole or in part from the proceeds of such bonds. Any such bonds may be additionally secured (a) by a pledge of any grant or contribution from the Commonwealth, or any political subdivision, agency, or instrumentality thereof, any federal agency or any unit, private corporation, co-partnership, association, or individual, or other entity, or (b) by mortgage or encumbrance of any property or facilities of the Authority. Unless otherwise provided in the proceedings authorizing the issuance of the bonds, or in the trust indenture securing the same, all bonds shall be payable solely and exclusively from the revenues and receipts of the Authority. Bonds may be executed and delivered by the Authority at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in registered, book entry, or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times, may be payable at such place or places whether within or without the Commonwealth, may bear interest at such rate or rates, may be payable at such time or times, and at such place or places, may be evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided and specified by the Board of Directors in authorizing each particular bond issue including any designation of an agent or officer of the Authority to establish such provisions under guidelines established by the Authority.

If deemed advisable by the Board of Directors, there may be retained in the proceedings under which any bonds of the Authority are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and as may be briefly recited on the face of the bonds, but nothing herein contained shall be construed to confer on the Authority any right or option to redeem any bonds except as may be provided in the

proceedings under which they shall be issued. Any bonds of the Authority may be sold at public or private sale in such manner and from time to time as may be determined by the Board of Directors of the Authority to be most advantageous, and the Authority may pay all costs, premiums, and commissions that its Board of Directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the Authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same facility or any other facility, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the Authority at any time outstanding may from time to time be refunded by the Authority by the issuance of its refunding bonds in such amount as the Board of Directors may deem necessary, but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any costs, including insurance costs, premiums, or commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby.

All bonds shall be signed on behalf of the Authority by the chairman or vice-chairman of the Authority, or shall bear the facsimile signature of such officer, and shall bear the official seal of the Authority, or a facsimile thereof shall be impressed or imprinted thereon and shall be attested to by the manual or facsimile signature of the secretary (or the secretary-treasurer) or assistant secretary (or assistant secretary-treasurer) of the Authority. Any coupons attached thereto shall bear the signature or facsimile signature of such chairman. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in office until such delivery. When the signatures of both the chairman or the vice-chairman and the secretary (or the secretary-treasurer) or the assistant secretary (or the assistant secretary-treasurer) are facsimiles, the bonds must be authenticated by a corporate trustee or other authenticating agent approved by the Authority.

If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, shall be less than the cost of the Authority facilities or infrastructure for

which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements, or enlargements of the Authority facilities or infrastructure for which such bonds shall have been issued.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds that shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this chapter without obtaining the consent of any department, division, commission, board, bureau, or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions, or things that are specifically required by this chapter.

All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of and shall be and are hereby made negotiable instruments under the Uniform Commercial Code of Virginia (§ [8.1A-101](#) et seq.), subject only to provisions respecting registration of the bonds.

The interest income from and any profit made on the sale of the obligations issued under the provisions of this Act shall at all times be free and exempt from taxation by the Commonwealth and by any municipality, county, or other political subdivision thereof.

2010, cc. [117](#), [210](#).

§15.2-7215. Credit of Commonwealth and political subdivisions not pledged.

Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth of Virginia, or any political subdivision thereof other than the Authority, but such bonds shall be payable solely from the funds provided therefor as herein authorized. All such bonds shall state on their face that neither the Commonwealth of Virginia nor any political subdivisions thereof, nor the Authority, are obligated to pay the same or the interest thereon or other costs incident thereto

except from the revenues and money pledged therefor and that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of such bonds, the redemption premium, if any, thereon, or the interest thereon or other costs incident thereto.

All expenses incurred in carrying out the provisions of this chapter shall be payable solely from the funds of the Authority and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall be available to the Authority.

Bonds issued pursuant to the provisions of this Act shall not constitute indebtedness within the meaning of any debt limitation or restriction.

2010, cc. [117](#), [210](#).

§15.2-7216. Directors and persons executing bonds not liable thereon.

Neither the Board of Directors nor any person executing the bonds shall be liable personally on the Authority's bonds by reasons of the issuance thereof.

2010, cc. [117](#), [210](#).

§15.2-7217. Security for payment of bonds; default.

The principal of and interest on any bonds issued by the Authority shall be secured by a pledge of the revenues and receipts out of which the same shall be made payable, and may be secured by a trust indenture covering all or any part of the Authority facilities from which revenues or receipts so pledged may be derived, including any enlargements of any additions to any such projects thereafter made. The resolution under which the bonds are authorized to be issued and any such trust indenture may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents for any portions thereof leased by the Authority to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the Board of Directors shall deem advisable not in conflict with the provisions hereof.

Each pledge, agreement and trust indenture made for the benefit or security of any of the bonds of the Authority shall continue effective until the principal of and interest on the bonds for the benefit of which the same were made shall have been fully paid. In the event of default in such payment or in any agreements of the Authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any trust indenture executed as security

therefor, may be enforced by mandamus, suit, action, or proceeding at law or in equity to compel the Authority and the directors, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any trust indenture of the Authority, the appointment of a receiver in equity, or by foreclosure of any such trust indenture, or any one or more of such remedies.

2010, cc. [117](#), [210](#).

§15.2-7218. Bonds as legal investments.

All bonds issued under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital, under their control or belonging to them. Such bonds are hereby made securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.

2010, cc. [117](#), [210](#).

§15.2-7219. Contracts concerning interest rates and investments.

The Authority may enter into any contract that the Board of Directors determines to be necessary or appropriate to place the obligation or investment of the Authority, as represented by the bonds or the investment of their proceeds, in whole or in part, on the interest rate, cash flow, or other basis desired by the Authority, which contract may include, without limitation, interest rate swap agreements, future contracts and contracts providing for payments based upon levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Authority in connection with, or incidental to, entering into or maintaining any (i) agreement that secures bonds or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts may contain such payment, security, default, remedy, and other terms as determined by the Authority. Any money set aside and pledged to secure payments of bonds or any contracts entered into pursuant to this section may be invested in accordance with Chapter 45 (§ [2.2-4500](#) et seq.) of Title 2.2 and may be pledged to and used to service any of the contracts or agreements entered into pursuant to this section.

2010, cc. [117](#), [210](#).

§15.2-7220. Taxation.

The exercise of the powers granted by this Act shall in all respects be presumed to be for the benefit of the public, for the increase of their commerce and for the promotion of their health, safety, welfare, convenience, and prosperity, and as the operation and maintenance of any service that the Authority is authorized to provide will constitute the performance of an essential governmental function, the Authority shall not be required to pay any taxes or assessments upon any facilities acquired and constructed by it under the provisions of this Act and the bonds issued under the provisions of this Act, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any political subdivision thereof. Persons, firms, partnerships, associations, corporations, and organizations leasing property of the Authority or doing business on property of the Authority shall be subject to and liable for payment of all applicable taxes of the political subdivision in which such leased property lies or in which business is conducted including but not limited to any leasehold tax on real property and taxes on the sale of utility services and local general retail sales and use taxes, taxes to be paid on licenses in respect to any business, profession, vocation or calling, and taxes upon consumers of gas, electricity, telephone, and other public utility services. The Authority shall continue to pay or impute any taxes presently paid or imputed by Bristol Virginia Utilities and to collect and remit all taxes presently collected and remitted by Bristol Virginia Utilities.

2010, cc. [117](#), [210](#).

§15.2-7221. Sovereign immunity.

No provisions of this chapter nor act of an authority, including the procurement of insurance or self-insurance, shall be deemed a waiver of any sovereign immunity to which the Authority or its directors, officers, employees, or agents are otherwise entitled.

2010, cc. [117](#), [210](#).

§15.2-7222. Appropriation by political subdivision.

Any political subdivision of the Commonwealth is authorized to provide services, to donate real or personal property, and to make appropriations to the Authority for the acquisition, construction, maintenance, and operation of the Authority's facilities. Any such political subdivision is hereby authorized to issue its bonds, including general obligation bonds, in the manner provided in the Public Finance Act of 1991 (§

[15.2-2600](#) et seq.) or in any applicable municipal charter for the purpose of providing funds to be appropriated to the Authority, and such political subdivisions may enter into contracts obligating such bond proceeds to the Authority.

2010, cc. [117](#), [210](#).

§15.2-7223. Contracts with political subdivisions.

The Authority is authorized to enter into contracts with the Commonwealth, with the states it operates within, with any one or more political subdivisions within and without the Commonwealth, and with any other person or entity for any legal purpose.

2010, cc. [117](#), [210](#).

§15.2-7224. Application of local ordinances, service charges, and taxes upon leaseholds.

Nothing herein contained shall be construed to exempt the Authority's property from any applicable zoning, subdivision, erosion and sediment control, and fire prevention codes or from building regulations of a political subdivision in which such property is located, except as otherwise specifically excluded herein. Nor shall anything herein contained exempt the property of the Authority from any service charge authorized by the General Assembly pursuant to Article X, Section 6 (g) of the Constitution of Virginia, or exempt any lessee of any of the Authority's property from any tax imposed upon his leasehold interest in such property or upon the receipts derived therefrom.

2010, cc. [117](#), [210](#).

§15.2-7225. Existing contracts, leases, franchises, etc, not impaired.

No provisions of this Act shall relieve, impair, or affect any right, duty, liability, or obligation arising out of any contract, concession, lease, or franchise now in existence, including all contracts entered into by Bristol Virginia Utilities except to the extent that such contract, concession, lease, or franchise may permit. Notwithstanding the foregoing provisions of this section, the Authority may renegotiate, renew, extend the term of, or otherwise modify at any time any contract, concession, lease, or franchise now in existence in such manner and on such terms and conditions as it may deem appropriate, provided that the operator of or under any said contract, concession, lease, or franchise consents to such renegotiation, renewal, extension, or modification. The Authority shall be obligated for the performance of

any contract of Bristol Virginia Utilities now in existence in accordance with its terms, and such contracts shall remain in full force and effect.

2010, cc. [117](#), [210](#).

§15.2-7226. Liberal construction.

Neither this chapter nor anything contained herein is or shall be construed as a restriction or limitation upon any powers that the Authority might otherwise have under any laws of the Commonwealth, and this chapter is cumulative to any such powers, provided, however, that nothing in the foregoing provision shall be deemed to have expanded the powers of the Authority to provide and operate telecommunication and related services, including without limitation, cable television, internet, and all other services that might be rendered by use of the Authority's fiber optic system, beyond existing restrictions and limitations thereon. This chapter does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws.

2010, cc. [117](#), [210](#); 2015, c. [709](#).

Coal Mine Safety Act

§45.1-161.7. Short title.

This chapter and Chapters 14.3 (§ [45.1-161.105](#) et seq.) and 14.4 (§ [45.1-161.253](#) et seq.) of this title shall be known as the "Coal Mine Safety Act."

1984, c. 590, § 45.1-1.10; 1994, c. [28](#); 1997, c. [390](#).

§45.1-161.8. Definitions.

As used in this chapter and in Chapters 14.3 (§ [45.1-161.105](#) et seq.) and 14.4 (§ [45.1-161.253](#) et seq.) of this title, unless the context requires a different meaning:

"Accident" means (i) a death of an individual at a mine; (ii) a serious personal injury; (iii) an entrapment of an individual for more than 30 minutes; (iv) an unplanned inundation of a mine by liquid or gas; (v) an unplanned ignition or explosion of gas or dust; (vi) an unplanned fire not extinguished within 30 minutes of discovery; (vii) an unplanned ignition or explosion of a blasting agent or an explosive; (viii) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or an unplanned roof or rib fall in active workings that impairs

ventilation or impedes passage; (ix) a coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour; (x) an unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, refuse pile or culm bank; (xi) damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than 30 minutes; (xii) an event at a mine which causes death or bodily injury to an individual not at a mine at the time the event occurs; and (xiii) the unintentional fall of highwall that entraps equipment for more than 30 minutes.

"Active areas" means all places in a mine that are ventilated, if underground, and examined regularly.

"Active workings" means any place in a mine where miners are normally required to work or travel.

"Agent" means any person charged by the operator with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

"Approved" means a device, apparatus, equipment, condition, method, course or practice approved in writing by the Chief or Director.

"Authorized person" means a person assigned by the operator or agent to perform a specific type of duty or duties or to be at a specific location or locations in the mine who is trained and has demonstrated the ability to perform such duty or duties safely and effectively.

"Auxiliary fan" means a supplemental underground fan installed to increase the volume of air to a specified location for the purpose of controlling dust, methane, or air quality.

"Cable" means a stranded conductor (single-conductor cable) or a combination of conductors insulated from one another (multiple-conductor cable).

"Certified person" means a person holding a valid certificate from the Board of Coal Mining Examiners authorizing him to perform the task to which he is assigned.

"Circuit" means a conducting part or a system of conducting parts through which an electric current is intended to flow.

"Circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

"Coal mine" means a surface coal mine or an underground coal mine.

"Coal Mine Safety Act" or "Act" shall mean this chapter and Chapters 14.3 (§ [45.1-161.105](#) et seq.) and 14.4 (§ [45.1-161.253](#) et seq.) of this title, and shall include any regulations promulgated thereunder, where applicable.

"Cross entry" means any entry or set of entries, turned from main entries, from which room entries are turned.

"Experienced surface miner" means a person with more than six months of experience working at a surface mine or the surface area of an underground mine.

"Experienced underground miner" means a person with more than six months of underground mining experience.

"Federal mine safety law" means the Federal Mine Safety and Health Act of 1977 (P.L. 95-164), and regulations promulgated thereunder.

"Fuse" means an overcurrent protective device with a circuit-opening fusible member directly heated and destroyed by the passage of overcurrent through it.

"Ground" means a conducting connection between an electric circuit or equipment and earth or to some conducting body which serves in place of earth.

"Grounded" means connected to earth or to some connecting body which serves in place of the earth.

"Hazardous condition" means conditions that are likely to cause death or serious personal injury to persons exposed to such conditions.

"Imminent danger" means the existence of any condition or practice in a mine which could reasonably be expected to cause death or serious personal injury before such condition or practice can be abated.

"Inactive mine" means a mine (i) at which coal or minerals have not been excavated or processed, or work, other than examinations by a certified person or emergency work to preserve the mine, has not been performed at an underground mine for a period of 30 days, or at a surface mine for a period of 60 days, (ii) for which a valid license is in effect, and (iii) at which reclamation activities have not been completed.

"Inexperienced underground miner" means a person with less than six months of underground mining experience.

"Intake air" means air that has not passed through the last active working place of the split of any working section or any worked-out area whether pillared or nonpillared, and by analysis contains not less than nineteen and one-half percent oxygen nor more than one-half of one percent of carbon dioxide, nor any hazardous quantities of flammable gas nor any harmful amounts of poisonous gas.

"Interested persons" means members of the Mine Safety Committee and other duly authorized representatives of the employees at a mine; federal Mine Safety and Health Administration employees; mine inspectors; and, to the extent required by this Act, any other person.

"Main entry" means the principal entry or set of entries driven through the coal bed or mineral deposit from which cross entries, room entries, or rooms are turned.

"Mine" means any underground coal mine or surface coal mine. Mines that are adjacent to each other and under the same management and which are administered as distinct units shall be considered as separate mines. A site shall not be a mine unless the coal extracted or excavated therefrom is offered for sale or exchange, or used for any other commercial purposes. The area in which coal is excavated under an exemption to the permitting requirements of § [45.1-234](#) shall not be a mine.

"Mine fire" means an unplanned fire not extinguished within 30 minutes of discovery.

"Mine foreman" means a person holding a valid certificate of qualification as a foreman duly issued by action of the Board of Coal Mining Examiners.

"Mine inspector" means a public employee assigned by the Chief or the Director to make mine inspections as required by this Act, and other applicable laws.

"Miner" means any individual working in a mine.

"Mineral" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

"Monthly" means, unless otherwise stated, to have occurred any time during the period of the first through the last day of a calendar month.

"Operator" means any person who operates, controls or supervises a mine or any independent contractor performing services or construction at such mine.

"Panel entry" means a room entry.

"Permissible" means a device, process, or equipment or method heretofore or hereafter classified by such term by the Mine Safety and Health Administration, when such classification is adopted by the Chief or the Director, and includes, unless otherwise herein expressly stated, all requirements, restrictions, exceptions, limitations, and conditions attached to such classification by the Administration.

"Return air" means air that has passed through the last active working place on each split, or air that has passed through worked-out areas, whether pillared or non-pillared.

"Room entry" means any entry or set of entries from which rooms are turned.

"Serious personal injury" means any injury which has a reasonable potential to cause death or an injury other than a sprain or strain which requires an admission to a hospital for 24 hours or more for medical treatment.

"Substation" means an electrical installation containing generating or power-conversion equipment and associated electric equipment and parts, such as switchboards, switches, wiring, fuses, circuit breakers, compensators and transformers.

"Surface coal mine" means (i) the pit and other active and inactive areas of surface extraction of coal; (ii) on-site preparation plants, shops, tipples and related facilities appurtenant to the extraction and processing of coal; (iii) surface areas for the transportation and storage of coal extracted at the site; (iv) impoundments, retention dams, tailing ponds, and refuse disposal areas appurtenant to the extraction of coal from the site; (v) equipment, machinery, tools, and other property used in, or to be used in, the extraction of coal from the site; (vi) private ways and roads appurtenant to such area; and (vii) the areas used to prepare a site for surface coal extraction activities. A site shall commence being a surface coal mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity that does not disturb the surface, and shall cease to be a surface coal mine upon completion of initial reclamation activities.

"Travel way" means a passage, walk or way regularly used and designated for persons to go from one place to another.

"Underground coal mine" means (i) the working face and other active and inactive areas of underground excavation of coal; (ii) underground travel ways, shafts, slopes, drifts, inclines, and tunnels connected to such areas; (iii) on-site preparation plants, shops, tipples and related facilities appurtenant to the excavation and processing of coal; (iv) on-site surface areas for the transportation and storage of coal excavated at the site; (v) impoundments, retention dams, and tailing ponds appurtenant to the excavation of coal from the site; (vi) equipment, machinery, tools, and other property, on the surface and underground, used in, or to be used in, the excavation of coal from the site; (vii) private ways and roads appurtenant to such area; (viii) the areas used to prepare a site for underground coal excavation activities; and (ix) areas used for the drilling of vertical ventilation holes. A site shall commence being an underground coal mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity, and shall cease to be an underground coal mine upon completion of initial reclamation activities.

"Weekly" means, unless otherwise stated, to have occurred any time during the period of Sunday through Saturday of a calendar week.

"Work area," as used in Chapter 14.4 (§ [45.1-161.253](#) et seq.) of this title, means those areas of a surface coal mine in production or being prepared for production and those areas of the mine which may pose a danger to miners at such areas.

"Worked-out area" means an area where underground coal mining has been completed, whether pillared or nonpillared, excluding developing entries, return air courses and intake air courses.

"Working face" means any place in a mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

"Working place" means the area of an underground mine in by the last open crosscut.

"Working section" means all areas from the loading point of a section to and including the working faces.

Code 1950, § 45-0.2; 1954, c. 191; 1966, c. 594, § 45.1-2; 1975, c. 520; 1978, cc. 120, 489; 1980, c. 442; 1984, c. 590; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 1997, c. [390](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.9. Safety and health.

In safety and health, all miners are to be governed by this Act and Chapter 18 (§ [45.1-221](#) et seq.) of this title, and any other sections of the Code relating to safety and health of miners and rules and regulations promulgated by the Department.

1984, c. 590, § 45.1-1.7; 1994, c. [28](#).

§45.1-161.10. Special safety rules.

The operator of every mine shall have the right to adopt special safety rules for the safety and operation of his mine or mines, covering the work pertaining thereto inside and outside of the same, which, however, shall not be in conflict with the provisions of this Act. Such rules, when established, shall be posted at some conspicuous place about the mines, where the rules may be seen by all miners at such mines, or in lieu thereof the operator shall furnish a printed copy of such rules to each of his miners.

Code 1950, § 45-87; 1966, c. 594, § 45.1-31; 1984, c. 590; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.11. Persons not permitted to work in mines.

A. No person under eighteen years of age shall be permitted to work in or around any mine, and in all cases of doubt, the operator, agent or mine foreman shall obtain a birth certificate or other documentary evidence, from the Registrar of Vital Statistics, or other authentic sources as to the age of such person.

B. No operator, agent or mine foreman shall make a false statement as to the age of any person under eighteen years of age applying for work in or around any mine.

Code 1950, § 45-16; 1954, c. 191; 1966, c. 594, § 45.1-32; 1972, c. 154; 1994, c. [28](#).

§45.1-161.12. Prohibited acts by miners or other persons; miners to comply with law.

A. No miner or other person shall (i) knowingly damage any shaft, lamp, instrument, air course, or brattice or obstruct airways; (ii) carry in a mine any intoxicating liquors or controlled drugs without the prescription of a licensed physician; (iii) disturb any part of the machinery or appliances in a mine; (iv) open a door used for directing ventilation and fail to close it again; (v) enter any part of a mine against caution; or (vi) disobey any order issued pursuant to the provisions of this Act.

B. Each miner at any mine shall comply fully with the provisions of this Act and other mining laws of the Commonwealth that pertain to his duties.

C. Any individual shall, upon the order of the Chief, complete training that addresses the subject of any violation issued to the individual as a condition for abatement of the violation.

Code 1950, § 45-72; 1954, c. 191; 1966, c. 594, § 45.1-26; 1978, cc. 489, 729; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.13. Safety materials and supplies.

It shall be the duty of every operator or agent to keep on hand, at or within convenient distance, of each mine at all times a sufficient quantity of all materials and supplies required to preserve the safety of the miners, as required by this Act. If for any reason, the operator or agent cannot procure the necessary materials or supplies, he shall cause the miners to withdraw from the mine, or the portion thereof affected, until such material or supplies are received.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. [28](#).

§45.1-161.14. Notifying miners of violations; compliance with Act.

A. The operator and his agent shall cooperate with the mine foreman and other officials in the discharge of their duties as required by this Act, and shall direct that the mine foreman and all other miners employed at the mine comply with all provisions of this Act, especially when his attention is called to any violation of this Act by the Chief, the Director, or a mine inspector.

B. The operator of any mine or his agent shall operate his mines in full conformity with this Act and any other mining law of the Commonwealth at all times. This requirement shall not relieve any other person subject to the provisions of this Act from his duty to comply with the requirements of this Act.

C. Nothing in this Act shall be construed to relieve an operator or his agent from the duty imposed at common law to secure the reasonable safety of their employees.

D. No operator, agent, or certified person shall knowingly permit any person to work in any part of a mine in violation of written instructions issued by a mine inspector pursuant to this Act.

E. The operator or his agent shall fully comply with any action plan required by the Chief to address hazardous conditions or practices.

Code 1950, §§ 45-7, 45-8, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83 to 45-85; 1950, p. 156; 1954, c. 191; 1966, c. 594, §§ 45.1-21, 45.1-30, 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 320; 1976, c. 598; 1978, cc. 120, 222, 489, 729; 1982, cc. 118, 255; 1984, cc. 178, 590; 1988, c. 577; 1990, c. 963; 1993, cc. 171, 442; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.15. Appointment of Chief.

The Chief shall be appointed by the Governor. The Chief shall be the head of the Division of Mines, and shall be under the direction of and shall report to the Director.

Code 1950, §§ 45-1 through 45-3; 1954, c. 191; 1966, c. 594, § 45.1-3; 1984, c. 590; 1994, c. [28](#).

§45.1-161.16. Qualification of Chief.

The Chief shall have a thorough knowledge of the various systems of working and ventilating coal mines, nature and properties of mine gases and methods for their detection and control, the control of mine roof, methods of rescue and recovery work in mine disasters, application of electricity and mechanical loading in mining operations, equipment and explosives used in mining, methods for preventing gas and dust explosions in mines, and mine haulage. The Chief shall possess such experience or educational background in management as determined necessary by the Governor and shall be not less than thirty years of age.

Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. [28](#).

§45.1-161.17. Affiliations of Department personnel with labor union, coal company, etc.; interest in coal mine; inspections of mines where inspector previously employed.

A. In addition to compliance with the provisions of the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.), neither the Chief nor any other officer or employee of the Department shall, upon taking office or being employed, or at any other time during the term of his office or employment, have any affiliation with any operating coal company, operators' association, or labor union. Neither the Chief nor any other officer while in office shall be directly or indirectly interested as owner, partner, proprietor, lessor, operator, superintendent, or engineer of any coal mine, nor shall the Chief, or any other officer while in office, own any stock in a corporation owning a coal mine either directly or through a subsidiary.

B. Neither the Chief nor any mine inspector shall perform an inspection at any mine site at which that individual was last employed for a period of two years following termination of his employment.

Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.18. Appointment of mine inspectors.

Mine inspectors shall be appointed by the Director.

Code 1950, §§ 45-1 through 45-3; 1954, c. 191; 1966, c. 594, § 45.1-3; 1984, c. 590; 1994, c. [28](#).

§45.1-161.19. Qualifications of mine inspectors generally.

Each mine inspector shall (i) be not less than twenty-five years of age; (ii) be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman; and (iv) hold a certificate as a mine inspector issued by the Board of Coal Mining Examiners.

Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. [28](#); 1997, c. [390](#).

§45.1-161.20. Qualifications of inspectors of coal mines.

A. Each mine inspector conducting inspections of underground coal mines shall have a thorough knowledge of the various systems of working and ventilating underground coal mines; the nature and properties of mine gases and methods for their detection and control; the control of mine roof and ground control; methods of rescue and recovery work in mine disasters; application of electricity and mechanical loading in mining operations; equipment and explosives used in mining; methods for preventing gas and dust explosions in mines; and mine haulage.

B. Each mine inspector conducting inspections of surface coal mines shall have a thorough knowledge of the various systems of working surface coal mines; the nature and properties of mine gases and methods of their detection and control; ground control; methods of rescue and recovery work in surface mine disasters; application of electricity and mechanical loading in mining operations; equipment and explosives used in mining; methods for preventing gas and dust explosions in surface facilities on mine property; and mine haulage.

Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. [28](#); 1997, c. [390](#); 2005, c. [3](#).

§45.1-161.21. Duties of the Chief.

A. The Chief shall supervise execution and enforcement of all laws pertaining to the health and safety of persons employed within or at coal mines within the Commonwealth, and the protection of property used in connection therewith, and to perform all other duties required pursuant to this Act.

B. The Chief shall keep a record of all inspections of coal mines made by him and the mine inspectors. The Chief shall make a comprehensive report to the Director. The Chief shall also keep a permanent record thereof properly indexed, which record shall at all times be open to inspection by any citizen of the Commonwealth.

C. The Chief is authorized to compel individuals to complete training that addresses the subject of a violation issued to the individual as a condition for abatement of the violation.

D. The Chief is authorized to require operators to submit for approval action plans to address hazardous conditions or practices.

E. For the purpose of investigating (i) an accident or (ii) a willful act resulting in a notice of violation or closure order, the Chief shall have the power to compel the attendance of witnesses and to administer oaths or affirmations. Any person who knowingly provides any false statement, representation or certification during investigations is guilty of a Class 1 misdemeanor.

F. The Chief shall supervise execution and enforcement of all reciprocal agreements made with responsible officers of other states that implicate any part of the Coal Mine Safety Act, Chapters 14.2 (§ [45.1-161.7](#) et seq.), 14.3 (§ [45.1-161.105](#) et seq.), and 14.4 (§ [45.1-161.253](#) et seq.) of Title 45.1.

Code 1950, §§ 45-1 to 45-6; 1954, c. 191; 1966, c. 594, §§ 45.1-3, 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. [28](#); 2005, c. [3](#); 2011, cc. [826](#), [862](#); 2014, c. [145](#).

§45.1-161.22. Repealed.

Repealed by Acts 1997, c. [390](#).

§45.1-161.23. Technical specialists.

The Director may appoint technical specialists in the areas of roof control, electricity, ventilation and other mine specialties. Technical specialists shall have all the qualifications of a mine inspector plus such specialized knowledge in their field as may be required. Technical specialists shall advise the Director and mine operators in the areas of their specialty. Technical specialists shall have the power of an inspector to issue a closure order only in cases of imminent danger.

Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. [28](#).

§45.1-161.24. Board of Coal Mining Examiners.

A. There is hereby created the Board of Coal Mining Examiners which shall consist of five members. One member shall be the Chief, and four members shall be appointed by the Governor. One appointed member shall be a miner holding a first class mine foreman's certificate with at least five years of experience in underground coal mining and who is employed at an underground coal mine in the Commonwealth in a nonmanagerial, nonsupervisory capacity at the time of appointment. One appointed member shall be a miner with at least five years of experience in surface coal mining and who is employed at a surface coal mine in the Commonwealth in a nonmanagerial, nonsupervisory capacity at the time of appointment. One appointed member shall be an individual holding a first class mine foreman's certificate with at least five years of experience in the operation of underground coal mines, who is (i) an operator of an underground coal mine, (ii) an officer or director of a corporation operating an underground coal mine, (iii) a general partner of a partnership operating an underground coal mine, or (iv) an employee in a managerial or supervisory capacity of an operator of an underground coal mine in the Commonwealth at the time of appointment. One appointed member shall be an individual with at least five years of experience in the operation of surface coal mines, who is (i) an operator of a surface coal mine, (ii) an officer or director of a corporation operating a surface coal mine, (iii) a general partner of a partnership operating a surface coal mine, or (iv) an employee in a managerial or supervisory capacity of an operator of a surface coal mine in the Commonwealth at the time of appointment. All appointed members shall be residents of the Commonwealth.

B. The terms of office of the appointed members of the Board shall be as follows: one shall be appointed for an initial term of one year; one shall be appointed for an

initial term of two years; one shall be appointed for an initial term of three years; and one shall be appointed for an initial term of four years. Thereafter, the members shall be appointed for terms of four years. Vacancies occurring on the Board among appointed members shall be filled by the Governor for the unexpired term.

C. The Chief shall serve as chairman of the Board.

Code 1950, §§ 45-18 to 45-21; 1954, c. 191; 1966, c. 594, § 45.1-7; 1978, c. 729; 1984, c. 590, § 45.1-7; 1994, c. [28](#).

§45.1-161.25. Meetings of Board of Coal Mining Examiners; compensation.

The Board of Coal Mining Examiners shall meet at least once a year and shall be called by the Chief to meet at such other times as he deems necessary. The Board shall meet at such place or places and at such times as may be designated by the Chief, and the Board shall remain in session until its work is completed; but no one session of the Board shall continue more than three days. Out of the Coal Mining Examiners' Fund, there shall be paid to each member of the Board, except the Chief who shall serve without extra pay, reimbursement for expenses and compensation as is provided by § [2.2-2813](#).

Code 1950, § 45-26; 1954, c. 191; 1960, c. 61; 1966, c. 594, § 45.1-10; 1978, c. 120; 1980, c. 728; 1994, c. [28](#).

§45.1-161.26. Records of Board of Coal Mining Examiners.

The Chief shall preserve in his office a record of the meetings and transactions of the Board of Coal Mining Examiners and of all certificates issued by the Board.

Code 1950, § 45-27; 1954, c. 191; 1966, c. 594, § 45.1-11; 1994, c. [28](#).

§45.1-161.27. Nominations for Board of Coal Mining Examiners.

Nominations for appointments to the Board of Coal Mining Examiners may be submitted to the Governor by the Director and each organization of coal miners and coal industry interests in the Commonwealth. Nominations are to be made to the Governor by June 1 of the year in which the terms of appointments of members expire. In no case shall the Governor be bound to make any appointment from the nominations submitted.

Code 1950, §§ 45-18 to 45-21; 1954, c. 191; 1966, c. 594, § 45.1-7; 1978, c. 729; 1984, c. 590, § 45.1-7; 1994, c. [28](#).

§45.1-161.28. Certification of certain persons employed in coal mines; powers of Board of Coal Mining Examiners.

A. The Board of Coal Mining Examiners may require certification of persons who work in coal mines and persons whose duties and responsibilities in relation to coal mining require competency, skill or knowledge in order to perform consistently with the health and safety of persons and property. The following certifications shall be issued by the Board, and a person holding such certification shall be authorized to perform the tasks which this Act or any regulation promulgated by the Board or by the Department requires to be performed by such a certified person:

1. First class mine foreman;
2. First class shaft or slope foreman;
3. Surface foreman;
4. Preparation plant foreman;
5. Electrical maintenance foreman;
6. Dock foreman;
7. Top person;
8. Underground shot firer;
9. Surface blaster;
10. Hoisting engineer;
11. Electrical repairman;
12. Automatic elevator operator;
13. Mine inspector;
14. Qualified gas detector;
15. Diesel engine mechanic;
16. Diesel engine mechanic instructor;
17. First aid instructor;
18. Advanced first aid;
19. Chief electrician; and
20. General coal miner.

B. Certification shall also be required for such additional tasks as the Board may require by regulation.

C. The Board shall have the power to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be promulgated in accordance with the provisions of Article 2 (§ [2.2-4006](#) et seq.) of the Administrative Process Act.

D. The Board is authorized to promulgate regulations establishing guidelines for on-site examinations of mine foremen conducted by mine inspectors pursuant to § [45.1-161.35](#).

Code 1950, §§ 45-23, 45-28, 45-31, 45-33.1; 1954, c. 191; 1966, c. 594, §§ 45.1-12, 45.1-14; 1972, c. 784; 1978, c. 729; 1980, c. 442; 1984, c. 237; 1993, c. 442; 1994, c. [28](#).

§45.1-161.29. Examinations required for Coal Mining Certifications.

A. The Board of Coal Mining Examiners may require examination of applicants for certification; however, the Board shall require examination of applicants for the mine inspector certification. The Board may require such other information from applicants as may be necessary to ascertain competency and qualifications for each task. Except as specifically provided by this Act, the Board shall prescribe the qualifications for any certification. The examinations shall be conducted under such rules, conditions and regulations as the Board shall promulgate. Such rules, when promulgated, shall be made a part of the permanent record of the Board, shall periodically be published and shall be of uniform application to all applicants.

B. Any certificate issued by the Board shall be valid from the date of issuance unless and until it has been suspended pursuant to § [45.1-161.34](#), or has been revoked by the Board pursuant to § [45.1-161.35](#).

Code 1950, §§ 45-23, 45-28; 1954, c. 191; 1966, c. 594, § 45.1-12; 1972, c. 784; 1978, c. 729; 1980, c. 442; 1984, c. 237; 1994, c. [28](#).

§45.1-161.30. Performance of certain tasks by uncertified persons; penalty.

A. It shall be unlawful for any person to perform any task requiring certification by the Board of Coal Mining Examiners until he has been certified. It shall also be unlawful for an operator or his agent to permit any uncertified person to perform such tasks. A violation of this subsection shall constitute a Class 1 misdemeanor. Each day of operation without a required certification shall constitute a separate offense.

B. A certificate issued by the Board of Examiners prior to July 1, 1994, shall be acceptable as a certificate issued by the Board of Coal Mining Examiners until the Board of Coal Mining Examiners shall provide otherwise by appropriate regulations.

1972, c. 784, § 45.1-12.1; 1994, c. [28](#).

§45.1-161.31. Examination fees; Coal Mining Examiners' Fund.

A. A reasonable fee in an amount set by the Board of Coal Mining Examiners, not to exceed \$50, shall be paid to the Chief by each person examined before the commencement of examination. All such fees collected, together with moneys collected pursuant to §§ [45.1-161.32](#) and [45.1-161.34](#), shall be retained by the Department and shall be promptly paid by the Chief into the state treasury and shall constitute the Coal Mining Examiners' Fund. The fund shall be administered by the Chief to cover the costs of administering the miner certification, for which purposes such moneys are hereby appropriated.

B. The cost of printing certificates and other necessary forms and the incidental expenses incurred by the Board in conducting examinations, reviewing examination papers and conducting its other duties pursuant to this article shall also be paid out of the Coal Mining Examiners' Fund. The Chief shall keep accounts and records concerning the receipts and expenditures of the fund as required by the Auditor of Public Accounts.

Code 1950, §§ 45-24, 45-25; 1954, c. 191; 1966, c. 594, §§ 45.1-8, 45.1-9; 1972, c. 440; 1978, c. 120; 1984, c. 590; 1994, c. [28](#); 1996, c. [774](#); 2007, cc. [894](#), [914](#).

§45.1-161.32. Replacement of lost or destroyed certificates.

If any certificate issued by the Board of Coal Mining Examiners is lost or destroyed, the Chief may supply a copy thereof to the person to whom it was issued, upon the payment of a reasonable fee in an amount set by the Board not to exceed \$10, provided that it has been established to his satisfaction that the loss or destruction actually occurred and that the person seeking such copy was the holder of such certificate.

Code 1950, §§ 45-29, 45-31; 1954, c. 191; 1966, c. 594, § 45.1-13; 1978, c. 729; 1994, c. [28](#); 1999, c. [256](#); 2007, cc. [894](#), [914](#).

§45.1-161.33. Reciprocal acceptances of other certifications.

A. In lieu of an examination prescribed by law or regulation, the Board of Coal Mining Examiners may issue to any person holding a certificate issued by another state a

certificate permitting him to perform similar tasks in the Commonwealth, provided that (i) the Board finds that the requirements for certification in such state are substantially equivalent to those of Virginia and (ii) holders of certificates issued by the Board are permitted to perform similar tasks in such state, and obtain similar certification from such state if required, upon presentation of the certificate issued by the Board and without additional testing, training, or other requirements not directly related to program administration.

B. If the issuing authority in another state has revoked or suspended a certificate of a person who holds a similar Virginia certificate issued pursuant to this section, the person shall notify the Chief of such action by the other state within 10 days of such action. The Chief shall schedule a hearing of the Board of Coal Mining Examiners to determine whether his Virginia certificate should be revoked or suspended.

Code 1950, §§ 45-31, 45-33.1; 1954, c. 191; 1966, c. 594, § 45.1-14; 1972, c. 784; 1993, c. 442; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.34. Continuing education requirements.

A. The Board of Coal Mining Examiners shall promulgate regulations establishing requirements for programs of continuing education for holders of certifications. The Board shall establish (i) the content and amount of continuing education to be required for maintaining certification; (ii) guidelines for the content of continuing education programs; (iii) procedures for approving continuing education programs and sponsors; (iv) distribution to holders of certificates of appropriate information regarding continuing education requirements; (v) provisions allowing surplus hours of continuing education to be carried forward from one period to meet the requirements for the next period; (vi) procedures for determining compliance with continuing education requirements; (vii) requirements for a certificate holder to provide the Board with his current address and such further administrative information as may be reasonable; and (viii) the length of time a certificate may be suspended for failure to comply with continuing education requirements before such certificate shall be revoked. The Board may also establish by regulation a fee to recover the reasonable costs of reissuing certificates or otherwise ascertaining that the requirements of this section have been satisfied.

B. A certification issued by the Board of Coal Mining Examiners shall be suspended if the holder fails to comply with the continuing education requirements established by the Board. The suspension shall be vacated upon compliance with the continuing

education requirements. However, if the holder of a certificate does not comply with the continuing education requirements within the period of time established by the Board, the certificate shall be revoked.

1994, c. [28](#).

§45.1-161.35. Revocation of certificates.

A. The Board of Coal Mining Examiners may suspend, revoke, or take other action regarding any certificate upon finding that the holder has (i) failed to comply with the continuing education requirements within the period following the suspension of the certificate as provided in § [45.1-161.34](#); (ii) been intoxicated while in duty status; (iii) neglected his duties; (iv) violated any provision of this Act or any other coal mining law of the Commonwealth; (v) used any controlled substance without the prescription of a licensed prescriber; or (vi) other sufficient cause. The Board shall also suspend, revoke, or take other action regarding the first class mine foreman certificate of any mine foreman who fails to display a thorough understanding of the roof control plan and ventilation for the area of the mine for which he is responsible for implementing, when examined on-site by a mine inspector in accordance with guidelines promulgated by the Board. In such a case, the Board shall make a determination, based on evidence presented by interested parties, of whether the mine foreman had a thorough knowledge of such plans at the time of his examination by the mine inspector.

B. The Board may act to suspend, revoke, or take other action regarding any certificate upon the presentation of written charges alleging prohibited conduct set forth in subsection A by (i) the Chief or the Director or his designated agent; (ii) the operator of a mine at which such person is employed; or (iii) ten persons employed at the mine at which such person is employed, or, if less than ten persons are employed at the mine, a majority of the employees at the mine. The Board may act on its own initiative to suspend, revoke, or take other action on any certificate for grounds set forth in item (i) of subsection A.

C. Any person holding a certification issued by the Board shall report to the Chief, within 30 days of any criminal conviction in any court of competent jurisdiction for possession or use of any controlled substance without the prescription of a licensed prescriber. This conviction shall result in the immediate temporary suspension of all certificates held by such person pending hearing before the Board.

D. Any miner present at any mine shall be deemed to have given consent to reasonable search, at the direction of the Chief by employees of the Department, of his person and his personal property located at the mine. This search shall be limited to the investigation of potential violations of the Coal Mine Safety Act (§ [45.1-161.7](#) et seq.).

E. All information regarding substance abuse test results of certified persons, written or otherwise received by the Department or Board, shall be confidential. Any hearing of the Board in which this information is presented shall be conducted as a closed session in accordance with the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

F. An affirmative vote of a majority of members of the Board who are qualified to vote shall be required for any action to suspend, revoke, or take other action regarding a certificate.

G. Prior to suspending, revoking, or taking other action regarding a certificate, the Board shall give due notice to the holder of the certificate and conduct a hearing. Any hearing shall be conducted in accordance with § [2.2-4020](#) unless the parties agree to informal proceedings. The hearing may be conducted by the Board or, in the Board's discretion, by a hearing officer as provided in § [2.2-4025](#) et seq.

H. Any hearing conducted after the temporary suspension of a miner's certificate due to (i) a criminal conviction in any court of competent jurisdiction for possession or use of any controlled substance without the prescription of a licensed prescriber as provided for in subsection C, (ii) a failure to pass a substance abuse test required by the Chief pursuant to § [45.1-161.78](#), (iii) a failure to pass a pre-employment substance abuse screening test, (iv) a discharge for violation of the company's substance or alcohol abuse policies, (v) a positive test for the use of any controlled substance without the prescription of a licensed prescriber, (vi) a positive test for intoxication while on duty status, or (vii) a failure to complete a substance abuse program pursuant to § [45.1-161.87](#), shall be conducted within 60 days of the temporary suspension. The Board shall make every effort to hold the hearing within 40 days of the temporary suspension.

I. Any person who has been aggrieved by a decision of the Board shall be entitled to judicial review of such decision. Appeals from such decisions shall be in accordance with Article 5 (§ [2.2-4025](#) et seq.) of the Administrative Process Act.

Code 1950, §§ 45-29, 45-31; 1954, c. 191; 1966, c. 594, § 45.1-13; 1978, c. 729; 1994, c. [28](#); 2004, c. [855](#); 2007, cc. [894](#), [914](#).

§45.1-161.36. Reexamination.

The holder of a certificate revoked pursuant to § [45.1-161.35](#) shall be entitled to examination by the Board of Coal Mining Examiners after three months have elapsed from the date of revocation of the certificate if he can prove to the satisfaction of the Board that the cause for revocation of his certificate has ceased to exist. However, no person convicted of violating subsection A of § [45.1-161.177](#) or §§ [45.1-161.178](#), [45.1-161.232](#), or § [45.1-161.233](#) shall be eligible for examination for a period of not less than one year nor more than three years following such conviction, such period to be set by the Board in its discretion at the time of revocation of the certificate.

Code 1950, §§ 45-29, 45-31; 1954, c. 191; 1966, c. 594, § 45.1-13; 1978, c. 729; 1994, c. [28](#).

§45.1-161.37. General coal miner certification.

A. Every person working in a coal mine in Virginia shall hold a general coal miner certificate issued by the Board of Coal Mining Examiners. Any person who has been employed to work in a coal mine in Virginia prior to January 1, 1996, shall submit a complete application for certification as a general coal miner by September 30, 2007. The Board of Coal Mining Examiners shall issue a general coal miner certification upon submittal of a complete application.

B. Each applicant for a general coal miner certificate who has not been employed to work in a Virginia coal mine prior to January 1, 1996, shall prove to the Board that he has knowledge of first aid practices and has a general working knowledge of the provisions of this Act, and applicable regulations, pertaining to coal mining health and safety. Each applicant shall have completed the new miner training requirements of 30 CFR Part 48 or submit proof of at least one year of experience in a coal mine prior to issuance of the General Coal Miner certification.

1994, c. [28](#); 2005, c. [3](#); 2007, cc. [894](#), [914](#).

§45.1-161.38. First-class mine foreman certification.

A. The operator of any coal mine where three or more persons work during any part of a 24-hour period shall employ a mine foreman. The operator shall employ as a mine foreman only persons holding a first-class mine foreman certificate. The holder of such a certificate shall present the certificate, or a photostatic copy thereof, to the

operator where he is employed, who shall file the certificate or its copy in the office at the mine, and the operator shall make it available for inspection by interested persons.

B. The holder of a first-class mine foreman certificate shall be authorized to act as foreman for all underground coal mines.

C. Applicants for a first-class mine foreman certificate shall be not less than 23 years of age and have had at least five years of experience in a coal mine (at least three years shall have been in an underground coal mine). A graduate of an approved course in mining engineering at a baccalaureate institution of higher education shall be given credit for three of the five years of practical experience required. An applicant who possesses a degree in mining technology shall be given credit for two of the five years of practical experience required. If the applicant meets the above requirements, makes 85 percent or more on each of the subjects of the written examination, and passes required map and gas examinations, he shall be entitled to a first-class mine foreman certificate. The written examination shall address, among other relevant topics, the theory and practice of coal mining; nature and properties of noxious, poisonous, and explosive gases, and methods for their detection and control; requirements of the coal mining laws of this Commonwealth; and responsibilities and duties of a mine foreman under state law.

D. Each candidate for certification as a first-class mine foreman shall complete the course or courses of instruction in first aid as provided in subsection A of § [45.1-161.101](#) and pass an examination relating thereto, approved by the Board of Coal Mining Examiners.

Code 1950, §§ 45-7, 45-12, 45-29, 45-30, 45-31, 45-33.1, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, §§ 45.1-13 to 45.1-15, 45.1-21, 45.1-101.2; 1972, c. 784; 1974, c. 686; 1976, c. 598; 1977, c. 679; 1978, cc. 94, 222, 489, 729; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. [28](#); 1997, c. [274](#).

§45.1-161.39. Surface foreman certification.

A. Applicants for a surface foreman certificate shall be at least 23 years of age and have had at least five years of experience in a coal mine with at least three years of such experience in a surface coal mine. A graduate of an approved course in mining engineering at a baccalaureate institution of higher education shall be given credit for three of the five years of practical experience required. An applicant who possesses a

degree in mining technology shall be given credit for two of the five years of required practical experience. Applicants shall demonstrate to the Board of Coal Mining Examiners a thorough knowledge of the theory and practice of surface coal mining by making 85 percent or more on the written examination. In addition, each applicant shall pass the examination in gas detection. The holder of a surface foreman certificate issued by the Board shall be authorized to act as surface foreman at any surface coal mine.

B. Each candidate for certification as a surface foreman shall complete, at a minimum, a 24-hour course of instruction in advanced first aid taught by a certified advanced first aid instructor in accordance with subsection A of § [45.1-161.101](#), and pass an examination relating thereto approved by the Board of Coal Mining Examiners. No course or examination shall be required of candidates holding a current higher level of emergency medical certification from the Virginia Department of Health.

C. All holders of a surface foreman certification issued prior to July 1, 2010, except those holding a current higher level of emergency medical certification from the Virginia Department of Health, shall complete by December 31, 2011, at a minimum, a 24-hour course of instruction in advanced first aid taught by a certified advanced first aid instructor in accordance with subsection A of § [45.1-161.101](#).

Code 1950, §§ 45-23, 45-28; 1954, c. 191; 1966, c. 594, § 45.1-12; 1972, c. 784; 1978, c. 729; 1980, c. 442; 1984, c. 237; 1994, c. [28](#); 2007, cc. [894](#), [914](#); 2010, cc. [809](#), [857](#).

§45.1-161.40. Chief electrician certification.

Each applicant for a chief electrician certificate shall demonstrate to the Board of Coal Mining Examiners by written and oral examination that he has a thorough knowledge of the theory and practice of electricity that pertains to coal mining. In addition, each applicant shall pass the examinations in first aid and gas detection. The holder of a chief electrician certificate issued by the Board shall be authorized to act as chief electrician in any coal mine.

Code 1950, §§ 45-23, 45-28; 1954, c. 191; 1966, c. 594, § 45.1-12; 1972, c. 784; 1978, c. 729; 1980, c. 442; 1984, c. 237; 1994, c. [28](#).

§45.1-161.41. Top person certificate.

Each applicant for a top person certificate shall demonstrate to the Board of Coal Mining Examiners by written and oral examination that he has a thorough knowledge of the theory and practice of shaft and slope mine construction. In addition, each applicant shall pass the examinations in first aid and gas detection. The holder of a top person certificate issued by the Board shall be authorized to act as top person in any coal mine.

1980, c. 442, § 45.1-20.1; 1994, c. [28](#).

§45.1-161.42. Repealed.

Repealed by Acts 1997, c. [390](#).

§45.1-161.57. License required for operation of coal mines; term.

A. No person shall engage in the operation of any coal mine within this Commonwealth without first obtaining a license from the Department. A license shall be required prior to commencement of the operation of a mine. A separate license shall be secured for each mine operated. Licenses shall be in such form as the Director may prescribe. The license shall be posted in a conspicuous place near the main entrance to the mine. The license shall not be transferable and every change in ownership of a mine shall be reported to the Department as provided in subsection B of § [45.1-161.62](#).

B. Licenses for coal mines shall be valid for a period of no more than one year following the date of issuance and shall be renewed annually within fifteen days following the anniversary of the date the mine began operations.

Code 1950, § 45-17.1; 1958, c. 306; 1966, c. 594, § 45.1-22; 1978, c. 489; 1984, c. 590; 1988, c. 577; 1994, c. [28](#); 1996, c. [774](#); 1997, c. [390](#).

§45.1-161.58. Fee to accompany application for license; fund; disposition of fees.

Each application for a license or a renewal or transfer of a license shall be submitted to the Department, accompanied by a fee, payable to the State Treasurer, in the amount of \$180. All such fees collected shall be retained by the Department and paid into the state treasury and shall constitute a fund under the control of the Director. Expenditures from this fund may be made by the Department for safety equipment, safety training, safety education or for any expenditure to further the safety program in the mining industry. All expenditures from this fund must be approved by the Director.

Code 1950, § 45-17.2; 1958, c. 306; 1966, c. 594, § 45.1-23; 1972, c. 235; 1978, c. 489; 1983, c. 356; 1984, c. 590; 1994, c. [28](#); 1999, c. [256](#); 2003, cc. [542](#), [550](#).

§45.1-161.59. Application for license.

A. An application for a license shall be submitted by the person who will be the operator of the mine. No application for a license or a renewal thereof shall be complete unless it contains the following:

1. Identity regarding the operator of the mine. If the operator is a sole proprietorship, the operator shall state: (i) his full name and address; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the sole proprietor has a twenty percent or greater ownership interest; and (vi) the trade name, if any, and the full name, address of record and telephone number of the proprietorship. If the operator is a partnership, the operator shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the partnership has a twenty percent or greater ownership interest; (v) the full name and address of all partners; (vi) the trade name, if any, and the full name and address of record and telephone number of the partnership; and (vii) the federal mine identification numbers of all other mines in which any partner has a twenty percent or greater ownership interest. If the operator is a corporation, the operator shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the corporation has a twenty percent or greater ownership interest; (v) the full name, address of record and telephone number of the corporation and the state of incorporation; (vi) the full name and address of each officer and director of the corporation; (vii) if the corporation is a subsidiary corporation, the operator shall state the full name, address, and state of incorporation of the parent corporation; and (viii) the federal mine identification numbers of all other mines in which any corporate officer has a twenty percent or greater ownership interest. If the

operator is any organization other than a sole proprietorship, partnership, or corporation, the operator shall state: (i) the nature and type, or legal identity of the organization; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the organization has a twenty percent or greater ownership interest; (vi) the full name, address of record and telephone number of the organization; (vii) the name and address of each individual who has an ownership interest in the organization; (viii) the name and address of the principal organization officials or members; and (ix) the federal mine identification numbers of all other mines in which any official or member has a twenty percent or greater ownership interest;

2. The names and addresses of any agent of the operator with responsibility for the business operation of the mine, and any person with an ownership or leasehold interest in the coal to be mined;

3. The names and addresses of persons to be contacted in the event of an accident or other emergency at the mine;

4. Such information required by the Department that is relevant to an assessment of the safety and health risks likely to be associated with the operation of the mine; and

5, 6. [Repealed.]

7. For any license renewal, the annual report required pursuant to § [45.1-161.62](#). When no change has occurred to the information required by subdivision 1, 2, or 3 of this subsection, the operator of the mine shall only be required to certify that such information on the current license application is accurate and complete.

B. The application shall be certified as being complete and accurate by the applicant, if an individual, by the agent of a corporate applicant, or by a general partner of an applicant that is a partnership. The application shall be submitted on forms furnished or approved by the Department.

C. Within thirty days after the occurrence of any change in the information required by subsection A, the operator shall notify the Department, in writing, of such change.

Code 1950, §§ 45-7, 45-12, 45-17.3, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1958, c. 306; 1966, c. 594, §§ 45.1-21,

45.1-24; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. [28](#); 1996, c. [774](#); 1997, c. [390](#); 1999, c. [256](#).

§45.1-161.60. Denial or revocation of license.

A. The Chief may deny an application for, or may revoke a license for the operation of a coal mine upon determining that the applicant, the operator, or his agent has committed violations of the mine safety laws of the Commonwealth which demonstrate a pattern of willful violations resulting in an imminent danger to miners.

B. The Chief may revoke every license issued to any person for the operation of a coal mine and may deny every application by a person for the issuance of a license for the operation of a coal mine who has been convicted of knowingly permitting a miner to work in an underground coal mine where a methane monitor or other device capable of detecting the presence of explosive gases was impaired, disturbed, disconnected, bypassed, or otherwise tampered with in violation of § [45.1-161.233](#).

C. The Chief may revoke every license issued to any person for the operation of a coal mine and may deny every application by a person for the issuance of a license for the operation of a coal mine who has been convicted of violating subsection A of § [45.1-161.177](#) or § [45.1-161.178](#).

D. Any person whose license is denied or revoked pursuant to subsection A, B, or C may bring a civil action in the circuit court of the city or county in which the mine is located for review of the decision. The commencement of such a proceeding shall not, unless specifically ordered by the court, operate as a stay of the decision. The court shall promptly hear and determine the matters raised by the aggrieved party. In any such action the court shall receive the records of the Department with respect to the determination, and shall receive additional evidence at the request of any party. The court, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

1993, c. 247, § 45.1-22.1, c. 389, § 45.1-98.4; 1994, c. [28](#); 1997, c. [390](#).

§45.1-161.61. Operating without license; penalty.

A. In addition to any other power conferred by law, the Chief, or his designated representative, shall have the authority to issue an order closing any coal mine which is operating without a license. The procedure for issuing a closure order shall be as provided in § [45.1-161.91](#).

B. Any person operating an unlicensed mine shall, upon conviction, be guilty of a Class 3 misdemeanor. Each day any person operates an unlicensed mine shall constitute a separate offense.

Code 1950, § 45-17.4; 1958, c. 306; 1966, c. 594, § 45.1-25; 1978, c. 489; 1994, c. [28](#); 1997, c. [390](#).

§45.1-161.62. Annual reports; condition to issuance of license following transfer of ownership.

A. The operator or his agent of every mine shall annually, by February 15, mail or deliver to the Department a report for the preceding twelve months, ending with December 31. Such report shall state: (i) the names of the operator, any agent, and their officers, of the mine; (ii) the quantity of coal mined; and (iii) such other information, not of a private nature, as may from time to time be required by the Department on blank forms furnished or approved by the Department.

B. Whenever the owner of a mine shall transfer the ownership of such mine to another person, the person transferring such ownership shall submit a report to the Department of such change and a statement of the tons of coal produced since the January 1 previous to the date of such sale or transfer of such mine. A license will not be issued covering such transfer of ownership until the report is furnished.

C. The operator or his agent of every coal mine shall annually, by February 15, mail or deliver to the Department (i) an affidavit, certified by the Commissioner of Revenue of the locality in which the coal mining operations are conducted, stating that all local coal severance taxes enacted pursuant to §§ [58.1-3703](#), [58.1-3712](#), [58.1-3713](#), and [58.1-3741](#) due with respect to the coal mining operations have been paid; and (ii) an affidavit, certified by the Treasurer of the locality in which the coal mining operations are conducted, stating that all personal property, real estate and mineral land taxes due with respect to coal mining operations have been paid.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. [28](#); 1996, c. [774](#); 1997, c. [390](#); 2013, cc. [305](#), [618](#).

§45.1-161.63. Notices to Department; resumption of mining following discontinuance.

A. The operator or his agent shall send notice of intent to discontinue the working of an underground mine for a period of 30 days or a surface mine for a period of 60 days to the Department at least 10 days prior to discontinuing the working of a mine with such intent, or at any time a mine becomes an inactive mine. Unless examinations of the mine are being conducted during the period of discontinued use, all surface openings to the discontinued underground mine shall be secured against unauthorized entrance when the activities are discontinued for 30 days or longer. Danger signs shall be posted at each secured entrance.

B. The operator, or his agent, shall send to the Department 10 days' prior notice of intent to resume the working of an inactive mine. The production of coal at such mine shall not resume until a mine inspector has inspected and approved it for resumption of production activities.

C. Emergency actions necessary to preserve a mine may be undertaken without the prior notice of intent and advance inspection required by subsection B. In such event, a mine foreman shall examine a mine for hazardous conditions immediately before miners are permitted to work. The operator, or his agent, shall notify the Department as soon as possible after commencing emergency action necessary to preserve the mine.

D. The operator, or his agent, shall send to the Department 10 days' prior notice of any change in the name of a mine or in the name of the operator of a mine.

E. The operator, or his agent, shall send to the Department 10 days' prior notice of the opening of a new mine.

F. Any notice required by this section shall be in writing and shall include the name of the mine, the location of the mine, the name of the operator, and the operator's mailing address.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. [28](#); 1996, c. [774](#); 1997, c. [390](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.64. Maps of mines required to be made; contents; extension and preservation; use by Department; release; posting of map.

A. Prior to commencing mining activity, the operator of a coal mine, or his agent, shall make, or cause to be made, unless already made and filed, an accurate map of

such mine. Such map shall be submitted to the Chief prior to producing coal at the mine. All maps shall be presented on the Virginia Coordinate System of 1983, South Zone, unless otherwise approved by the Chief. At intervals not to exceed 12 months and when a coal mine is abandoned, the operator shall submit to the Chief copies of an up-to-date map of the entire mine in an electronic format approved by the Chief. The operator shall also submit to the Chief revisions that show directional changes whenever mine projections deviate more than 600 feet from the approved mine map. Only maps in an electronic format will be accepted unless otherwise approved by the Chief. If there are no changes in the information required to be submitted under this section at the time an updated map is due, the operator may submit a notice that there are no changes to the map in lieu of submitting an updated map to the Department.

B. Underground coal mine maps shall show:

1. The active workings;
2. All pillared, worked out, and abandoned areas, except as provided in this section;
3. Entries and aircourses with the quantity of airflow, direction of airflow indicated by arrows, and ventilation controls;
4. Contour lines of all elevations;
5. Dip of the coalbed;
6. Escapeways;
7. The locations that are known or should be known of (i) adjacent mine workings within 1,000 feet, (ii) mines above or below, and (iii) water pools above;
8. Either producing or abandoned oil and gas wells located within 500 feet of such mine and in any underground area of such mine; and
9. Such other information as the Chief may require.

Such map shall identify those areas of the mine which have been pillared, worked out, or abandoned, which are inaccessible, or cannot be entered safely.

C. Additional information required to be shown on underground coal mine maps shall include:

1. Mine name, company name, mine index number, and name of the person responsible for information on the map;

2. The scale and orientation of the map and symbols used on the map;
 3. The property or boundary lines of the mine;
 4. All known drill holes that penetrate the coalbed being mined;
 5. All shaft, slope, drift, and tunnel openings and auger and strip mined areas of the coalbed being mined;
 6. The location of all surface mine ventilation fans; the location may be designated on the mine map by symbols;
 7. The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;
 8. The location and description of a least two permanent base line points coordinated with the underground and surface mine traverses, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;
 9. The location and elevation of any body of water dammed or held back in any portion of the mine; provided, however, such bodies of water may be shown on overlays or tracings attached to the mine maps used to show contour lines as provided under subdivision 12;
 10. The elevations of tops and bottoms of shafts and slopes, and the floor at the entrance to drift and tunnel openings;
 11. The elevation of the floor at intervals of not more than 200 feet in (i) at least one entry of each working section and main and cross entries; (ii) the last line of open crosscuts of each working section, and main and cross entries before such sections and main and cross entries that are abandoned; and (iii) rooms advancing toward or adjacent to property or boundary lines or adjacent mines; and
 12. Contour lines passing through whole number elevations of the coalbed being mined. The spacing of such lines shall not exceed 10-foot elevation levels, except that a broader spacing of contour lines may be approved by the Chief for steeply-pitching coalbeds. Contour lines may be placed on overlays or tracings attached to mine maps.
- D. Underground coal mine maps submitted to the Chief shall be on a scale of not less than 100 or more than 500 feet to the inch. Mapping of the underground mine works shall be completed by a closed loop survey method of traversing or other equally

accurate methods of traversing. All closed loop surveys shall meet a minimum accuracy standard of one part in 5,000. Elevations shall be tied to either the United States Geological Survey or the United States Coast and Geodetic Survey benchmark system. A registered engineer or licensed land surveyor shall certify that the map of the mine workings is accurate.

E. Underground coal mine maps shall be kept up-to-date by temporary notations and revised and supplemented at intervals not to exceed six months based on a survey made and certified by a registered engineer or licensed land surveyor who has exercised complete direction and control over the work to which it is affixed. Temporary notations shall include:

1. The location of each working face of each working place;
2. Pillars mined or other such second mining;
3. Permanent ventilation controls constructed or removed, such as seals, overcasts, undercasts, regulators, and permanent stoppings, and the direction of air currents indicated; and
4. Escapeways designated by means of symbols.

F. At underground coal mines, an accurate map of the mine showing clearly all avenues of ingress and egress in case of fire shall be posted in a place accessible to all miners.

G. Surface coal mine maps shall show:

1. Name and address of the mine;
2. The property or boundary lines of the active areas of the mine;
3. Contour lines passing through whole number elevations of the coalbed being mined. The spacing of such lines shall not exceed 25-foot elevation levels, except that a broader spacing of contour lines may be approved by the Chief for steeply pitching coalbeds. The Chief may approve alternate means of delineating seam elevations where multiple seams are being mined. Contour lines may be placed on overlays or tracings attached to mine maps;
4. The general elevation of the coalbed or coalbeds being mined, and the general elevation of the surface;

5. Either producing or abandoned oil and gas wells and gas transmission lines located on the mine property;
6. The location and elevation of any body of water dammed or held back in any portion of the mine: provided, however, such bodies of water may be shown on overlays or tracings attached to the mine maps;
7. All prospect drill holes that penetrate the coalbed or coalbeds being mined on the mine property;
8. All auger and surface mined areas of the coalbed or coalbeds being mined on the mine property together with the line of maximum depth of holes drilled during auger mining operations;
9. All worked out and abandoned areas;
10. The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;
11. Underground mine workings underlying and within 1,000 feet of the active areas of the mine;
12. The location and description of at least two permanent baseline points, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;
13. The scale of the map; and
14. Such other information required by the Chief.

H. Surface coal mine maps shall be kept up to date by temporary notations and revised and supplemented at intervals not to exceed six months based on a survey made and certified by a registered engineer or licensed land surveyor who has exercised complete direction and control over the work to which it is affixed. Temporary notations shall include:

1. The location of each working pit or pits;
2. Auger or highwall miner workings; and
3. Other information that may affect the safety of miners including, but not limited to, updates of gas well or gas line locations.

I. Surface surveys shall originate from at least two permanent survey monuments on the mine property located with a minimum accuracy standard of one part in 10,000.

The monuments shall be clearly referenced on the mine map. Elevations shall be tied to either the United States Geological Survey or the United States Coast and Geodetic benchmark system.

J. The original map, or a true copy thereof, shall be left by the operator at the active mine, open at all reasonable times for the examinations and use of the mine inspector.

K. Such maps may be used by the Department for the evaluation of the coal resources of the Commonwealth.

L. The map shall be filed and preserved among the records of the Department and copies of such maps shall be made available at a reasonable cost.

M. Any person who has conducted mining operations or prepared mine maps and who has a map or surveying data of any worked out or abandoned underground coal mine shall on request make such map or data available to the Department to copy or reproduce such material.

Code 1950, § 45-10; 1954, c. 191; 1966, c. 594, §§ 45.1-27, 45.1-91; 1978, c. 118; 1980, c. 5; 1984, c. 590; 1986, c. 222; 1994, c. [28](#); 1995, c. [265](#); 1996, c. [774](#); 1997, c. [390](#); 1999, c. [256](#); 2005, c. [3](#); 2007, cc. [894](#), [914](#); 2011, cc. [826](#), [862](#); 2012, cc. [109](#), [241](#).

§45.1-161.65. When the Chief may cause maps to be made; payment of expense.

If the operator, or his agent, of any mine shall neglect or fail to furnish to the Chief a copy of any map or extension thereof, as provided in § [45.1-161.64](#), the Chief is authorized to cause a correct survey and map of said mine, or extension thereof, to be made at the expense of the operator of such mine, the cost of which shall be recovered from the operator as other debts are recoverable by a civil action at law. If at any time the Chief has reason to believe that such map, or extensions thereof, furnished pursuant to § [45.1-161.64](#) is substantially incorrect, or will not serve the purpose for which it is intended, he may have a survey and map or extension thereof made, or corrected. The expense of making such survey and map or extension thereof shall be paid by the operator. The expense shall be recovered from the operator as other debts are recoverable by a civil action at law. However, if the map filed by the operator is found to be substantially correct, the expense shall be paid by the Commonwealth.

Code 1950, § 45-11; 1954, c. 191; 1966, c. 594, § 45.1-28; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.66. Making false statements; penalty.

A. It shall be unlawful for any person charged with the making of maps or other data to be furnished as provided in this Act to fail to correctly show, within the limits of error, the data required.

B. Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this Act shall, upon conviction, be guilty of a Class 1 misdemeanor.

Code 1950, § 45-17; 1954, c. 191; 1966, c. 594, § 45.1-105; 1975, c. 520; 1978, c. 118; 1980, c. 388; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.67. Mine rescue and first aid stations.

The Director is hereby authorized to purchase, equip and operate for the use of the Department, such mine rescue and first aid stations as he may determine necessary for the adequate provision of mine rescue and recovery services at all mines in the Commonwealth.

1975, c. 432, § 45.1-33.1; 1984, c. 590; 1994, c. [28](#).

§45.1-161.68. Mine rescue crews.

The Director is hereby authorized to have trained and employed at the mine rescue and first aid stations operated by the Department within the Commonwealth mine rescue crews as he may determine necessary. Each member of a mine rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work. Members shall receive compensation for services at a rate set by the Director, to be determined annually based on prevailing wage rates within the industry. For the purposes of workers' compensation coverage during training periods, such crew members shall be deemed to be within the scope of their regular employment. The Director shall certify to the Comptroller of the Commonwealth that such crew members have performed the required service. Upon such certification the Comptroller shall issue a warrant upon the state treasury for their compensation. The Director may remove any crew member at any time.

1975, c. 432, § 45.1-33.1; 1984, c. 590; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.69. Duty to train crew.

It shall be the duty and responsibility of the Department to see that all crews be properly trained by a qualified instructor of the Department or such other persons who

have a certificate of training from the Department or the Mine Safety and Health Administration.

1975, c. 432, § 45.1-33.2; 1984, c. 590; 1994, c. [28](#).

§45.1-161.70. Qualification for crew membership; direction of crews.

A. To qualify for membership in mine rescue crews an applicant shall be an experienced miner and shall pass a physical examination by a licensed physician, physician assistant, or licensed nurse practitioner at least annually. A record that such examination was taken shall be kept on file by the operator who employs the crew members and a copy shall be furnished to the Director.

B. All rescue or recovery work performed by these crews shall be under the jurisdiction of the Department. The Department shall consult with company officials, representatives of the Mine Safety and Health Administration and representatives of the miners, and all should be in agreement as far as possible on the proper procedure for rescue and recovery; however, the Chief in his discretion may take full responsibility in directing such work. Procedures for use of apparatus or equipment shall be guided by the mine rescue apparatus and auxiliary equipment manuals.

1975, c. 432, § 45.1-33.3; 1984, c. 590; 1994, c. [28](#); 1999, c. [256](#); 2004, c. [855](#); 2006, c. [396](#).

§45.1-161.71. Crew members to be considered employees of the mine where emergency exists; compensation; workers' compensation.

When engaged in rescue or recovery work during an emergency at a mine, all crew members assigned to the work shall be considered, during the period of their work, employees of the mine where the emergency exists and shall be compensated by the operator at the rate established in the area for such work. In no event shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, all crew members shall be deemed to be within the employment of the operator of the mine for the purpose of workers' compensation coverage.

1975, c. 432, § 45.1-33.4; 1994, c. [28](#).

§45.1-161.72. Requirements of recovery work.

A. During recovery work and prior to entering any mine, all mine rescue crews conducting recovery work shall be properly informed of existing conditions by the operator or his agent in charge.

B. Each mine rescue crew performing rescue or recovery work with breathing apparatus shall be provided with a backup crew of equal strength, stationed at each fresh air base.

C. For every two crews performing work underground, one six-member crew shall be stationed at the mine portal.

D. Two-way communication, life lines or their equivalent shall be provided by the fresh air base to all crews and no crew member shall be permitted to advance beyond such communication system.

E. A mine rescue crew shall immediately return to the fresh air base should any crew member's breathing apparatus malfunction or the atmospheric pressure of any apparatus deplete to sixty atmospheres.

F. The Director may also assign rescue and recovery work to inspectors, instructors or other qualified employees of the Department as the Director may determine desirable.

1975, c. 432, § 45.1-33.5; 1984, c. 590; 1994, c. [28](#).

§45.1-161.73. State-designated mine rescue teams.

The Director may, upon the request of an operator or agent who employs a mine rescue team, designate two or more mine rescue teams as "state-designated mine rescue teams." Any team which is certified as a mine rescue team by the Mine Safety and Health Administration under 30 CFR Part 49 shall be eligible to be a state-designated team. Following the designation of any such teams, the Director shall, upon the payment to the Department of an annual fee, set by the Director based on current costs for maintaining mine rescue stations and personnel, assign two or more state-designated teams to the operator. An operator who has paid the rescue fee shall be entitled to the rescue services of a state-designated rescue team at no additional charge.

1985, c. 496, § 45.1-33.5:1; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.74. Mine Rescue Fund.

The Mine Rescue Fund is created as a special fund in the office of the State Treasurer. All moneys collected from operators pursuant to agreements entered into by the Director shall be paid into the Mine Rescue Fund. Moneys in the Mine Rescue Fund shall be used only for mine rescue services under such agreements. No moneys in the Mine Rescue Fund shall revert to the general fund.

1985, c. 496, § 45.1-33.5:2; 1994, c. [28](#); 2011, cc. [826](#), [862](#).

§45.1-161.75. Inspections; Mine Rescue Coordinator.

A. The Director shall (i) inspect, or cause to be inspected, the rescue station of each state-designated mine rescue team four times a year, (ii) ensure that all rescue stations are adequately equipped, and (iii) ensure that all team members are adequately trained.

B. The Director shall designate an employee of the Department as the Mine Rescue Coordinator, who shall perform the duties assigned to him by the Director.

1985, c. 496, § 45.1-33.5:3; 1994, c. [28](#).

§45.1-161.76. Workers' compensation; liability.

A. For the purpose of workers' compensation coverage, during any mine disaster to which a state-designated mine rescue team responds under the provisions of this article or during any training exercise for a state-designated mine rescue team, members of the state-designated team shall be deemed to be within the employment of the operator of the mine at which the disaster occurred or the training exercise is conducted. Additionally, for purposes of workers' compensation coverage, travel by members of a state-designated mine rescue team to and from the mine disaster or training exercise shall be deemed to be within the employment of the operator of the mine at which the disaster occurred or the training exercise is to be or was conducted.

B. Any member of a state-designated team engaging in rescue work at a mine shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue work unless the act or omission was the result of gross negligence or willful misconduct.

C. Any operator providing personnel to a state-designated mine rescue team to engage in rescue work at a mine not owned or operated by the operator shall not be liable for any civil damages for acts or omissions resulting from the rendering of such rescue work.

1985, c. 496, § 45.1-33.5:4; 1994, c. [28](#); 2007, cc. [894](#), [914](#).

§45.1-161.77. Reports of explosions and mine fires; procedure.

A. If an explosion or mine fire occurs in a mine, the operator shall notify the Department by the quickest available means. All facilities of the mine shall be made available for rescue and recovery operations and firefighting.

B. No work other than rescue and recovery work and firefighting may be attempted or started until and unless it is authorized by the Department.

C. If an explosion occurs in an underground mine, the fan shall not be reversed except by authority of the officials in charge of rescue and recovery work, and then only after a study of the effect of reversing the fan on any persons who may have survived the explosion and are still underground.

D. The Department shall make available all the facilities at its disposal in effecting rescue and recovery work. The Chief shall act as consultant, or take personal charge, where in his opinion the circumstances of any mine explosion, fire or other accident warrant.

E. The orders of the official in charge of rescue and recovery work shall be respected and obeyed by all persons engaged in rescue and recovery work.

F. The Chief shall maintain an up-to-date rescue and recovery plan for prompt and adequate employment at any coal mine in the Commonwealth. All employees of the Department shall be kept fully informed and trained in their respective duties in executing rescue and recovery plans. The Department's plan shall be reviewed annually. Any changes in the plan shall be published promptly and made available to all operators of mines.

Code 1950, § 45-14; 1954, c. 191; 1966, c. 594, § 45.1-6; 1984, c. 590; 1994, c. [28](#); 1997, c. [390](#); 1999, c. [256](#); 2011, cc. [826](#), [862](#).

§45.1-161.78. Operators' reports of accidents; investigations; reports by Department.

A. Each operator will report promptly to the Department the occurrence at any mine of any accident. The scene of the accident shall not be disturbed pending an investigation, except to the extent necessary to rescue or recover a person, prevent or eliminate an imminent danger, prevent destruction of mining equipment, or prevent suspension of use of a slope, entry or facility vital to the operation of a section or a mine. In cases where reasonable doubt exists as to whether to leave the scene unchanged, the operator will secure prior approval from the Department before any changes are made.

B. The Chief will go personally or dispatch one or more mine inspectors to the scene of such a coal mine accident, investigate causes, and issue such orders as may be needed to ensure safety of other persons.

C. Representatives of the operator will render such assistance as may be needed and act in a consulting capacity in the investigation. An employee if so designated by the employees of the mine will be notified, and as many as three employees if so designated as representatives of the employees may be present at the investigation in a consulting capacity.

D. The Chief shall require substance abuse testing as part of an inspection or complaint investigation if there is reasonable cause to suspect a miner's impairment, due to the presence of intoxicants or any controlled substance not used in accordance with the prescription of a licensed prescriber, or has been a contributing factor to any accident in which a serious personal injury or death occurs at a mine. The Chief shall require substance abuse testing of any miner killed or seriously injured and of any other person who may have contributed to the accident. Any substance abuse testing required by the Chief will be paid for by the Department. Refusal by any miner to submit to substance abuse testing, or the failure to pass such a test, shall result in the immediate temporary suspension of all certificates, pending hearing before the Board of Coal Mining Examiners.

E. The Department will render a complete report of circumstances and causes of each accident investigated, and make recommendations for the prevention of similar accidents. The Department will furnish one copy of the report to the operator, and one copy to the employee representative when he has been present at the investigation. The Chief shall maintain a complete file of all accident reports for coal mines, and shall give such further publicity as may be ordered by the Director in an effort to prevent mine accidents.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. [28](#); 1997, c. [390](#); 1999, c. [256](#); 2007, cc. [894](#), [914](#).

§45.1-161.79. Reports of other accidents and injuries.

A. Each miner employed at a mine shall promptly notify his supervisor of any injury received during the course of his employment.

B. Each operator shall keep on file a report of each accident including any accident which does not result in a lost-time injury. Copies of such report shall be given to the person injured or to his designated representative to review the accident report and

verify its accuracy prior to filing such report for the review of state or federal mine inspectors.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. [28](#).

§45.1-161.80. Duties of mine inspectors.

Each mine inspector shall:

1. Report immediately, and by the quickest available means, any mine fire, mine explosion, and any accident involving serious personal injury or death to his supervisor;
2. Proceed immediately to the scene of any accident at any mine under his jurisdiction that results in loss of life or serious personal injury, and to the scene of any mine fire or explosion regardless of whether there is loss of life or personal injury. He shall make such investigation and suggestions and render such assistance as he deems necessary for the future safety of the employees, and make a complete report to his supervisor as soon as practicable; and
3. Provide assistance to mine rescue and recovery operations whenever a mine fire, mine explosion, or other serious accident occurs, and shall monitor the reopening of all mines or sections thereof that have been sealed or abandoned on account of fire or any other cause in accordance with a plan approved by the Chief.

Code 1950, §§ 45-4.1, 45-7, 45-9, 45-12, 45-68.4, 45-69, 45-73, 45-74, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, §§ 45.1-5, 45.1-21; 1976, c. 598; 1978, cc. 120, 222, 489; 1982, c. 255; 1984, cc. 178, 236, 590; 1985, c. 448; 1987, c. 470; 1988, c. 577; 1990, c. 963; 1993, cc. 171, 442; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.81. Frequency of mine inspections.

The Chief shall conduct a complete inspection of every underground coal mine not less frequently than every 180 days, and of every surface coal mine not less frequently than once per year. Additional inspections of coal mines shall be made when deemed appropriate by the Chief based on an evaluation of risks at each mine, or if requested by miners employed at a mine or the operator of a mine.

Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. [28](#); 1997, c. [390](#).

§45.1-161.82. Evaluation of risks at mines.

A. For the purpose of allocating the resources of the Department to be used for conducting additional inspections, the Department shall develop a procedural policy of scheduling such inspections based on an assessment, to be made not less frequently than annually, of the comparative risks at each underground and surface coal mine. The Department's procedural policy shall be prepared with the assistance of working groups consisting of persons knowledgeable in mine safety issues. The issuance of the procedural policy shall be exempt from Article 2 (§ [2.2-4006](#) et seq.) of the Administrative Process Act. Variables to be included in the risk assessment measures shall include, but not be limited to: (i) fatality and serious accident rates at the mine; (ii) the rates of issuance of closure orders and notices of violations of the mine safety laws of the Commonwealth at the mine; and (iii) the frequency rates for nonserious accidents or nonfatal days lost.

B. The Chief shall schedule additional inspections at underground and surface coal mines based on the rating assigned to a mine reflecting the assessment of its risks compared to other such mines.

1994, c. [28](#); 1997, c. [390](#).

§45.1-161.83. Review of inspection reports and records.

Prior to commencing an inspection of a coal mine, a mine inspector shall review the most recent available report of inspection by the Mine Safety and Health Administration. During the course of a complete inspection of a coal mine, the mine inspector shall comprehensively review the records of pre-shift examinations, on-shift exams, daily inspections, and weekly examinations which are required to be maintained pursuant to this Act, for the 30-day period preceding the inspection. The mine inspector may, but shall not be required to, review the records for such additional period as he may deem prudent. The inspector shall review other records relating to safety and health conditions in the mine which are required to be maintained pursuant to this Act during the course of the inspection.

1994, c. [28](#); 1997, c. [390](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.84. Advance notice of inspections; confidentiality of trade secrets.

A. No person shall give advance notice of any mine inspection conducted under the provisions of this title without authorization from the Director.

B. All information reported to or otherwise obtained by the Chief or the Director or his authorized representative in connection with any inspection or proceeding under this title which contains or might reveal a trade secret referred to in § 1905 of Title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to the Chief or the Director or his authorized representative concerned with carrying out any provisions of this title or any proceeding hereunder. In any such proceeding, the court, the Chief or the Director shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

1973, c. 425, § 40.1-51.3:1; 1976, c. 607, § 40.1-51.4:1; 1994, c. [28](#).

§45.1-161.85. Scheduling of mine inspections.

A. The Chief and the Director shall schedule the inspections of mines under this article, to the extent deemed reasonable and prudent, in order to reduce their chronological proximity to inspections conducted by the Mine Safety and Health Administration.

B. The Chief, Director and mine inspectors, to the extent deemed reasonable and prudent, shall schedule mine inspections to commence at a variety of hours of the day and days of the week, including evening and night shifts, weekends, and holidays.

1994, c. [28](#); 2011, cc. [826](#), [862](#).

§45.1-161.86. Denial of entry.

No person shall deny the Chief or the Director, as applicable, or any mine inspector entry upon or through a mine for the purpose of conducting an inspection or any office at the site where maps or records relating to the mine are located, pursuant to this Act.

Code 1950, § 45-17; 1954, c. 191; 1966, c. 594, § 45.1-105; 1975, c. 520; 1978, c. 118; 1980, c. 388; 1994, c. [28](#).

§45.1-161.87. Duties of operator.

A. The operator, or his agent, of every mine shall furnish the Chief and mine inspectors proper facilities for entering such mine and making examinations or obtaining

information and shall furnish any data or information not of a confidential nature requested by such inspector.

B. The operator of an underground mine, or his agent, shall provide a mine inspector adequate means for transportation to the active working areas of the mine within a reasonable time following the mine inspector's arrival at the mine.

C. The operator or his agent shall, when ordered to do so by a mine inspector during the course of his inspection, promptly clear the mine or section thereof of all persons.

D. The mine operator shall implement a substance abuse screening policy and program for all miners that shall, at a minimum, include:

1. A pre-employment, 10-panel urine test for the following and any other substances as set out in regulation adopted by the Board of Coal Mining Examiners:

- a. Amphetamines,
- b. Cannabinoids/THC,
- c. Cocaine,
- d. Opiates,
- e. Phencyclidine (PCP),
- f. Benzodiazepines,
- g. Propoxyphene,
- h. Methadone,
- i. Barbiturates, and
- j. Synthetic narcotics.

Samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation's rule, 49 CFR Part 40. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing. The mine operator may implement a more stringent substance abuse screening policy and program; and

2. Review of the substance abuse screening program with all miners at the time of employment and annually thereafter.

E. The operator or his agent shall notify the Chief, on a form prescribed by the Chief, within seven days of any failure of a pre-employment substance abuse screening test and provide a record of the test showing such failure or violation. Notice shall result in the immediate temporary suspension of all certificates held by the applicant, pending hearing before the Board of Coal Mining Examiners.

F. The operator or his agent shall notify the Chief, on a form prescribed by the Chief, within seven days of (i) discharging a miner due to violation of the company's substance or alcohol abuse policies, (ii) a miner testing positive for intoxication while on duty status, or (iii) a miner testing positive as using any controlled substance without the prescription of a licensed prescriber. An operator having a substance abuse program shall not be required to notify the Chief under subdivision (iii) unless the miner having tested positive fails to complete the operator's substance abuse program. The notification shall be accompanied by a record of the test showing such positive results or violation. Notice shall result in the immediate temporary suspension of all certificates held by the applicant, pending hearing before the Board of Coal Mining Examiners.

G. The provisions of this chapter shall not be construed to preclude an employer from developing or maintaining a drug and alcohol abuse policy, testing program, or substance abuse program that exceeds the minimum requirements set forth in this section.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. [28](#); 1999, c. [256](#); 2007, cc. [894](#), [914](#); 2010, cc. [809](#), [857](#).

§45.1-161.88. Duties of inspectors.

A. During a complete inspection of a mine, other than an inactive mine, the mine inspector shall inspect, where applicable, the surface plant; all active workings; all active travel ways; entrances to inaccessible worked-out areas; accessible worked-out areas; at least one entry of each intake and return airway in its entirety; escapeways and other places where miners work or travel or where hazardous conditions may exist; electric installations and equipment; haulage facilities; first-aid equipment; ventilation facilities; communication installations; roof and rib conditions; roof-

support practices; blasting practices; haulage practices and equipment; and any other condition, practice or equipment pertaining to the health and safety of the miners. The mine inspector shall make tests for the quantity of air flows, and for gas and oxygen deficiency, in each place which he is required to inspect in an underground mine. In mines operating more than one shift in a twenty-four-hour period, the mine inspector shall devote sufficient time on the second and third shifts to determine conditions and practices relating to the health and safety of the miners. For an inactive mine, the mine inspector shall inspect all areas of the mine where persons may work or travel during the period the mine is an inactive mine.

B. The inspector shall make a personal examination of the interior of the mine, and of the outside of the mine where any danger may exist to the miners.

Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.89. Certificates of inspection.

A. Upon completing a mine inspection, a mine inspector shall complete a certificate regarding such inspections. The certificate of inspection shall show the date of inspection, the condition in which the mine is found, a statement regarding any violations of this Act discovered during the inspection, the progress made in the improvement of the mine as such progress relates to health and safety, the number of accidents and injuries occurring in and about the mine since the previous inspection, and all other facts and information of public interest concerning the condition of the mine as may be useful and proper.

B. The mine inspector shall deliver one copy of the certificate of inspection to the operator, agent or mine foreman, and one copy to the employees' safety committee where applicable; and shall post one copy at a prominent place on the premises where it can be read conveniently by the miners.

C. With respect to coal mines, the Department shall provide access to certificates of inspection to the Mine Safety and Health Administration.

Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. [28](#); 1996, c. [774](#); 1997, c. [390](#).

§45.1-161.90. Notices of violations.

A. If the Director, the Chief, or a mine inspector has reasonable cause to believe that a violation of the Act has occurred, he shall with reasonable promptness issue a notice of violation to the person who is responsible for the violation. Each notice of violation shall be in writing and shall describe with particularity the nature of the violation or violations, including a reference to the provision of this Act or the appropriate regulations violated, and shall include an order of abatement and fix a reasonable time for abatement of the violation.

B. A copy of the notice of violation shall be delivered to the operator, his agent, or mine foreman.

C. Upon a finding by the mine inspector of completion of the action required to abate the violation, the Director, the Chief, or the mine inspector shall issue a notice of correction, a copy of which shall be delivered as provided in subsection B.

D. The notice of violation shall be deemed to be the final order of the Department and not subject to review by any court or agency unless, within twenty days following its issuance, the person to whom the notice of violation has been issued appeals its issuance by notifying the Department in writing that he intends to contest its issuance. The Department shall conduct informal conference or consultation proceedings, presided over by the Chief, pursuant to § [2.2-4019](#), unless the person and the Department agree to waive such a conference or proceeding to go directly to a formal hearing. If such a conference or proceeding has been waived, or if it has failed to dispose of the case by consent, the Department shall conduct a formal hearing pursuant to § [2.2-4020](#). The formal hearing shall be presided over by a hearing officer pursuant to § [2.2-4024](#), who shall recommend findings and an initial decision, which shall be subject to review and approval by the Director. Any party aggrieved by and claiming unlawfulness of the decision shall be entitled to judicial review pursuant to Article 5 (§ [2.2-4025](#) et seq.) of the Administrative Process Act.

E. If it shall be finally determined that a notice of violation was not issued in accordance with the provisions of this section, the notice of violation shall be vacated, and the improperly issued notice of violation shall not be used to the detriment of the person or the operator to whom it was issued.

Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. [28](#); 1997, c. [390](#).

§45.1-161.91. Closure orders.

A. The Director, the Chief, or a mine inspector shall issue a closure order requiring any mine or section thereof cleared of all persons, or equipment removed from use, and refusing further entry into the mine of all persons except those necessary to correct or eliminate a hazardous condition, when (i) a violation of this Act has occurred, which creates an imminent danger to the life or health of persons in the mine; (ii) a mine fire, mine explosion, or other serious accident has occurred at the mine, as may be necessary to preserve the scene of such accident during the investigation of the accident; (iii) a mine is operating without a license, as provided by § [45.1-161.57](#); or (iv) an operator to whom a notice of violation was issued has failed to abate the violation cited therein within the time period provided in such notice for its abatement; however, a closure order shall not be issued for failure to abate a violation during the pendency of an administrative appeal of the issuance of the notice of violation as provided in subsection D of § [45.1-161.90](#). In addition, a technical specialist may issue a closure order upon discovering a violation creating an imminent danger.

B. One copy of the closure order shall be delivered to the operator of the mine or his agent or the mine foreman.

C. Upon a finding by the mine inspector of abatement of the violation creating the hazardous condition pursuant to which a closure order has been issued as provided in clause (i) of subsection A, or cessation of the need to preserve an accident scene as provided in clause (ii) of subsection A, or the issuance of a license for the mine if the closure order was issued as provided in clause (iii) of subsection A, or abatement of the violation for which the notice of violation was issued as provided in clause (iv) of subsection A, the Director, the Chief, or mine inspector shall issue a notice of correction, copies of which shall be delivered as provided in subsection B.

D. The issuance of a closure order shall constitute a final order of the Department, and the owner or operator of the mine shall not be entitled to administrative review of such decision. The owner or operator of any mine or part thereof for which a closure order has been issued may, within ten days following the issuance of the order, bring a civil action in the circuit court of the city or county in which the mine, or the greater portion thereof, is located for review of the decision. The commencement of such a proceeding shall not, unless specifically ordered by the court, operate as a stay of the closure order. The court shall promptly hear and determine the matters raised by the owner or operator. In any such action the court shall receive the records of the Department with respect to the issuance of the order, and shall receive additional

evidence at the request of any party. In any proceeding under this section, the Attorney General or the attorney for the Commonwealth for the jurisdiction where the mine is located, upon the request of the Director, shall represent the Department. The court shall vacate the closure order if the preponderance of the evidence establishes that the order was not issued in accordance with the provisions of this section.

E. If it shall be finally determined that a closure order was not issued in accordance with the provisions of this section, the closure order shall be vacated, and the improperly issued closure order shall not be used to the detriment of the owner or operator of the mine for which it was issued.

Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.92. Tolling of time for abating violations.

The period of time specified in a notice of violation for the abatement of the violation shall not begin to run until the final decision of the Department is issued, if an administrative appeal of its issuance is pursued, or until the final order of the circuit court is rendered, if an appeal of its issuance is taken to circuit court, provided that the appeal was undertaken in good faith and not solely for delay or avoidance of penalties.

1994, c. [28](#).

§45.1-161.93. Injunctive relief.

A. Any person violating or failing, neglecting or refusing to obey any closure order may be compelled in a proceeding instituted by the Director in any appropriate circuit court to obey same and to comply therewith by injunction or other appropriate relief.

B. Any person failing to abate any violation of this Act which has been cited in a notice of violation within the time period provided in such notice for its abatement may be compelled in a proceeding instituted by the Director in any appropriate circuit court to abate such violation as provided in such notice, and to cease the operation of the mine at which such violation exists until the violation has been abated, by injunction or other appropriate remedy.

C. The Director may file a bill of complaint with any appropriate circuit court asking the court to temporarily or permanently enjoin a person from operating a mine or

mines in the Commonwealth, to be granted upon finding by a preponderance of the evidence that (i) a history of noncompliance at the mine or mines operated by the person demonstrates that he is not able or willing to operate a mine in compliance with the provisions of this Act or (ii) a history of the issuance of closure orders for the mine or mines operated by the person demonstrates that he is not able or willing to operate a mine in compliance with the provisions of this Act.

Code 1950, §§ 45-8, 45-84; 1954, c. 191; 1966, c. 594, § 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 520; 1978, c. 120; 1982, c. 118; 1990, c. 963; 1994, c. [28](#).

§45.1-161.94. Violations; penalties.

Any person convicted of willfully violating any provisions of this Act or any regulation promulgated pursuant to this Act, unless otherwise specified in this Act, shall be guilty of a Class 1 misdemeanor.

Code 1950, § 45-17; 1954, c. 191; 1966, c. 594, § 45.1-105; 1975, c. 520; 1978, c. 118; 1980, c. 388; 1994, c. [28](#).

§45.1-161.95. Prosecution of violations.

A. It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized representative has reported any violation of this Act or on his own initiative to cause proceedings to be prosecuted in such cases.

B. If the attorney for the Commonwealth declines to cause proceedings to be prosecuted in such cases, the Director or the Chief may request the Attorney General to institute proceedings for any violation of the Act on behalf of the Commonwealth; however, such action shall not preclude the Director or the Chief from pursuing other applicable statutory procedures. Upon receiving such a request from the Director or the Chief, the Attorney General shall have the authority to institute actions and proceedings for violations described in the request.

Code 1950, § 45-17; 1954, c. 191; 1966, c. 594, § 45.1-105; 1975, c. 520; 1978, c. 118; 1980, c. 388; 1994, c. [28](#).

§45.1-161.96. Fees and costs.

No fees or costs shall be charged the Commonwealth by a court or any officer for or in connection with the filing of any pleading or other papers in any action authorized by this article.

1994, c. [28](#).

§45.1-161.97. Reports of violations.

A. Any person aware of a violation of this Act may report the violation to a mine inspector or to any other employee of the Department, in person, in writing, or by telephone call, at the mine, at an office of the Department or at the mine inspector's residence.

B. The operator of every mine, or his agent, shall deliver a copy of this Act to every miner upon the commencement of his employment at the mine, unless the miner is already in possession of a copy.

C. The operator of every mine, or his agent, shall display on a sign placed at the mine office, at the bath house, and on a bulletin board at the mine site, a notice containing the office and home telephone numbers of mine inspectors and other Department personnel, and office addresses, which may be used to report any violation of this Act.

D. The Department shall keep a record, on a form prepared for such purpose, of every alleged violation of this Act which is reported and the results of any investigation. The Department shall give a copy of the complaint form, with the identity of the person making the report, and any individuals identified in the alleged violation being omitted or deleted, to the operator of the mine or his agent. The Department shall not disclose the identity of any person who reports an alleged violation to the owner or operator of the mine or his agent, or to any other person or entity. Information regarding the identity of the person reporting the violation shall be excluded from access under the provisions of the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

1994, c. [28](#); 2005, c. [3](#).

§45.1-161.98. Virginia Coal Mine Safety Board continued; membership; appointments; expenses.

A. The Virginia Mine Safety Board is continued as the Virginia Coal Mine Safety Board. The Board shall be composed of nine members appointed by the Governor, subject to the confirmation of the General Assembly, as follows: three shall be appointed from a list of individuals nominated by the Virginia Coal and Energy Alliance, three shall be appointed from a list of individuals nominated by the United Mine Workers of America, and three shall be appointed from the Commonwealth at large. All members of the Board shall serve at the pleasure of the Governor and shall be residents of the Commonwealth.

B. The members of the Board shall elect its chairman. Members shall serve for terms of four years and their successors shall be appointed for terms of the same length, but vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Any member may be reappointed for successive terms. Members shall receive no compensation for their services but shall receive reimbursement for actual expenses.

1990, c. 963, § 45.1-5.2; 1994, c. [28](#); 2014, c. [438](#).

§45.1-161.99. Meetings of the Virginia Coal Mine Safety Board; notices; quorum.

The Virginia Coal Mine Safety Board shall hold meetings at such times and places as shall be designated by the chairman. The chairman may call a meeting of the Board at any time and shall call a meeting of the Board within twenty days of receipt by the chairman of a written request by another member of the Board. Notification of each meeting of the Board shall be given in writing to each member by the chairman at least five days in advance of the meeting. The chairman and any four or more members of the Board shall constitute a quorum for the transaction of any business of the Board.

1990, c. 963, § 45.1-5.3; 1994, c. [28](#).

§45.1-161.100. Powers and duties of the Virginia Coal Mine Safety Board.

The Virginia Coal Mine Safety Board shall have the power to advise and make recommendations to the Chief on matters relating to the health and safety of persons working in the Virginia coal industry. The Board shall serve as the regulatory work committee for the Department on all coal mine health and safety regulations not under the jurisdiction of the Board of Coal Mining Examiners.

1990, c. 963, § 45.1-5.3; 1994, c. [28](#).

§45.1-161.101. First aid training of coal miners.

A. The Chief shall establish specifications for first aid and refresher training programs for miners at coal mines. Such specifications shall be no less than, but may exceed, the minimum requirements of such training programs which underground and surface operators are required to provide for their employees by the federal mine safety law. The Chief is authorized to utilize the Department's educational and training facilities in the conduct of such training programs and may require the cooperation of operators in making such programs available to their employees.

B. Each operator of a coal mine, upon request, shall make available to every miner employed in such mine the course of first aid training, including refresher training, as is required by subsection A.

1977, c. 679, § 45.1-101.2; 1978, c. 94; 1984, c. 590; 1994, c. [28](#).

§45.1-161.102. Training programs.

A. The Department may administer training programs for the purpose of (i) assisting with the provision of selected requirements of the federal mine safety law and (ii) preparing miners for examinations administered by the Board of Coal Mining Examiners. The Director shall establish the curriculum and teaching materials for the training programs, which shall be consistent with the requirements of the federal mine safety law where feasible.

B. The Department is authorized to charge persons attending the training programs reasonable fees to cover the costs of administering such programs. The Director may exempt certain persons from any required fees for refresher training programs, based on the person's employment status or such other criteria as the Director deems appropriate. The Director shall not be required to allocate more of the Department's resources to training programs than are appropriated or otherwise made available for such purpose, or are collected from fees charged to attendees.

C. No miner, operator, or other person shall be required to participate in any training program established under this article. Nothing contained herein shall prevent an operator or any other person from administering a state-approved training program.

1994, c. [28](#); 1997, c. [390](#).

§45.1-161.103. Additional coal mining training programs.

The Chief is authorized to implement a voluntary on-site safety awareness training program for coal mines. Such training may be conducted by a mine inspector in conjunction with his inspection of a coal mine or other Department personnel. Safety awareness training for coal miners may include such methods as job safety analysis and topical talks on safety issues to reduce accidents.

1994, c. [28](#).

§45.1-161.104. Repealed.

Repealed by Acts 1997, c. [390](#).

Collision Damage Waiver Act

§59.1-207.28. Title of chapter.

This chapter shall be known and may be cited as the "Collision Damage Waiver Act."
1988, c. 349.

§59.1-207.29. Scope.

This chapter shall apply to all persons in the business of leasing rental motor vehicles from locations in the Commonwealth under an agreement which imposes upon the lessee an obligation to pay for any damages caused to the leased vehicle. The provisions of this chapter apply solely to the collision damage waiver portion of the rental agreement.

1988, c. 349.

§59.1-207.30. Definitions.

As used in this chapter, the following terms shall have the following meanings:

"Collision damage waiver" means any contract or contractual provision, whether separate from or a part of a motor vehicle rental agreement, whereby the lessor agrees, for a charge, to waive any and all claims against the lessee for any damages to the rental motor vehicle during the term of the rental agreement.

"Lessor" means any person or organization in the business of providing rental motor vehicles to the public.

"Lessee" means any person or organization obtaining the use of a rental motor vehicle from a lessor under the terms of a rental agreement.

"Rental agreement" means any written agreement setting forth the terms and conditions governing the use of the rental motor vehicle by the lessee.

"Rental motor vehicle" means a private passenger type vehicle or commercial type vehicle which, upon execution of a rental agreement, is made available to a lessee for its use.

1988, c. 349.

§59.1-207.31. Required notice.

A. No lessor shall sell or offer to sell to a lessee a collision damage waiver as a part of a rental agreement unless the lessor first provides the lessee the following written notice:

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A COLLISION DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE VEHICLE. BEFORE DECIDING WHETHER TO PURCHASE THE COLLISION DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN VEHICLE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER IS NOT MANDATORY AND MAY BE WAIVED.

B. Such notice shall be made on the face of the rental agreement either by stamp, label, or as part of the written contract, shall be set apart in boldface type and in no smaller print than ten-point type, and shall include a space for the lessee to acknowledge his receipt of the notice.

1988, c. 349.

§59.1-207.32. Prohibited exclusion.

No collision damage waiver subject to this chapter shall contain an exclusion from the waiver for damages caused by the ordinary negligence of the lessee. Any such exclusion in violation of this section shall be void. This section shall not be deemed to prohibit an exclusion from the waiver for damages caused intentionally by the lessee or as a result of his willful or wanton misconduct or gross negligence, driving while intoxicated or under the influence of any drug or alcohol, or damages caused while engaging in any speed contest.

1988, c. 349.

§59.1-207.33. Enforcement; penalties.

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § [59.1-200](#) and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ [59.1-196](#) et seq.) of this title.

1988, c. 349.

Commercial Real Estate Broker's Lien Act

§55-526. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Commercial real estate" means any real estate other than (i) real estate containing one to four residential units or (ii) real estate classified for assessment purposes under the provisions of Article 4 (§ [58.1-3230](#) et seq.) of Chapter 32 of Title 58.1. Commercial real estate shall not include single family residential units, including condominiums, townhouses, apartments or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

"Principal broker" shall have the same meaning as provided in the regulations promulgated by the Real Estate Board.

1992, c. 877; 2009, c. [262](#).

§55-527. Broker's lien.

A. Any principal broker who either himself or through the principal broker's or associated broker's employees or independent contractors has provided licensed services that result in the procuring of a tenant of commercial real estate upon the terms provided for in a written agreement signed by the owner thereof, or which are otherwise acceptable to the owner as evidenced by a written agreement signed by the owner, shall have a lien, in the amount of the compensation agreed upon by and between the principal broker and the owner, upon rent paid by the tenant of the commercial real estate, or by the successors or assigns of such tenant. The amount of the lien shall not exceed the lesser of (i) the amount of the rent to be paid during the term of the lease or (ii) the amount of the rent to be paid during the first twenty years thereof.

B. The lien provided by this chapter shall not attach or be perfected until a memorandum of such lien signed under oath by the broker and meeting the requirements of this subsection has been recorded in the clerk's office of the circuit court of the county or city where the commercial real estate is located, from which date the lien shall have priority over all liens recorded subsequent thereto. The memorandum of lien shall state the name of the claimant, the name of the owner of the commercial real estate, a description of the commercial real estate, the name and address of the person against whom the broker's claim for compensation is made, the name and address of the tenant paying the rent against which the lien is being claimed, the amount for which the lien is being claimed, and the real estate license number of the

principal broker claiming the lien. The lien provided by this chapter and the right to rents secured by such lien shall be subordinate to all liens, deeds of trust, mortgages or assignments of the leases, rents or profits recorded prior to the time the memorandum of lien is recorded and shall not affect a purchaser for valuable consideration without constructive or actual notice of the recorded lien.

However, a purchaser acquiring fee simple title to commercial real estate and having actual knowledge of terms of a lease agreement which provide for the payment of brokerage fees due and payable to a real estate broker shall be liable for payment thereof, unless otherwise agreed to in writing by the parties at or before the time of sale regardless of whether the real estate broker has perfected the lien in accordance with this chapter. The term purchaser shall not include a trustee under or a beneficiary of a deed of trust, a mortgagee under a mortgage, a secured party or any other assignee under an assignment as security, nor successors, assigns, transferees or purchasers from such persons or entities.

C. Nothing in this section shall be construed to prevent a subsequent purchaser of commercial real estate subject to a lien under this chapter from establishing an escrow fund at settlement sufficient to satisfy the lien which may otherwise affect transferability of title.

1992, c. 877; 1996, c. [557](#); 1998, c. [617](#).

Community Action Act

§2.2-5400. Short title; definitions.

A. This chapter shall be known as the Community Action Act.

B. As used in this chapter, unless the context requires a different meaning:

"Community action agency" means a local subdivision of the Commonwealth, a combination of political subdivisions, a separate public agency or a private nonprofit agency that has the authority under its applicable charter or laws to receive funds to support community action activities and other appropriate measures designed to identify and deal with the causes of poverty in the Commonwealth, and that is designated as a community action agency by federal law, federal regulations or the Governor.

"Community action program budget" means state funds, federal block grants and federal categorical grants that are received by the Commonwealth for community action activities.

"Community action statewide organization" means community action programs, organized on a statewide basis, to enhance the capability of community action agencies.

"Designated agency" means the agency designated by the Secretary of Health and Human Resources pursuant to § [2.2-5401](#).

"Local share" means cash or in-kind goods and services donated to community action agencies to carry out their responsibilities.

"Low-income person" means a person who is a member of a household with a gross annual income equal to or less than 125 percent of the poverty standard accepted by the federal agency designated to establish poverty guidelines.

"Service area" means the geographical area within the jurisdiction of a community action agency or a community action statewide organization.

1982, c. 667, §§ 2.1-587, 2.1-588; 2001, c. [844](#).

§2.2-5401. Designation by Secretary of Health and Human Resources of agency to administer act.

The Secretary of Health and Human Resources shall designate an agency to administer the Community Action Act and to work with community action agencies and community action statewide organizations to develop social and economic opportunities for low-income persons.

1982, c. 667, § 2.1-589; 2001, c. [844](#).

§2.2-5402. Powers and duties of designated agency.

The designated agency shall have the following powers and duties to:

1. Coordinate state activities designed to reduce poverty.
2. Cooperate with agencies of the Commonwealth and the federal government in reducing poverty and implementing community, social and economic programs.
3. Receive and expend funds for any purpose authorized by this chapter.
4. Enter into contracts with and to award grants to public and private nonprofit agencies and organizations.

5. Develop a state plan based on needs identified by community action agencies and community action statewide organizations.
6. Fund community action agencies and community action statewide organizations and to adopt regulations.
7. Provide assistance to local governments or private organizations for the purpose of establishing and operating a community action agency.
8. Provide technical assistance to community action agencies to improve program planning, program development, administration and the mobilization of public and private resources.
9. Require community action agencies and community action statewide organizations to generate local contributions of cash or in-kind services as the agency may establish by regulation.
10. Convene public meetings that provide citizens the opportunity to comment on public policies and programs to reduce poverty.
11. Advise the Governor and the General Assembly of the nature and extent of poverty in the Commonwealth and to make recommendations concerning changes in state and federal policies and programs.

1982, c. 667, § 2.1-590; 2001, c. [844](#).

§2.2-5403. Community action boards.

A. Each community action agency shall administer its community action program through a community action board consisting of no less than fifteen members who shall be selected as follows:

1. One-third of the members of the board shall be elected public officials or their designees, who shall be selected by the local governing body of the service area, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointed public officials may be counted in meeting the one-third requirement.
2. At least one-third of the members shall be persons chosen democratically to represent the poor of the area served.
3. The other members shall be members of business, industry, labor, religious, social service, education or other major community groups.

B. Each member of the board selected to represent a specific geographic area within a community shall reside in the area represented.

C. Except as otherwise provided in subsection D, the board shall be responsible for the following:

1. Appointing and dismissing an executive director of the community action agency.
2. Approving grants and contracts, annual program budget requests and operational policies of the community action agency.
3. Having an annual audit performed by an independent auditor.
4. Convening public meetings to provide low-income and other persons the opportunity to comment upon public policies and programs to reduce poverty.
5. Annually evaluating the policies and programs of the community action agency. The board shall submit the evaluation and recommendations to improve the administration of the community action agency to the designated agency and to the local governing body or bodies within the service area.
6. Carrying out such other duties as may be delegated by the local governing body or bodies within the service area or by the designated agency.
7. Delegating responsibilities pursuant to the provisions of § [2.2-5404](#).

D. Where a local subdivision of the Commonwealth acts as or has designated a community action agency, the local governing body shall determine the responsibilities and authority of the community action board.

1982, c. 667, § 2.1-591; 1989, c. 273; 2001, c. [844](#); 2010, c. [584](#).

§2.2-5404. Delegation of responsibilities by community action agency.

If a community action agency places responsibility for major policy determination with respect to the character, funding, extent and administration of and budgeting for programs to be carried on in a particular geographic area within the community in a subsidiary board, council or similar agency, the board, council or agency shall be broadly representative of the area.

1982, c. 667, § 2.1-592; 2001, c. [844](#).

§2.2-5405. Local participation.

Each community action agency shall consult neighborhood-based organizations composed of residents of the area it serves or members of the groups to be served to

assist the agency in planning, conducting and evaluating components of the community action agency.

1982, c. 667, § 2.1-593; 2001, c. [844](#).

§2.2-5406. Community action statewide organizations; structure; responsibilities.

A. A community action statewide organization shall be a nonprofit corporation whose charter, articles of incorporation and bylaws permit the corporation to operate in all jurisdictions of the Commonwealth.

B. A community action statewide organization shall be governed by a board. The board shall conform to requirements for the community action agency board.

C. Community action statewide organizations shall carry out all the planning, reporting, evaluation, fiscal and programmatic responsibilities required by the designated agency and other appropriate agencies of state government.

D. Community action statewide organizations shall receive and administer state, federal and private funds, render technical assistance and carry out activities that will enable community action agencies to solve local problems.

E. Community action statewide organizations shall work with community action agencies in areas served by those agencies and with community-based organizations, local governments, industry and other organizations in areas unserved by a community action agency to assist in carrying out the purposes of this chapter.

1982, c. 667, §§ 2.1-594, 2.1-595, 2.1-596; 1989, c. 273; 2001, c. [844](#).

§2.2-5407. Designation of community action agencies; rescission of designation.

A. Each community action agency that has been designated by a unit of local government and funded pursuant to the Economic Opportunity Act of 1964 (Public Law 88-452) that was in operation on July 1, 1982, and is still in operation shall be deemed a community action agency for the purposes of this chapter.

B. No new community action agency shall be designated in any area of the Commonwealth that is served by an existing community action agency.

C. The Governor may designate a community action agency to serve any locality not currently served by an existing community action agency. This determination may be through the expansion of the service area of an existing community action agency or the designation of a new community action agency.

The designated agency shall receive and review requests for the expansion of existing community action agencies or the designation of new community action agencies and shall present to the Secretary of Health and Human Resources a recommendation for community action status and funding. The review and recommendation shall be in compliance with regulations developed by the board of the designated agency.

Upon completion of a satisfactory review of the request, the Secretary shall forward a recommendation to the Governor.

D. The Secretary of Human Resources may recommend that the Governor rescind the designation of a community action agency for cause or by mutual agreement.

If the rescission is for cause, the Secretary shall:

1. Receive from the designated agency a request to rescind the designation of the community action agency, including the causes for the request;
2. Notify the chief elected official of each local governing body in the service area of the intent to rescind the designation of the community action agency;
3. Provide the community action agency the opportunity for a hearing on the record; and
4. Meet any other provisions required by federal law.

If the rescission is by mutual agreement, the Secretary shall:

1. Receive from the designated agency a resolution, approved by the governing body of the community action agency, requesting the Governor to rescind its designation as a community action agency. The resolution shall include a proposed effective date for the rescission; and
2. Meet any other provisions required by federal law.

1982, c. 667, § 2.1-597; 2001, c. [844](#); 2007, c. [522](#).

§2.2-5408. Administration of community action budget.

The designated agency shall adopt regulations detailing the formula for the distribution of community action program budget funds. The regulations shall take into consideration the distribution of low-income persons residing in the service areas of the community action agencies, the relative cost of living of the areas, as well as other factors considered appropriate.

Each community action agency and community action statewide organization annually shall develop and submit a program budget request for funds appropriated from the community action program budget. The designated agency shall publish annually guidelines detailing the nature and extent of information required in the program budget request for the succeeding fiscal year.

In order to carry out its overall responsibility for planning, coordinating, evaluating and administering a community action program, a community action agency may under its charter or applicable laws receive and administer funds pursuant to this chapter. The community action agency may receive and administer funds and contributions from private or public sources that may be used in support of a community action agency or program and funds under any federal or state assistance program pursuant to which a public or private nonprofit agency organized in accordance with this chapter could act as grantee, contractor or sponsor of projects appropriate for inclusion in a community action program. A community action agency or community action statewide organization may transfer funds so received between components and to delegate funds to other agencies subject to the powers of its governing board and its overall program responsibilities.

In accordance with the requirements of the federal Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), the designated agency in cooperation with community action agencies and community action statewide organizations, shall develop a state plan for submission annually by the Governor to the Secretary of Health and Human Services.

Community action agencies and community action statewide organizations shall provide the designated agency with quarterly financial and program reports.

Funds received in the Community Services Block Grant pursuant to the federal Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) shall be expended in support of the purposes of this chapter as follows:

1. Ninety percent of the funds received in the Community Services Block Grant shall be used for the development and implementation of programs and projects designed by community action agencies to serve poor or low-income areas of the Commonwealth in accordance with a formula approved by the Governor for the first year of the Community Services Block Grant and thereafter biennially by the General Assembly.

2. No more than five percent of the funds received in the Community Services Block Grant shall be used for administration of the duties required by this chapter of the designated agency.

3. At least five percent of the funds received in the Community Services Block Grant shall be used to support community action activities conducted by community action statewide organizations.

1982, c. 667, § 2.1-598; 2001, c. [844](#).

Comparison Price Advertising Act

§59.1-207.40. Definitions.

In addition to the definitions listed in § [59.1-198](#), as used in this chapter, the following terms shall have the following meanings:

"Former price" or "comparison price" means the direct or indirect comparison in any advertisement whether or not expressed wholly or in part in dollars, cents, fractions, or percentages, and whether or not such price is actually stated in the advertisement.

"Substantial sales" means a substantial aggregate volume of sales of identical or comparable goods or services at or above the advertised comparison price in the supplier's trade area.

1992, c. 768 .

§59.1-207.41. Advertising former price of goods or services.

No supplier shall in any manner knowingly advertise a former price of any goods or services unless:

1. Such former price is the price at or above which substantial sales were made in the recent regular course of business; or
2. Such former price was the price at which such goods or services or goods or services of substantially the same kind, quality, or quantity and with substantially the same service were openly and actively offered for sale for a reasonably substantial period of time in the recent regular course of business honestly, in good faith and not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based; or

3. Such former price is based on a markup that does not exceed the supplier's cost plus the usual and customary markup used by the supplier in the actual sale of such goods or services or goods or services of substantially the same kind, quality, or quantity and with substantially the same service, in the recent regular course of business; or
4. The date on which substantial sales were made, or the goods or services were openly and actively offered for sale for a reasonably substantial period of time at the former price is advertised in a clear and conspicuous manner.

1992, c. 768 .

§59.1-207.42. Advertising comparison price of goods or services.

No supplier shall in any manner knowingly advertise a comparison price which is based on another supplier's price unless:

1. The supplier can substantiate that the comparison price is the price offered for sale by another supplier in the regular course of business for goods or services of substantially the same kind and quality, and with substantially the same service in the defined trade area;
2. The trade area to which the advertisement refers is clearly defined and disclosed; and
3. A clear and conspicuous disclosure is made in the advertisement that the price used as a basis of comparison is another supplier's price, and not the supplier's own price.

1992, c. 768 .

§59.1-207.43. Use of certain terms in advertising former or comparison prices.

- A. No supplier shall advertise a former or comparison price in terms of "market value," "valued at" or words of similar import unless such price is the price at which the goods or services, or goods or services of substantially the same kind, quality or quantity, are offered for sale by a reasonable number of suppliers in the supplier's trade area.
- B. A supplier may advertise a former or comparison price in terms of "manufacturer's suggested price," "suggested retail price," "list price," or words of similar import provided that, with regard to such advertising, the use of the former or comparison

price complies with 15 U.S.C. § 45 (a) (1) and the regulations of the Federal Trade Commission adopted thereunder.

1992, c. 768 .

§59.1-207.44. Enforcement; penalties.

Any violation of this chapter shall constitute a prohibited practice under the provisions of § [59.1-200](#) and shall be subject to the enforcement provisions of Chapter 17 (§ [59.1-196](#) et seq.). It shall be the responsibility of any supplier who uses a comparison price to be able to substantiate the basis for any price comparisons made by the supplier. Upon the request of the Attorney General, any attorney for the Commonwealth, or the attorney of any county, city, or town, a supplier shall provide documentation to substantiate the basis for any comparison price utilized by the supplier in any advertisement governed by this chapter. No provision of this chapter shall be construed to apply to any supplier whose advertising practices are governed by § [46.2-1581](#).

1992, c. 768; 2012, cc. [803](#), [835](#).

Comprehensive Services Act for At-Risk Youth and Families

§2.2-5200. Intent and purpose; definitions.

A. It is the intention of this law to create a collaborative system of services and funding that is child-centered, family-focused and community-based when addressing the strengths and needs of troubled and at-risk youths and their families in the Commonwealth.

This law shall be interpreted and construed so as to effectuate the following purposes:

1. Ensure that services and funding are consistent with the Commonwealth's policies of preserving families and providing appropriate services in the least restrictive environment, while protecting the welfare of children and maintaining the safety of the public;

2. Identify and intervene early with young children and their families who are at risk of developing emotional or behavioral problems, or both, due to environmental, physical or psychological stress;
3. Design and provide services that are responsive to the unique and diverse strengths and needs of troubled youths and families;
4. Increase interagency collaboration and family involvement in service delivery and management;
5. Encourage a public and private partnership in the delivery of services to troubled and at-risk youths and their families; and
6. Provide communities flexibility in the use of funds and to authorize communities to make decisions and be accountable for providing services in concert with these purposes.

B. As used in this chapter, unless the context requires a different meaning:

"CSA" means the Children's Services Act.

"Council" means the State Executive Council for Children's Services created pursuant to § [2.2-2648](#).

1992, cc. 837, 880, § 2.1-745; 2001, c. [844](#); 2015, c. [366](#).

§2.2-5201. State and local advisory team; appointment; membership.

The state and local advisory team is established to better serve the needs of troubled and at-risk youths and their families by advising the Council and by managing cooperative efforts at the state level and providing support to community efforts. The team shall be appointed by and be responsible to the Council. The team shall include one representative from each of the following state agencies: the Department of Health, the Department of Juvenile Justice, the Department of Social Services, the Department of Behavioral Health and Developmental Services, the Department of Medical Assistance Services, and the Department of Education. The team shall also include a parent representative who is not an employee of any public or private program that serves children and families and who has a child who has received services that are within the purview of the Children's Services Act; a representative of a private organization or association of providers for children's or family services; a local Children's Services Act coordinator or program manager; a juvenile and domestic relations district court judge; a representative who has previously received services through the

Children's Services Act, appointed with recommendations from entities including the Departments of Education and Social Services and the Virginia Chapter of the National Alliance on Mental Illness; and one member from each of five different geographical areas of the Commonwealth who is representative of one of the different participants of community policy and management teams pursuant to § [2.2-5205](#). The nonstate agency members shall serve staggered terms of not more than three years, such terms to be determined by the Council.

The team shall annually elect a chairman from among the local government representatives who shall be responsible for convening the team. The team shall develop and adopt bylaws to govern its operations that shall be subject to approval by the Council. Any person serving on such team who does not represent a public agency shall file a statement of economic interests as set out in § [2.2-3117](#) of the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.). Persons representing public agencies shall file such statements if required to do so pursuant to the State and Local Government Conflict of Interests Act.

1992, cc. 837, 880, § 2.1-747; 2000, c. [937](#); 2001, c. [844](#); 2003, c. [499](#); 2004, c. [836](#); 2009, cc. [813](#), [840](#); 2015, cc. [366](#), [526](#); 2016, c. [443](#).

§2.2-5202. State and local advisory team; powers and duties.

The state and local advisory team may:

1. Advise the Council on state interagency program policies that promote and support cooperation and collaboration in the provision of services to troubled and at-risk youths and their families at the state and local levels;
2. Advise the Council on state interagency fiscal policies that promote and support cooperation and collaboration in the provision of services to troubled and at-risk youths and their families at the state and local levels;
3. Advise state agencies and localities on training and technical assistance necessary for the provision of efficient and effective services that are responsive to the strengths and needs of troubled and at-risk youths and their families; and
4. Advise the Council on the effects of proposed policies, regulations and guidelines.

1992, cc. 837, 880, § 2.1-748; 2000, c. [937](#); 2001, c. [844](#); 2003, c. [483](#).

§2.2-5203. Duties of agencies represented on state and local advisory team.

The state agencies represented on the state and local advisory team shall provide administrative support for the team in the development and implementation of the collaborative system of services and funding authorized by this chapter. This support shall also include, but not be limited to, the provision of timely fiscal information, data for client- and service-tracking, and assistance in training local agency personnel on the system of services and funding established by this chapter.

1992, cc. 837, 880, § 2.1-749; 2001, c. [844](#).

§2.2-5204. Community policy and management team; appointment; fiscal agent.

Every county, city, or combination of counties, cities, or counties and cities shall establish a community policy and management team in order to receive funds pursuant to this chapter. Each such team shall be appointed by the governing body of the participating local political subdivision establishing the team. In making such appointments, the governing body shall ensure that the membership is appropriately balanced among the representatives required to serve on the team in accordance with § [2.2-5205](#). When any combination of counties, cities or counties and cities establishes a community policy and management team, the board of supervisors of each participating county or the council in the case of each participating city shall jointly establish the size of the team and the type of representatives to be selected from each locality in accordance with § [2.2-5205](#). The governing bodies of each participating county and city served by the team shall appoint the designated representatives from their localities. The participating governing bodies shall jointly designate an official of one member city or county to act as fiscal agent for the team.

The county or city that comprises a single team and the county or city whose designated official serves as the fiscal agent for the team in the case of joint teams shall annually audit the total revenues of the team and its programs. The county or city that comprises a single team and any combination of counties or cities establishing a team shall arrange for the provision of legal services to the team.

1992, cc. 837, 880, § 2.1-750; 2001, c. [844](#).

§2.2-5205. Community policy and management teams; membership; immunity from liability.

The community policy and management team to be appointed by the local governing body shall include, at a minimum, at least one elected official or appointed official or his designee from the governing body of a locality that is a member of the team, and the local agency heads or their designees of the following community agencies:

community services board established pursuant to § [37.2-501](#), juvenile court services unit, department of health, department of social services and the local school division. The team shall also include a representative of a private organization or association of providers for children's or family services if such organizations or associations are located within the locality, and a parent representative. Parent representatives who are employed by a public or private program that receives funds pursuant to this chapter or agencies represented on a community policy and management team may serve as a parent representative provided that they do not, as a part of their employment, interact directly on a regular and daily basis with children or supervise employees who interact directly on a daily basis with children. Notwithstanding this provision, foster parents may serve as parent representatives. Those persons appointed to represent community agencies shall be authorized to make policy and funding decisions for their agencies.

The local governing body may appoint other members to the team including, but not limited to, a local government official, a local law-enforcement official and representatives of other public agencies.

When any combination of counties, cities or counties, and cities establishes a community policy and management team, the membership requirements previously set out shall be adhered to by the team as a whole.

Persons who serve on the team shall be immune from any civil liability for decisions made about the appropriate services for a family or the proper placement or treatment of a child who comes before the team, unless it is proven that such person acted with malicious intent. Any person serving on such team who does not represent a public agency shall file a statement of economic interests as set out in § [2.2-3117](#) of the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.). Persons representing public agencies shall file such statements if required to do so pursuant to the State and Local Government Conflict of Interests Act.

Persons serving on the team who are parent representatives or who represent private organizations or associations of providers for children's or family services shall abstain from decision-making involving individual cases or agencies in which they have either a personal interest, as defined in § [2.2-3101](#) of the State and Local Government Conflict of Interests Act, or a fiduciary interest.

1992, cc. 837, 880, § 2.1-751; 1995, c. [190](#); 1999, cc. [644](#), [669](#); 2001, c. [844](#).

§2.2-5206. Community policy and management teams; powers and duties.

The community policy and management team shall manage the cooperative effort in each community to better serve the needs of troubled and at-risk youths and their families and to maximize the use of state and community resources. Every such team shall:

1. Develop interagency policies and procedures to govern the provision of services to children and families in its community;
2. Develop interagency fiscal policies governing access to the state pool of funds by the eligible populations including immediate access to funds for emergency services and shelter care;
3. Establish policies to assess the ability of parents or legal guardians to contribute financially to the cost of services to be provided and, when not specifically prohibited by federal or state law or regulation, provide for appropriate parental or legal guardian financial contribution, utilizing a standard sliding fee scale based upon ability to pay;
4. Coordinate long-range, community-wide planning that ensures the development of resources and services needed by children and families in its community including consultation on the development of a community-based system of services established under § [16.1-309.3](#);
5. Establish policies governing referrals and reviews of children and families to the family assessment and planning teams or a collaborative, multidisciplinary team process approved by the Council, including a process for parents and persons who have primary physical custody of a child to refer children in their care to the teams, and a process to review the teams' recommendations and requests for funding;
6. Establish quality assurance and accountability procedures for program utilization and funds management;
7. Establish procedures for obtaining bids on the development of new services;
8. Manage funds in the interagency budget allocated to the community from the state pool of funds, the trust fund, and any other source;
9. Authorize and monitor the expenditure of funds by each family assessment and planning team or a collaborative, multidisciplinary team process approved by the Council;

10. Submit grant proposals that benefit its community to the state trust fund and enter into contracts for the provision or operation of services upon approval of the participating governing bodies;
11. Serve as its community's liaison to the Office of Children's Services, reporting on its programmatic and fiscal operations and on its recommendations for improving the service system, including consideration of realignment of geographical boundaries for providing human services;
12. Collect and provide uniform data to the Council as requested by the Office of Children's Services in accordance with subdivision D 16 of § [2.2-2648](#);
13. Review and analyze data in management reports provided by the Office of Children's Services in accordance with subdivision D 18 of § [2.2-2648](#) to help evaluate child and family outcomes and public and private provider performance in the provision of services to children and families through the Children's Services Act program. Every team shall also review local and statewide data provided in the management reports on the number of children served, children placed out of state, demographics, types of services provided, duration of services, service expenditures, child and family outcomes, and performance measures. Additionally, teams shall track the utilization and performance of residential placements using data and management reports to develop and implement strategies for returning children placed outside of the Commonwealth, preventing placements, and reducing lengths of stay in residential programs for children who can appropriately and effectively be served in their home, relative's homes, family-like setting, or their community;
14. Administer funds pursuant to § [16.1-309.3](#);
15. Have authority, upon approval of the participating governing bodies, to enter into a contract with another community policy and management team to purchase coordination services provided that funds described as the state pool of funds under § [2.2-5211](#) are not used;
16. Submit to the Department of Behavioral Health and Developmental Services information on children under the age of 14 and adolescents ages 14 through 17 for whom an admission to an acute care psychiatric or residential treatment facility licensed pursuant to Article 2 (§ [37.2-403](#) et seq.) of Chapter 4 of Title 37.2, exclusive of group homes, was sought but was unable to be obtained by the reporting entities. Such information shall be gathered from the family assessment and planning team or

participating community agencies authorized in § [2.2-5207](#). Information to be submitted shall include:

- a. The child or adolescent's date of birth;
- b. Date admission was attempted; and
- c. Reason the patient could not be admitted into the hospital or facility;

17. Establish policies for providing intensive care coordination services for children who are at risk of entering, or are placed in, residential care through the Children's Services Act program, consistent with guidelines developed pursuant to subdivision D 22 of § [2.2-2648](#); and

18. Establish policies and procedures for appeals by youth and their families of decisions made by local family assessment and planning teams regarding services to be provided to the youth and family pursuant to an individual family services plan developed by the local family assessment and planning team. Such policies and procedures shall not apply to appeals made pursuant to § [63.2-915](#) or in accordance with the Individuals with Disabilities Education Act or federal or state laws or regulations governing the provision of medical assistance pursuant to Title XIX of the Social Security Act.

1992, cc. 837, 880; 1995, cc. [396](#), [696](#), [699](#), § 2.1-752; 1997, c. [347](#); 1999, c. [669](#); 2000, c. [937](#); 2001, cc. [190](#), [206](#), [844](#); 2002, cc. [585](#), [619](#); 2003, c. [483](#); 2008, cc. [39](#), [170](#), [277](#); 2009, cc. [813](#), [840](#); 2014, c. [407](#); 2015, cc. [88](#), [305](#), [366](#).

§2.2-5207. Family assessment and planning team; membership; immunity from liability.

Each community policy and management team shall establish and appoint one or more family assessment and planning teams as the needs of the community require. Each family assessment and planning team shall include representatives of the following community agencies who have authority to access services within their respective agencies: community services board established pursuant to § [37.2-501](#), juvenile court services unit, department of social services, and local school division. Each family and planning team also shall include a parent representative and may include a representative of the department of health at the request of the chair of the local community policy and management team. Parent representatives who are employed by a public or private program that receives funds pursuant to this chapter or agencies represented on a family assessment and planning team may serve as a parent

representative provided that they do not, as a part of their employment, interact directly on a regular and daily basis with children or supervise employees who interact directly on a regular basis with children. Notwithstanding this provision, foster parents may serve as parent representatives. The family assessment and planning team may include a representative of a private organization or association of providers for children's or family services and of other public agencies.

Persons who serve on a family assessment and planning team shall be immune from any civil liability for decisions made about the appropriate services for a family or the proper placement or treatment of a child who comes before the team, unless it is proven that such person acted with malicious intent. Any person serving on such team who does not represent a public agency shall file a statement of economic interests as set out in § [2.2-3117](#) of the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.). Persons representing public agencies shall file such statements if required to do so pursuant to the State and Local Government Conflict of Interests Act.

Persons serving on the team who are parent representatives or who represent private organizations or associations of providers for children's or family services shall abstain from decision-making involving individual cases or agencies in which they have either a personal interest, as defined in § [2.2-3101](#) of the State and Local Government Conflict of Interests Act, or a fiduciary interest.

1992, cc. 837, 880, § 2.1-753; 1995, c. [190](#); 1999, c. [644](#); 2001, c. [844](#); 2003, c. [483](#).

§2.2-5208. Family assessment and planning team; powers and duties.

The family assessment and planning team, in accordance with § [2.2-2648](#), shall assess the strengths and needs of troubled youths and families who are approved for referral to the team and identify and determine the complement of services required to meet these unique needs.

Every such team, in accordance with policies developed by the community policy and management team, shall:

1. Review referrals of youths and families to the team;
2. Provide for family participation in all aspects of assessment, planning and implementation of services;
3. Provide for the participation of foster parents in the assessment, planning and implementation of services when a child has a program goal of permanent foster care

or is in a long-term foster care placement. The case manager shall notify the foster parents of a troubled youth of the time and place of all assessment and planning meetings related to such youth. Such foster parents shall be given the opportunity to speak at the meeting or submit written testimony if the foster parents are unable to attend. The opinions of the foster parents shall be considered by the family assessment and planning team in its deliberations;

4. Develop an individual family services plan for youths and families reviewed by the team that provides for appropriate and cost-effective services;

5. Identify children who are at risk of entering, or are placed in, residential care through the Children's Services Act program who can be appropriately and effectively served in their homes, relatives' homes, family-like settings, and communities. For each child entering or in residential care, in accordance with the policies of the community policy and management team developed pursuant to subdivision 17 of § [2.2-5206](#), the family assessment and planning team or approved alternative multidisciplinary team, in collaboration with the family, shall (i) identify the strengths and needs of the child and his family through conducting or reviewing comprehensive assessments, including but not limited to information gathered through the mandatory uniform assessment instrument, (ii) identify specific services and supports necessary to meet the identified needs of the child and his family, building upon the identified strengths, (iii) implement a plan for returning the youth to his home, relative's home, family-like setting, or community at the earliest appropriate time that addresses his needs, including identification of public or private community-based services to support the youth and his family during transition to community-based care, and (iv) provide regular monitoring and utilization review of the services and residential placement for the child to determine whether the services and placement continue to provide the most appropriate and effective services for the child and his family;

6. Where parental or legal guardian financial contribution is not specifically prohibited by federal or state law or regulation, or has not been ordered by the court or by the Division of Child Support Enforcement, assess the ability of parents or legal guardians, utilizing a standard sliding fee scale, based upon ability to pay, to contribute financially to the cost of services to be provided and provide for appropriate financial contribution from parents or legal guardians in the individual family services plan;

7. Refer the youth and family to community agencies and resources in accordance with the individual family services plan;
8. Recommend to the community policy and management team expenditures from the local allocation of the state pool of funds; and
9. Designate a person who is responsible for monitoring and reporting, as appropriate, on the progress being made in fulfilling the individual family services plan developed for each youth and family, such reports to be made to the team or the responsible local agencies.

1992, cc. 837, 880, § 2.1-754; 1995, c. [396](#); 1999, c. [669](#); 2001, cc. [437](#), [844](#); 2008, cc. [39](#), [170](#); 2015, c. [366](#).

§2.2-5209. Referrals to family assessment and planning team or collaborative, multidisciplinary team process.

The community policy and management team shall establish policies governing the referral of troubled youths and families to the family assessment and planning team or a collaborative, multidisciplinary team process approved by the Council. These policies shall include that all youth and families for which CSA-funded treatment services are requested are to be assessed by the family assessment and planning team or an approved collaborative, multidisciplinary team process and shall consider the criteria set out in subdivisions A 1 and A 2 of § [2.2-5212](#). Except for cases involving only the payment of foster care maintenance that shall be at the discretion of the local community policy and management team, cases for which service plans are developed outside of this family assessment and planning team process or approved collaborative, multidisciplinary team process shall not be eligible for state pool funds.

Nothing in this section shall prohibit the use of state pool funds for emergency placements, provided the youth are subsequently assessed by the family assessment and planning team or an approved collaborative, multidisciplinary team process within 14 days of admission and the emergency placement is approved at the time of placement. In cases involving the denial of state pool funds resulting from parental refusal to consent to release of student records under federal law, where such refusal precludes the development of placement through the family assessment and planning team process or the approved collaborative, multidisciplinary team process, an appeal for good cause may be made to the Council.

1992, cc. 837, 880, § 2.1-755; 1999, c. [669](#); 2001, c. [844](#); 2003, c. [483](#).

§2.2-5210. Information sharing; confidentiality.

All public agencies that have served a family or treated a child referred to a family assessment and planning team shall cooperate with this team. The agency that refers a youth and family to the team shall be responsible for obtaining the consent required to share agency client information with the team. After obtaining the proper consent, all agencies shall promptly deliver, upon request and without charge, such records of services, treatment or education of the family or child as are necessary for a full and informed assessment by the team.

Proceedings held to consider the appropriate provision of services and funding for a particular child or family or both who have been referred to the family assessment and planning team and whose case is being assessed by this team or reviewed by the community policy and management team shall be confidential and not open to the public, unless the child and family who are the subjects of the proceeding request, in writing, that it be open. All information about specific children and families obtained by the team members in the discharge of their responsibilities to the team shall be confidential.

Utilizing a secure electronic database, the CPMT and the family assessment and planning team shall provide the Office of Children's Services with client-specific information from the mandatory uniform assessment and information in accordance with subdivision D 11 of § [2.2-2648](#).

1992, cc. 837, 880, § 2.1-756; 2001, c. [844](#); 2008, c. [277](#); 2015, cc. [357](#), [366](#).

§2.2-5211. State pool of funds for community policy and management teams.

A. There is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriation act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families.

The purposes of this system of funding are to:

1. Place authority for making program and funding decisions at the community level;
2. Consolidate categorical agency funding and institute community responsibility for the provision of services;
3. Provide greater flexibility in the use of funds to purchase services based on the strengths and needs of children, youths, and families; and

4. Reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children and youth according to differing required local match rates for funding streams.

B. The state pool shall consist of funds that serve the target populations identified in subdivisions 1 through 5 of this subsection in the purchase of residential and non-residential services for children and youth. References to funding sources and current placement authority for the targeted populations of children and youth are for the purpose of accounting for the funds in the pool. It is not intended that children and youth be categorized by individual funding streams in order to access services. The target population shall be the following:

1. Children and youth placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;

2. Children and youth with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;

3. Children and youth for whom foster care services, as defined by § [63.2-905](#), are being provided;

4. Children and youth placed by a juvenile and domestic relations district court, in accordance with the provisions of § [16.1-286](#), in a private or locally operated public facility or nonresidential program, or in a community or facility-based treatment program in accordance with the provisions of subsections B or C of § [16.1-284.1](#); and

5. Children and youth committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility in accordance with § [66-14](#).

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient to (i) provide special education services and foster care services for children and youth identified in subdivisions B 1, B 2, and B 3 and (ii) meet relevant federal mandates for the provision of these services. The community policy and management team shall

anticipate to the best of its ability the number of children and youth for whom such services will be required and reserve funds from its state pool allocation to meet these needs. Nothing in this section prohibits local governments from requiring parental or legal financial contributions, where not specifically prohibited by federal or state law or regulation, utilizing a standard sliding fee scale based upon ability to pay, as provided in the appropriation act.

D. When a community services board established pursuant to § [37.2-501](#), local school division, local social service agency, court service unit, or the Department of Juvenile Justice has referred a child and family to a family assessment and planning team and that team has recommended the proper level of treatment and services needed by that child and family and has determined the child's eligibility for funding for services through the state pool of funds, then the community services board, the local school division, local social services agency, court service unit or Department of Juvenile Justice has met its fiscal responsibility for that child for the services funded through the pool. However, the community services board, the local school division, local social services agency, court service unit or Department of Juvenile Justice shall continue to be responsible for providing services identified in individual family service plans that are within the agency's scope of responsibility and that are funded separately from the state pool.

Further, in any instance that an individual 18 through 21 years of age, inclusive, who is eligible for funding from the state pool and is properly defined as a school-aged child with disabilities pursuant to § [22.1-213](#) is placed by a local social services agency that has custody across jurisdictional lines in a group home in the Commonwealth and the individual's individualized education program (IEP), as prepared by the placing jurisdiction, indicates that a private day school placement is the appropriate educational program for such individual, the financial and legal responsibility for the individual's special education services and IEP shall remain, in compliance with the provisions of federal law, Article 2 (§ [22.1-213](#)) of Chapter 13 of Title 22.1, and Board of Education regulations, the responsibility of the placing jurisdiction until the individual reaches the age of 21, inclusive, or is no longer eligible for special education services. The financial and legal responsibility for such special education services shall remain with the placing jurisdiction, unless the placing jurisdiction has transitioned all appropriate services with the individual.

E. In any matter properly before a court for which state pool funds are to be accessed, the court shall, prior to final disposition, and pursuant to §§ [2.2-5209](#) and [2.2-5212](#), refer the matter to the community policy and management team for assessment by a local family assessment and planning team authorized by policies of the community policy and management team for assessment to determine the recommended level of treatment and services needed by the child and family. The family assessment and planning team making the assessment shall make a report of the case or forward a copy of the individual family services plan to the court within 30 days of the court's written referral to the community policy and management team. The court shall consider the recommendations of the family assessment and planning team and the community policy and management team. If, prior to a final disposition by the court, the court is requested to consider a level of service not identified or recommended in the report submitted by the family assessment and planning team, the court shall request the community policy and management team to submit a second report characterizing comparable levels of service to the requested level of service. Notwithstanding the provisions of this subsection, the court may make any disposition as is authorized or required by law. Services ordered pursuant to a disposition rendered by the court pursuant to this section shall qualify for funding as appropriated under this section.

1992, cc. 837, 880, § 2.1-757; 1993, c. 567; 1994, cc. [854](#), [865](#); 1998, c. [534](#); 1999, c. [669](#); 2000, c. [914](#); 2001, c. [844](#); 2004, cc. [286](#), [631](#); 2009, c. [304](#); 2013, c. [5](#).

§2.2-5211.1. Certain restrictions on reimbursement and placements of children in residential facilities.

Notwithstanding any provision of this chapter to the contrary or any practice or previous decision-making process of the state executive council, Office of Children's Services, state and local advisory team, any community policy and management team, any family assessment and planning team or any other local entity placing children through the Children's Services Act (CSA), the following restrictions shall control:

1. In the event that any group home or other residential facility in which CSA children reside has its licensure status lowered to provisional as a result of multiple health and safety or human rights violations, all children placed through CSA in such facility shall be assessed as to whether it is in the best interests of each child placed to be removed from the facility and placed in a fully licensed facility and no additional CSA placements shall be made in the provisionally licensed facility until and

unless the violations and deficiencies relating to health and safety or human rights that caused the designation as provisional shall be completely remedied and full licensure status restored.

2. Prior to the placement of a child across jurisdictional lines, the family assessment and planning teams shall (i) explore all appropriate community services for the child, (ii) document that no appropriate placement is available in the locality, and (iii) report the rationale for the placement decision to the community policy and management team. The community policy and management team shall report annually to the Office of Children's Services on the gaps in the services needed to keep children in the local community and any barriers to the development of those services.

3. Community policy and management teams, family assessment and planning teams or other local entities responsible for CSA placements shall notify the receiving school division whenever a child is placed across jurisdictional lines and identify any children with disabilities and foster care children to facilitate compliance with expedited enrollment and special education requirements.

2006, c. [781](#); 2015, c. [366](#).

§2.2-5212. Eligibility for state pool of funds.

A. In order to be eligible for funding for services through the state pool of funds, a youth, or family with a child, shall meet one or more of the criteria specified in subdivisions 1 through 4 and shall be determined through the use of a uniform assessment instrument and process and by policies of the community policy and management team to have access to these funds.

1. The child or youth has emotional or behavior problems that:

- a. Have persisted over a significant period of time or, though only in evidence for a short period of time, are of such a critical nature that intervention is warranted;
- b. Are significantly disabling and are present in several community settings, such as at home, in school or with peers; and
- c. Require services or resources that are unavailable or inaccessible, or that are beyond the normal agency services or routine collaborative processes across agencies, or require coordinated interventions by at least two agencies.

2. The child or youth has emotional or behavior problems, or both, and currently is in, or is at imminent risk of entering, purchased residential care. In addition, the

child or youth requires services or resources that are beyond normal agency services or routine collaborative processes across agencies, and requires coordinated services by at least two agencies.

3. The child or youth requires placement for purposes of special education in approved private school educational programs.

4. The child or youth requires foster care services as defined in § [63.2-905](#).

B. For purposes of determining eligibility for the state pool of funds, "child" or "youth" means (i) a person younger than 18 years of age or (ii) any individual through 21 years of age who is otherwise eligible for mandated services of the participating state agencies including special education and foster care services.

1992, cc. 837, 880, § 2.1-758; 1994, c. [865](#); 1999, c. [669](#); 2001, c. [844](#); 2013, c. [5](#).

§2.2-5213. State trust fund.

A. There is established a state trust fund with funds appropriated by the General Assembly. The purposes of this fund are to develop:

1. Early intervention services for young children and their families, which are defined to include: prevention efforts for individuals who are at-risk for developing problems based on biological, psychological or social/environmental factors.

2. Community services for troubled youths who have emotional or behavior problems, or both, and who can appropriately and effectively be served in the home or community, or both, and their families.

The fund shall consist of moneys from the state general fund, federal grants, and private foundations.

B. Proposals for requesting these funds shall be made by community policy and management teams to the Office of Children's Services. The Office of Children's Services shall make recommendations on the proposals it receives to the Council, which shall award the grants to the community teams in accordance with the policies developed under the authority of § [2.2-5202](#).

1992, cc. 837, 880, § 2.1-759; 1995, c. [520](#); 2000, c. [937](#); 2001, c. [844](#); 2015, c. [366](#).

§2.2-5214. Rates for purchase of services; service fee directory.

The rates paid for services purchased pursuant to this chapter shall be determined by competition of the market place and by a process sufficiently flexible to ensure that family assessment and planning teams and providers can meet the needs of

individual children and families referred to them. To ensure that family assessment and planning teams are informed about the availability of programs and the rates charged for such programs, the Council shall oversee the development of and approve a service fee directory that shall list the services offered and the rates charged by any entity, public or private, which offers specialized services for at-risk youth or families. The Council shall designate the Office of Children's Services to coordinate the establishment, maintenance and other activities regarding the service fee directory.

1993, c. 110, § 2.1-759.1; 2000, c. [937](#); 2001, c. [844](#); 2015, c. [366](#).

Condominium Act

§55-79.39. How chapter cited.

This chapter shall be known and may be cited as the "Condominium Act."

1974, c. 416.

§55-79.40. Application and construction of chapter.

A. This chapter shall apply to all condominiums and to all horizontal property regimes or condominium projects. For the purposes of this chapter, the terms "horizontal property regime" and "condominium project" shall be deemed to correspond to the term "condominium"; the term "apartment" shall be deemed to correspond to the term "unit"; the term "co-owner" shall be deemed to correspond to the term "unit owner"; the term "council of co-owners" shall be deemed to correspond to the term "unit owners' association"; the term "developer" shall be deemed to correspond to the term "declarant"; the term "general common elements" shall be deemed to correspond to the term "common elements"; and the terms "master deed" and "master lease" shall be deemed to correspond to the term "declaration" and shall be deemed included in the term "condominium instruments." This chapter shall be deemed to supersede the Horizontal Property Act, §§ [55-79.1](#) through [55-79.38](#), and no condominium shall be established under the latter on or after July 1, 1974. But this chapter shall not be construed to affect the validity of any provision of any condominium instrument recorded prior to July 1, 1974. Nor shall Article 4 (§ [55-79.86](#) et seq.) of this chapter be deemed to supersede §§ [55-79.16](#) through [55-79.31](#) of the Horizontal Property Act as to any condominiums established prior to the effective date hereof.

B. This chapter shall not apply to condominiums located outside the Commonwealth. Sections [55-79.88](#) through [55-79.94](#) and §§ [55-79.98](#) through [55-79.103](#) shall apply to all contracts for the disposition of condominium units signed in the Commonwealth by any person, unless exempt under § [55-79.87](#).

C. Subsection B of § [55-79.79](#) and § [55-79.94](#) do not apply to the declarant of a conversion condominium if that declarant is a proprietary lessees' association that, immediately before the creation of the condominium, owned fee simple title to or a fee simple reversionary interest in the real estate described pursuant to subdivision (a) (3) of § [55-79.54](#).

1974, c. 416; 1982, c. 545; 1989, c. 63; 2006, c. [646](#).

§55-79.41. Definitions.

When used in this chapter:

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement or restoration and for which the executive organ determines funding is necessary.

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § [54.1-2345](#).

"Condominium" means real property, and any incidents thereto or interests therein, lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" is a collective term referring to the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium

instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit. (Cf. the definition of unit, *infra*.).

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

"Conversion condominium" means a condominium containing structures which before the recording of the declaration, were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a building site; that is to say, a portion of the common elements, within which additional units and/or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium, which portion may be converted into one or more units and/or common elements, including but not limited to limited common elements in accordance with the provisions of this chapter. (Cf. the definition of unit, *infra*.).

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of his or its interest in a condominium unit not previously disposed of, including an institutional lender which may not have succeeded to or accepted any special declarant rights pursuant to § [55-79.74:3](#); (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), the term "declarant" shall not include an institutional lender which acquires title by foreclosure or deed in lieu thereof unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § [55-79.74:3](#). The term "declarant" shall not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but shall not include the transfer or release of security for a debt.

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any term used in this definition that is defined in § [59.1-480](#) of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Executive organ" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

"Financial update" means an update of the financial information referenced in subdivisions C 2 through C 7 of § [55-79.97](#).

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters and/or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest therein, within which no units are situated or to be situated shall not be deemed a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Meeting" or "meetings" means the formal gathering of the executive organ where the business of the unit owners' association is discussed or transacted.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be canceled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any time prior to the formation of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

"Offer" means any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing shall be considered an "offer" which expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered.

"Officer" means any member of the executive organ or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered

substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners' association or liability for common expenses assigned on the basis thereof.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person or persons, other than a declarant, who acquire by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Resale certificate update" means an update of the financial information referenced in subdivisions C 2 through C 9 and C 12 of § [55-79.97](#). The update shall include a copy of the original resale certificate.

"Settlement agent" means the same as that term is defined in § [55-525.16](#).

"Size" means the number of cubic feet, or the number of square feet of ground and/or floor space, within each unit as computed by reference to the plat and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, and/or garage space may, but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium, (ii) contract a contractable condominium, (iii) convert convertible land or convertible space or both, (iv) appoint or remove any officers of the unit owners' association or the executive organ pursuant to subsection A of § [55-79.74](#), (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer or the executive organ, or (vi) maintain sales offices, management offices, model units and signs pursuant to § [55-79.66](#).

"Unit" means a portion of the condominium designed and intended for individual ownership and use. (Cf. the definition of condominium unit, *supra*.) For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection (d) of § [55-79.62](#).

"Unit owner" means one or more persons who own a condominium unit or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person or persons holding an interest in a condominium unit solely as security for a debt.

1974, c. 416; 1975, c. 415; 1981, c. 480; 1982, c. 545; 1991, c. 497; 1993, c. 667; 1996, c. [977](#); 2001, c. [715](#); 2002, c. [459](#); 2003, c. [442](#); 2008, cc. [851](#), [871](#); 2015, cc. [93](#), [410](#).

§55-79.41:1. Variation by agreement.

Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under power of attorney or use any other device to evade the limitations or prohibitions of this chapter or of the condominium instruments.

1982, c. 545.

§55-79.42. Separate assessments, titles and taxation.

Except as provided in the following sentence, each condominium unit constitutes for all purposes a separate parcel of real estate. If there is any unit owner other than the declarant, each unit, together with its common element interest, but excluding its common element interest in convertible land and in any withdrawable land within which the declarant has the right to create units and/or limited common elements shall be separately assessed and taxed. Each convertible land and withdrawable land within which the declarant has the right to create units and/or limited common elements shall be separately assessed and taxed against the declarant.

1974, c. 416; 1986, c. 324.

§55-79.42:1. Association charges.

Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise provided by law, no unit owners' association may make an assessment

or impose a charge against a unit owner unless the charge is (i) authorized under § [55-79.83](#), (ii) a fee for services provided, or (iii) related to the provisions set out in § [55-79.97:1](#). The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) unit owners' association pursuant to § [54.1-2351](#) or (b) common interest community manager pursuant to § [54.1-2349](#), and may issue a cease and desist order pursuant to § [54.1-2349](#) or [54.1-2352](#), as applicable.

2015, c. [277](#).

§55-79.43. County and municipal ordinances; nonconforming conversion condominiums; applicability of Uniform Statewide Building Code; other regulations.

A. No zoning or other land use ordinance shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership. Except as provided in subsection E, no local government may require further review or approval to record condominium instruments when a property has previously complied with subdivision, site plan, zoning, or other applicable land use regulations.

B. Subdivision and site plan ordinances in any county, city or town in the Commonwealth shall apply to any condominium in the same manner as such ordinances would apply to a physically identical project or development under a different form of ownership; however, the declarant need not apply for or obtain subdivision approval to record condominium instruments if site plan approval for the land being submitted to the condominium has first been obtained.

C. During development of a condominium containing additional land or withdrawable land, phase lines created by the condominium instruments shall not be considered property lines for purposes of subdivision. If the condominium can no longer be expanded by the addition of additional land, then the owner of the land not part of the condominium shall subdivide such land prior to its conveyance, unless such land is subject to an approved site plan as provided in subsection B of this section, or prior to modification of such approved site plan. In the event of any conveyance of land within phase lines of the condominium, the condominium and any lot created by such conveyance shall be deemed to comply with the local subdivision ordinance, provided such land is subject to an approved site plan.

D. During the period of declarant control and as long as the declarant has the right to create additional units or to complete the common elements, the declarant has the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including conditional zoning proffers and agreements incidental thereto that do not create an affirmative obligation on the unit owners' association without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the declarant is not the owner of the land.

In accordance with subsection B of § [55-79.80](#), once the declarant no longer has such authority, the executive organ of the unit owners' association, if any, and if not, then a representative duly appointed by the unit owners' association, shall have the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including conditional zoning proffers and agreements incidental thereto that do not create an affirmative obligation on the declarant without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the unit owners' association is not the owner of the land. Such applications shall not adversely affect the rights of the declarant to develop additional land. For purposes of obtaining building and occupancy permits, the unit owner (including the declarant if the declarant is the unit owner) shall apply for permits for the unit, and the unit owners' association shall apply for permits for the common elements, except that the declarant shall apply for permits for convertible land.

E. Counties, cities and towns may provide by ordinance that proposed conversion condominiums and the use thereof, which do not conform to the zoning, land use and site plan regulations of the respective county or city in which the property is located, shall secure a special use permit, a special exception, or variance, as the case may be, prior to such property becoming a conversion condominium. A request for such a special use permit, special exception, or variance filed on or after July 1, 1982, shall be granted if the applicant can demonstrate to the reasonable satisfaction of the local authority that the nonconformities are not likely to be adversely affected by the proposed conversion. No action on any such request shall be unreasonably delayed. In the event of an approved conversion to condominium ownership, counties, cities, towns, sanitary districts, or other political subdivisions may impose such charges and fees as are lawfully imposed by such political subdivisions as a result of construction of new structures to the extent that such charges and fees, or portions of such charges

and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the political subdivision as a result of the conversion.

F. Nothing in this section shall be construed to permit application of any provision of the Uniform Statewide Building Code (§ [36-97](#) et seq.) or any local ordinances regulating design and construction of roads, sewer and water lines, stormwater management facilities and other public infrastructure, to a condominium in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.

1974, c. 416; 1975, c. 415; 1982, c. 663; 1991, c. 497; 2006, cc. [9](#), [317](#).

§55-79.44. Eminent domain.

(a) If any portion of the common elements is taken by eminent domain, the award therefor shall be paid to the unit owners' association. Provided, however, that the portion of the award attributable to the taking of any permanently assigned limited common element shall be allocated by the decree to the unit owner of the unit to which that limited common element was so assigned at the time of the taking. If that limited common element was permanently assigned to more than one unit at the time of the taking, then the portion of the award attributable to the taking thereof shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the condominium instruments may specify for this express purpose. A permanently assigned limited common element is a limited common element which cannot be reassigned or which can be reassigned only with the consent of the unit owner or owners of the unit or units to which it is assigned in accordance with § [55-79.57](#).

(b) If one or more units is taken by eminent domain, the undivided interest in the common elements appertaining to any such unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit taken for his undivided interest in the common elements as well as for his unit.

(c) If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of such unit not taken, and the undivided interest in the common elements appertaining to any such units shall be reduced, in

the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other units in the condominium in proportion to their respective undivided interests in the common elements, with any units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with the preceding sentence. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested from him by operation of the first sentence of this subsection and not reverted in him by operation of the following sentence, as well as for that portion of his unit taken by eminent domain.

(d) If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the condominium instruments, then the entire undivided interest in the common elements appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a common element. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of such unit for his entire undivided interest in the common elements and for his entire unit.

(e) Votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, appertaining to any unit or units taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the unit owners' association, with any units partially taken participating in such reallocation as though their voting strength in the unit owners' association had been reduced in proportion to the reduction in their undivided interests in the common elements, and the decree of the court shall provide accordingly.

(f) The decree of the court shall require the recordation thereof among the land records of the city or county in which the condominium is located.

1974, c. 416; 1975, c. 415; 1982, c. 545; 1998, c. [32](#).

§55-79.45. How condominium may be created.

No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on plats and plans that comply with the provisions of subsections A and B of § [55-79.58](#). The foreclosure of any mortgage, deed of trust, or other lien shall not be deemed, ex proprio vigore, to terminate the condominium.

1974, c. 416.

§55-79.46. Release of liens.

A. At the time of the conveyance to the first purchaser of each condominium unit following the recordation of the declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens, affecting all of the condominium or a greater portion thereof than the condominium unit conveyed, shall be paid and satisfied of record, or the declarant shall forthwith have the said condominium unit released of record from all such liens not so paid and satisfied. The provisions of this subsection shall not apply, however, to any withdrawable land in a contractable condominium, nor shall any provision of this subsection be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as any time limit specified pursuant to § [55-79.74](#) has expired, and so long as the bylaws authorize the same. This subsection shall not apply to any lien on more than one condominium unit in a condominium in which all units are restricted to nonresidential use and in which all unit owners whose condominium units will be subject to such lien expressly agree to assume or take subject thereto.

B. In the event that any lien, other than a deed of trust or mortgage, becomes effective against two or more condominium units subsequent to the creation of the condominium, any unit owner may remove his condominium unit from that lien by payment of the amount attributable to his condominium unit. Such amount shall be computed by reference to the liability for common expenses appertaining to that condominium unit pursuant to subsection D of § [55-79.83](#). Subsequent to such payment, discharge or other satisfaction, the unit owner of that condominium unit shall be entitled to have that lien released as to his condominium unit in accordance with the provisions of § [55-66.4](#), and the unit owners' association shall not assess, or have a

valid lien against, that condominium unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in §§ [55-79.83](#) and [55-79.84](#).

1974, c. 416; 1985, c. 107; 1992, c. 72; 1993, c. 667 .

§55-79.47. Description of condominium units.

After the creation of the condominium, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm which sets forth the identifying number of that unit, the name of the condominium, the name of the city or county wherein the condominium is situated, and either the deed book and page number where the first page of the declaration is recorded or else the document number assigned to the declaration by the clerk. Any such description shall be deemed to include the undivided interest in the common elements appertaining to such unit even if such interest is not defined or referred to therein.

1974, c. 416; 1975, c. 415.

§55-79.48. Execution of condominium instruments.

The declaration and bylaws, and any amendments to either made pursuant to § [55-79.71](#) shall be duly executed by or on behalf of all of the owners and lessees of the submitted land. But the phrase "owners and lessees" in the preceding sentence and in § [55-79.63](#) does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an equitable interest under any contract for the sale and/or lease of a condominium unit, any lessee whose leasehold interest does not extend to any portion of the common elements, any person whose land is subject to an easement included in the condominium or, in the case of a leasehold condominium subject to any lease or leases executed before July 1, 1962, any lessor of the submitted land who is not a declarant.

1974, c. 416; 1980, c. 702; 1984, c. 21; 1990, c. 831 .

§55-79.49. Recordation of condominium instruments.

All amendments and certifications of condominium instruments shall set forth the name of the city or county in which the condominium is located, and the deed book and page number where the first page of the declaration is recorded. All condominium instruments and all amendments and certifications thereof shall be recorded in every city and county wherein any portion of the condominium is located. The condominium instruments, amendments and certifications shall set forth the name

of the condominium and either the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration by the clerk. Wherever the phrase "city or county" appears in this chapter, the disjunctive shall be deemed to include the conjunctive and the singular shall be deemed to include the plural.

1974, c. 416; 1975, c. 415; 1982, c. 545.

§55-79.50. Construction of condominium instruments.

Except to the extent otherwise provided by the condominium instruments:

(a) The terms defined in § [55-79.41](#) shall be deemed to have the meanings therein specified wherever they appear in the condominium instruments unless the context otherwise requires.

(b) To the extent that walls, floors and/or ceilings are designated as the boundaries of the units or of any specified units, all lath, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof, shall be deemed a part of such units, while all other portions of such walls, floors and/or ceilings shall be deemed a part of the common elements.

(c) If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns or any other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of that unit, while any portions thereof serving more than one unit or any portion of the common elements shall be deemed a part of the common elements.

(d) Subject to the provisions of subsection (c) hereof, all space, interior partitions and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit.

(e) Any shutters, awnings, doors, windows, window boxes, doorsteps, porches, balconies, patios and any other apparatus designed to serve a single unit, but located outside the boundaries thereof, shall be deemed a limited common element appertaining to that unit exclusively; provided that if a single unit's electrical master switch is located outside the designated boundaries of the unit, the switch and its cover shall be deemed a part of the common elements.

1974, c. 416; 1982, cc. 206, 545.

§55-79.51. Complementarity of condominium instruments; controlling construction.

The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this chapter as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. In the event of any conflict between the condominium instruments, the declaration shall control; but particular provisions shall control more general provisions, except that a construction conformable with the statute shall in all cases control over any construction inconsistent therewith.

1974, c. 416; 1975, c. 415.

§55-79.52. Validity of condominium instruments; discrimination prohibited.

A. All provisions of the condominium instruments shall be deemed severable, and any unlawful provision thereof shall be void.

B. No provision of the condominium instruments shall be deemed void by reason of the rule against perpetuities.

C. No restraint on alienation shall discriminate or be used to discriminate on any basis prohibited under the Virginia Fair Housing Law (§ [36-96.1](#) et seq.).

D. Subject to the provisions of subsection C, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments restraining the alienation of condominium units other than such units as may be restricted to residential use only.

1974, c. 416; 1975, c. 415; 1998, cc. [32](#), [454](#).

§55-79.53. Compliance with condominium instruments.

A. The declarant, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium instruments. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the unit owners' association, or by its executive organ or any managing agent on behalf of such association, or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action. A unit owners' association shall have standing to sue in its own name for any claims or actions related to the common elements as provided in subsection B of § [55-79.80](#). Except as provided in subsection B, the prevailing party shall be entitled to recover

reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § [8.01-382](#). This section shall not preclude an action against the unit owners' association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § [8.01-382](#) in such actions.

B. In actions against a unit owner for nonpayment of assessments in which the unit owner has failed to pay assessments levied by the unit owners' association on more than one unit or such unit owner has had legal actions taken against him for non-payment of any prior assessment and the prevailing party is the association or its executive organ or any managing agent on behalf of the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in subsection A, even if the proceeding is settled prior to judgment. The delinquent unit owner shall be personally responsible for reasonable attorney fees and costs expended in the matter by the unit owners' association, whether any judicial proceedings are filed.

C. The condominium instruments may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ [8.01-577](#) et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the condominium is located, or as mutually agreed by the parties.

1974, c. 416; 1975, c. 415; 1993, c. 667; 1996, c. [977](#); 2012, c. [758](#); 2014, c. [569](#).

§55-79.54. Contents of declaration.

(a) The declaration for every condominium shall contain the following:

- (1) The name of the condominium, which name shall include the word "condominium" or be followed by the words "a condominium."
- (2) The name of the city or county in which the condominium is located.
- (3) A legal description by metes and bounds of the land submitted to this chapter.
- (4) A description or delineation of the boundaries of the units, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimeteric) boundaries.

(5) A description or delineation of any limited common elements, other than those which are limited common elements by virtue of subsection (e) of § [55-79.50](#), showing or designating the unit or units to which each is assigned.

(6) A description or delineation of all common elements not within the boundaries of any convertible lands which may subsequently be assigned as limited common elements, together with a statement that (i) they may be so assigned and a description of the method whereby any such assignments shall be made in accordance with the provisions of § [55-79.57](#) or (ii) once assigned, the conditions under which they may be unassigned and converted to common elements in accordance with § [55-79.57](#).

(7) The allocation to each unit of an undivided interest in the common elements in accordance with the provisions of § [55-79.55](#).

(7a) A statement of the extent of the declarant's obligation to complete improvements labeled "(NOT YET COMPLETED)" or to begin and complete improvements labeled "(NOT YET BEGUN)" on plats recorded pursuant to the requirements of this chapter. Such statement shall be specific as to the type and quality of materials to be used, the size or capacity of the improvements, when material, and the time by which such improvements shall be completed.

(8) Such other matters as the declarant deems appropriate.

(b) If the condominium contains any convertible land, the declaration shall also contain the following:

(1) A legal description by metes and bounds of each convertible land within the condominium.

(2) A statement of the maximum number of units that may be created within each such convertible land.

(3) A statement, with respect to each such convertible land, of the maximum percentage of the aggregate land and floor area of all units that may be created therein that may be occupied by units not restricted exclusively to residential use.

(4) A statement of the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the submitted land in terms of quality of construction, the principal materials to be used, and architectural style.

(5) A description of all other improvements that may be made on each convertible land within the condominium.

(6) A statement that any units created within each convertible land will be substantially identical to the units on other portions of the submitted land, or a statement describing in detail what other types of units may be created therein.

(7) A description of the declarant's reserved right, if any, to create limited common elements within any convertible land, and/or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such convertible land.

Provided, that plats and plans may be recorded with the declaration and identified therein to supplement information furnished pursuant to items (1), (4), (5), (6), and (7), and that item (3) need not be complied with if none of the units on other portions of the submitted land are restricted exclusively to residential use.

(c) If the condominium is an expandable condominium, the declaration shall also contain the following:

(1) The explicit reservation of an option to expand the condominium.

(2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations.

(3) A time limit, not exceeding 10 years from the recording of the declaration, upon which the option to expand the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified. After the expiration of any period of declarant control reserved pursuant to subsection A of § [55-79.74](#), such time limit may be extended by an amendment to the declaration made pursuant to § [55-79.71](#).

(4) A legal description by metes and bounds of all land that may be added to the condominium, henceforth referred to as "additional land."

(5) A statement as to whether, if any of the additional land is added to the condominium, all of it or any particular portion of it must be added, and if not, a statement of any limitations as to what portions may be added or a statement that there are no such limitations.

(6) A statement as to whether portions of the additional land may be added to the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds thereof and/or regulating the order in which they may be added to the condominium.

(7) A statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium, or a statement that no assurances are made in that regard.

(8) A statement of the maximum number of units that may be created on the additional land. If portions of the additional land may be added to the condominium and the boundaries of those portions are fixed in accordance with item (6), the declaration shall also state the maximum number of units that may be created on each such portion added to the condominium. If portions of the additional land may be added to the condominium and the boundaries of those portions are not fixed in accordance with item (6), then the declaration shall also state the maximum number of units per acre that may be created on any such portion added to the condominium.

(9) A statement, with respect to the additional land and to any portion or portions thereof that may be added to the condominium, of the maximum percentage of the aggregate land and floor area of all units that may be created thereon that may be occupied by units not restricted exclusively to residential use.

(10) A statement of the extent to which any structures erected on any portion of the additional land added to the condominium will be compatible with structures on the submitted land in terms of quality of construction, the principal materials to be used, and architectural style, or a statement that no assurances are made in those regards.

(11) A description of all other improvements that will be made on any portion of the additional land added to the condominium, or a statement of any limitations as to what other improvements may be made thereon, or a statement that no assurances are made in that regard.

(12) A statement that any units created on any portion of the additional land added to the condominium will be substantially identical to the units on the submitted land, or a statement of any limitations as to what types of units may be created thereon, or a statement that no assurances are made in that regard.

(13) A description of the declarant's reserved right, if any, to create limited common elements within any portion of the additional land added to the condominium,

and/or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such portion, or a statement that no assurances are made in those regards.

Provided, that plats and plans may be recorded with the declaration and identified therein to supplement information furnished pursuant to items (4), (5), (6), (7), (10), (11), (12), and (13), and that item (9) need not be complied with if none of the units on the submitted land are restricted exclusively to residential use.

(d) If the condominium is a contractable condominium, the declaration shall also contain the following:

(1) The explicit reservation of an option to contract the condominium.

(2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations.

(3) A time limit, not exceeding 10 years from the recording of the declaration, upon which the option to contract the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified.

(4) A legal description by metes and bounds of all land that may be withdrawn from the condominium, henceforth referred to as "withdrawable land."

(5) A statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds thereof and/or regulating the order in which they may be withdrawn from the condominium.

(6) A legal description by metes and bounds of all of the submitted land to which the option to contract the condominium does not extend.

Provided, that plats may be recorded with the declaration and identified therein to supplement information furnished pursuant to items (4), (5), and (6), and that item (6) shall not be construed in derogation of any right the declarant may have to terminate the condominium in accordance with the provisions of § [55-79.72:1](#).

(e) If the condominium is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium, the declaration shall set forth the city or county wherein the same are recorded and the deed book and page number where the first page of each such lease is recorded; and the declaration shall also contain the following:

(1) The date upon which each such lease is due to expire.

(2) A statement as to whether any land and/or improvements will be owned by the unit owners in fee simple, and if so, either (a) a description of the same, including without limitation a legal description by metes and bounds of any such land, or (b) a statement of any rights the unit owners shall have to remove such improvements within a reasonable time after the expiration or termination of the lease or leases involved, or a statement that they shall have no such rights.

(3) A statement of the rights the unit owners shall have to redeem the reversion or any of the reversions, or a statement that they shall have no such rights.

Provided, that after the recording of the declaration, no lessor who executed the same, and no successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold interest of any unit owner who makes timely payment of his share of the rent to the person or persons designated in the declaration for the receipt of such rent and who otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. Acquisition or reacquisition of such a leasehold interest by the owner of the reversion or remainder shall not cause a merger of the leasehold and fee simple interests unless all leasehold interests in the condominium are thus acquired or reacquired.

(f) Wherever this section requires a legal description by metes and bounds of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be deemed satisfied by any legally sufficient description and shall be deemed to require a legally sufficient description of any easements that are submitted to this chapter or that may be added to or withdrawn from the condominium, as the case may be. In the case of each such easement, the declaration shall contain the following:

(1) A description of the permitted use or uses.

(2) If less than all of those entitled to the use of all of the units may utilize such easement, a statement of the relevant restrictions and limitations on utilization.

(3) If any persons other than those entitled to the use of the units may utilize such easement, a statement of the rights of others to utilization of the same.

(g) Wherever this section requires a legal description by metes and bounds of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, an added requirement shall be a separate legally sufficient description of all lands in which the unit owners shall or may be tenants in common or joint tenants with any other persons, and a separate legally sufficient description of all lands in which the unit owners shall or may be life tenants. No units shall be situated on any such lands, however, and the declaration shall describe the nature of the unit owners' estate therein. No such lands shall be shown on the same plat or plats showing other portions of the condominium, but shall be shown instead on separate plats.

1974, c. 416; 1975, c. 415; 1977, c. 428; 1982, c. 545; 1993, c. 667; 1998, c. [32](#); 2012, c. [520](#).

§55-79.55. Allocation of interests in the common elements.

(a) The declaration may allocate to each unit depicted on plats and plans that comply with subsections A and B of § [55-79.58](#) an undivided interest in the common elements proportionate to either the size or par value of each unit.

(b) Otherwise, the declaration shall allocate to each such unit an equal undivided interest in the common elements, subject to the following exception: Each convertible space so depicted shall be allocated an undivided interest in the common elements proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interest in the common elements shall be allocated equally to the other units so depicted.

(c) The undivided interests in the common elements allocated in accordance with subsection (a) or (b) hereof shall add up to 1 if stated as fractions or 100% if stated as percentages.

(d) If, in accordance with subsection (a) or (b) hereof, an equal undivided interest in the common elements is allocated to each unit, the declaration may simply state that fact and need not express the fraction or percentage so allocated.

(e) Otherwise, the undivided interest allocated to each unit in accordance with subsection (a) or (b) hereof shall be reflected by a table in the declaration, or by an exhibit or schedule accompanying the declaration and recorded simultaneously therewith, containing three columns. The first column shall identify the units, listing

them serially or grouping them together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective areas or par values of those units and the fraction or percentage of undivided interest in the common elements allocated thereto.

(f) Except to the extent otherwise expressly provided by this chapter, the undivided interest in the common elements allocated to any unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the unit to which it appertains shall be void.

(g) The common elements shall not be subject to any suit for partition until and unless the condominium is terminated.

1974, c. 416.

§55-79.56. Reallocation of interests in common elements.

(a) If a condominium contains any convertible land or is an expandable condominium, then the declaration shall not allocate undivided interests in the common elements on the basis of par value unless the declaration:

(1) Prohibits the creation of any units not substantially identical to the units depicted on the plats and plans recorded pursuant to subsections A and B of § [55-79.58](#),
or

(2) Prohibits the creation of any units not described pursuant to subdivision (b) (6) of § [55-79.54](#) (in the case of convertible lands) and subdivision (c) (12) of § [55-79.54](#) (in the case of additional land), and contains from the outset a statement of the par value that shall be assigned to every such unit that may be created.

(b) Interests in the common elements shall not be allocated to any units to be created within any convertible land or within any additional land until plats and plans depicting the same are recorded pursuant to subsection C of § [55-79.58](#). But simultaneously with the recording of such plats and plans the declarant shall execute and record an amendment to the declaration reallocating undivided interests in the common elements so that the units depicted on such plats and plans shall be allocated undivided interests in the common elements on the same basis as the units depicted on the plats and plans recorded simultaneously with the declaration pursuant to subsections A and B of § [55-79.58](#).

(c) If all of a convertible space is converted into common elements, including without limitation limited common elements, then the undivided interest in the common

elements appertaining to such space shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

(d) In the case of a leasehold condominium, if the expiration or termination of any lease causes a contraction of the condominium which reduces the number of units, then the undivided interest in the common elements appertaining to any units thereby withdrawn from the condominium shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

1974, c. 416.

§55-79.57. Assignments of limited common elements; conversion to common element.

A. All assignments and reassignments of limited common elements shall be reflected by the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with the provisions of this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common elements without the consent of all unit owners adversely affected thereby as evidenced by their execution of such amendment, except to the extent that the condominium instruments expressly provided otherwise prior to the first assignment of that limited common element.

B. Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned or converted to a common element upon written application of the unit owners concerned to the principal officer of the unit owners' association, or to such other officer or officers as the condominium instruments may specify. The officer or officers to whom such application is duly made shall forthwith prepare and execute an amendment to the declaration reassigning all rights and obligations with respect to the limited common element involved. Such amendment shall be executed by the unit owner or unit owners of the unit or units concerned and

recorded by an officer of the unit owners' association or his agent following payment by the unit owner or unit owners of the unit or units concerned of all reasonable costs for the preparation, acknowledgment and recordation thereof. The amendment shall become effective when recorded.

C. A common element not previously assigned as a limited common element shall be so assigned only in pursuance of subdivision (a) (6) of § [55-79.54](#). The amendment to the declaration making such an assignment shall be prepared and executed by the declarant, the principal officer of the unit owners' association, or by such other officer or officers as the condominium instruments may specify. Such amendment shall be recorded by the declarant or his agent, without charge to any unit owner, or by an officer of the unit owners' association or his agent following payment by the unit owner or unit owners of the unit or units concerned of all reasonable costs for the preparation, acknowledgment and recordation thereof. The amendment shall become effective when recorded, and the recordation thereof shall be conclusive evidence that the method prescribed pursuant to subdivision (a) (6) of § [55-79.54](#) was adhered to. A copy of the amendment shall be delivered to the unit owner or unit owners of the unit or units concerned. If executed by the declarant, such an amendment recorded prior to July 1, 1983, shall not be invalid because it was not prepared by an officer of the unit owners' association.

D. If the declarant does not prepare and record an amendment to the declaration to effect the assignment of common elements as limited common elements in accordance with rights reserved in the condominium instruments, but has reflected an intention to make such assignments in deeds conveying units, then the principal officer of the unit owners' association may prepare, execute and record such an amendment at any time after the declarant ceases to be a unit owner.

E. The declarant may unilaterally record an amendment to the declaration converting a limited common element appurtenant to a unit owned by the declarant into a common element as long as the declarant continues to own the unit.

1974, c. 416; 1983, c. 230; 1991, c. 497; 1998, c. [32](#).

§55-79.58. Contents of plats and plans.

A. There shall be recorded simultaneously with the declaration one or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of

any contemplated improvements which are to be located on any portion of the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise submitted to this chapter as a part of the common elements. If the submitted land is not contiguous, then the plats shall indicate the distances between the parcels constituting the submitted land. The plats shall label every convertible land as a convertible land, and if there is more than one such land the plats shall label each such land with one or more letters and/or numbers different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land as a withdrawable land. The plats shall show the location and dimensions of any additional lands and shall label each such land as an additional land. If, with respect to any portion or portions, but less than all, of the submitted land, the unit owners are to own only an estate for years, the plats shall show the location and dimensions of any such portions, and shall label each such portion as a leased land. If there is more than one withdrawable land, or more than one leased land, the plats shall label each such land with one or more letters and/or numbers different from those designating any convertible land or other withdrawable or leased land, and different also from the identifying number of any unit. The plats shall show all easements to which the submitted land or any portion thereof is subject, and shall show the location and dimensions of all such easements to the extent feasible. The plats shall also show all encroachments by or on any portion of the condominium. In the case of any improvements located or to be located on any portion of the submitted land other than within the boundaries of any convertible lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "(NOT YET BEGUN)," and which, if any, have been begun but have not been substantially completed by the use of the phrase "(NOT YET COMPLETED)." In the case of any units the vertical boundaries of which lie wholly or partially outside of structures for which plans pursuant to subsection B are simultaneously recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such plans, and the units or portions thereof thus depicted shall bear their identifying numbers. Each plat shall be certified in a recorded document as to its accuracy and compliance with the provisions of this subsection by a licensed land surveyor, and the said surveyor shall certify in such document or on the face of the plat that all units or portions thereof depicted

thereon pursuant to the preceding sentence of this subsection have been substantially completed. The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or hereafter required for land title surveys.

B. There shall also be recorded, simultaneously with the declaration, plans of every structure which contains or constitutes all or part of any unit or units, and which is located on any portion of the submitted land other than within the boundaries of any convertible lands. The plans shall show the location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units or portions thereof thus depicted shall bear their identifying numbers. In addition, each convertible space thus depicted shall be labeled a convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be identified on the plans with reference to established datum. Unless the condominium instruments expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained within or constituting one or more such structures, the horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation with regard to any part of such unit, lying outside of such structures, subject to the following exception: In the case of any such unit which does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of such structures. The plans shall be certified on their face or in another recorded document as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer or licensed land surveyor, and the said architect, engineer or land surveyor shall certify on the plans or in the recorded document that all units or portions thereof depicted thereon have been substantially completed.

C. When converting all or any portion of any convertible land, or adding additional land to an expandable condominium, the declarant shall record, with regard to any structures on the land being converted, or added, either plats of survey conforming to the requirements of subsection A and plans conforming to the requirements of subsection B, or certifications, conforming to the certification requirements of said subsections, of plats and plans previously recorded pursuant to § [55-79.59](#).

D. Notwithstanding the provisions of subsection A and B, a time-share interest in a unit which has been subjected to a time-share instrument pursuant to § [55-367](#) may

be conveyed prior to substantial completion of that unit if (i) a completion bond has been filed in compliance with subsection B of § [55-79.58:1](#) and remains in full force and effect until the unit is certified as substantially complete in accordance with subsections A and B and (ii) the settlement agent or title insurance company insuring the time-share estate in the unit certifies to the purchaser in writing, based on information provided by the Common Interest Community Board, that the bond has been filed with the Common Interest Community Board.

E. When converting all or any portion of any convertible space into one or more units and/or limited common elements, the declarant shall record, with regard to the structure or portion thereof constituting that convertible space, plans showing the location and dimensions of the vertical boundaries of each unit and/or limited common elements formed out of such space. Such plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer or licensed land surveyor.

F. For the purposes of subsections A, B, and C, all provisions and requirements relating to units shall be deemed equally applicable to limited common elements. The limited common elements shall be labeled as such, and each limited common element depicted on the plats and plans shall bear the identifying number or numbers of the unit or units to which it is assigned, if it has been assigned, unless the provisions of subsection (e) of § [55-79.50](#) make such designations unnecessary.

1974, c. 416; 1975, c. 415; 1984, c. 601; 1991, c. 497; 1999, c. [560](#); 2008, cc. [851](#), [871](#).

§55-79.58:1. Bond to insure completion of improvements.

A. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion, to the extent of the declarant's obligation as stated in the declaration, of all improvements to the common elements of the condominium labeled in the plat or plats as "(NOT YET COMPLETED)" or "(NOT YET BEGUN)" located upon submitted land and which the declarant reasonably believes will not be substantially complete at the time of conveyance of the first condominium unit. Such bond shall be conditioned upon the faithful performance of the declarant's obligation to complete said improvements in strict conformity with the plans and specifications for the same as described in the declaration.

B. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion of a unit in which a time-share interest is conveyed before the unit has been certified as substantially complete in accordance with subsections A and B of § [55-79.58](#). The bond required by this subsection shall be conditioned upon the faithful performance of the declarant's obligation to complete said improvements in strict conformity with the plans and specifications for the same as described in the declaration.

C. All bonds required herein shall be executed by a surety company authorized to transact business in the Commonwealth of Virginia or by such other surety as is satisfactory to the Board.

D. The Board may promulgate reasonable regulations which govern the return of bonds submitted in accordance with this section.

1977, c. 428; 1988, c. 15; 1999, c. [560](#); 2008, cc. [851](#), [871](#).

§55-79.59. Preliminary recordation of plats and plans.

Plats and plans previously recorded pursuant to § [55-79.54](#) (a), (b) and (c) may be used in lieu of new plats and plans to satisfy in whole or in part the requirements of § [55-79.56](#) (b), § [55-79.61](#) B and/or § [55-79.63](#) if certifications thereof are recorded by the declarant in accordance with § [55-79.58](#) A and B; and if such certifications are recorded, the plats and plans which they certify shall be deemed recorded pursuant to § [55-79.58](#) C within the meaning of the three sections aforesaid. All condominium instruments for condominiums created prior to July 1, 1991, are hereby validated notwithstanding that the plats were prerecorded as if in compliance with this section and not recorded with amendments converting convertible land or adding additional land if the plats or subsequent amendments contained the required certifications.

1974, c. 416; 1991, c. 497 .

§55-79.60. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, whether by reason of any deviation from the plats and plans in the construction, repair, renovation, restoration, or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist. The purpose of this section is to protect the unit owners, except in cases of willful and intentional misconduct by them or their agents or

employees, and not to relieve the declarant or any contractor, subcontractor, or materialman of any liability which any of them may have by reason of any failure to adhere strictly to the plats and plans.

1974, c. 416.

§55-79.61. Conversion of convertible lands.

A. The declarant may convert all or any portion of any convertible land into one or more units and/or limited common elements subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection B of this section and subsection C of § [55-79.58](#).

B. Simultaneously with the recording of plats and plans pursuant to subsection C of § [55-79.58](#), the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common elements in accordance with subsection (b) of § [55-79.56](#). Such amendment shall describe or delineate the limited common elements formed out of the convertible land, showing or designating the unit or units to which each is assigned.

C. All convertible lands shall be deemed a part of the common elements except for such portions thereof as are converted in accordance with the provisions of this section. Until the expiration of the period during which conversion may occur or until actual conversion, whichever occurs first, the declarant alone shall be liable for real estate taxes assessed against the convertible land and any improvements thereon and all other expenses in connection with that real estate, and no other unit owner and no other portion of the condominium shall be subject to a claim for payment of those taxes or expenses, and unless the declaration provides otherwise, any income or proceeds from the convertible land and any improvements thereon shall inure to the declarant. No such conversion shall occur after 10 years from the recordation of the declaration, or such shorter period of time as the declaration may specify.

1974, c. 416; 1975, c. 415; 1986, c. 324; 1991, c. 497; 1993, c. 45; 2012, c. [520](#).

§55-79.62. Conversion of convertible spaces.

(a) The declarant may convert all or any portion of any convertible space into one or more units and/or common elements, including, without limitation, limited common

elements, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) hereof and subsection B of § [55-79.58](#).

(b) Simultaneously with the recording of plats and plans pursuant to subsection E of § [55-79.58](#), the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common elements appertaining to that space. Such amendment shall describe or delineate the limited common elements formed out of the convertible space, showing or designating the unit or units to which each is assigned.

(c) If all or any portion of any convertible space is converted into one or more units in accordance with this section, the declarant shall prepare and execute, and record simultaneously with the amendment to the declaration, an amendment to the bylaws. The amendment to the bylaws shall reallocate votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, all as in the case of the subdivision of a unit in accordance with subsection D of § [55-79.70](#).

(d) Any convertible space not converted in accordance with the provisions of this section, or any portion or portions thereof not so converted, shall be treated for all purposes as a single unit until and unless it is so converted, and the provisions of this chapter shall be deemed applicable to any such space, or portion or portions thereof, as though the same were a unit.

1974, c. 416; 1999, c. [560](#).

§55-79.63. Expansion of condominium.

No condominium shall be expanded except in accordance with the provisions of the declaration and of this chapter. Any such expansion shall be deemed to have occurred at the time of the recordation of plats and plans pursuant to subsection C of § [55-79.58](#), together with an amendment to the declaration, duly executed by the declarant, including, without limitation, all of the owners and lessees of the additional land added to the condominium. Such amendment shall contain a legal description by metes and bounds of the land added to the condominium, and shall reallocate undivided interests in the common elements in accordance with the provisions of

subsection (b) of § [55-79.56](#). Such amendment may create convertible or withdrawable lands or both within the land added to the condominium, but this provision shall not be construed in derogation of the time limits imposed by or pursuant to subdivision (d) (3) of § [55-79.54](#) and subsection C of § [55-79.61](#).

1974, c. 416; 1975, c. 415.

§55-79.64. Contraction of condominium.

No condominium shall be contracted except in accordance with the provisions of the declaration and of this chapter. Any such contraction shall be deemed to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legal description by metes and bounds of the land withdrawn from the condominium. If portions of the withdrawable land were described pursuant to subdivision (d) (5) of § [55-79.54](#), then no such portion shall be so withdrawn after the conveyance of any unit on such portion. If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any unit thereon.

1974, c. 416.

§55-79.65. Easement to facilitate conversion and expansion.

Subject to any restrictions and limitations the condominium instruments may specify, the declarant shall have a transferable easement over and on the common elements for the purpose of making improvements on the submitted land and any additional land pursuant to the provisions of those instruments and of this chapter, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

1974, c. 416.

§55-79.66. Easement to facilitate sales.

The declarant and his duly authorized agents, representatives, and employees may maintain sales offices and/or model units on the submitted land if and only if the condominium instruments provide for the same and specify the rights of the declarant with regard to the number, size, location, and relocation thereof. Any such sales office or model unit which is not designated a unit by the condominium instruments shall become a common element as soon as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights with regard thereto unless such sales

office or model unit is removed forthwith from the submitted land in accordance with a right reserved in the condominium instruments to make such removal.

1974, c. 416.

§55-79.67. Declarant's obligation to complete and restore.

(a) No covenants, restrictions, limitations, or other representations or commitments in the condominium instruments with regard to anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either, shall be binding as to any portion of either lawfully withdrawn from the condominium or never added thereto except to the extent that the condominium instruments so provide. But in the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments or in any other agreement requiring the declarant to add all or any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done thereon or with regard thereto, or imposing any obligations with regard to anything that is or is not to be done on or with regard to the condominium or any portion thereof, this subsection shall not be construed to nullify, limit, or otherwise affect any such obligation.

(a1) The declarant shall complete all improvements labeled "(NOT YET COMPLETED)" on plats recorded pursuant to the requirements of this chapter unless the condominium instruments expressly exempt the declarant from such obligation, and shall, in the case of every improvement labeled "(NOT YET BEGUN)" on such plats, state in the declaration either the extent of the obligation to complete the same or that there is no such obligation.

(b) To the extent that damage is inflicted on any part of the condominium by any person or persons utilizing the easements reserved by the condominium instruments or created by §§ [55-79.65](#) and [55-79.66](#), the declarant together with the person or persons causing the same shall be jointly and severally liable for the prompt repair thereof and for the restoration of the same to a condition compatible with the remainder of the condominium.

1974, c. 416; 1975, c. 415.

§55-79.68. Alterations within units.

(a) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, any unit owner may make any

improvements or alterations within his unit that do not impair the structural integrity of any structure or otherwise lessen the support of any portion of the condominium. But no unit owner shall do anything which would change the exterior appearance of his unit or of any other portion of the condominium except to such extent and subject to such conditions as the condominium instruments may specify.

(b) If a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may in whole or in part be a common element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common element other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of § [55-79.69](#).

1974, c. 416.

§55-79.69. Relocation of boundaries between units.

A. If the condominium instruments expressly permit the relocation of boundaries between adjoining units, then the boundaries between such units may be relocated in accordance with (i) the provisions of this section and (ii) any restrictions and limitations not otherwise unlawful which the condominium instruments may specify. The boundaries between adjoining units shall not be relocated unless the condominium instruments expressly permit it.

B. If the unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate such boundaries, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of such unit owners, forthwith prepare and execute appropriate instruments pursuant to subsections C, D, and E.

C. An amendment to the declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof, which amendment shall contain conveyancing between those unit owners. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

D. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate number of votes in the unit owners' association allocated to those units, an amendment to the bylaws shall reflect that reallocation and a proportionate reallocation of liability for common expenses as between those units.

E. Such plats and plans as may be necessary to show the altered boundaries between the units involved together with their other boundaries shall be prepared, and the units depicted thereon shall bear their identifying numbers. Such plats and plans shall indicate the new dimensions of the units involved, and any change in the horizontal boundaries of either as a result of the relocation of their boundaries shall be identified with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and (ii) by a licensed architect, licensed engineer or licensed land surveyor in the case of any plan.

F. When appropriate instruments in accordance with the preceding subsections hereof have been prepared, executed, and acknowledged, they shall be recorded by an officer of the unit owners' association following payment by the unit owners of the units involved of all reasonable costs for the preparation, acknowledgment and recordation thereof. Said instruments shall become effective when executed by the unit owners of the units involved and recorded, and the recordation thereof shall be conclusive evidence that the relocation of boundaries thus effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections C and D were reasonable.

G. Any relocation of boundaries between adjoining units shall be governed by this section and not by § [55-79.70](#). Section [55-79.70](#) shall apply only to such subdivisions of units as are intended to result in the creation of two or more new units in place of the subdivided unit.

1974, c. 416; 1991, c. 497 .

§55-79.70. Subdivision of units.

A. If the condominium instruments expressly permit the subdivision of any units, then such units may be subdivided in accordance with (i) the provisions of this section and (ii) any restrictions and limitations not otherwise unlawful which the condominium instruments may specify. No unit shall be subdivided unless the condominium instruments expressly permit it.

B. If the unit owner of any unit which may be subdivided desires to subdivide such unit, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall henceforth be referred to in this section, forthwith prepare and execute appropriate instruments pursuant to subsections C, D and E.

C. An amendment to the declaration shall assign new identifying numbers to the new units created by the subdivision of a unit and shall allocate to those units, on a reasonable basis acceptable to the subdivider, all of the undivided interest in the common elements appertaining to the subdivided unit. The new units shall jointly share all rights, and shall be equally liable jointly and severally for all obligations, with regard to any limited common elements assigned to the subdivided unit except to the extent that the subdivider may have specified in his written application that all or any portions of any limited common element assigned to the subdivided unit exclusively should be assigned to one or more, but less than all of the new units, in which case the amendment to the declaration shall reflect the desires of the subdivider as expressed in such written application.

D. An amendment to the bylaws shall allocate to the new units, on a reasonable basis acceptable to the subdivider, the votes in the unit owners' association allocated to the subdivided unit, and shall reflect a proportionate allocation to the new units of the liability for common expenses formerly appertaining to the subdivided unit.

E. Such plats and plans as may be necessary to show the boundaries separating the new units together with their other boundaries shall be prepared, and the new units depicted thereon shall bear their new identifying numbers. Such plats and plans shall indicate the dimensions of the new units, and the horizontal boundaries thereof, if any, shall be identified thereon with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and (ii) by a licensed architect, licensed engineer or licensed land surveyor in the case of any plan.

F. When appropriate instruments in accordance with the preceding subsections hereof have been prepared, executed, and acknowledged, they shall be recorded by an officer of the unit owners' association following payment by the subdivider of all reasonable costs for the preparation, acknowledgment and recordation thereof. Said instruments shall become effective when executed by the subdivider and recorded, and the

recording thereof shall be conclusive evidence that the subdivision thus effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections C and D were reasonable.

G. Notwithstanding the definition of "unit" found in § [55-79.41](#) and the provisions of subsection (d) of § [55-79.62](#), this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any units formed by the conversion of all or any portion of any such space, and any such unit shall be deemed a unit for the purposes of this section.

1974, c. 416; 1991, c. 497 .

§55-79.71. Amendment of condominium instruments.

A. If there is no unit owner other than the declarant, the declarant may unilaterally amend the condominium instruments, and the amendment shall become effective upon the recording thereof if the amendment has been executed by the declarant. But this section shall not be construed to nullify, limit, or otherwise affect the validity of enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred.

B. If any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium instruments shall be amended only by agreement of unit owners of units to which two-thirds of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify, except in cases for which this chapter provides different methods of amendment. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

C. An action to challenge the validity of an amendment adopted by the unit owners' association pursuant to this section may not be brought more than one year after the amendment is recorded.

D. Agreement of the required majority of unit owners to any amendment of the condominium instruments shall be evidenced by their execution of the amendment, or ratifications thereof, and the same shall become effective when a copy of the amendment is recorded together with a certification, signed by the principal officer of the

unit owners' association or by such other officer or officers as the condominium instruments may specify, that the requisite majority of the unit owners signed the amendment or ratifications thereof.

E. Except to the extent expressly permitted or expressly required by other provisions of this chapter, or agreed to by 100 percent of the unit owners, no amendment to the condominium instruments shall change (i) the boundaries of any unit, (ii) the undivided interest in the common elements, (iii) the liability for common expenses, or (iv) the number of votes in the unit owners' association that appertains to any unit.

F. Notwithstanding any other provision of this section, the declarant may unilaterally execute and record a corrective amendment or supplement to the condominium instruments to correct a mathematical mistake, an inconsistency or a scrivener's error, or clarify an ambiguity in the condominium instruments with respect to an objectively verifiable fact (including without limitation recalculating the undivided interest in the common elements, the liability for common expenses or the number of votes in the unit owners' association appertaining to a unit), within five years after the recordation of the condominium instrument containing or creating such mistake, inconsistency, error or ambiguity. No such amendment or supplement may materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error or ambiguity had not occurred. Regardless of the date of recordation of the condominium instruments, the principal officer of the unit owners' association may also unilaterally execute and record such a corrective amendment or supplement upon a vote of two-thirds of the members of the executive organ. All corrective amendments and supplements recorded prior to July 1, 1986, are hereby validated to the extent that such corrective amendments and supplements would have been permitted by this subsection.

1974, c. 416; 1993, c. 667 .

§55-79.71:1. Use of technology.

A. Unless the condominium instruments expressly provide otherwise, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any condominium instrument or any provision of this chapter may be accomplished using the most advanced technology available at that time if such use is a generally accepted business practice. This section shall govern the use of technology in implementing the provisions of any condominium instru-

ment or any provision of this chapter dealing with notices, signatures, votes, consents, or approvals.

B. Electronic transmission and other equivalent methods. The unit owners' association, unit owners, and other persons entitled to occupy a unit may perform any obligation or exercise any right under any condominium instrument or any provision of this chapter by use of any technological means providing sufficient security, reliability, identification, and verifiability. "Acceptable technological means" shall include without limitation electronic transmission over the Internet or the community or other network, whether by direct connection, intranet, telecopier, or electronic mail.

C. Signature requirements. An electronic signature meeting the requirements of applicable law shall satisfy any requirement for a signature under any condominium instrument or any provision of this chapter.

D. Voting rights. Voting, consent to and approval of any matter under any condominium instrument or any provision of this chapter may be accomplished by electronic transmission or other equivalent technological means provided that a record is created as evidence thereof and maintained as long as such record would be required to be maintained in nonelectronic form.

E. Acknowledgment not required. Subject to other provisions of law, no action required or permitted by any condominium instrument or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the executive organ.

F. Nontechnology alternatives. If any person does not have the capability or desire to conduct business using electronic transmission or other equivalent technological means, the unit owners' association shall make reasonable accommodation, at its expense, for such person to conduct business with the unit owners' association without use of such electronic or other means.

G. This section shall not apply to any notice related to an enforcement action by the unit owners' association, an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

2010, c. [432](#).

§55-79.71:2. Merger or consolidation of condominiums; procedure.

A. Any two or more condominiums, by agreement of the unit owners as provided in subsection B, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium shall be the legal successor, for all purposes, of all of the preexisting condominiums, and the operations and activities of all unit owners' associations of the preexisting condominiums shall be merged or consolidated into a single unit owners' association that holds all powers, rights, obligations, assets, and liabilities of all preexisting unit owners' associations.

B. An agreement to merge or consolidate two or more condominiums pursuant to subsection A shall be evidenced by an agreement prepared, executed, recorded, and certified by the principal officer of the unit owners' association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. The agreement shall be recorded in every locality in which a portion of the condominium is located and shall not be effective until recorded.

C. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new unit owners' association among the units of the resultant condominium either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of the overall allocated interests of the condominium that are allocated to all of the units comprising each of the preexisting condominiums, and provided that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium shall be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

D. If the condominium instruments of a condominium to be merged or consolidated require a vote or consent of mortgagees in order to amend the condominium instruments or terminate the condominium, the same vote or consent of mortgagees shall be required before such merger or consolidation shall become effective. No merger or consolidation shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. A vote or consent of a mortgagee required by this section may be deemed received pursuant to § [55-79.73:1](#).

2014, c. [659](#).

§55-79.72. Repealed.

Repealed by Acts 1993, c. 667 .

§55-79.72:1. Termination of condominium.

A. If there is no unit owner other than the declarant, the declarant may unilaterally terminate the condominium. An instrument terminating a condominium shall become effective upon recordation thereof if the termination instrument has been signed by the declarant. But this section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred.

B. Except in the case of a taking of all the units by eminent domain, if any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium may be terminated only by the agreement of unit owners of units to which four-fifths of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

C. Agreement of the required majority of unit owners to termination of the condominium shall be evidenced by their execution of a termination agreement, or ratifications thereof, and the same shall become effective when a copy of the termination agreement is recorded together with a certification, signed by the principal officer of the unit owners' association or by such other officer or officers as the condominium instruments may specify, that the requisite majority of the unit owners signed the termination agreement or ratifications thereof. Unless the termination agreement otherwise provides, prior to recordation of the termination agreement, a unit owner's prior agreement to terminate the condominium may be revoked only with the approval of unit owners of units to which a majority of the votes in the unit owners' association appertain. The termination agreement shall specify a date after which the termination agreement shall be void if the termination agreement is not recorded. For the purposes of this section, an instrument terminating a condominium and any ratification thereof shall be deemed a condominium instrument subject to the provisions of § [55-79.49](#).

D. In the case of a condominium that contains only units having horizontal boundaries described in the condominium instruments, a termination agreement may

provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the termination agreement, any property in the condominium is sold following termination, the termination agreement shall set forth the minimum terms of the sale.

E. In the case of a condominium that contains any units not having horizontal boundaries described in the condominium instruments, a termination agreement may provide for sale of the common elements. The termination agreement may not require that the units be sold following termination, unless the condominium instruments as originally recorded provide otherwise or all the unit owners consent to the sale. In the case of a master condominium that contains a unit which is a part of another condominium, a termination agreement for the master condominium shall not terminate the other condominium.

F. On behalf of the unit owners, the unit owners' association may contract for the disposition of property in the condominium, but the contract shall not be binding on the unit owners until approved pursuant to subsections B and C of this section. If the termination agreement requires that any property in the condominium be sold following termination, title to the property, upon termination, shall vest in the unit owners' association as trustee for the holders of all interest in the units. Thereafter, the unit owners' association shall have powers necessary and appropriate to effect the sale. Until the same has been concluded and the proceeds have been distributed, the unit owners' association shall continue in existence with all the powers the unit owners' association had before termination. Proceeds of the sale shall be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of the unit owners as provided in subsection I of this section. Unless otherwise specified in the termination agreement, for as long as the unit owners' association holds title to the property, each unit owner or his successor in interest shall have an exclusive right to occupancy of the portion of the property that formerly constituted his unit. During the period of occupancy by the unit owner or his successor in interest, each unit owner or his successor in interest shall remain liable for any assessment or other obligation imposed on the unit owner by this chapter or the condominium instruments.

G. If the property that constitutes the condominium is not sold following termination, title to the common elements and, in the case of a condominium containing only units that have horizontal boundaries described in the condominium

instruments, title to all the property in the condominium shall vest in the unit owners, upon termination, as tenants in common in proportion to the unit owners' respective interests as provided in subsection I of this section. Any liens on the units shall shift accordingly. While the tenancy in common exists, each unit owner or his successor in interest shall have the exclusive right to occupancy of the portion of the property that formerly constituted the unit owner's unit.

H. Following termination of the condominium, the proceeds of any sale of property, together with the assets of the unit owners' association, shall be held by the unit owners' association as trustee for unit owners or lien holders on the units as their interests may appear. Following termination, any creditor of the unit owners' association who holds a lien on the unit that was recorded before termination may enforce the lien in the same manner as any lien holder. Any other creditor of the unit owners' association shall be treated as if he had perfected a lien on the units immediately before termination.

I. Unless the condominium instruments as originally recorded or as amended by 100 percent of the unit owners provide otherwise, the respective interests of unit owners referred to in subsections F, G, and H shall be as follows:

1. Except as provided in subdivision 2, the respective interests of the unit owners shall be the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the unit owners' association. The decision of the independent appraisers shall be distributed to the unit owners and become final unless disapproved within thirty days after distribution by unit owners of units to which one-quarter of the votes in the unit owners' association appertain. The proportion of any unit owner's interest to the interest of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and their common element interests.

2. If any unit or limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are the unit owners' respective common element interests immediately before the termination.

J. Except as provided in subsection K, foreclosure or enforcement of a lien or encumbrance against the entire condominium shall not alone terminate the condominium,

and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable land, shall not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone withdraw the land from the condominium, but the person who takes title to the withdrawable land shall have the right to require from the unit owners' association, upon request, an amendment that excludes the land from the condominium.

K. If a lien or encumbrance against a portion of the property that comprises the condominium has priority over the condominium instruments and the lien or encumbrance has not been partially released, upon foreclosure, the parties foreclosing the lien or encumbrance may record an instrument that excludes the property subject to the lien or encumbrance from the condominium.

1993, c. 667 .

§55-79.72:2. Rights of mortgagees.

No provision of this chapter shall be construed in derogation of any requirement of the condominium instruments that all or a specified number of the beneficiaries of mortgages or deeds of trust encumbering the condominium units approve specified actions contemplated by the unit owners' association.

1993, c. 667 .

§55-79.72:3. Statement of unit owner rights.

Every unit owner who is a member in good standing of a unit owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the unit owners' association according to and subject to the provisions of § [55-79.74:1](#), including records of all financial transactions;
2. The right to cast a vote on any matter requiring a vote by the unit owners' association membership in proportion to the unit owner's ownership interest, except to the extent that the condominium instruments provide otherwise;
3. The right to have notice of any meeting of the executive organ, to make a record of such meetings by audio or visual means, and to participate in such meeting in accordance with the provisions of § [55-79.75](#);

4. The right to have (i) notice of any proceeding conducted by the executive organ or other tribunal specified in the condominium instruments against the unit owner to enforce any rule or regulation of the unit owners' association and (ii) the opportunity to be heard and represented by counsel at the proceeding, as provided in § [55-79.80:2](#), and the right of due process in the conduct of that hearing; and
5. The right to serve on the executive organ if duly elected and a member in good standing of the unit owners' association, except to the extent that the condominium instruments provide otherwise.

The rights enumerated in this section shall be enforceable by any such unit owner pursuant to the provisions of § [55-79.53](#).

2015, c. [286](#).

§55-79.73. Bylaws to be recorded with declaration; contents; unit owners' association; executive organ; amendment of bylaws.

A. There shall be recorded simultaneously with the declaration a set of bylaws providing for the self-government of the condominium by an association of all the unit owners. The unit owners' association may be incorporated.

B. The bylaws shall provide whether or not the unit owners' association shall elect an executive organ. If there is to be such an organ, the bylaws shall specify the powers and responsibilities of the same and the number and terms of its members. Except to the extent the condominium instruments provide otherwise, any vacancy occurring in the executive organ shall be filled by a vote of a majority of the remaining members of the executive organ at a meeting of the executive organ, even though the members of the executive organ present at such meeting may constitute less than a quorum because a quorum is impossible to obtain. Each person so elected shall serve until the next annual meeting of the unit owners' association at which time a successor shall be elected by a vote of the unit owners. The bylaws may delegate to such organ, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive organ may delegate to a managing agent.

C. The bylaws may provide for arbitration of disputes or other means of alternative dispute resolution in accordance with subsection C of § [55-79.53](#).

D. In any case where an amendment to the declaration is required by subsection (b), (c), or (d) of § [55-79.56](#), the person or persons required to execute the same shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate votes in the unit owners' association to new units on the same basis as was used for the allocation of such votes to the units depicted on plats and plans recorded pursuant to subsections A and B of § [55-79.58](#), or shall abolish the votes appertaining to former units, as the case may be. The amendment to the bylaws shall also reallocate rights to future common profits, and liabilities for future common expenses not specially assessed, in proportion to relative voting strengths as reflected by the said amendment.

1974, c. 416; 1978, c. 332; 1993, c. 667; 1998, c. [32](#); 2012, c. [758](#).

§55-79.73:1. Amendment to condominium instruments; consent of mortgagee.

A. In the event that any provision in the condominium instruments requires the written consent of a mortgagee in order to amend the condominium instruments, the unit owners' association shall be deemed to have received the written consent of a mortgagee if the unit owners' association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address supplied by such mortgagee in a written request to the unit owners' association to receive notice of proposed amendments to the condominium instruments and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the unit owners' association, unless the condominium instruments expressly provide otherwise. If the mortgagee has not supplied an address to the unit owners' association, the unit owners' association shall be deemed to have received the written consent of a mortgagee if the unit owners' association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office, and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the unit owners' association, unless the condominium instruments expressly provide otherwise.

B. Subsection A shall not apply to amendments which alter the priority of the lien of the mortgagee or which materially impair or affect the unit as collateral or the right of the mortgagee to foreclose on a unit as collateral.

C. Where the condominium instruments are silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the condominium instruments does not specifically affect mortgagee rights.

1993, c. 1; 1998, c. [32](#); 2007, c. [675](#).

§55-79.73:2. Reformation of declaration; judicial procedure.

A. A unit owners' association may petition the circuit court in the county or city wherein the condominium or the greater part thereof is located to reform the condominium instruments where the unit owners' association, acting through its executive organ, has attempted to amend the condominium instruments regarding ownership of legal title of the common elements or real property using provisions outlined therein to resolve (i) ambiguities or inconsistencies in the condominium instruments that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the unit owners' association or individual unit owners or (ii) scrivener's errors, including incorrectly identifying the unit owners' association, incorrectly identifying an entity other than the unit owners' association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

B. The court shall have jurisdiction over matters set forth in subsection A regarding ownership of legal title of the common elements or real property to:

1. Reform, in whole or in part, any provision of the condominium instruments; and
2. Correct mistakes or any other error in the condominium instruments that may exist with respect to the declaration for any other purpose.

C. A petition filed by the unit owners' association with the court setting forth any inconsistency or error made in the condominium instruments, or the necessity for any change therein, shall be deemed sufficient basis for the reformation, in whole or in part, of the condominium instruments, provided that:

1. The unit owners' association has made three good faith attempts to convene a duly called meeting of the unit owners' association to present for consideration amendments to the condominium instruments for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association;
2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;

3. Where the declarant of the condominium still owns a unit or continues to have any special declarant rights in the condominium, the declarant joins in the petition of the unit owners' association;
 4. A copy of the petition is sent to all unit owners at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association; and
 5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.
- D. Any mortgagee of a condominium unit in the condominium shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to § [55-79.73:1](#).

2014, c. [659](#).

§55-79.74. Control of condominium by declarant.

A. The condominium instruments may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association and/or its executive organ, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive organ. The declarant or the managing agent or such other person or persons selected by the declarant to so appoint and remove officers and/or the executive organ or to exercise such powers and responsibilities otherwise assigned to the unit owners' association, the officers, or the executive organ shall be subject to liability as fiduciaries of the unit owners for their action or omissions during the period of declarant control as specified in the condominium instruments or if not so specified, within such period as defined in this section. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant, and no such authorization shall be valid after the time limit set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have

been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the Common Interest Community Board pursuant to subsection B of § [55-79.92](#) hereof and described pursuant to subdivision (4) of subsection (a), subdivision (2) of subsection (b), or subdivision (8) of subsection (c), of § [55-79.54](#).

B. The time limit initially set by the condominium instruments shall not exceed five years in the case of an expandable condominium, three years in the case of a condominium (other than an expandable condominium) containing any convertible land, or two years in the case of any other condominium. Such time period shall commence upon settlement of the first unit to be sold in any portion of the condominium.

Notwithstanding the foregoing, at the request of the declarant, such time limits may be extended for a period not to exceed 15 years from the settlement of the first unit to be sold in any portion of the condominium or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first, provided that (i) a special meeting is held prior to the expiration of the initial period of declarant control; (ii) at such special meeting, the extension of such time limits is approved by a two-thirds affirmative vote of the unit owners other than the declarant; and (iii) at such special meeting, there is an election of a warranty review committee consisting of no fewer than three persons unaffiliated with the declarant.

Prior to any such vote, the declarant shall furnish to the unit owners in the notice of such special meeting made in accordance with § [55-79.75](#) a written statement in a form provided by the Common Interest Community Board that discloses that an affirmative vote extends the right of the declarant, or a managing agent or some other person selected by the declarant, to (a) appoint and remove some or all of the officers of the unit owners' association or its executive organ and (b) exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter. In addition, such statement shall contain both a notice of the effect of the extension of declarant control on the enforcement of the warranty against structural defects provided by the declarant in accordance with § [55-79.79](#) and a statement that a unit owner is advised to exercise whatever due diligence the unit owner deems necessary to protect his interest.

C. If entered into any time prior to the expiration of the period of declarant control, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, employment contract or lease of recreational or parking areas or facilities, which is directly or indirectly made by or on behalf of the unit owners' association, its executive organ, or the unit owners as a group, shall be entered into for a period in excess of two years. Any such contract or agreement entered into on or after July 1, 1978, may be terminated without penalty by the unit owners' association or its executive organ upon not less than 90 days' written notice to the other party given not later than 60 days after the expiration of the period of declarant control. Any such contract or agreement may be renewed for periods not in excess of two years; however, at the end of any two-year period the unit owners' association or its executive organ may terminate any further renewals or extensions thereof. The provisions of this subsection shall not apply to any lease or leases which are referred to in § [55-79.48](#) or which are subject to subsection (e) of § [55-79.54](#).

D. If entered into at any time prior to the expiration of the period of declarant control, any contract, lease or agreement, other than those subject to the provisions of subsection C, may be entered into by or on behalf of the unit owners' association, its executive organ, or the unit owners as a group, if such contract, lease or agreement is bona fide and is commercially reasonable to the unit owners' association at the time entered into under the circumstances.

E. This section does not apply to any contract, incidental to the disposition of a condominium unit, to provide to a unit owner for the duration of such unit owner's life, or for any term in excess of one year, nursing services, medical services, other health-related services, board and lodging and care as necessary, or any combination of such services. The rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments requiring that the unit owners be parties to such contracts.

F. If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this chapter requires action by the unit owners' association, its executive organ, or any officer or officers.

G. Thirty days prior to the expiration of the period of declarant control, the declarant shall notify the governing body of the city, county or town in which the

condominium is located of the forthcoming termination of declarant control. Prior to the expiration of the 30-day period, the local governing body or an agency designated by the local governing body shall advise the principal elected officer of the condominium unit owners' association of any outstanding violations of applicable building codes, local ordinances or other deficiencies of record.

H. Within 45 days from the expiration of the period of declarant control, the declarant shall deliver to the president of the unit owners' association or his designated agent (i) all unit owners' association books and records held by or controlled by the declarant including, without limitation, the following items: minute books and all rules, regulations and amendments thereto which may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the condominium instruments to the end of the regular accounting period immediately succeeding the first election of the board of directors by the unit owners not to exceed 60 days from the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (iv) all association insurance policies which are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any; (vi) any contracts in which the association is a contracting party, if any; and (vii) a list of manufacturers of paints, roofing materials and other similar materials if specified for use on the condominium property.

In the event that the unit owners' association is managed by a management company in which the declarant, or its principals, have no pecuniary interest or management role, then such management company shall have the responsibility to provide the documents and information as required by clauses (i), (ii), (iv), and (vi) of this subsection.

I. This section shall be strictly construed to protect the rights of the unit owners.

1974, c. 416; 1975, c. 415; 1978, c. 332; 1980, c. 738; 1984, c. 601; 1985, c. 83; 1996, c. [977](#); 2008, cc. [851](#), [871](#); 2013, c. [599](#).

§55-79.74:01. Deposit of funds.

All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the unit owners' association and shall be segregated for each account in the

records of the managing agent in a manner that permits the funds to be identified on an individual unit owners' association basis.

2007, cc. [696](#), [712](#).

§55-79.74:1. Books, minutes and records; inspection.

A. The declarant, the managing agent, the unit owners' association, or the person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C and D, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including, but not limited to, the unit owners' association membership list, addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association, and not for pecuniary gain or commercial solicitation. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the unit owners' association's books and records or if such books and records concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;

2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. Probable litigation means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive organ;
5. Communications with legal counsel which relates to subdivisions 1 through 4 or which is protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the executive organ held pursuant to subsection C of § [55-79.75](#);
8. Documentation, correspondence or management or executive organ reports compiled for or on behalf of the unit owners' association or the executive organ by its agents or committees for consideration by the executive organ in executive session; or
9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

D. Prior to providing copies of any books and records, the unit owners' association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof. Charges may be imposed only in accordance with a cost schedule adopted by the executive organ in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all unit owners in good standing, and (iii) be provided to such requesting unit owner at the time the request is made.

1980, c. 738; 1985, c. 75; 1989, c. 57; 1990, c. 662; 1992, c. 72; 1994, c. [463](#); 1999, c. [594](#); 2000, cc. [906](#), [919](#); 2001, c. [419](#); 2011, cc. [334](#), [361](#), [605](#); 2014, c. [207](#).

§55-79.74:2. Management office.

Unless the condominium instruments expressly provide otherwise, the unit owners' association shall not be prohibited from maintaining a management office on common elements or in one or more units in the condominium.

1982, c. 545.

§55-79.74:3. Transfer of special declarant rights.

A. No special declarant right may be transferred except by a document evidencing the transfer recorded in every city and county wherein any portion of the condominium is located. The instrument shall not be effective unless executed by the transferee.

B. Upon transfer of any special declarant right, the liability of a transferor declarant shall be as follows:

1. The transferor shall not be relieved of any obligation or liability arising before the transfer and shall remain liable for warranty obligations imposed upon him by subsection B of § [55-79.79](#). Lack of privity shall not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

2. If the successor to any special declarant right is an affiliate of a declarant, the transferor shall also be jointly and severally liable with the successor for any obligation or liability of the successor which relates to the condominium.

3. If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor shall also be liable for all obligations and liabilities relating to the retained special declarant rights and imposed on a declarant by this chapter or by the condominium instruments.

4. A transferor shall have no liability for any breach of a contractual or warranty obligation or for any other act or omission, arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

C. Except as otherwise provided by the mortgage or deed of trust, in case of foreclosure of a mortgage, sale by a trustee under a deed of trust, tax sale, judicial sale or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code, of any unit owned by a declarant or land subject to development rights:

1. A person acquiring title to all the land being foreclosed or sold shall, but only upon his request, succeed to all special declarant rights related to that land reserved

by that declarant, or only to any rights reserved in the declaration pursuant to § [55-79.66](#) and held by that declarant to maintain sales offices, management offices, model units and/or signs.

2. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

For the purposes of this subsection, "development rights" means any right or combination of rights to expand an expandable condominium, contract a contractable condominium, convert convertible land or convert convertible space.

D. Upon foreclosure, sale by a trustee under a deed of trust, tax sale, judicial sale or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code of all units and other land in the condominium owned by a declarant (i) that declarant ceases to have any special declarant rights, and (ii) any period of declarant control reserved under subsection A of § [55-79.74](#) shall terminate, unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

E. The liabilities and obligations of any person or persons who succeed to any special declarant right shall be as follows:

1. A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the condominium instruments.

2. A successor to any special declarant right, other than a successor described in subdivisions 3 and 4 of this subsection, who is not an affiliate of a declarant shall be subject to all obligations and liabilities imposed by this chapter or the condominium instruments on a declarant, which relate to his exercise or nonexercise of special declarant rights, or on his transferor, except for (i) misrepresentations by any prior declarant, (ii) warranty obligations as provided in subsection B of § [55-79.79](#) on improvements made by any previous declarant or made before the condominium was created, (iii) breach of any fiduciary obligation by any previous declarant or his appointees to the executive organ, or (iv) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

3. Unless he is an affiliate of a declarant, a successor to only a right reserved in the declaration to maintain sales offices, management offices, model units and/or signs shall not exercise any other special declarant right and shall not be subject to any

liability or obligation as a declarant, except the liabilities and obligations arising under Article 4 (§ [55-79.86](#) et seq.) of this chapter as to disposition by that successor.

4. A successor to all special declarant rights held by his transferor who is not an affiliate of that transferor and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection C hereof may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right reserved by his transferor pursuant to subsection A of § [55-79.74](#). Any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he shall not be subject to any liability or obligation as a declarant other than liability for his acts and omissions relating to the exercise of rights reserved under subsection A of § [55-79.74](#).

F. Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the condominium instruments.

G. For the purposes of this section, "affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person (i) is general partner, officer, director or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than twenty percent of the capital of the declarant. A person is controlled by a declarant if the declarant (i) is a general partner, officer, director or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than twenty percent of the voting interest in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

1982, c. 545; 1991, c. 497; 1996, c. [977](#); 2006, c. [646](#).

§55-79.74:4. Declarants not succeeding to special declarant rights.

A declarant who does not succeed to any special declarant rights shall be liable only to the extent of his actions for claims and obligations arising under this chapter or the condominium instruments.

1993, c. 667 .

§55-79.75. Meetings of unit owners' associations and executive organ.

A. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of said association. The bylaws shall specify an officer or his agent who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the unit owners' association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

Notice shall be sent by United States mail to all unit owners of record at the address of their respective units unless the unit owner has provided to such officer or his agent an address other than the address of the unit; or notice may be hand delivered by the officer or his agent, provided the officer or his agent certifies in writing that notice was delivered to the person of the unit owner.

In lieu of delivering notice as specified in the preceding paragraph of this subsection, such officer or his agent may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the unit owner to whom the notice is given, provided the officer or his agent certifies in writing that notice was sent.

B. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive organ meetings. All meetings of the unit owners' association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record. The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent the condominium instruments or rules adopted thereto expressly

so provide, send notice by electronic transmission consented to by the officer to whom the notice is given. Minutes of the meetings of the executive organ shall be recorded and shall be available as provided in § [55-79.74:1](#).

Notice of the time, date and place of each meeting of the executive organ or of any subcommittee or other committee thereof, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

A unit owner may make a request to be notified on a continual basis of any such meetings which request shall be made at least once a year in writing and include the unit owners' name, address, zip code, and any e-mail address as appropriate. Notice of the time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or e-mail in the case of meetings of the executive organ or (ii) by e-mail in the case of meetings of any subcommittee or other committee of the executive organ, or of a subcommittee or other committee of the unit owners' association.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the (i) executive organ or any subcommittee or other committee thereof or (ii) subcommittee or other committee of the unit owners' association conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of the executive organ or subcommittee or other committee thereof for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive organ.

Any unit owner may record any portion of a meeting required to be open. The executive organ or subcommittee or other committee thereof conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the unit owner recording the meeting to provide notice that the meeting is being recorded.

If a meeting of the executive organ is conducted by telephone conference or video conference or similar electronic means, at least two board members shall be physically present at the meeting place included in the notice. The audio equipment shall be sufficient for any member in attendance to hear what is said by any board member participating in the meeting who is not physically present.

Voting by secret or written ballot in an open meeting shall be a violation of this chapter except for the election of officers.

C. The executive organ or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation and matters involving violations of the condominium instruments or rules and regulations promulgated pursuant thereto for which a unit owner, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive organ shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in executive session shall become effective unless the executive organ or subcommittee or other committee thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the executive organ, the executive organ shall provide a designated period of time during a meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the executive organ may limit the comments of unit owners to the topics listed on the meeting agenda.

1974, c. 416; 1978, c. 363; 1989, c. 58; 1990, c. 662; 1992, c. 72; 2000, c. [906](#); 2001, c. [715](#); 2003, cc. [404](#), [405](#), [442](#); 2005, c. [353](#); 2007, c. [675](#); 2013, c. [275](#).

§55-79.75:1. Distribution of information by members.

A. The executive organ shall establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive organ regarding any matter concerning the unit owners' association.

B. Except as otherwise provided in the condominium instruments, the executive organ shall not require prior approval of the dissemination or content of any material regarding any matter concerning the unit owners' association.

2001, c. [715](#); 2003, c. [405](#).

§55-79.75:2. Display of the flag of the United States; necessary supporting structures; affirmative defense.

A. In accordance with the federal Freedom to Display the American Flag Act of 2005, no unit owners' association shall prohibit or otherwise adopt or enforce any policy restricting a unit owner from displaying upon property to which the unit owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code, or any rule or custom pertaining to the proper display of the flag. A unit owners' association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property provided such restrictions are necessary to protect a substantial interest of the unit owners' association.

B. The unit owners' association may restrict the display of such flags in the common elements.

C. In any action brought by the unit owners' association under § [55-79.80:2](#) for a violation of a flag restriction, the unit owners' association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the unit owners' association.

D. In any action brought by the unit owners' association under § [55-79.80:2](#), the unit owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitation pertaining to the flag of the United States or any flagpole or similar structure necessary to display the flag of the United States was not contained in the public offering statement or resale certificate, as appropriate, required pursuant to § [55-79.90](#) or [55-79.97](#).

2007, cc. [854](#), [910](#); 2010, cc. [166](#), [453](#).

§55-79.76. Meetings of unit owners' associations and executive organ; quorums.

A. Unless the condominium instruments otherwise provide or as specified in subsection G of § [55-79.77](#), a quorum shall be deemed to be present throughout any

meeting of the unit owners' association until adjourned if persons entitled to cast more than 33 1/3 percent of the votes are present at the beginning of such meeting. The bylaws may provide for a larger percentage, or for a smaller percentage not less than 10 percent.

B. Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the executive organ if persons entitled to cast one-half of the votes in that body are present at the beginning of such meeting.

C. On petition of the unit owners' association or any unit owner entitled to vote, the circuit court of the city or county in which the condominium or the greater part thereof is located may order an annual meeting of the unit owners' association be held for the purpose of the election of members of the executive organ, provided that:

1. No annual meeting as required by § [55-79.75](#) has been held due to the failure to obtain a quorum of unit owners as specified in the condominium instruments; and
2. The unit owners' association has made good faith attempts to convene a duly called annual meeting of the unit owners' association in three successive years, which attempts have proven unsuccessful due to the failure to obtain a quorum.

The court may set the quorum for the meeting and enter other orders necessary to convene the meeting.

A unit owner filing a petition under this subsection shall provide a copy of the petition to the executive organ at least ten business days prior to filing.

1974, c. 416; 2003, c. [413](#); 2015, cc. [214](#), [430](#).

§55-79.77. Meetings of unit owners' associations and executive organ; voting by unit owners; proxies.

A. The bylaws may allocate to each unit depicted on plats and plans that comply with subsections A and B of § [55-79.58](#) a number of votes in the unit owners' association proportionate to the undivided interest in the common elements appertaining to each such unit.

B. Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit owners' association, subject to the following exception: Each convertible space so depicted shall be allocated a number of votes in the unit owners' association proportionate to the size of each such space, vis-a-vis the aggregate size of all units

so depicted, while the remaining votes in the unit owners' association shall be allocated equally to the other units so depicted.

C. Since a unit owner may be more than one person, if only one of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. But if more than one of such persons is present, the vote appertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this subsection to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a unit owner.

D. The votes appertaining to any unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the unit owner, or, in cases where the unit owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the unit owner or by any of such persons, that it be revoked. Except to the extent otherwise provided in the condominium instruments, any proxy shall be void if it is not dated, or if it purports to be revocable without notice as aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate after the first meeting held on or after the date of that proxy or any recess or adjournment of that meeting. The proxy shall include a brief explanation of the effect of leaving the proxy uninstructed. To the extent the condominium instruments or rules adopted thereto expressly so provide, a vote or proxy may be submitted by electronic transmission, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the unit owner or the unit owner's proxy.

E. If 50 percent or more of the votes in the unit owners' association appertain to 25 percent or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority

shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

F. All votes appertaining to units owned by the unit owners' association shall be deemed present for quorum purposes at all duly called meetings of the unit owners' association and shall be deemed cast in the same proportions as the votes cast by unit owners other than the unit owners' association.

G. Except to the extent that the condominium instruments provide otherwise, the voting interest allocated to the unit or member that has been suspended by the unit owners' association or the executive organ pursuant to the condominium instruments shall not be counted in the total number of voting interests used to determine the quorum for any meeting or vote under the condominium instruments.

1974, c. 416; 1980, c. 108; 1991, c. 497; 1993, c. 667; 1998, c. [32](#); 2003, c. [442](#); 2015, c. [214](#).

§55-79.78. Officers.

A. If the condominium instruments provide that any officer or officers must be unit owners, then any such officer who disposes of all of his units in fee shall be deemed to have disqualified himself from continuing in office unless the condominium instruments otherwise provide, or unless he acquires or contracts to acquire another unit in the condominium under terms giving him a right of occupancy thereto effective on or before the termination of his right of occupancy under such disposition or dispositions.

B. If the condominium instruments provide that any officer or officers must be unit owners, then notwithstanding the provisions of subsection (a) of § [55-79.50](#), the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include, without limitation, any director, officer, partner in, or trustee of any person which is, either alone or in conjunction with another person or persons, a unit owner. Any officer who would not be eligible to serve as such were he not a director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that person, or if that person would itself have been deemed to have disqualified itself from continuing in such office under subsection A were it a natural person holding such office.

1974, c. 416; 1991, c. 497; 2002, c. [520](#).

§55-79.79. Upkeep of condominiums; warranty against structural defects; statute of limitations for warranty; warranty review committee.

A. Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the case of the common elements, and (ii) to the individual unit owner in the case of any unit or any part thereof, except to the extent that the need for repairs, renovation, restoration or replacement arises from a condition originating in or through the common elements or any apparatus located within the common elements, in which case the unit owners' association shall have such powers and responsibilities. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair thereof.

B. Notwithstanding anything in this section to the contrary, the declarant shall warrant or guarantee, against structural defects, each of the units for two years from the date each is conveyed, and all of the common elements for two years. In the case of each unit the declarant shall also warrant that the unit is fit for habitation and constructed in a workmanlike manner so as to pass without objection in the trade. The two years referred to in this subsection shall begin as to each of the common elements whenever the same has been completed or, if later, (i) as to any common element within any additional land or portion thereof, at the time the first unit therein is conveyed, (ii) as to any common element within any convertible land or portion thereof, at the time the first unit therein is conveyed, and (iii) as to any common element within any other portion of the condominium, at the time the first unit therein is conveyed. For the purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. Any conveyance of a condominium unit transfers to the purchaser all of the declarant's warranties against structural defects imposed by this subsection. For the purposes of this subsection, structural defects shall be those defects in components constituting any unit or common element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require

repair, renovation, restoration, or replacement. Nothing in this subsection shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

C. An action for breach of any warranty prescribed by this section shall be commenced within (i) five years after the date such warranty period began or (ii) one year after the formation of any warranty review committee pursuant to subsection B of § [55-79.74](#), whichever last occurs. However, no such action shall be maintained against the declarant unless a written statement by the claimant or his agent, attorney or representative, of the nature of the alleged defect has been sent to the declarant, by registered or certified mail, at his last known address, as reflected in the records of the Common Interest Community Board, more than six months prior to the commencement of the action giving the declarant an opportunity to cure the alleged defect within a reasonable time, not to exceed five months. Sending the notice required by this subsection shall toll the statute of limitations for commencing a breach of warranty action for a period not to exceed six months.

D. If the initial period of declarant control has been extended in accordance with subsection B of § [55-79.74](#), the warranty review committee (the committee) shall have (i) subject to the provisions of subdivision 3, the irrevocable power as attorney-in-fact on behalf of the unit owners' association to assert or settle in the name of the unit owners' association any claims involving the declarant's warranty against structural defects with respect to all of the common elements and (ii) the authority to levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements pursuant to § [55-79.83](#) if the committee determines that the assessments levied by the unit owners' association are insufficient to enable the committee reasonably to perform its functions pursuant to this subsection. The committee or the declarant shall notify the governing body of the county, city, or town in which the condominium is located of the formation of the committee, within 30 days of its formation. Within 30 days after such notice, the local governing body or an agency designated by the local governing body shall advise the chair of the committee of any outstanding violations of applicable building codes, local ordinances, or other deficiencies of record. Members of the committee shall be insured, indemnified, and subject to liability to the same extent as officers or directors under the condominium instruments or applicable law. The unit owners' association shall provide sufficient funds reasonably necessary for the committee to perform the functions set out in this subsection and to:

1. Engage an independent architect, engineer, legal counsel, and such other experts as the committee may reasonably determine;
2. Investigate whether there exists any breach of the warranty as to any of the common elements. The committee shall document its findings and the evidence that supports such findings. Such findings and evidence shall be confidential and shall not be disclosed to the declarant without the consent of the committee; and
3. Assert or settle in the name of the unit owners' association any claims involving the declarant's warranty on the common elements, provided (i) the committee sends the declarant at least six months prior to the expiration of the statute of limitations a written statement pursuant to subsection C of the alleged nature of any defect in the common elements giving the declarant an opportunity to cure the alleged defect, (ii) the declarant fails to cure the alleged defect within a reasonable time, and (iii) the declarant control period or the statute of limitations has not expired.

E. Within 45 days after the formation of the committee, the declarant shall deliver to the chair of the committee (i) a copy of the latest available approved plans and specifications for all improvements in the project or as-build plans if available; (ii) all association insurance policies that are currently in force; (iii) any written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers applicable to the condominium; and (iv) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the condominium property.

1974, c. 416; 1975, c. 415; 1980, c. 386; 1982, c. 545; 1984, c. 347; 1987, c. 395; 2006, c. [646](#); 2008, cc. [851](#), [871](#); 2013, c. [599](#).

§55-79.80. Control of common elements.

A. Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the unit owners' association shall have the power to:

1. Employ, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the said association arising under § [55-79.79](#).
2. Make or cause to be made additional improvements on and as a part of the common elements.
3. Grant or withhold approval of any action by one or more unit owners or other persons entitled to the occupancy of any unit which would change the exterior appearance of any unit or of any other portion of the condominium, or elect or provide for

the appointment of an architectural control committee, the members of which must have the same qualifications as officers, to grant or withhold such approval.

4. Acquire, hold, convey, and encumber title to real property, including but not limited to condominium units, whether or not the association is incorporated.

B. Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the executive organ of the unit owners' association, if any, and if not, then the unit owners' association itself, shall have the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title with respect to the common elements, including without limitation the right, in the name of the unit owners' association, (i) to grant easements through the common elements and accept easements benefiting the condominium or any portion thereof, (ii) to assert, through litigation or otherwise, defend against, compromise, adjust, and settle any claims or actions related to common elements, other than claims against or actions involving the declarant during any period of declarant control reserved pursuant to subsection A of § [55-79.74](#), and (iii) to apply for any governmental approvals under state and local law.

C. This section shall not be construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities to the unit owners' association or its executive organ.

1974, c. 416; 1975, c. 415; 1981, c. 146; 1982, c. 195; 1991, c. 497; 1993, c. 667; 1996, c. [977](#).

§55-79.80:01. Common elements; notice of pesticide application.

Unit owners' associations shall post notice of all pesticide applications in or upon the common elements. Such notice shall consist of conspicuous signs placed in or upon the common elements where the pesticide will be applied at least forty-eight hours prior to the application.

1999, c. [65](#).

§55-79.80:1. Tort and contract liability; judgment lien.

A. An action for tort alleging a wrong done (i) by any agent or employee of the declarant or of the unit owners' association, or (ii) in connection with the condition of any portion of the condominium which the declarant or the association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be. No unit owner shall be precluded from bringing such an action by virtue

of his ownership of an undivided interest in the common elements or by reason of his membership in the association or his status as an officer.

B. Unit owners other than the declarant shall not be liable for torts caused by agents or employees of the declarant within any convertible land or using any easement reserved in the declaration or created by § [55-79.65](#) or § [55-79.66](#).

C. An action arising from a contract made by or on behalf of the unit owners' association, its executive organ, or the unit owners as a group, shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved pursuant to subsection A of § [55-79.74](#). No unit owner shall be precluded from bringing such an action by reason of his membership in the association or his status as an officer.

D. A judgment for money against the unit owners' association shall be a lien against any property owned by the association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established pursuant to subsection D of § [55-79.83](#), but not against any other property of any unit owner. A unit owner who pays a percentage of the total amount due under such judgment equal to such unit owner's liability for common expenses fixed pursuant to subsection D of § [55-79.83](#) shall be entitled to a release of any such judgment lien and the association shall not be entitled to assess the unit for payment of the remaining amount due. Such judgment shall be otherwise subject to the provisions of § [8.01-458](#).

1975, c. 415; 1991, c. 497; 1992, c. 72; 1996, c. [977](#).

§55-79.80:2. Suspension of services for failure to pay assessments; corrective action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules.

A. The unit owners' association shall have the power, to the extent the condominium instruments or rules duly adopted pursuant thereto expressly so provide, to (i) suspend a unit owner's right to use facilities or services, including utility services, provided directly through the unit owners' association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the unit through the common elements is not precluded and provided that such suspension shall not endanger the health, safety, or property of any unit owner, tenant, or occupant and (ii) assess charges against any unit owner for any violation of the condominium instruments or of the rules or regulations promulgated pursuant thereto

for which such unit owner or his family members, tenants, guests or other invitees are responsible.

B. Before any action authorized in this section is taken, the unit owner shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the unit owner at the address required for notices of meetings pursuant to § [55-79.75](#). If the violation remains uncorrected, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive organ or such other tribunal as the condominium instruments or rules duly adopted pursuant thereto specify.

Notice of such hearing, including the actions that may be taken by the unit owners' association in accordance with this section, shall, at least 14 days in advance thereof, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § [55-79.75](#). Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § [55-79.75](#).

C. The amount of any charges so assessed shall not exceed \$50 for a single offense, or \$10 per diem for any offense of a continuing nature, and shall be treated as an assessment against such unit owner's condominium unit for the purpose of § [55-79.84](#). However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

D. The unit owners' association may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief, arising from any violation of the condominium instruments or duly adopted rules and regulations.

E. After the date a lawsuit is filed in the general district or circuit court by (i) the unit owners' association, by and through its counsel to collect the charges or obtain injunctive relief and correct the violation or (ii) the unit owner challenging any such charges, no additional charges shall accrue.

If the court rules in favor of the unit owners' association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the unit owner prior to the action. In addi-

tion, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.

In any suit filed in general district court pursuant to this section, the court may enter default judgment against the unit owner on the unit owners' association's sworn affidavit.

F. This section shall not be construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities to the unit owners' association or its executive organ.

1993, c. 667; 1997, cc. [173](#), [417](#); 2000, cc. [846](#), [906](#); 2002, c. [509](#); 2011, cc. [372](#), [378](#); 2014, c. [784](#).

§55-79.80:3. Power of unit owners' association to limit occupancy of a unit.

The unit owners' association shall have the power, to the extent the condominium instruments expressly so provide, to limit the number of persons who may occupy a unit as a dwelling. Such limitation shall be reasonable and shall comply with the provisions of § [55-79.52](#).

1996, c. [888](#); 1998, c. [454](#).

§55-79.81. Insurance.

A. The condominium instruments may require the unit owners' association, or the executive organ or managing agent on behalf of such association, to obtain:

1. A master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the structures within the condominium, or of such structures that in whole or in part comprise portions of the common elements.
2. A master liability policy, in an amount specified by the condominium instruments, covering the unit owners' association, the executive organ, if any, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the condominium, and all unit owners and other persons entitled to occupy any unit or other portion of the condominium.
3. Such other policies as may be required by the condominium instruments, including, without limitation, workers' compensation insurance, liability insurance on motor vehicles owned by the unit owners' association, and specialized policies cov-

ering lands or improvements in which the unit owners' association has or shares ownership or other rights.

B. Any unit owners' association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the unit owners' association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the unit owners' association, or committed by any common interest community manager or employees of the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of \$1 million or the amount of reserve balances of the unit owners' association plus one-fourth of the aggregate annual assessment of such unit owners' association. The minimum coverage amount shall be \$10,000. The executive organ or common interest community manager may obtain such bond or insurance on behalf of the unit owners' association.

C. When any policy of insurance has been obtained by or on behalf of the unit owners' association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of subsection A of § [55-79.75](#).

1974, c. 416; 2000, c. [906](#); 2003, c. [360](#); 2004, c. [281](#); 2007, cc. [696](#), [712](#); 2008, cc. [851](#), [871](#).

§55-79.82. Repealed.

Repealed by Acts 1991, c. 497 .

§55-79.83. Liability for common expenses; late fees.

A. Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred. If the limited common element involved was assigned at that time to more than one condominium unit, however, such expenses shall be specially assessed against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.

B. To the extent that the condominium instruments expressly so provide, any other common expenses benefiting less than all of the condominium units, or caused by the conduct of less than all those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against the condominium unit or units involved, in accordance with such reasonable provisions as the condominium instruments may make for such cases. The executive organ may impose reasonable user fees.

C. To the extent that the condominium instruments expressly so provide, (i) any common expenses paid or incurred in making available the same off-site amenities or paid subscription television service to some or all of the unit owners shall be assessed equally against the condominium units involved and (ii) any common expenses paid or incurred in providing metered utility services to some or all of the units shall be assessed against each condominium unit involved based on its actual consumption of such services.

D. The amount of all common expenses not specially assessed pursuant to subsection A, B, or C hereof shall be assessed against the condominium units in proportion to the number of votes in the unit owners' association appertaining to each such unit, or, if such votes were allocated as provided in subsection B of § [55-79.77](#), those common expense assessments shall be either in proportion to those votes or in proportion to the units' respective undivided interests in the common elements, whichever basis the condominium instruments specify. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

E. Except to the extent otherwise provided in the condominium instruments, if the executive organ determines that the assessments levied by the unit owners' association are insufficient to cover the common expenses of the unit owners' association, the executive organ shall have the authority to levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements. The executive organ shall give written notice of any additional assessment to the unit owners stating the amount, reasons therefor, and the due date for payment of such assessment. If the additional assessment is to be paid in a lump sum, payment shall be due and payable no earlier than 90 days after delivery or mailing of the notice.

All unit owners shall be obligated to pay the additional assessment unless the unit owners by a majority of votes cast, in person or by proxy, at a meeting of the unit owners' association convened in accordance with the provisions of the condominium instruments within 60 days of the delivery or mailing of the notice required by this subsection, rescind or reduce the additional assessment. No director or officer of the unit owners' association shall be liable for failure to perform his fiduciary duty if an additional assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the unit owners' association in accordance with this subsection. The unit owners' association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty arising therefrom.

F. It remains the policy of this section that neither a unit owned by the declarant nor any other unit may be exempted from assessments made pursuant to this section by reason of the identity of the unit owner thereof.

G. All condominium instruments for condominiums created prior to January 1, 1981, are hereby validated notwithstanding noncompliance with the first sentence of subsection D hereof, if they provide instead that the amount of all common expenses not specially assessed pursuant to subsection A, B, or C hereof shall be assessed against the condominium units in proportion to their respective undivided interests in the common elements.

H. Except to the extent that the condominium instruments or rules or regulations promulgated pursuant thereto provide otherwise, an executive organ may impose a late fee, not to exceed the penalty provided in § [58.1-3915](#), for any assessment or installment thereof that is not paid within 60 days of the due date for payment of such assessment.

1974, c. 416; 1977, c. 428; 1981, c. 180; 1984, cc. 27, 84, 601; 1992, c. 72; 1993, c. 667; 2003, c. [421](#); 2013, c. [256](#); 2014, c. [239](#).

§55-79.83:1. Reserves for capital components.

A. Except to the extent otherwise provided in the condominium instruments and unless the condominium instruments impose more stringent requirements, the executive organ shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace and restore the capital components;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive organ deems necessary to maintain reserves, as appropriate.

B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life and estimated useful life of the capital components;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside, to repair, replace or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year; and

3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the unit owners' association is funding its reserve obligations consistent with the study currently in effect.

2002, c. [459](#).

§55-79.84. Lien for assessments.

A. The unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments. The said lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of said lien for assessments and securing institutional lenders. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

B. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1974, all memoranda of liens arising under this section shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any such

memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for condominium assessments.

C. The unit owners' association, in order to perfect the lien given by this section, shall file before the expiration of 90 days from the time the first such assessment became due and payable in the clerk's office of the circuit court in the county or city in which such condominium is situated, a memorandum, verified by the oath of the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, which contains the following:

1. A description of the condominium unit in accordance with the provisions of § [55-79.47](#).
2. The name or names of the persons constituting the unit owners of that condominium unit.
3. The amount of unpaid assessments currently due or past due together with the date when each fell due.
4. The date of issuance of the memorandum.

It shall be the duty of the clerk in whose office such memorandum is filed as hereinabove provided to record and index the same as provided in subsection B, in the names of the persons identified therein as well as in the name of the unit owners' association. The cost of recording such memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

D. No suit to enforce any lien perfected under subsection C shall be brought or action to foreclose any lien perfected under subsection I shall be initiated after 36 months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this section. Nothing herein shall extend the time within which any such lien may be perfected.

E. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

F. When payment or satisfaction is made of a debt secured by the lien perfected by subsection C, said lien shall be released in accordance with the provisions of § [55-](#)

[66.3](#). Any lien which is not so released shall subject the lien creditor to the penalty set forth in subdivision A 1 of § [55-66.3](#). For the purposes of that section, the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall be deemed the duly authorized agent of the lien creditor.

G. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to § [55-79.53](#).

H. Any unit owner or purchaser of a condominium unit, having executed a contract for the disposition of the same, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days of the receipt of such request shall extinguish the lien created by subsection A as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive organ, and every unit owner. Payment of a fee not exceeding \$10 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

I. At any time after perfecting the lien pursuant to this section, the unit owners' association may sell the unit at public sale, subject to prior liens. For purposes of this section, the unit owners' association shall have the power both to sell and convey the unit, and shall be deemed the unit owner's statutory agent for the purpose of transferring title to the unit. A nonjudicial foreclosure sale shall be conducted in compliance with the following:

1. The unit owners' association shall give notice to the unit owner prior to advertisement required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the unit owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the unit. The notice shall further inform the unit owner of the right to bring a court action in the circuit court of the county or city where the condominium is located to assert the nonexistence of a debt or any other defense of the unit owner to the sale.

2. After expiration of the 60-day notice period provided in subdivision 1, the unit owners' association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which the condominium is located. It shall be the duty of the clerk in whose office such appointment is filed to record and index the same as provided in subsection C, in the names of the persons identified therein as well as in the name of the unit owners' association. The unit owners' association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the unit owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the unit owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the unit. Those conditions are that the unit owner: (a) satisfy the debt secured by lien that is the subject of the non-judicial foreclosure sale and (b) pays all expenses and costs incurred in perfecting and enforcing the lien, including but not limited to advertising costs and reasonable attorneys' fees.

4. In addition to the advertisement required by subdivision 5, the unit owners' association shall give written notice of the time, date and place of any proposed sale in execution of the lien, and including the name, address and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the unit owners' association, (ii) any lienholder who holds a note against the property secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale, shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the unit owners' association shall be in a newspaper having a general circulation in the city or county wherein the property to be sold, or any portion thereof, lies pursuant to the following provisions:

a. The unit owners' association shall advertise once a week for four successive weeks; however, if the property or some portion thereof is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the unit owners' association finds appropriate, shall set forth a description of the property to be sold, which description need not be as extensive as that contained in the deed of trust, but shall identify the property by street address, if any, or, if none, shall give the general location of the property with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the unit owners' association. It shall set forth the name, address and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b above, the unit owners' association may give such other further and different advertisement as the association finds appropriate.

6. In the event of postponement of sale, which postponement shall be at the discretion of the unit owners' association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

8. In the event of a sale, the unit owners' association shall have the following powers and duties:

a. Written one-price bids may be made and shall be received by the trustee from the unit owners' association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder

in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the condominium instruments, the unit owners' association may bid to purchase the unit at a foreclosure sale. The unit owners' association may own, lease, encumber, exchange, sell or convey the unit. Whenever the written bid of the unit owners' association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision I 10 of this section and § [64.2-1309](#). The written bid submitted pursuant to this subsection may be prepared by the unit owners' association, its agent or attorney.

b. The unit owners' association may require of any bidder at any sale a cash deposit of as much as 10 percent of the sale price before his bid is received, which shall be refunded to him if the property is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the unit owners' association in connection with that sale.

c. The unit owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including reasonable attorneys' fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the unit owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the unit owner or his assigns; provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the unit owner's equity, without actual notice thereof prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the unit with special warranty of title. The trustee shall not be required to take possession of the property prior to the sale thereof or to deliver possession of the unit to the purchaser at the sale.

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § [64.2-1309](#) and every account of a sale shall be recorded pursuant to § [64.2-1310](#). In addition, the accounting shall be made available for inspection and copying pursuant to § [55-79.74:1](#) upon the written request of the prior unit owner, current unit owner or any holder of a recorded lien against the unit at the time of the

sale. The unit owners' association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a unit is made pursuant to subsection I and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the accounting by the commissioner of accounts, the sale is set aside by the court or an appeal is allowed by the Supreme Court of Virginia, and a decree is therein entered requiring such sale to be set aside.

1974, c. 416; 1975, c. 415; 1991, c. 497; 1992, c. 72; 1997, cc. [760](#), [766](#); 2000, c. [906](#); 2004, cc. [778](#), [779](#), [786](#).

§55-79.84:01. Notice of sale under deed of trust.

In accordance with the provisions of § [15.2-979](#), the unit owners' association shall be given notice whenever a condominium unit becomes subject to a sale under a deed of trust. Upon receipt of such notice, the executive organ, on behalf of the unit owners' association, shall exercise whatever due diligence it deems necessary with respect to the unit subject to a sale under a deed of trust to protect the interests of the unit owners' association.

2015, cc. [93](#), [410](#).

§55-79.84:1. Bond to be posted by declarant.

A. The declarant of a condominium containing units which are required by this chapter to be registered with the Common Interest Community Board shall post a bond in favor of the unit owners' association with good and sufficient surety, in a sum equal to \$1,000 per unit, except that such sum shall not be less than \$10,000, nor more than \$100,000. Such bond shall be filed with the Common Interest Community Board and shall be maintained for so long as the declarant owns more than 10 percent of the units in the condominium or, if the declarant owns less than 10 percent of the units in the condominium, until the declarant is current in the payment of assessments. However, the Board shall return a bond where the declarant owns one unit in a condominium containing less than 10 units, provided such declarant is current in the payment of assessments.

B. No bond shall be accepted for filing unless it is with a surety company authorized to do business in the Commonwealth, or by such other surety as is satisfactory to the Board and such bond shall be conditioned upon the payment of all assessments

levied against condominium units owned by the declarant. The Board may accept a letter of credit in lieu of the bond contemplated by this section.

The Board may promulgate reasonable regulations which govern the return of bonds submitted in accordance with this section.

1977, c. 428; 1981, c. 480; 1984, c. 601; 1985, c. 107; 1988, c. 15; 1993, cc. 667, 900; 2008, cc. [851](#), [871](#).

§55-79.85. Restraints on alienation.

If the condominium instruments create any rights of first refusal or other restraints on free alienability of the condominium units, such rights and restraints shall be void unless the condominium instruments make provision for promptly furnishing to any unit owner or purchaser requesting the same a recordable statement certifying to any waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a statement in such circumstances in accordance with the provisions of the condominium instruments shall make all such rights and restraints inapplicable to any disposition of a condominium unit in contemplation of which such statement was requested. Any such statement shall be binding on the association of unit owners, the executive organ, and every unit owner. Payment of a fee not exceeding twenty-five dollars may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

1974, c. 416.

§55-79.86. Administrative agency.

This chapter shall be administered by the Common Interest Community Board which hereinafter is called the agency.

1974, c. 416; 2008, cc. [851](#), [871](#).

§55-79.87. Exemptions from certain provisions of article.

A. Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of §§ [55-79.88](#) through [55-79.93](#), subsections A and C of § [55-79.94](#), and § [55-79.97](#) do not apply to:

1. Dispositions pursuant to court order;
2. Dispositions by any government or government agency;
3. Offers by the declarant on nonbinding reservation agreements;

4. Dispositions in a residential condominium in which there are three or fewer units, so long as the condominium instruments do not reserve to the declarant the right to create additional condominium units; or

5. A disposition of a unit by a sale at an auction, where a current public offering statement or resale certificate was made available as part of an auction package for prospective purchasers prior to the auction sale.

B. In cases of dispositions in a condominium where all units are restricted to non-residential use, the provisions of §§ [55-79.88](#) through [55-79.95](#) shall not apply, unless the method of offer or disposition is adopted for the purpose of evasion of this chapter.

1974, c. 416; 1975, c. 415; 1984, c. 427; 1993, c. 667; 2007, c. [266](#); 2012, c. [325](#); 2015, c. [277](#).

§55-79.87:1. Rental of units.

A. Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall:

1. Condition or prohibit the rental of a unit to a tenant by a unit owner or make an assessment or impose a charge except as provided in § [55-79.42:1](#);

2. Charge a rental fee, application fee, or other processing fee of any kind in excess of \$50 during the term of any lease;

3. Charge an annual or monthly rental fee or any other fee not expressly authorized in § [55-79.42:1](#);

4. Require the unit owner to use a lease or an addendum to the lease prepared by the unit owners' association;

5. Charge any deposit from the unit owner or the tenant of the unit owner; or

6. Have the authority to evict a tenant of any unit owner or to require any unit owner to execute a power of attorney authorizing the unit owners' association to so evict. However, if the unit owner designates a person licensed under the provisions of § [54.1-2106.1](#) as the unit owner's authorized representative with respect to any lease, the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization signed by the unit owner designating such representative. Notwithstanding the foregoing, the requirements of § [55-79.77](#) and the condominium

instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

B. The unit owners' association may require the unit owner to provide the unit owners' association with the names and contact information of the tenants and authorized occupants under such lease and any authorized agent of the unit owner, and vehicle information for such tenants or authorized occupants. The unit owners' association may require the unit owner to provide the unit owners' association with the tenant's acknowledgement of and consent to any rules and regulations of the unit owners' association.

C. The provisions of this section shall not apply to units owned by the unit owners' association.

2015, c. [277](#); 2016, c. [471](#).

§55-79.88. Limitations on dispositions of units.

Unless exempt by § [55-79.87](#):

1. No declarant may offer or dispose of any interest in a condominium unit located in this Commonwealth, nor offer or dispose in this Commonwealth of any interest in a condominium unit located without this Commonwealth prior to the time the condominium including such unit is registered in accordance with this chapter.
2. No declarant may dispose of any interest in a condominium unit unless he delivers to the purchaser a current public offering statement by the time of such disposition and such disposition is expressly and without qualification or condition subject to cancellation by the purchaser within five calendar days from the contract date of the disposition or delivery of the current public offering statement, whichever is later. If the purchaser elects to cancel, he may do so by notice thereof hand-delivered or sent by United States mail, return receipt requested, to the declarant. Such cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.
3. The purchaser's right to cancel the purchase contract pursuant to subdivision 2 shall be set forth on the first page of the purchase contract in boldface print of not less than 12 point type.

1974, c. 416; 1975, c. 415; 1988, c. 15; 2014, c. [215](#).

§55-79.89. Application for registration; fee.

A. The application for registration of the condominium shall be filed as prescribed by the agency's regulations and shall contain the following documents and information:

1. An irrevocable appointment of the agency to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative if nonresidents of the Commonwealth;
2. The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the condominium by the regulatory authorities in each jurisdiction or by any court;
3. The applicant's name, address, and the form, date, and jurisdiction or organization; and the address of each of its offices in this Commonwealth;
4. The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the condominium as of a specified date within 30 days of the filing of the application;
5. A statement, in a form acceptable to the agency, of the condition of the title to the condominium project including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the agency;
6. Copies of the instruments which will be delivered to a purchaser to evidence his interest in the unit and of the contracts and other agreements which a purchaser will be required to agree to or sign;
7. Copies of any management agreements, employment contracts or other contracts or agreements affecting the use, maintenance or access of all or a part of the condominium;
8. A statement of the zoning and other governmental regulations affecting the use of the condominium, including the site plans and building permits and their status, and also of any existing tax and existing or proposed special taxes or assessments which affect the condominium;
9. A narrative description of the promotional plan for the disposition of the units in the condominium;

10. Plats and plans of the condominium that comply with the provisions of § [55-79.58](#) other than the certification requirements thereof, and which show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands, except that the agency may establish by regulation or order requirements in lieu of the provisions of § [55-79.58](#) for plats and plans of a condominium located outside this Commonwealth;

11. The proposed public offering statement;

12. Any bonds required to be posted pursuant to the provisions of this chapter; and

13. Any other information, including any current financial statement, which the agency by its regulations requires for the protection of purchasers.

B. If the declarant registers additional units to be offered for disposition in the same condominium he may consolidate the subsequent registration with any earlier registration offering units in the condominium for disposition under the same promotional plan.

C. The declarant shall immediately report any material changes in the information contained in an application for registration.

D. Each application shall be accompanied by a fee in an amount established by the agency pursuant to § [54.1-113](#). All fees shall be remitted by the agency to the State Treasurer, and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § [55-529](#).

1974, c. 416; 1975, c. 415; 1977, c. 428; 1988, c. 16; 2008, cc. [851](#), [871](#); 2011, c. [605](#).

§55-79.90. Public offering statement; condominium securities.

A. A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and regulations and shall include the following:

1. The name and principal address of the declarant and the condominium;

2. A general narrative description of the condominium stating the total number of units in the offering; the total number of units planned to be sold and rented; the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

3. Copies of the declaration and bylaws, with a brief narrative statement describing each and including information on declarant control, a projected budget for at least the first year of the condominium's operation (including projected common expense assessments for each unit), and provisions for reserves for capital expenditures and restraints on alienation;
4. Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the declarant and the managing agent or firm;
5. A general description of the status of construction, zoning, site plan approval, issuance of building permits, or compliance with any other state or local statute or regulation affecting the condominium;
6. The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;
7. The significant terms of any financing offered by the declarant to the purchaser of units in the condominium;
8. Provisions of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by subsection B of § [55-79.79](#);
9. A statement that, pursuant to subdivision A 2 of § [55-79.88](#), the purchaser may cancel the disposition within five calendar days of delivery of the current public offering statement or within five calendar days of the contract date of the disposition, whichever is later;
10. A statement of the declarant's obligation to complete improvements of the condominium which are planned but not yet begun, or begun but not yet completed. Said statement shall include a description of the quality of the materials to be used, the size or capacity of the improvements when material, and the time by which the improvements shall be completed. Any limitations on the declarant's obligation to begin or complete any such improvements shall be expressly stated;
11. If the units in the condominium are being subjected to a time-share instrument pursuant to § [55-367](#), the information required to be disclosed by § [55-374](#);

12. A statement listing the facilities or amenities which are defined as common elements or limited common elements in the condominium instruments, which are available to a purchaser for use. Such statement shall also include whether there are any fees or other charges for the use of such facilities or amenities which are not included as part of any assessment, and the amount of such fees or charges, if any, a purchaser may be required to pay;

13. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;

14. A statement setting forth any restrictions, limitation, or prohibition on the right of a unit owner to display the flag of the United States, including, but not limited to reasonable restrictions as to the size, place, and manner of placement or display of such flag; and

15. Additional information required by the agency to assure full and fair disclosure to prospective purchasers.

B. The public offering statement shall not be used for any promotional purposes before registration of the condominium project and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the condominium or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the agency requires it.

C. The agency may require the declarant to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the condominium may be made after registration without notifying the agency and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

D. If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement in this chapter if he delivers to the purchaser and files with the agency a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not a security under the provisions of the Securities Act (§ [13.1-501](#) et seq.).

1974, c. 416; 1977, c. 428; 1986, c. 324; 1996, cc. [281](#), [888](#); 1999, c. [560](#); 2006, c. [646](#); 2007, cc. [854](#), [910](#); 2011, c. [605](#); 2014, c. [215](#).

§55-79.91. Inquiry and examination.

Upon receipt of an application for registration, the agency shall conduct an examination of the material submitted to determine that:

1. The declarant can convey or cause to be conveyed the units offered for disposition if the purchaser complies with the terms of the offer;
2. There is reasonable assurance that all proposed improvements will be completed as represented;
3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the agency in its regulations and afford full and fair disclosure;
4. The declarant has not, or if a corporation, its officers, and principals have not, been convicted of a crime involving condominium unit dispositions or any aspect of the land sales business in this Commonwealth, United States, or any other state or foreign country within the past ten years and has not been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions; and
5. The public offering statement requirements of this chapter have been satisfied.

1974, c. 416; 1988, c. 15.

§55-79.92. Notice of filing and registration.

A. Upon receipt of the application for registration, the agency shall, within five business days, issue a notice of filing to the applicant. In the case of receipt of an application for a condominium that is a conversion condominium, the agency shall, within five business days, also issue a notice of filing to the chief administrative officer of the county or city in which the proposed condominium is located, which notice shall include the name and address of the applicant and the name and address or location of the proposed condominium. Within sixty days from the date of the notice of filing, the agency shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within sixty days from the date of notice of filing, the condominium shall be deemed registered unless the applicant has consented in writing to a delay.

B. If the agency affirmatively determines, upon inquiry and examination, that the requirements of §§ [55-79.89](#) and [55-79.91](#) have been met, it shall enter an order registering the condominium and shall designate the form of the public offering statement.

C. If the agency determines upon inquiry and examination that any of the requirements of §§ [55-79.89](#) and [55-79.91](#) have not been met, the agency shall notify the applicant that the application for registration must be corrected in the particulars specified within twenty days. If the requirements are not met within the time allowed the agency shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days after issuance of the order. During this twenty-day period the applicant may petition for reconsideration and shall be entitled to a hearing or correct the particulars specified in the agency's notice. Such order of rejection shall not take effect, in any event, until such time as the hearing, once requested, is given to the applicant.

1974, c. 416; 1985, c. 107; 1988, c. 15; 2006, c. [726](#).

§55-79.93. Annual report by declarant.

The declarant shall file a report in the form prescribed by the regulations of the agency within 30 days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration.

1974, c. 416; 1975, c. 415; 1988, c. 15; 2012, cc. [481](#), [797](#).

§55-79.93:1. Annual report by unit owners' association.

A. The unit owners' association shall file an annual report in a form and at such time as prescribed by regulations of the agency. The filing of the annual report required by this section shall commence upon the termination of the declarant control period pursuant to § [55-79.74](#). The annual report shall be accompanied by a fixed fee in an amount established by the agency.

B. The agency may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the agency.

C. The unit owners' association shall also remit to the agency an annual payment as follows:

1. The lesser of:

- a. \$1,000 or such other amount as established by agency regulation; or
- b. Five hundredths of one percent (0.05%) of the unit owners' association's gross assessment income during the preceding year.

2. For the purposes of clause b of subsection C, no minimum payment shall be less than \$10.00.

D. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § [55-529](#).

1993, c. 958; 2008, cc. [851](#), [871](#); 2009, c. [557](#); 2012, cc. [481](#), [797](#).

§55-79.93:2. Termination of registration.

A. In the event that all of the units in the condominium have been disposed of, and that all periods for conversion or expansion have expired, the agency shall issue an order terminating the registration of the condominium.

B. Notwithstanding any other provision of this chapter, the agency may administratively terminate the registration of a condominium if:

- 1. The declarant has not filed an annual report in accordance with § [55-79.93](#) for three or more consecutive years; or
- 2. The declarant's registration with the State Corporation Commission, if applicable, has not been active for five or more consecutive years.

2012, cc. [481](#), [797](#).

§55-79.94. Conversion condominiums; special provisions.

A. Any declarant of a conversion condominium shall include in his public offering statement in addition to the requirements of § [55-79.90](#) the following:

- 1. A specific statement of the amount of any initial or special condominium fee due from the purchaser on or before settlement of the purchase contract and the basis of such fee;
- 2. Information on the actual expenditures made on all repairs, maintenance, operation or upkeep of the subject building or buildings within the last three years, set forth tabularly with the proposed budget of the condominium, and cumulatively broken down on a per unit basis in proportion to the relative voting strengths

allocated to the units by the bylaws. If such building or buildings have not been occupied for a period of three years, then the information shall be set forth for the maximum period such building or buildings have been occupied;

3. A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves, or, if no provision is made for such reserves, a statement to that effect;

4. A statement of the declarant as to the present condition of all structural components and major utility installations in the condominium, which statement shall include the approximate dates of construction, installation, and major repairs, and the expected useful life of each such item, together with the estimated cost (in current dollars) of replacing each of the same;

5. If any building included or that may be included in the condominium was substantially completed prior to July 1, 1978, a statement that each such building has been inspected for asbestos in accordance with standards in effect at the time of inspection; or that an asbestos inspection will be conducted; and whether asbestos requiring response actions has been found, and if found, that response actions have been or will be completed in accordance with applicable standards prior to the conveyance of any unit in such building. Any asbestos management program or response action undertaken by the building owner shall comply with the standards promulgated pursuant to § [2.2-1164](#).

B. In the case of a conversion condominium, the declarant shall give at the time specified in subsection C of this section, formal notice to each of the tenants of the building or buildings which the declarant has submitted or intends to submit to the provisions of this chapter. This notice shall advise each tenant of (i) the offering price of the unit he occupies, (ii) the projected common expense assessments against that unit for at least the first year of the condominium's operation, (iii) any relocation services or assistance, public or private, of which the declarant is aware, (iv) any measures taken or to be taken by the declarant to reduce the incidence of tenant dislocation, and (v) the details of the relocation plan, if any is provided by the declarant, to assist tenants in relocating. During the first sixty days after such notice is mailed or hand delivered, each of the said tenants shall have the exclusive right to purchase the unit he occupies, but only if such unit is to be retained in the conversion condominium without substantial alteration in its physical layout. If the conversion condominium is subject to local ordinances that have been adopted pursuant

to subsections F and G, any tenant who is disabled or elderly may assign the exclusive right to purchase his unit to a government agency, housing authority, or certified nonprofit housing corporation, which shall then offer the tenant a lease at an affordable rent, following the provisions of subsection F. The acquisition of such units by the governmental agency, housing authority, or certified nonprofit housing corporation shall not (i) exceed the greater of one unit or five percent of the total number of units in the condominium or (ii) impede the condominium conversion process. In determining which, if any, units shall be acquired pursuant to this subsection, preference shall be given to elderly or disabled tenants.

The notice required above shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the tenants of the conversion to condominium. Such notice may also constitute the notice to terminate the tenancy as provided for in § [55-222](#), except that, despite the provisions of § [55-222](#), a tenancy from month to month may only be terminated upon 120 days' notice when such termination is in regard to the creation of a conversion condominium. If, however, a tenant so notified remains in possession of the unit he occupies after the expiration of the 120-day period with the permission of the declarant, in order to then terminate the tenancy, such declarant shall give the tenant a further notice as provided in § [55-222](#). Until the expiration of the 120-day period, the declarant shall have no right of access to the unit except as provided by subsection A of § [55-248.18](#) and except that, upon 45 days' written notice to the tenant, the declarant may enter the unit in order to make additional repairs, decorations, alterations or improvements, provided (i) the making of the same does not constitute an actual or constructive eviction of the tenant; and (ii) such entry is made either with the consent of the tenant or only at times when the tenant is absent from the unit. The declarant shall also provide general notice to the tenants of the condominium or proposed condominium at the time of application to the agency in addition to the formal notice required by this subsection.

C. The declarant of a conversion condominium shall, in addition to the requirements of § [55-79.89](#), include with the application for registration a copy of the formal notice set forth in subsection B and a certified statement that such notice, fully complying with the provisions of subsection B, shall be, at the time of the registration of such condominium, mailed or delivered to each of the tenants in the building or buildings for which registration is sought. The price and projected common expense assessments for each unit need not be filed with the agency until such notice is mailed to the tenants.

D. Notwithstanding the provisions of § [55-79.40](#) of this chapter, in the case of any conversion condominium created under the provisions of the Horizontal Property Act (§ [55-79.1](#) et seq.) for which a final report has not been issued by the agency pursuant to § [55-79.21](#) prior to June 1, 1975, the provisions of subsections A and B of this section shall apply and the declarant shall be required to furnish evidence of full compliance with subsections A and B prior to the issuance by the agency of a final report for such conversion condominium.

E. Any county, city or town may require by ordinance that the declarant of a conversion condominium file with that governing body all information which is required by the agency pursuant to § [55-79.89](#) and a copy of the formal notice required by subsection B. Such information shall be filed with that governing body when the application for registration is filed with the agency, and such copy of the formal notice shall be filed with that governing body. There shall be no fees for such filings.

F. The governing body of any county, city or town may enact an ordinance requiring that elderly or disabled tenants occupying as their residence, at the time of issuance of the general notice required by subsection B, apartments or units in a conversion condominium be offered leases or extensions of leases on the apartments or units they then occupied, or on other apartments or units of at least equal size and overall quality. The terms and conditions thereof shall be as agreed upon by the lessor and the lessee, provided that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable apartments or units in the same market area as such conversion condominium and such lease shall include or incorporate by reference the bylaws and/or rules and regulations, if any, of the association. No such ordinance may require that such leases or extensions be offered on more than twenty percent of the apartments or units in such conversion condominium, nor may any such ordinance require that such leases or extensions extend beyond three years from the date of such notice. Such leases or extensions shall not be required, however, in the case of any apartments or units which will, in the course of the conversion, be substantially altered in the physical layout, restricted exclusively to nonresidential use, or be converted in such a manner as to require relocation of the tenant in premises outside of the project being converted.

For the purposes of this section:

"Affordable rent" means a monthly rent that does not exceed the greater of 30 percent of the annual gross income of the tenant household or 30 percent of the

imputed income limit applicable to such unit size, as published by the Virginia Housing Development Authority for compliance with the Low Income Housing Tax Credit program.

"Certified nonprofit housing corporation" means a nonprofit organization exempt from taxation under § 501(c) (3) of the Internal Revenue Code that has been certified by a locality as actively engaged in producing or preserving affordable housing as determined by criteria established by the locality.

"Disabled" means a person suffering from a severe, chronic physical or mental impairment which results in substantial functional limitations.

"Elderly" means a person not less than 62 years of age.

G. The governing body of any county utilizing the urban county executive form of optional government (§§ [15.2-800](#) through [15.2-858](#)) or the county manager plan of optional government (§§ [15.2-702](#) through [15.2-749](#)), or of any city or town adjoining any such county, may require by ordinance that the declarant of any residential condominium converted from multi-family rental use shall reimburse any tenant displaced by the conversion for amounts actually expended to relocate as a result of such dislocation. The reimbursement shall not be required to exceed the amount which the tenant would have been entitled to receive under §§ [25.1-407](#) and [25.1-415](#) if the real estate comprising the condominium had been condemned by the Department of Transportation.

1974, c. 416; 1975, c. 415; 1980, cc. 727, 738; 1981, cc. 455, 503; 1982, cc. 273, 475, 663; 1983, c. 310; 1984, cc. 321, 601; 1985, c. 69; 1987, c. 412; 1988, c. 723; 1989, c. 398; 1991, c. 497; 1993, c. 634; 2007, cc. [602](#), [665](#).

§55-79.95. Escrow of deposits.

A. Any deposit made in regard to any disposition of a unit, including a nonbinding reservation agreement, shall be held in escrow until delivered at settlement. Such escrow funds shall be deposited in a separate account designated for this purpose which is federally insured and located in Virginia; except where such deposits are being held by a real estate broker or attorney licensed under the laws of this Commonwealth such funds may be placed in that broker's or attorney's regular escrow account and need not be placed in a separate designated account. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant.

B. In lieu of escrowing deposits as provided in subsection A, the declarant of a condominium consisting of more than 50 units may:

1. Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the Commonwealth, in the form and amount set forth below, or
2. Obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts are insured by the FDIC, in the form and amount set forth below.

The surety bond or letter of credit shall be maintained until (i) the granting of a deed to the unit, (ii) the purchaser's default under a purchase contract for the unit entitling the declarant to retain the deposit, or (iii) the refund of the deposit to the purchaser, whichever occurs first.

C. The surety bond shall be payable to the Commonwealth for the use and benefit of every person protected under the provisions of this chapter. The declarant shall file the bond with the Common Interest Community Board. The surety bond may be either in the form of an individual bond for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds \$10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount shall be as follows. If the amount of such deposits is:

1. \$75,000 or less, the blanket bond shall be \$75,000;
2. More than \$75,000 but less than \$200,000, the blanket bond shall be \$200,000;
3. \$200,000 or more but less than \$500,000, the blanket bond shall be \$500,000;
4. \$500,000 or more but less than \$1 million, the blanket bond shall be \$1 million; and
5. \$1 million or more, the blanket bond shall be 100 percent of the amount of such deposits.

D. The letter of credit shall be payable to the Commonwealth for use and benefit of every person protected under this chapter. The declarant shall file the letter of credit with the Common Interest Community Board. The letter of credit may be either in the form of an individual letter of credit for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds \$10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount shall be as follows. If the amount of such deposits is:

1. \$75,000 or less, the blanket letter of credit shall be \$75,000;
2. More than \$75,000 but less than \$200,000, the blanket letter of credit shall be \$200,000;
3. \$200,000 or more but less than \$500,000, the blanket letter of credit shall be \$500,000;
4. \$500,000 or more but less than \$1 million, the blanket letter of credit shall be \$1 million; and
5. \$1 million or more, the blanket letter of credit shall be 100 percent of the amount of such deposits.

For the purposes of determining the amount of any blanket letter of credit that a declarant maintains in any calendar year, the total amount of deposits considered held by the declarant shall be determined as of May 31 in each calendar year and the amount of the letter of credit shall be in accordance with the amount of deposits held as of May 31.

1974, c. 416; 1977, c. 91; 2007, c. [445](#); 2008, cc. [851](#), [871](#).

§55-79.96. Declarant to deliver declaration, etc., to purchaser.

The declarant shall within ten days of recordation of the condominium instruments as provided for in §§ [55-79.45](#) and [55-79.49](#) hereof, forward to each purchaser at his last known address by first-class mail, return receipt requested, an exact copy of the recorded declaration and bylaws.

1974, c. 416.

§55-79.97. Resale by purchaser; resale certificate; use of for sale sign in connection with resale; designation of authorized representative.

A. In the event of any resale of a condominium unit by a unit owner other than the declarant, and subject to the provisions of subsection F and § [55-79.87](#) A, the unit owner shall disclose in the contract that (i) the unit is located within a development which is subject to the Condominium Act, (ii) the Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale certificate or being notified that the resale certificate will not be available, (iv) if the purchaser has received the resale certificate, the purchaser has a right to request a resale certificate update or financial update in accordance with § [55-79.97:1](#), as

appropriate, and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the resale certificate shall be deemed not to be available if (a) a current annual report has not been filed by the unit owners' association with either the State Corporation Commission pursuant to § [13.1-936](#) or the Common Interest Community Board pursuant to § [55-79.93:1](#), (b) the seller has made a written request to the unit owners' association that the resale certificate be provided and no such resale certificate has been received within 14 days in accordance with subsection C, or (c) written notice has been provided by the unit owners' association that a resale certificate is not available.

B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole remedy is to cancel the contract prior to settlement.

C. The information contained in the resale certificate shall be current as of a date specified on the resale certificate. A resale certificate update or a financial update may be requested as provided in § [55-79.97:1](#), as appropriate. The purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate or is notified that the resale certificate will not be available on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate or notice that the resale certificate will not be available is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained; or (iii) within six days after the postmark date if the resale certificate or notice that the resale certificate will not be available is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the resale certificate will not be available and the resale certificate is not delivered to the purchaser.

Notice of cancellation shall be provided to the unit owner or his agent by one of the following methods:

a. Hand delivery;

b. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;

c. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or

d. Overnight delivery using a commercial service or the United States Postal Service.

In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be returned promptly to the purchaser.

A resale certificate shall include the following:

1. An appropriate statement pursuant to subsection H of § [55-79.84](#) which need not be notarized and, if applicable, an appropriate statement pursuant to § [55-79.85](#);
2. A statement of any expenditure of funds approved by the unit owners' association or the executive organ which shall require an assessment in addition to the regular assessment during the current or the immediately succeeding fiscal year;
3. A statement, including the amount, of all assessments and any other fees or charges currently imposed by the unit owners' association, together with any known post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition and maintenance of the condominium unit and the use of the common elements, and the status of the account;
4. A statement whether there is any other entity or facility to which the unit owner may be liable for fees or other charges;
5. The current reserve study report or a summary thereof, a statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the executive organ;
6. A copy of the unit owners' association's current budget or a summary thereof prepared by the unit owners' association and a copy of the statement of its financial position (balance sheet) for the last fiscal year for which a statement is available, including a statement of the balance due of any outstanding loans of the unit owners' association;
7. A statement of the nature and status of any pending suits or unpaid judgments to which the unit owners' association is a party which either could or would have a

material impact on the unit owners' association or the unit owners or which relates to the unit being purchased;

8. A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association, including the fidelity bond maintained by the unit owners' association, and what additional insurance coverage would normally be secured by each individual unit owner;

9. A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, are or are not in violation of the condominium instruments;

10. A copy of the current bylaws, rules and regulations and architectural guidelines adopted by the unit owners' association and the amendments thereto;

11. A statement of whether the condominium or any portion thereof is located within a development subject to the Property Owners' Association Act (§ [55-508](#) et seq.) of Chapter 26 of this title;

12. A copy of the notice given to the unit owner by the unit owners' association of any current or pending rule or architectural violation;

13. A copy of any approved minutes of the executive organ and unit owners' association meetings for the six calendar months preceding the request for the resale certificate;

14. Certification that the unit owners' association has filed with the Common Interest Community Board the annual report required by § [55-79.93:1](#); which certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing;

15. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;

16. A statement setting forth any restrictions, limitation or prohibition on the right of a unit owner to display the flag of the United States, including, but not limited to reasonable restrictions as to the size, time, place, and manner of placement or display of such flag;

17. A statement setting forth any restriction, limitation, or prohibition on the right of a unit owner to install or use solar energy collection devices on the unit owner's property; and

18. A statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies.

Failure to receive a resale certificate shall not excuse any failure to comply with the provisions of the condominium instruments, articles of incorporation, or rules or regulations.

The resale certificate shall be delivered in accordance with the written request and instructions of the seller or the seller's authorized agent, including whether the resale certificate shall be delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and shall specify the complete contact information for the parties to whom the resale certificate shall be delivered. The resale certificate shall be delivered within 14 days of receipt of such request. The resale certificate shall not, in and of itself, be deemed a security within the meaning of § [13.1-501](#).

D. The seller or the seller's authorized agent may request that the resale certificate be provided in hard copy or in electronic form. A unit owners' association or common interest community manager may provide the resale certificate electronically; however, the seller or the seller's authorized agent shall have the right to request that the resale certificate be provided in hard copy. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the resale certificate in person at the principal place of business of the unit owners' association. If the seller or the seller's authorized agent requests that the resale certificate be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the seller or the seller's authorized agent to pay any fees to use the provider's electronic network or system. The resale certificate shall not be delivered in hard copy if the requester has requested delivery of such resale certificate electronically. If the resale certificate is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee for a financial update or for an inspection as provided in § [55-79.97:1](#). If the seller or the seller's authorized agent asks that the resale certificate be provided in electronic format, the seller or the seller's authorized agent may request that an electronic copy be provided to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. If so requested, the unit owners' association or

its common interest community manager may require the seller or the seller's authorized agent to pay the fee specified in § [55-79.97:1](#). Regardless of whether the resale certificate is delivered in paper form or electronically, the preparer of the resale certificate shall provide such resale certificate directly to the persons designated by the requester to the addresses or, if applicable, the email addresses provided by the requester.

E. Subject to the provisions of § [55-79.87](#), but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of the Horizontal Property Act (§ [55-79.1](#) et seq.).

F. The resale certificate required by this section need not be provided in the case of:

1. A disposition of a unit by gift;
2. A disposition of a unit pursuant to court order if the court so directs;
3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or
4. A disposition of a unit by a sale at auction, when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction.

G. In any transaction in which a resale certificate is required and a trustee acts as the seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association and provide the resale certificate to the purchaser.

H. For purposes of this chapter:

"Delivery" means that the resale certificate is delivered to the purchaser or purchaser's authorized agent by one of the methods specified in this section.

"Purchaser's authorized agent" means any person designated by such purchaser in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

"Receives, received, or receiving" the resale certificate means that the purchaser or purchaser's authorized agent has received the resale certificate by one of the methods specified in this section.

"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

I. Unless otherwise provided in the ratified real estate contract or other writing, delivery to the purchaser's authorized agent shall require delivery to such agent and not to a person other than such agent. Delivery of the resale certificate may be made by the unit owner or the seller's authorized agent.

J. If the unit is governed by more than one association, the purchaser's right of cancellation may be exercised within the required time frames following delivery of the last resale certificate or disclosure packet.

K. Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall:

1. Require the use of any for sale sign that is (i) a unit owners' association sign or (ii) a real estate sign that does not comply with the requirements of the Virginia Real Estate Board. A unit owners' association may, however, prohibit the placement of signs in the common elements and establish reasonable rules and regulations that regulate (a) the number of real estate signs to be located on real property upon which the owner has a separate ownership interest or a right of exclusive possession, so long as at least one real estate sign is permitted; (b) the geographical location of real estate signs on real property in which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real estate signs complies with the requirements of the Virginia Real Estate Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period of time after settlement when the real estate signs on such real property shall be removed; or

2. Require any unit owner to execute a formal power of attorney if the unit owner designates a person licensed under the provisions of § [54.1-2106.1](#) as the unit owner's authorized representative, and the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization signed by the unit owner designating such representative. Notwithstanding the foregoing, the requirements of § [55-79.77](#) and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

1974, c. 416; 1975, c. 415; 1978, cc. 234, 290; 1983, c. 60; 1984, cc. 29, 103; 1990, c. 662; 1991, c. 497; 1994, c. [172](#); 1997, c. [222](#); 1998, cc. [32](#), [454](#), [463](#); 1999, c. [263](#); 2001, c. [556](#); 2002, cc. [459](#), [509](#); 2005, c. [415](#); 2007, cc. [696](#), [712](#), [854](#), [910](#); 2008, cc. [851](#), [871](#); 2011, c. [334](#); 2013, cc. [357](#), [492](#); 2014, c. [216](#); 2015, c. [277](#); 2016, c. [471](#); 2017, cc. [393](#), [406](#).

§55-79.97:1. Fees for resale certificate.

A. The unit owners' association may charge fees as authorized by this section for the inspection of the property, the preparation and issuance of the resale certificate required by § [55-79.97](#), and for such other services as are set out in this section. Nothing in this chapter shall be construed to authorize the unit owners' association or common interest community manager to charge an inspection fee for a unit except as provided in this section.

B. A reasonable fee may be charged by the preparer of the resale certificate as follows for:

1. The inspection of the unit, as authorized in the declaration and as required to prepare the resale certificate, a fee not to exceed \$100;
2. The preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed \$150 for no more than two hard copies, or (ii) electronic format, a fee not to exceed a total of \$125, for an electronic copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. Only one fee shall be charged for the preparation and delivery of the resale certificate;
3. At the option of the seller or the seller's authorized agent, with the consent of the unit owners' association or the common interest community manager, expediting the inspection, preparation, and delivery of the resale certificate, an additional expedite fee not to exceed \$50;
4. At the option of the seller or the seller's authorized agent, an additional hard copy of the resale certificate, a fee not to exceed \$25 per hard copy;
5. At the option of the seller or the seller's authorized agent, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of the resale certificate; and

6. A post-closing fee to the purchaser of the unit, collected at settlement, for the purpose of establishing the purchaser as the owner of the unit in the records of the unit owners' association, a fee not to exceed \$50.

Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the resale certificate is made. The resale certificate shall state that all fees and costs for the resale certificate shall be the personal obligation of the unit owner and shall be an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § [55-79.83](#), if not paid at settlement or within 60 days of the delivery of the resale certificate, whichever occurs first.

For purposes of this section, an expedite fee shall only be charged if the inspection and preparation of delivery of the resale certificate are completed within five business days of the request for a resale certificate.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the unit owners' association or its common interest community manager for compliance with the duties and responsibilities of the unit owners' association under this section. No additional fee shall be charged for access to the unit owners' association's or common interest community manager's website. The unit owners' association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so that the seller or the seller's authorized agent will know such fees at the time of requesting the resale certificate.

D. Any fees charged pursuant to this section shall be collected at the time settlement occurs on the sale of the unit and shall be due and payable out of the settlement proceeds in accordance with this section. The seller shall be responsible for all costs associated with the preparation and delivery of the resale certificate, except for the costs of any resale certificate update or financial update, which costs shall be the responsibility of the requester, payable at settlement. The settlement agent shall escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate.

E. If settlement does not occur within 60 days of the delivery of the resale certificate, or funds are not collected at settlement and disbursed to the unit owners' association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the resale certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § [55-79.83](#). The seller may pay the unit owners' association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the unit owners' association. The unit owners' association shall pay the common interest community manager the amount due from the unit owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

G. If a resale certificate has been issued within the preceding 12-month period, a person specified in the written instructions of the seller or the seller's authorized agent, including the seller or the seller's authorized agent or the purchaser or the purchaser's authorized agent, may request a resale certificate update. The requester shall specify whether the resale certificate update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The resale certificate update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requester shall specify whether the financial update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the resale certificate update or financial update may be charged by the preparer, not to exceed \$50. At the option of the purchaser or the purchaser's authorized agent, the requester may request that the unit owners' association or the common interest community manager perform an additional inspection of the unit,

as authorized in the declaration, for a fee not to exceed \$100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. The settlement agent shall escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate update. The requester may request that the specified update be provided in hard copy or in electronic form.

J. No unit owners' association or common interest community manager may require the requester to request the specified update electronically. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the unit owners' association. If the requester asks that the specified update be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the requester to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or the seller's authorized agent.

K. When a resale certificate has been delivered as required by § [55-79.97](#), the unit owners' association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the unit with respect to any violation of the condominium instruments as of the date of the statement unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

L. If the unit owners' association or its common interest community manager has been requested in writing to furnish the resale certificate required by § [55-79.97](#), failure to provide the resale certificate substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject unit. The preparer of the resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the condominium instruments, rules and regulations, and architectural guidelines of the unit owners' association as to all matters arising after the date of the settlement of the sale.

M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the resale certificate within 14 days against any (i) unit owners' association pursuant to § [54.1-2351](#) or (ii) common interest community manager pursuant to § [54.1-2349](#) and regulations promulgated thereto, and may issue a cease and desist order pursuant to § [54.1-2349](#) or [54.1-2352](#), as applicable.

2008, cc. [851](#), [871](#); 2011, cc. [334](#), [577](#), [585](#); 2014, c. [216](#); 2015, c. [277](#); 2016, c. [471](#); 2017, cc. [393](#), [406](#).

§55-79.97:2. Properties subject to more than one declaration.

If the unit is subject to more than one declaration, the unit owners' association or its common interest community manager may charge the fee authorized by § [55-79.97:1](#) for each of the applicable associations, provided however, that no association may charge an inspection fee unless the association has architectural control over the unit.

2008, cc. [851](#), [871](#).

§55-79.97:3. Requests by settlement agents.

A. The settlement agent may request a financial update from the preparer of the resale certificate. The preparer of the resale certificate shall, upon request from the settlement agent, provide the settlement agent with written escrow instructions directing the amount of any funds to be paid from the settlement proceeds to the association or the common interest community manager. There shall be no fees charged for a response by the association or its common interest community manager to a request from the settlement agent for written escrow instructions; however a fee may be charged for a financial update pursuant to this chapter.

B. The settlement agent, when transmitting funds to the unit owners' association or the common interest community manager, shall, unless otherwise directed in writing, provide the preparer of the resale certificate with (i) the complete record name of the seller, (ii) the address of the subject unit, (iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted or by providing a copy of a settlement statement, unless otherwise prohibited.

2008, cc. [851](#), [871](#).

§55-79.98. General powers and duties of the Common Interest Community Board.

A. The agency shall prescribe reasonable rules and regulations which shall be adopted, amended or repealed in compliance with law applicable to the administrative procedure of agencies of government. The rules and regulations shall include but not be limited to provisions for advertising standards to assure full and fair disclosure; provisions for operating procedures; and other rules and regulations as are necessary and proper to accomplish the purpose of this chapter.

B. The agency by rule or by an order, after reasonable notice and hearing, may require the filing of advertising material relating to condominiums prior to its distribution.

C. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule or order hereunder, the agency, with or without prior administrative proceedings may bring an action in the circuit court of the city or county in which any portion of the condominium is located to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon proper showing, injunctive relief of temporary restraining orders shall be granted. The agency is not required to post a bond in any court proceedings or prove that any other adequate remedy at law exists.

D. With respect to any lawful process served upon the agency pursuant to the appointment made in accordance with subdivision A 1 of § [55-79.89](#), the agency shall forthwith cause the same to be sent by registered or certified mail to any of the principals, officers, directors, partners, or trustees of the declarant listed in the application for registration at the last address listed in such application or any annual report.

E. The agency may intervene in any suit involving the declarant. In any suit by or against a declarant involving a condominium, the declarant shall promptly furnish the agency notice of the suit and copies of all pleadings.

F. The agency may:

1. Accept registrations filed in other states or with the federal government;
2. Contract with similar agencies in this Commonwealth or other jurisdictions to perform investigative functions;
3. Accept grants in aid from any governmental source.

G. The agency shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

1974, c. 416; 1981, c. 480; 2011, c. [605](#).

§55-79.99. Investigations and proceedings.

A. Whenever the agency receives a written complaint which appears to state a valid claim, the agency shall make necessary public or private investigations in accordance with law within or outside of this Commonwealth to determine whether any declarant, its agents, employees or other representatives have violated or are about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules, regulations and forms hereunder. The agency may also in like manner and with like authority investigate written complaints against persons other than the declarant, its agents, employees or other representatives.

B. For the purpose of any investigation or proceeding under this chapter, the agency or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the agency may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

1974, c. 416; 1993, c. 198; 2011, c. [605](#).

§55-79.100. Cease and desist orders.

(a) If the agency determines after notice and hearing that a person has:

(1) Violated any provision of this chapter;

(2) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of a unit;

- (3) Made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the agency;
- (4) Disposed of any units which have not been registered with the agency; or
- (5) Violated any lawful order or rule of the agency;

it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the agency will carry out the purposes of this chapter.

(b) If the agency makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the agency shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

1974, c. 416; 1975, c. 415.

§55-79.101. Revocation of registration.

(a) A registration may be revoked after notice and hearing upon a written finding of fact that the declarant has:

- (1) Failed to comply with the terms of a cease and desist order;
- (2) Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;
- (3) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of unit purchasers;
- (4) Failed faithfully to perform any stipulation or agreement made with the agency as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or
- (5) Made intentional misrepresentations or concealed material facts in an application for registration.

Findings of fact, if set forth in statutory language, shall be accompanied by concise and explicit statement of the underlying facts supporting the findings.

(b) If the agency finds after notice and hearing that the developer has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

1974, c. 416.

§55-79.102. Judicial review.

Proceedings for judicial review shall be in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

1974, c. 416; 1996, c. [573](#).

§55-79.103. Penalties.

Any person who willfully violates any provision of §§ [55-79.87](#), [55-79.88](#), [55-79.89](#), [55-79.90](#), [55-79.93](#), [55-79.94](#), [55-79.95](#), or any rule adopted under or order issued pursuant to § [55-79.98](#), or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact shall be guilty of a misdemeanor and may be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is the larger but not more than \$50,000; or he may be imprisoned for not more than 6 months; or both, for each offense.

1974, c. 416.

Corrections Private Management Act

§53.1-261. Definitions.

As used in this chapter unless the context requires otherwise or it is otherwise provided:

"Correctional services" means the following functions, services and activities when provided within a prison or otherwise:

1. Operation of facilities, including management, custody of inmates and provision of security;
2. Food services, commissary, medical services, transportation, sanitation or other ancillary services;
3. Development and implementation assistance for classification, management information systems or other information systems or services;

4. Education, training and employment programs;
5. Recreational, religious and other activities; and
6. Counseling, special treatment programs, or other programs for special needs.

"Prison" or "facility" or "prison facility" means any institution operated by or under authority of the Department and shall include, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair or other means, any physical betterment or improvement related to the housing of inmates or any preliminary plans, studies or surveys relative thereto; land or rights to land; and any furnishings, machines, vehicles, apparatus, or equipment for use in connection with any prison facility.

"Prison contractor" or "contractor" means any entity, including a local government, entering into or offering or proposing to enter into a contractual agreement to provide any correctional services to inmates under the custody of the Commonwealth or federal inmates under the custody of the prison contractor, while in the Commonwealth of Virginia.

1991, c. 705; 1992, c. 654; 1995, c. [694](#); 1996, c. [632](#); 2007, c. [394](#).

§53.1-262. State correctional facilities; private contracts.

The Director, subject to any applicable regulations which may be promulgated by the Board pursuant to § [53.1-266](#) and subject to the provisions of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.), is hereby authorized to enter into contracts with prison contractors for the financing, site selection, acquisition, construction, maintenance, leasing, management or operation of prison facilities, or any combination of those services, subject to the requirements and limitations set out below.

1. Contracts entered into under the terms of this chapter shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which meets all the requirements in the request for proposals. However, no contract for correctional services may be entered into unless the private contractor demonstrates that it has:

- a. The qualifications, experience and management personnel necessary to carry out the terms of this contract;
- b. The financial resources to provide indemnification for liability arising from prison management projects;

c. Evidence of past performance of similar contracts which shall include the experience of persons in management with such entity and may include the experience of the parent of such entity; and

d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and local laws; court orders; and correctional standards.

2. Contracts awarded under the provisions of this chapter, including contracts for the provision of correctional services or for the lease or use of public lands or buildings for use in the operation of facilities, may be entered into for a period of up to thirty years, subject to the requirements for annual appropriation of funds by the Commonwealth.

3. Contracts awarded under the provisions of this chapter shall, at a minimum, comply with the following:

a. Provide for internal and perimeter security to protect the public, employees and inmates;

b. Provide inmates with work or training opportunities while incarcerated; however, the contractor shall not benefit financially from the labor of inmates;

c. Impose discipline on inmates only in accordance with applicable regulations; and

d. Provide proper food, clothing, housing and medical care for inmates.

4. No contract for correctional services shall be entered into unless the following requirements are met:

a. The contractor provides audited financial statements for the previous five years or for each of the years the contractor has been in operation, if fewer than five years, and provides other financial information as requested; and

b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims. The indemnification plan shall be adequate to protect the Commonwealth and public officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a prison contractor or the Commonwealth of the benefits of any law limiting exposure to liability or setting a limit on damages.

5. No contract for correctional services shall be executed by the Director nor shall any funds be expended for the contract unless:

- a. The proposed contract complies with any applicable regulations which may be promulgated by the Board pursuant to § [53.1-266](#);
 - b. An appropriation for the services to be provided under the contract has been expressly approved as is otherwise provided by law;
 - c. The correctional services proposed by the contract are of at least the same quality as those routinely provided by the Department to similar types of inmates; and
 - d. An evaluation of the proposed contract demonstrates a cost benefit to the Commonwealth when compared to alternative means of providing the services through governmental agencies.
6. A site proposed by a contractor for the construction of a prison facility shall not be subject to the approval procedure set forth in § [53.1-19](#). However, no contract for the construction and operation of a private correctional facility shall be entered into nor shall any funds be expended for the contract unless the local governing body, by duly adopted resolution, consents to the siting and construction of such facility within the boundaries of the locality.

1991, c. 705; 1992, c. 654; 1995, c. [694](#); 1998, c. [818](#).

§53.1-263. Authority of security employees.

Security employees of a prison contractor shall be allowed to use force and shall exercise their powers and authority only while on the grounds of an institution under the supervision of the prison contractor, while transporting inmates, while pursuing escapees from such institutions, and while providing inmate security for prisoners at a medical facility in the Commonwealth. All provisions of law pertaining to custodians of inmates, correctional officers, or prison or jail officers, except § [19.2-81.1](#), shall apply to contractors' security employees.

1991, c. 705; 1992, c. 654; 2007, c. [394](#).

§53.1-264. Application of certain criminal law to contractor-operated facilities.

All provisions of law establishing penalties for offenses committed against custodians of inmates, correctional officers, prison guards, or jail officers shall apply mutatis mutandis to offenses committed by or with regard to inmates assigned to facilities or programs for which a prison contractor is providing correctional services.

1991, c. 705; 1992, c. 654 .

§53.1-265. Powers and duties not delegable to contractor.

No contract for correctional services shall authorize, allow, or imply a delegation of authority or responsibility of the Director to a prison contractor for any of the following:

1. Developing and implementing procedures for calculating inmate release and parole eligibility dates;
2. Developing and implementing procedures for calculating and awarding sentence credits;
3. Approving inmates for furlough and work release;
4. Approving the type of work inmates may perform and the wages or sentence credits which may be given the inmates engaging in such work;
5. Granting, denying, or revoking sentence credits;
6. Classifying inmates or placing inmates in less restrictive custody or more restrictive custody;
7. Transferring an inmate; however, the contractor may make written recommendations regarding the transfer of an inmate or inmates;
8. Formulating rules of inmate behavior, violations of which may subject inmates to sanctions; however, the contractor may propose such rules to the Director for his review and adoption, rejection, or modification as otherwise provided by law or regulation; and
9. Disciplining inmates in any manner which requires a discretionary application of rules of inmate behavior or a discretionary imposition of a sanction for violations of such rules.

1991, c. 705; 1992, c. 654; 1995, c. [694](#).

§53.1-266. Board shall promulgate regulations.

The Board shall make, adopt and promulgate regulations governing the following aspects of private management and operation of prison facilities:

1. Contingency plans for state operation of a contractor-operated facility in the event of a termination of the contract;
2. Use of deadly and nondeadly force by prison contractors' security personnel;
3. Methods of monitoring a contractor-operated facility by the Department or the Board;

4. Public access to a contractor-operated facility; and
5. Such other regulations as may be necessary to carry out the provisions of this chapter.

1991, c. 705; 1992, c. 654; 1995, c. [694](#).

§53.1-267. Expired.

Expired.

Crime Victim and Witness Rights Act

§19.2-11.1. Establishment of crime victim-witness assistance programs; funding; minimum standards.

Any local governmental body which establishes, operates and maintains a crime victim and witness assistance program, whose funding is provided in whole or part by grants administered by the Department of Criminal Justice Services pursuant to § [9.1-104](#), shall operate the program in accordance with guidelines which shall be established by the Department to implement the provisions of this chapter and other applicable laws establishing victims' rights.

1988, c. 542; 1994, cc. [361](#), [598](#); 1995, c. [687](#); 1996, c. [545](#).

§19.2-11.2. Crime victim's right to nondisclosure of certain information; exceptions; testimonial privilege.

Upon request of any witness in a criminal prosecution under § [18.2-46.2](#), [18.2-46.3](#), or [18.2-248](#) or of any violent felony as defined by subsection C of § [17.1-805](#), or any crime victim, neither a law-enforcement agency, the attorney for the Commonwealth, the counsel for a defendant, a court nor the Department of Corrections, nor any employee of any of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the witness or victim or a member of the witness' or victim's family, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law or Rules of the Supreme Court, (iii) necessary for law-enforcement purposes or preparation for court proceedings, or (iv) permitted by the court for good cause.

Except with the written consent of the victim of any crime involving any sexual assault, sexual abuse, or family abuse or the victim's next of kin if the victim is a minor and the victim's death results from any crime, a law-enforcement agency may

not disclose to the public information that directly or indirectly identifies the victim of such crime except to the extent that disclosure is (a) of the site of the crime, (b) required by law, (c) necessary for law-enforcement purposes, or (d) permitted by the court for good cause. In addition, at the request of the victim to the Court of Appeals of Virginia or the Supreme Court of Virginia hearing, on or after July 1, 2007, the case of a crime involving any sexual assault or sexual abuse, no appellate decision shall contain the first or last name of the victim.

Nothing herein shall limit the right to examine witnesses in a court of law or otherwise affect the conduct of any criminal proceeding.

1994, cc. [845](#), [931](#); 2002, cc. [810](#), [818](#); 2005, cc. [764](#), [813](#); 2007, c. [503](#); 2014, c. [744](#); 2017, c. [500](#).

§19.2-11.3. Virginia Crime Victim-Witness Fund.

There is hereby established the Virginia Crime Victim-Witness Fund as a special non-reverting fund to be administered by the Department of Criminal Justice Services to support victim and witness services that meet the minimum standards prescribed for such programs under § [19.2-11.1](#). A portion of the sum collected pursuant to §§ [16.1-69.48:1](#), [17.1-275.1](#), [17.1-275.2](#), [17.1-275.3](#), [17.1-275.4](#), [17.1-275.7](#), [17.1-275.8](#), and [17.1-275.9](#), as specified in these sections, shall be deposited into the state treasury to the credit of this Fund. The Fund shall be distributed according to grant procedures adopted pursuant to § [9.1-104](#) and shall be established on the books of the Comptroller. Any funds remaining in such Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund.

1995, c. [371](#); 2002, c. [831](#).

§19.2-11.4. Establishment of victim-offender reconciliation program.

A. Any Crime Victim and Witness Assistance Program may establish a victim-offender reconciliation program to provide an opportunity after conviction for a victim, at his request and upon the subsequent agreement of the offender, to:

1. Meet with the offender in a safe, controlled environment in accordance with the policies established pursuant to subsection B of § [53.1-30](#);
2. Give to the offender, either orally or in writing, a summary of the financial, emotional, and physical effects of the offense on the victim or the victim's family; and

3. Discuss a proposed restitution agreement which may be submitted for consideration by the sentencing court for damages incurred by the victim as a result of the offense.

B. If the victim chooses to participate in a victim-offender reconciliation program under this section, the victim shall execute a waiver releasing the Crime Victim and Witness Assistance Program, attorney for the offender and the attorney for the Commonwealth from civil and criminal liability for actions taken by the victim or offender as a result of participation by the victim or the offender in a victim-offender reconciliation program.

C. A victim shall not be required to participate in a victim-offender reconciliation program under this section.

D. The failure of any person to participate in a reconciliation program pursuant to this section shall not be used directly or indirectly at sentencing.

1995, c. [628](#); 2010, c. [844](#).

Declaration of Policy; Plan of Cooperation

§51.5-1. Declaration of policy.

It is the policy of the Commonwealth to encourage and enable persons with disabilities to participate fully and equally in the social and economic life of the Commonwealth and to engage in remunerative employment. To these ends, the General Assembly directs the Governor; the Virginia Board for People with Disabilities; the Departments of Education, Health, Housing and Community Development, Behavioral Health and Developmental Services, and Social Services; the Departments for Aging and Rehabilitative Services, the Blind and Vision Impaired, and the Deaf and Hard-of-Hearing; and such other agencies as the Governor deems appropriate to provide, in a comprehensive and coordinated manner that makes the best use of available resources, those services necessary to assure equal opportunity to persons with disabilities in the Commonwealth.

The provisions of this title shall be known and may be cited as "The Virginians with Disabilities Act."

1985, c. 421, § 51.01-1; 1990, c. 458; 1991, c. 563; 2002, c. [572](#); 2009, cc. [813](#), [840](#); 2012, cc. [803](#), [835](#); 2013, c. [571](#).

§51.5-2. Repealed.

Repealed by Acts 2012, cc. [803](#) and [835](#), cl. 60.

Delinquency Prevention and Youth Development Act

§66-26. Delinquency prevention and youth development programs; agents.

The Director shall develop and supervise delinquency prevention and youth development programs in order that better services and coordination of services are provided to children. The Director shall have the authority to appoint necessary agents for the carrying out of these programs as may be needed. To this end the Director shall cooperate with state and local authorities in establishing and maintaining suitable delinquency prevention and youth development programs.

Code 1950, § 53-19.22:1; 1974, c. 496; 1979, c. 700; 1982, c. 636, § 53.1-251; 1989, c. 733 .

§66-27. Authority of Director to make grants to localities.

The Director is authorized to make grants to counties and cities pursuant to the provisions of this chapter to promote efficiency and economy in the delivery of youth services and to provide support to localities seeking to respond positively to the growing rate of juvenile delinquency.

Code 1950, § 53-335; 1979, c. 698; 1982, c. 636, § 53.1-252; 1989, c. 733 .

§66-28. Policies.

The Board shall prescribe policies governing applications for grants pursuant to this chapter and standards for the operation of programs developed and implemented under the grants. The Department shall cooperate with and seek the assistance of representatives of county and city governing bodies, private nonprofit youth service agencies and private citizens having expertise in the development and any subsequent revisions of the standards required by this section.

Code 1950, § 53-336; 1979, c. 698; 1982, c. 636, § 53.1-253; 1989, c. 733; 2000, c. [277](#).

§66-29. Ordinances to be enacted by participating localities; applications by localities for grants.

Prior to applying to the Director for a grant pursuant to this chapter, each governing body of a county or city which is to participate in the grant shall enact an appropriate ordinance or resolution which provides for the creation of a youth services citizen board pursuant to § [66-34](#).

Any county or city or combination thereof may apply to the Director for a grant pursuant to this chapter. The Director shall provide consultation and technical assistance, if requested, to localities in the development of applications for such grants. The Director shall approve or disapprove applicants for grants.

Code 1950, § 53-337; 1979, c. 698; 1982, c. 636, § 53.1-254; 1989, c. 733; 2000, c. [277](#).

§66-30. Renewal of grants; suspension for failure to comply with standards; notice and hearing.

Grants approved by the Director pursuant to § [66-29](#) shall be renewed subject to approval by the Director of an annual plan update for youth services submitted by the participating counties or cities.

If the Director determines that a program operating under an approved grant is not in compliance with minimum standards promulgated by the Board, he may suspend all or any portion of the grant until the required standards of operation are met.

Code 1950, § 53-338; 1979, c. 698; 1982, c. 636, § 53.1-255; 1989, c. 733; 1990, c. 679; 2000, c. [277](#).

§66-31. Funding; records to be kept by localities; use of funds.

A. Grants made to a county or city or combination thereof pursuant to this chapter shall be of an amount up to seventy-five percent of the total program budget for the proposed program for salaries and all other operating expenses including the lease of facilities, subject to funds provided by the General Assembly.

B. Each county and city receiving moneys under this chapter shall keep records of receipts and disbursements thereof which records shall be open for audit and evaluation by the appropriate state authorities.

C. Participating counties and cities may not use funds provided under this chapter to decrease those funds allocated by the governing body for existing citizen boards as

provided for in § [66-34](#) hereof with the exception of those programs being funded by federal grant moneys.

Code 1950, § 53-339; 1979, c. 698; 1982, c. 636, § 53.1-256; 1989, c. 733 .

§66-32. Withdrawal from program.

Any participating county or city may, at the beginning of any calendar quarter, by ordinance or resolution of its governing authority, notify the Director of its intention to withdraw from the grant program. Such withdrawal shall be effective the last day of the quarter in which such notice is given.

Code 1950, § 53-340; 1979, c. 698; 1982, c. 636, § 53.1-257; 1989, c. 733 .

§66-33. Unexpended funds.

In any case in which any portion of state funds obtained through a grant authorized pursuant to this chapter remains unencumbered or unexpended at the end of the fiscal year, such funds shall be returned by the locality to the State Treasurer, who shall deposit such moneys in the state general fund.

Code 1950, § 53-341; 1979, c. 698; 1982, c. 636, § 53.1-258; 1989, c. 733 .

§66-34. Youth services citizen boards; appointment and qualifications of members.

Each county and city participating in a program funded by an approved grant shall be represented on a youth services citizen board. The board shall be appointed by the county or city governing body or combination thereof and may include in its membership representative elected officials, representatives of public and private agencies serving youths, citizens not employed by government or service agencies and at least one member who is below the age of eighteen years. A majority of the board shall be citizens who are not employed by government or service agencies and who are not elected governmental officials. The board shall actively participate with community representatives in the formulation of a comprehensive plan for the development, coordination and evaluation of the youth services program and shall make formal recommendations to the governing authority or authorities at least annually concerning the comprehensive plan and its implementation during the ensuing year.

Code 1950, § 53-342; 1979, c. 698; 1982, c. 636, § 53.1-259; 1989, c. 733; 2000, c. [277](#).

§66-35. Responsibilities of local programs.

It shall be the responsibility of the local programs to:

1. Prepare and annually update a comprehensive plan based on an objective assessment of the community's youth development and delinquency prevention needs and resources;
2. Assist the locality in establishing and modifying programs and services to youth pursuant to § [16.1-309.3](#) on the basis of an objective assessment of the community's needs and resources;
3. Collaborate with public and private entities to maintain and disseminate an annual inventory of youth and parenting related services and programs available in the locality;
4. Collaborate with public and private entities to identify gaps in program services and identify potential funding sources to assist in developing programs to respond to identified gaps; and
5. Provide assistance to other community agencies and organizations, including the community policy and management team established pursuant to § [2.2-5204](#), in establishing and modifying programs and services to youth.

Code 1950, § 53-343; 1979, c. 698; 1982, c. 636, § 53.1-260; 1989, c. 733; 1992, cc. 837, 880; 1993, cc. 232, 283; 2000, c. [277](#).

Department of State Police; Public Building Safety Law; Arson Reporting Immunity Act

§27-55. Department of State Police or successor agency to keep record of fires and explosions; when open to public inspection.

The Department of State Police or its successor agency shall keep in its office a record of all fires occurring in the Commonwealth, investigation of which is provided for in this article, together with all facts, statistics and circumstances concerning the same, including the origin of the fires. Such records shall not be open to public inspection, except insofar as the Department shall permit otherwise. Whenever the word "Department" appears in this article it shall be deemed to mean the Department of State Police or its successor agency in the Office of Public Safety.

Code 1919, § 4148; 1918, p. 123; 1936, p. 259; 1948, p. 487; 1977, c. 613.

§27-56. Department to examine into origin of fires; appointment of arson investigators.

The Department shall examine, or cause examination to be made, into the origin and circumstances of all fires occurring in this Commonwealth, which may be brought to its attention by official report, or otherwise, and for that purpose shall have authority to call for and demand of the chief or other head officer of the fire department, and the chief or other head officer of the police department, of any city or town, and the sheriff of any county, for any information or assistance it may require in making or furthering such examination.

The Department shall appoint a chief arson investigator and assistant arson investigators, who shall have the same police powers as a sheriff in the investigation and prosecution of all offenses involving fires, fire bombings, bombings, attempts, threats to commit such offense, false alarms relating to any such offense, possession and manufacture of explosive devices, substances and firebombs.

Code 1919, § 4186; 1977, c. 613.

§27-57. When insurance company to pay expenses of examination.

When such examination is made on the application of any fire insurance company, the necessary expenses attending the same shall be paid by such company.

Code 1919, § 4186.

§27-58. Right to examine buildings or premises.

The Department, and such person or persons as it may appoint, shall have authority at all times of the day, in the performance of the duties imposed by the provisions of [§ 27-56](#), to enter upon and examine any building or premises where any fire has occurred, and any other buildings or premises immediately adjoining the same; provided, that such adjoining building is not at the time occupied and used as a dwelling house.

Code 1919, § 4187; 1977, c. 613.

§27-59. Criminal prosecutions.

If the Department shall be of opinion, after investigation as to the cause or origin of any fire, that there is sufficient evidence to charge any person with the crime of arson, or with incendiary burning of property, it shall furnish to the attorney for the Commonwealth of the city or county all such evidence, together with the names of

witnesses, and all information obtained by it, including a copy of all pertinent and material testimony taken by it touching such offense.

Code 1919, § 4188; 1918, p. 123; 1977, c. 613.

§27-60. Department to conduct investigations in certain cases; investigations may be private.

The Department may petition an appropriate judicial officer to summons and compel the attendance of witnesses to testify in relation to any matter which is, by the provisions of this chapter, a subject of inquiry and investigation. It may also administer oaths and affirmations to such witnesses, and false swearing in any such matter shall be deemed perjury, and shall be punished as such. It may in its discretion take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matters as to which any examination is, in this chapter, required to be made, and shall cause the same to be reduced to writing. Investigations in relation to such matters may, in the discretion of the Department, be private, and persons other than those required to be present by the provisions of this chapter may be excluded from that place where such examination is held, and witnesses may be kept separate and apart from each other, and not allowed to communicate with each other until they have been examined.

Code 1919, § 4189; 1977, c. 613.

§27-61. When Department or fire chief may remedy inflammable or unsafe conditions.

The Department of Fire Programs, by its representative, or the chief or other head of the fire department of any county, city or town or district thereof, shall have the right, at all reasonable hours, for the purpose of examination, to enter into and upon any public school building or any other building or premises not at the time occupied and used as a dwelling house, within their respective jurisdictions, for examination as to combustible materials or inflammable or unsafe conditions in any such building or upon any such premises. Upon complaint of any person having an interest in any building or premises or property adjacent thereto, in his jurisdiction, an officer shall make an immediate investigation as to the presence of any combustible materials or the existence of inflammable or unsafe conditions in such buildings or upon such premises. Whenever any officer finds in any building or upon any premises combustible, inflammable or unsafe conditions, dangerous to the safety of the building or premises, or other property, he shall order the same to be removed or remedied, and

the order shall, within a reasonable time to be fixed in the order, be complied with by the owner or occupant of the building or premises.

Any owner or occupant aggrieved by such order may within five days after notice of such order, appeal to the Department of Fire Programs, and the cause of his complaint shall be at once investigated by the Executive Director of the Department of Fire Programs, and unless by its authority such order is revoked, the order shall remain in force and the owner or occupant shall comply with the order.

Any owner or occupant of any building or premises failing to comply with any final order made or given under the authority of this section, shall be deemed guilty of a misdemeanor, and punished by a fine of not less than \$5 nor more than \$100 for each offense.

Code 1919, § 4190; 1936, p. 776; 1977, c. 613; 1988, c. 199; 2007, cc. [647](#), [741](#).

§27-62. Penalty on local officers for violating law.

Any city, town or county officer referred to in this article who willfully neglects or refuses to comply with any of the requirements of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not less than \$5, nor more than \$100.

Code 1919, § 4192.

§27-63. Repealed.

Repealed by Acts 1988, c. 199.

§27-65. Repealed.

Repealed by Acts 1981, c. 499.

§27-66. Repealed.

Repealed by Acts 1977, c. 613.

§27-66.1. Repealed.

Repealed by Acts 1989, c. 258 .

§27-67. Repealed.

Repealed by Acts 1981, c. 499.

§27-68. Repealed.

Repealed by Acts 1977, c. 613.

§27-69. Repealed.

Repealed by Acts 1981, c. 499.

§27-70. Repealed.

Repealed by Acts 1981, c. 499.

§27-70.1. Repealed.

Repealed by Acts 1988, c. 199.

§27-70.2. Repealed.

Repealed by Acts 1981, c. 499.

§27-71. Repealed.

Repealed by Acts 1977, c. 613.

§27-72. Repealed.

Repealed by Acts 1988, c. 199.

§27-73. Repealed.

Repealed by Acts 1989, c. 258 .

§27-73.1. Repealed.

Repealed by Acts 1988, c. 199.

§27-74. Repealed.

Repealed by Acts 1977, c. 613.

§27-78. Repealed.

Repealed by Acts 1989, c. 258 .

§27-79. Repealed.

Repealed by Acts 1988, c. 199.

§27-79.1. Repealed.

Repealed by Acts 1981, c. 499.

§27-79.9. Repealed.

Repealed by Acts 1989, c. 258 .

§27-80. Repealed.

Repealed by Acts 1988, c. 199.

§27-85. Repealed.

Repealed by Acts 1981, c. 499.

§27-85.2. Repealed.

Repealed by Acts 1989, c. 258 .

§27-85.3. Short title.

This article shall be known as the Arson Reporting Immunity Act.

1979, c. 279.

§27-85.4. Definitions.

For the purposes of this article:

"Action" includes nonaction or the failure to take action.

"Authorized agencies" means:

- i. The chief or director of any municipal or county fire or police department or the sheriff of any county;
- ii. The arson investigator of the State Police Department; the Alcohol, Tobacco and Firearms Division of the United States Department of the Treasury; or
- iii. The attorney for the Commonwealth or other person responsible for prosecutions in the jurisdiction where the fire occurred.

"Insurance company" includes the Virginia Property Insurance Association.

1979, c. 279; 1985, c. 58; 2008, c. [410](#).

§27-85.5. Disclosure of information.

A. Any authorized agency may, in writing, require an insurance company to release to the requesting agency any or all relevant information or evidence deemed material by the requesting agency in the insurance company's possession relating to the fire loss in question. Relevant information may include, but shall not be limited to:

1. Pertinent insurance policy information relevant to a fire loss under investigation and any application for such a policy;
2. Policy premium payment records;
3. History of previous claims made by the insured;
4. Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence relevant to the investigation.

B.1. When an insurance company has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, then, for the purpose of notification and for having such fire loss investigated, the company shall, in writing, notify an authorized agency and provide it with any or all material developed from the company's inquiry into the fire loss.

2. When an insurance company provides any one of the authorized agencies with notice of a fire loss, it shall be sufficient notice for the purpose of this article.

C. The authorized agency provided with information pursuant to subsections A or B of this section and in furtherance of its own purposes, may release or provide such information to any of the other authorized agencies.

D. Any insurance company providing information to an authorized agency or agencies pursuant to subsections A or B of this section shall have the right to request relevant information and receive, within a reasonable time, not to exceed thirty days, the information requested.

E. Any insurance company, or person acting in its behalf or authorized agency who releases information, whether oral or written, pursuant to subsections A or B of this section shall be immune from any liability arising out of a civil action, or penalty resulting from a criminal prosecution unless actual malice on the part of the insurance company or authorized agency is present.

1979, c. 279.

§27-85.6. Evidence.

Any authorized agency and insurance company described in § [27-85.4](#) or § [27-85.5](#) who receives any information furnished pursuant to this article, shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding, except release in accordance with subsection C of § [27-85.5](#).

1979, c. 279.

Drug Control Act

§54.1-3400. Citation.

This chapter may be cited as "The Drug Control Act."

1970, c. 650, § 54-524.1; 1988, c. 765.

§54.1-3401. (Effective July 1, 2020) Definitions.

As used in this chapter, unless the context requires a different meaning:

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by (i) a practitioner or by his authorized agent and under his direction or (ii)

the patient or research subject at the direction and in the presence of the practitioner.

"Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs or devices.

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

"Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone.

"Animal" means any nonhuman animate being endowed with the power of voluntary action.

"Automated drug dispensing system" means a mechanical or electronic system that performs operations or activities, other than compounding or administration, relating to pharmacy services, including the storage, dispensing, or distribution of drugs and the collection, control, and maintenance of all transaction information, to provide security and accountability for such drugs.

"Biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein other than a chemically synthesized polypeptide, or analogous product, or arsphenamine or any derivative of arsphenamine or any other trivalent organic arsenic compound, applicable to the prevention, treatment, or cure of a disease or condition of human beings.

"Biosimilar" means a biological product that is highly similar to a specific reference biological product, notwithstanding minor differences in clinically inactive compounds, such that there are no clinically meaningful differences between the reference biological product and the biological product that has been licensed as a biosimilar pursuant to 42 U.S.C. § 262(k) in terms of safety, purity, and potency of the product.

"Board" means the Board of Pharmacy.

"Bulk drug substance" means any substance that is represented for use, and that, when used in the compounding, manufacturing, processing, or packaging of a drug,

becomes an active ingredient or a finished dosage form of the drug; however, "bulk drug substance" shall not include intermediates that are used in the synthesis of such substances.

"Change of ownership" of an existing entity permitted, registered, or licensed by the Board means (i) the sale or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor, the dissolution of a partnership, or change in partnership composition; (iii) the acquisition or disposal of 50 percent or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; (iv) the merger of a corporation owning the entity or of the parent corporation of a wholly-owned subsidiary owning the entity with another business or corporation; or (v) the expiration or forfeiture of a corporation's charter.

"Co-licensed partner" means a person who, with at least one other person, has the right to engage in the manufacturing or marketing of a prescription drug, consistent with state and federal law.

"Compounding" means the combining of two or more ingredients to fabricate such ingredients into a single preparation and includes the mixing, assembling, packaging, or labeling of a drug or device (i) by a pharmacist, or within a permitted pharmacy, pursuant to a valid prescription issued for a medicinal or therapeutic purpose in the context of a bona fide practitioner-patient-pharmacist relationship, or in expectation of receiving a valid prescription based on observed historical patterns of prescribing and dispensing; (ii) by a practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine as an incident to his administering or dispensing, if authorized to dispense, a controlled substance in the course of his professional practice; or (iii) for the purpose of, or as incident to, research, teaching, or chemical analysis and not for sale or for dispensing. The mixing, diluting, or reconstituting of a manufacturer's product drugs for the purpose of administration to a patient, when performed by a practitioner of medicine or osteopathy licensed under Chapter 29 (§ [54.1-2900](#) et seq.), a person supervised by such practitioner pursuant to subdivision A 6 or 19 of § [54.1-2901](#), or a person supervised by such practitioner or a licensed nurse prac-

itioner or physician assistant pursuant to subdivision A 4 of § [54.1-2901](#) shall not be considered compounding.

"Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VI of this chapter. The term shall not include distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 3.2 or Title 4.1. The term "controlled substance" includes a controlled substance analog that has been placed into Schedule I or II by the Board pursuant to the regulatory authority in subsection D of § [54.1-3443](#).

"Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and either (i) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II or (ii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II. "Controlled substance analog" does not include (a) any substance for which there is an approved new drug application as defined under § 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355) or that is generally recognized as safe and effective pursuant to §§ 501, 502, and 503 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 351, 352, and 353) and 21 C.F.R. Part 330; (b) with respect to a particular person, any substance for which an exemption is in effect for investigational use for that person under § 505 of the federal Food, Drug, and Cosmetic Act to the extent that the conduct with respect to that substance is pursuant to such exemption; or (c) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

"DEA" means the Drug Enforcement Administration, U.S. Department of Justice, or its successor agency.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer of any item regulated by this chapter, whether or not there exists an agency relationship.

"Device" means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended for use in the diagnosis, cure, mitigation,

treatment, or prevention of disease in man or animals or to affect the structure or any function of the body of man or animals.

"Dialysis care technician" or "dialysis patient care technician" means an individual who is certified by an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§ [54.1-2729.1](#) et seq.) and who, under the supervision of a licensed physician, nurse practitioner, physician assistant, or a registered nurse, assists in the care of patients undergoing renal dialysis treatments in a Medicare-certified renal dialysis facility.

"Dialysis solution" means either the commercially available, unopened, sterile solutions whose purpose is to be instilled into the peritoneal cavity during the medical procedure known as peritoneal dialysis, or commercially available solutions whose purpose is to be used in the performance of hemodialysis not to include any solutions administered to the patient intravenously.

"Dispense" means to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery. However, dispensing shall not include the transportation of drugs mixed, diluted, or reconstituted in accordance with this chapter to other sites operated by such practitioner or that practitioner's medical practice for the purpose of administration of such drugs to patients of the practitioner or that practitioner's medical practice at such other sites. For practitioners of medicine or osteopathy, "dispense" shall only include the provision of drugs by a practitioner to patients to take with them away from the practitioner's place of practice.

"Dispenser" means a practitioner who dispenses.

"Distribute" means to deliver other than by administering or dispensing a controlled substance.

"Distributor" means a person who distributes.

"Drug" means (i) articles or substances recognized in the official United States Pharmacopoeia National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them; (ii) articles or substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (iii) articles or substances, other than food, intended to affect the structure or any function of the body of man or animals; (iv) articles or substances intended

for use as a component of any article specified in clause (i), (ii), or (iii); or (v) a biological product. "Drug" does not include devices or their components, parts, or accessories.

"Drug product" means a specific drug in dosage form from a known source of manufacture, whether by brand or therapeutically equivalent drug product name.

"Electronic prescription" means a written prescription that is generated on an electronic application and is transmitted to a pharmacy as an electronic data file; Schedule II through V prescriptions shall be transmitted in accordance with 21 C.F.R. Part 1300.

"Facsimile (FAX) prescription" means a written prescription or order that is transmitted by an electronic device over telephone lines that sends the exact image to the receiving pharmacy in hard copy form.

"FDA" means the U.S. Food and Drug Administration.

"Hashish oil" means any oily extract containing one or more cannabinoids, but shall not include any such extract with a tetrahydrocannabinol content of less than 12 percent by weight.

"Immediate precursor" means a substance which the Board of Pharmacy has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

"Interchangeable" means a biosimilar that meets safety standards for determining interchangeability pursuant to 42 U.S.C. § 262(k)(4).

"Label" means a display of written, printed, or graphic matter upon the immediate container of any article. A requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of such article or is easily legible through the outside container or wrapper.

"Labeling" means all labels and other written, printed, or graphic matter on an article or any of its containers or wrappers, or accompanying such article.

"Manufacture" means the production, preparation, propagation, conversion, or processing of any item regulated by this chapter, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. This term does not include compounding.

"Manufacturer" means every person who manufactures, a manufacturer's co-licensed partner, or a repackager.

"Marijuana" means any part of a plant of the genus *Cannabis* whether growing or not, its seeds, or its resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or its resin. Marijuana shall not include any oily extract containing one or more cannabinoids unless such extract contains less than 12 percent of tetrahydrocannabinol by weight, nor shall marijuana include the mature stalks of such plant, fiber produced from such stalk, or oil or cake made from the seeds of such plant, unless such stalks, fiber, oil, or cake is combined with other parts of plants of the genus *Cannabis*. Marijuana shall not include industrial hemp as defined in § [3.2-4112](#) that is possessed, cultivated, or manufactured by a grower licensed pursuant to § [3.2-4115](#).

"Medical equipment supplier" means any person, as defined in § [1-230](#), engaged in the delivery to the ultimate consumer, pursuant to the lawful order of a practitioner, of hypodermic syringes and needles, medicinal oxygen, Schedule VI controlled devices, those Schedule VI controlled substances with no medicinal properties that are used for the operation and cleaning of medical equipment, solutions for peritoneal dialysis, and sterile water or saline for irrigation.

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (i) opium, opiates, and any salt, compound, derivative, or preparation of opium or opiates; (ii) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (i), but not including the isoquinoline alkaloids of opium; (iii) opium poppy and poppy straw; (iv) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including

decocainized coca leaves or extraction of coca leaves which do not contain cocaine or ecgonine.

"New drug" means (i) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling, except that such a drug not so recognized shall not be deemed to be a "new drug" if at any time prior to the enactment of this chapter it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use, or (ii) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

"Nuclear medicine technologist" means an individual who holds a current certification with the American Registry of Radiological Technologists or the Nuclear Medicine Technology Certification Board.

"Official compendium" means the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them.

"Official written order" means an order written on a form provided for that purpose by the U.S. Drug Enforcement Administration, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided then on an official form provided for that purpose by the Board of Pharmacy.

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Article 4 (§ [54.1-3437](#) et seq.), the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

"Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof.

"Original package" means the unbroken container or wrapping in which any drug or medicine is enclosed together with label and labeling, put up by or for the manufacturer, wholesaler, or distributor for use in the delivery or display of such article.

"Outsourcing facility" means a facility that is engaged in the compounding of sterile drugs and is currently registered as an outsourcing facility with the U.S. Secretary of Health and Human Services and that complies with all applicable requirements of federal and state law, including the Federal Food, Drug, and Cosmetic Act.

"Person" means both the plural and singular, as the case demands, and includes an individual, partnership, corporation, association, governmental agency, trust, or other institution or entity.

"Pharmacist-in-charge" means the person who, being licensed as a pharmacist, signs the application for a pharmacy permit and assumes full legal responsibility for the operation of the relevant pharmacy in a manner complying with the laws and regulations for the practice of pharmacy and the sale and dispensing of controlled substances; the "pharmacist-in-charge" shall personally supervise the pharmacy and the pharmacy's personnel as required by § [54.1-3432](#).

"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

"Practitioner" means a physician, dentist, licensed nurse practitioner pursuant to § [54.1-2957.01](#), licensed physician assistant pursuant to § [54.1-2952.1](#), pharmacist pursuant to § [54.1-3300](#), TPA-certified optometrist pursuant to Article 5 (§ [54.1-3222](#) et seq.) of Chapter 32, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to a controlled substance in the course of professional practice or research in the Commonwealth.

"Prescriber" means a practitioner who is authorized pursuant to §§ [54.1-3303](#) and [54.1-3408](#) to issue a prescription.

"Prescription" means an order for drugs or medical supplies, written or signed or transmitted by word of mouth, telephone, telegraph, or other means of communication to a pharmacist by a duly licensed physician, dentist, veterinarian, or other practitioner authorized by law to prescribe and administer such drugs or medical supplies.

"Prescription drug" means any drug required by federal law or regulation to be dispensed only pursuant to a prescription, including finished dosage forms and active ingredients subject to § 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 353(b)).

"Production" or "produce" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance or marijuana.

"Proprietary medicine" means a completely compounded nonprescription drug in its unbroken, original package which does not contain any controlled substance or marijuana as defined in this chapter and is not in itself poisonous, and which is sold, offered, promoted, or advertised directly to the general public by or under the authority of the manufacturer or primary distributor, under a trademark, trade name, or other trade symbol privately owned, and the labeling of which conforms to the requirements of this chapter and applicable federal law. However, this definition shall not include a drug that is only advertised or promoted professionally to licensed practitioners, a narcotic or drug containing a narcotic, a drug that may be dispensed only upon prescription or the label of which bears substantially the statement "Warning -- may be habit-forming," or a drug intended for injection.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any non-radioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Reference biological product" means the single biological product licensed pursuant to 42 U.S.C. § 262(a) against which a biological product is evaluated in an application submitted to the U.S. Food and Drug Administration for licensure of biological products as biosimilar or interchangeable pursuant to 42 U.S.C. § 262(k).

"Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as an individual, proprietor, agent, servant, or employee.

"Therapeutically equivalent drug products" means drug products that contain the same active ingredients and are identical in strength or concentration, dosage form,

and route of administration and that are classified as being therapeutically equivalent by the U.S. Food and Drug Administration pursuant to the definition of "therapeutically equivalent drug products" set forth in the most recent edition of the Approved Drug Products with Therapeutic Equivalence Evaluations, otherwise known as the "Orange Book."

"Third-party logistics provider" means a person that provides or coordinates warehousing of or other logistics services for a drug or device in interstate commerce on behalf of a manufacturer, wholesale distributor, or dispenser of the drug or device but does not take ownership of the product or have responsibility for directing the sale or disposition of the product.

"USP-NF" means the current edition of the United States Pharmacopeia-National Formulary.

"Warehouser" means any person, other than a wholesale distributor, manufacturer, or third-party logistics provider, engaged in the business of selling or otherwise distributing prescription drugs or devices to any person who is not the ultimate user or consumer. No person shall be subject to any state or local tax by reason of this definition.

"Wholesale distribution" means distribution of prescription drugs to persons other than consumers or patients, subject to the exemptions set forth in the federal Drug Supply Chain Security Act.

"Wholesale distributor" means any person other than a manufacturer, a manufacturer's co-licensed partner, a third-party logistics provider, or a repackager that engages in wholesale distribution.

The words "drugs" and "devices" as used in Chapter 33 (§ [54.1-3300](#) et seq.) and in this chapter shall not include surgical or dental instruments, physical therapy equipment, X-ray apparatus, or glasses or lenses for the eyes.

The terms "pharmacist," "pharmacy," and "practice of pharmacy" as used in this chapter shall be defined as provided in Chapter 33 (§ [54.1-3300](#) et seq.) unless the context requires a different meaning.

Code 1950, §§ 54-399, 54-487; 1952, c. 451; 1958, c. 551, § 54-524.2; 1966, c. 193; 1968, c. 582; 1970, c. 650; 1971, Ex. Sess., c. 94; 1972, c. 798; 1975, c. 425; 1976, c. 14; 1977, c. 193; 1978, c. 833; 1979, c. 435; 1980, c. 150; 1988, c. 765; 1991, cc. 519, 524; 1992, cc. 737, 793; 1996, cc. [37](#), [152](#), [158](#), [407](#), [408](#); 1997, cc. [20](#), [677](#), [806](#);

1998, c. [470](#); 1999, cc. [661](#), [750](#); 2000, cc. [861](#), [878](#), [935](#); 2003, cc. [509](#), [639](#), [995](#); 2005, cc. [475](#), [839](#); 2006, c. [346](#); 2012, c. [213](#); 2013, cc. [412](#), [504](#), [544](#), [765](#); 2014, cc. [674](#), [719](#); 2015, cc. [158](#), [180](#), [300](#); 2016, cc. [221](#), [495](#); 2017, cc. [115](#), [429](#).

§54.1-3401. (Effective until July 1, 2020) Definitions.

As used in this chapter, unless the context requires a different meaning:

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by (i) a practitioner or by his authorized agent and under his direction or (ii) the patient or research subject at the direction and in the presence of the practitioner.

"Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs or devices.

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

"Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone.

"Animal" means any nonhuman animate being endowed with the power of voluntary action.

"Automated drug dispensing system" means a mechanical or electronic system that performs operations or activities, other than compounding or administration, relating to pharmacy services, including the storage, dispensing, or distribution of drugs and the collection, control, and maintenance of all transaction information, to provide security and accountability for such drugs.

"Biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein other than a chemically synthesized polypeptide, or analogous product, or arsphenamine or any derivative of arsphenamine or any other trivalent organic arsenic compound, applicable to the prevention, treatment, or cure of a disease or condition of human beings.

"Biosimilar" means a biological product that is highly similar to a specific reference biological product, notwithstanding minor differences in clinically inactive compounds, such that there are no clinically meaningful differences between the reference biological product and the biological product that has been licensed as a biosimilar pursuant to 42 U.S.C. § 262(k) in terms of safety, purity, and potency of the product.

"Board" means the Board of Pharmacy.

"Bulk drug substance" means any substance that is represented for use, and that, when used in the compounding, manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug; however, "bulk drug substance" shall not include intermediates that are used in the synthesis of such substances.

"Change of ownership" of an existing entity permitted, registered, or licensed by the Board means (i) the sale or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor, the dissolution of a partnership, or change in partnership composition; (iii) the acquisition or disposal of 50 percent or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; (iv) the merger of a corporation owning the entity or of the parent corporation of a wholly-owned subsidiary owning the entity with another business or corporation; or (v) the expiration or forfeiture of a corporation's charter.

"Co-licensed partner" means a person who, with at least one other person, has the right to engage in the manufacturing or marketing of a prescription drug, consistent with state and federal law.

"Compounding" means the combining of two or more ingredients to fabricate such ingredients into a single preparation and includes the mixing, assembling, packaging, or labeling of a drug or device (i) by a pharmacist, or within a permitted pharmacy, pursuant to a valid prescription issued for a medicinal or therapeutic purpose in the context of a bona fide practitioner-patient-pharmacist relationship, or in expectation of receiving a valid prescription based on observed historical patterns of prescribing and dispensing; (ii) by a practitioner of medicine, osteopathy, podiatry, dentistry, or

veterinary medicine as an incident to his administering or dispensing, if authorized to dispense, a controlled substance in the course of his professional practice; or (iii) for the purpose of, or as incident to, research, teaching, or chemical analysis and not for sale or for dispensing. The mixing, diluting, or reconstituting of a manufacturer's product drugs for the purpose of administration to a patient, when performed by a practitioner of medicine or osteopathy licensed under Chapter 29 (§ [54.1-2900](#) et seq.), a person supervised by such practitioner pursuant to subdivision A 6 or 19 of § [54.1-2901](#), or a person supervised by such practitioner or a licensed nurse practitioner or physician assistant pursuant to subdivision A 4 of § [54.1-2901](#) shall not be considered compounding.

"Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VI of this chapter. The term shall not include distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 3.2 or Title 4.1. The term "controlled substance" includes a controlled substance analog that has been placed into Schedule I or II by the Board pursuant to the regulatory authority in subsection D of § [54.1-3443](#).

"Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and either (i) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II or (ii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II. "Controlled substance analog" does not include (a) any substance for which there is an approved new drug application as defined under § 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355) or that is generally recognized as safe and effective pursuant to §§ 501, 502, and 503 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 351, 352, and 353) and 21 C.F.R. Part 330; (b) with respect to a particular person, any substance for which an exemption is in effect for investigational use for that person under § 505 of the federal Food, Drug, and Cosmetic Act to the extent that the conduct with respect to that substance is pursuant to such exemption; or (c) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

"DEA" means the Drug Enforcement Administration, U.S. Department of Justice, or its successor agency.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer of any item regulated by this chapter, whether or not there exists an agency relationship.

"Device" means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals or to affect the structure or any function of the body of man or animals.

"Dialysis care technician" or "dialysis patient care technician" means an individual who is certified by an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§ [54.1-2729.1](#) et seq.) and who, under the supervision of a licensed physician, nurse practitioner, physician assistant, or a registered nurse, assists in the care of patients undergoing renal dialysis treatments in a Medicare-certified renal dialysis facility.

"Dialysis solution" means either the commercially available, unopened, sterile solutions whose purpose is to be instilled into the peritoneal cavity during the medical procedure known as peritoneal dialysis, or commercially available solutions whose purpose is to be used in the performance of hemodialysis not to include any solutions administered to the patient intravenously.

"Dispense" means to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery. However, dispensing shall not include the transportation of drugs mixed, diluted, or reconstituted in accordance with this chapter to other sites operated by such practitioner or that practitioner's medical practice for the purpose of administration of such drugs to patients of the practitioner or that practitioner's medical practice at such other sites. For practitioners of medicine or osteopathy, "dispense" shall only include the provision of drugs by a practitioner to patients to take with them away from the practitioner's place of practice.

"Dispenser" means a practitioner who dispenses.

"Distribute" means to deliver other than by administering or dispensing a controlled substance.

"Distributor" means a person who distributes.

"Drug" means (i) articles or substances recognized in the official United States Pharmacopoeia National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them; (ii) articles or substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (iii) articles or substances, other than food, intended to affect the structure or any function of the body of man or animals; (iv) articles or substances intended for use as a component of any article specified in clause (i), (ii), or (iii); or (v) a biological product. "Drug" does not include devices or their components, parts, or accessories.

"Drug product" means a specific drug in dosage form from a known source of manufacture, whether by brand or therapeutically equivalent drug product name.

"Electronic transmission prescription" means any prescription, other than an oral or written prescription or a prescription transmitted by facsimile machine, that is electronically transmitted directly to a pharmacy without interception or intervention from a third party from a practitioner authorized to prescribe or from one pharmacy to another pharmacy.

"Facsimile (FAX) prescription" means a written prescription or order that is transmitted by an electronic device over telephone lines that sends the exact image to the receiving pharmacy in hard copy form.

"FDA" means the U.S. Food and Drug Administration.

"Hashish oil" means any oily extract containing one or more cannabinoids, but shall not include any such extract with a tetrahydrocannabinol content of less than 12 percent by weight.

"Immediate precursor" means a substance which the Board of Pharmacy has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

"Interchangeable" means a biosimilar that meets safety standards for determining interchangeability pursuant to 42 U.S.C. § 262(k)(4).

"Label" means a display of written, printed, or graphic matter upon the immediate container of any article. A requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be

considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of such article or is easily legible through the outside container or wrapper.

"Labeling" means all labels and other written, printed, or graphic matter on an article or any of its containers or wrappers, or accompanying such article.

"Manufacture" means the production, preparation, propagation, conversion, or processing of any item regulated by this chapter, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. This term does not include compounding.

"Manufacturer" means every person who manufactures, a manufacturer's co-licensed partner, or a repackager.

"Marijuana" means any part of a plant of the genus *Cannabis* whether growing or not, its seeds, or its resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or its resin. Marijuana shall not include any oily extract containing one or more cannabinoids unless such extract contains less than 12 percent of tetrahydrocannabinol by weight, nor shall marijuana include the mature stalks of such plant, fiber produced from such stalk, or oil or cake made from the seeds of such plant, unless such stalks, fiber, oil, or cake is combined with other parts of plants of the genus *Cannabis*. Marijuana shall not include industrial hemp as defined in § [3.2-4112](#) that is possessed, cultivated, or manufactured by a grower licensed pursuant to § [3.2-4115](#).

"Medical equipment supplier" means any person, as defined in § [1-230](#), engaged in the delivery to the ultimate consumer, pursuant to the lawful order of a practitioner, of hypodermic syringes and needles, medicinal oxygen, Schedule VI controlled devices, those Schedule VI controlled substances with no medicinal properties that are used for the operation and cleaning of medical equipment, solutions for peritoneal dialysis, and sterile water or saline for irrigation.

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (i) opium, opiates, and any salt, compound, derivative, or preparation of opium or

opiates; (ii) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (i), but not including the isoquinoline alkaloids of opium; (iii) opium poppy and poppy straw; (iv) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extraction of coca leaves which do not contain cocaine or ecgonine.

"New drug" means (i) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling, except that such a drug not so recognized shall not be deemed to be a "new drug" if at any time prior to the enactment of this chapter it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use, or (ii) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

"Nuclear medicine technologist" means an individual who holds a current certification with the American Registry of Radiological Technologists or the Nuclear Medicine Technology Certification Board.

"Official compendium" means the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them.

"Official written order" means an order written on a form provided for that purpose by the U.S. Drug Enforcement Administration, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided then on an official form provided for that purpose by the Board of Pharmacy.

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Article 4 (§ [54.1-3437](#) et seq.), the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

"Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof.

"Original package" means the unbroken container or wrapping in which any drug or medicine is enclosed together with label and labeling, put up by or for the manufacturer, wholesaler, or distributor for use in the delivery or display of such article.

"Outsourcing facility" means a facility that is engaged in the compounding of sterile drugs and is currently registered as an outsourcing facility with the U.S. Secretary of Health and Human Services and that complies with all applicable requirements of federal and state law, including the Federal Food, Drug, and Cosmetic Act.

"Person" means both the plural and singular, as the case demands, and includes an individual, partnership, corporation, association, governmental agency, trust, or other institution or entity.

"Pharmacist-in-charge" means the person who, being licensed as a pharmacist, signs the application for a pharmacy permit and assumes full legal responsibility for the operation of the relevant pharmacy in a manner complying with the laws and regulations for the practice of pharmacy and the sale and dispensing of controlled substances; the "pharmacist-in-charge" shall personally supervise the pharmacy and the pharmacy's personnel as required by § [54.1-3432](#).

"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

"Practitioner" means a physician, dentist, licensed nurse practitioner pursuant to § [54.1-2957.01](#), licensed physician assistant pursuant to § [54.1-2952.1](#), pharmacist pursuant to § [54.1-3300](#), TPA-certified optometrist pursuant to Article 5 (§ [54.1-3222](#) et seq.) of Chapter 32, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to a controlled substance in the course of professional practice or research in the Commonwealth.

"Prescriber" means a practitioner who is authorized pursuant to §§ [54.1-3303](#) and [54.1-3408](#) to issue a prescription.

"Prescription" means an order for drugs or medical supplies, written or signed or transmitted by word of mouth, telephone, telegraph, or other means of communication to a pharmacist by a duly licensed physician, dentist, veterinarian, or other practitioner authorized by law to prescribe and administer such drugs or medical supplies.

"Prescription drug" means any drug required by federal law or regulation to be dispensed only pursuant to a prescription, including finished dosage forms and active ingredients subject to § 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 353(b)).

"Production" or "produce" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance or marijuana.

"Proprietary medicine" means a completely compounded nonprescription drug in its unbroken, original package which does not contain any controlled substance or marijuana as defined in this chapter and is not in itself poisonous, and which is sold, offered, promoted, or advertised directly to the general public by or under the authority of the manufacturer or primary distributor, under a trademark, trade name, or other trade symbol privately owned, and the labeling of which conforms to the requirements of this chapter and applicable federal law. However, this definition shall not include a drug that is only advertised or promoted professionally to licensed practitioners, a narcotic or drug containing a narcotic, a drug that may be dispensed only upon prescription or the label of which bears substantially the statement "Warning -- may be habit-forming," or a drug intended for injection.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any non-radioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Reference biological product" means the single biological product licensed pursuant to 42 U.S.C. § 262(a) against which a biological product is evaluated in an application

submitted to the U.S. Food and Drug Administration for licensure of biological products as biosimilar or interchangeable pursuant to 42 U.S.C. § 262(k).

"Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as an individual, proprietor, agent, servant, or employee.

"Therapeutically equivalent drug products" means drug products that contain the same active ingredients and are identical in strength or concentration, dosage form, and route of administration and that are classified as being therapeutically equivalent by the U.S. Food and Drug Administration pursuant to the definition of "therapeutically equivalent drug products" set forth in the most recent edition of the Approved Drug Products with Therapeutic Equivalence Evaluations, otherwise known as the "Orange Book."

"Third-party logistics provider" means a person that provides or coordinates warehousing of or other logistics services for a drug or device in interstate commerce on behalf of a manufacturer, wholesale distributor, or dispenser of the drug or device but does not take ownership of the product or have responsibility for directing the sale or disposition of the product.

"USP-NF" means the current edition of the United States Pharmacopeia-National Formulary.

"Warehouser" means any person, other than a wholesale distributor, manufacturer, or third-party logistics provider, engaged in the business of selling or otherwise distributing prescription drugs or devices to any person who is not the ultimate user or consumer. No person shall be subject to any state or local tax by reason of this definition.

"Wholesale distribution" means distribution of prescription drugs to persons other than consumers or patients, subject to the exemptions set forth in the federal Drug Supply Chain Security Act.

"Wholesale distributor" means any person other than a manufacturer, a manufacturer's co-licensed partner, a third-party logistics provider, or a repackager that engages in wholesale distribution.

The words "drugs" and "devices" as used in Chapter 33 (§ [54.1-3300](#) et seq.) and in this chapter shall not include surgical or dental instruments, physical therapy equipment, X-ray apparatus, or glasses or lenses for the eyes.

The terms "pharmacist," "pharmacy," and "practice of pharmacy" as used in this chapter shall be defined as provided in Chapter 33 (§ [54.1-3300](#) et seq.) unless the context requires a different meaning.

Code 1950, §§ 54-399, 54-487; 1952, c. 451; 1958, c. 551, § 54-524.2; 1966, c. 193; 1968, c. 582; 1970, c. 650; 1971, Ex. Sess., c. 94; 1972, c. 798; 1975, c. 425; 1976, c. 14; 1977, c. 193; 1978, c. 833; 1979, c. 435; 1980, c. 150; 1988, c. 765; 1991, cc. 519, 524; 1992, cc. 737, 793; 1996, cc. [37](#), [152](#), [158](#), [407](#), [408](#); 1997, cc. [20](#), [677](#), [806](#); 1998, c. [470](#); 1999, cc. [661](#), [750](#); 2000, cc. [861](#), [878](#), [935](#); 2003, cc. [509](#), [639](#), [995](#); 2005, cc. [475](#), [839](#); 2006, c. [346](#); 2012, c. [213](#); 2013, cc. [412](#), [504](#), [544](#), [765](#); 2014, cc. [674](#), [719](#); 2015, cc. [158](#), [180](#), [300](#); 2016, cc. [221](#), [495](#).

§54.1-3401.1. Repealed.

Repealed by Acts 2016, c. [221](#), cl. 2.

§54.1-3402. Repealed.

Repealed by Acts 2003, c. [509](#).

§54.1-3403. Chapter not applicable to economic poisons.

This chapter shall not be construed to apply (i) to poisons used for the control of insects, animal pests, weeds, fungus diseases or other substances sold for use in agricultural, horticultural or related arts and sciences when such substances which are poisons within the meaning of this chapter are sold in original unbroken packages bearing a label having plainly printed upon it the name of the contents and the word POISON and an effective antidote or (ii) to any person, persons, corporations or associations engaged in the business of selling, making, compounding or manufacturing industrial chemicals for distribution or sale at wholesale or for making, compounding or manufacturing other products.

Code 1950, § 54-403.1; 1958, c. 551; 1970, c. 650, § 54-524.4; 1988, c. 765.

§54.1-3404. Inventories of controlled substances required of certain persons; contents and form of record.

A. Except as set forth in subsection G, every person manufacturing, compounding, processing, selling, dispensing or otherwise disposing of drugs in Schedules I, II, III, IV or V shall take a complete and accurate inventory of all stocks of Schedules I through V drugs on the date he first engages in business. If there are no controlled substances on hand at that time, he shall record this fact as part of the inventory. An inventory taken by use of an oral recording device shall be promptly reduced to

writing and maintained in a written, typewritten or printed form. Such inventory shall be made either as of the opening of business or as of the close of business on the inventory date.

B. After the initial inventory is taken, every person described herein shall take a new inventory at least every two years of all stocks on hand of Schedules I through V drugs. The biennial inventory shall be taken on any date which is within two years of the previous biennial inventory.

C. The record of such drugs received shall in every case show the date of receipt, the name and address of the person from whom received and the kind and quantity of drugs received, the kind and quantity of drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture. The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced.

D. The record of all drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Any person selling, administering, dispensing or otherwise disposing of such drugs shall make and sign such record at the time of each transaction. The keeping of a record required by or under the federal laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of any drugs lost, destroyed or stolen, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft. The form of records shall be prescribed by the Board.

E. Whenever any registrant or licensee discovers a theft or any other unusual loss of any controlled substance, he shall immediately report such theft or loss to the Board. If the registrant or licensee is unable to determine the exact kind and quantity of the drug loss, he shall immediately make a complete inventory of all Schedule I through V drugs.

Within 30 days after the discovery of a loss of drugs, the registrant or licensee shall furnish the Board with a listing of the kind, quantity and strength of such drugs lost.

F. All records required pursuant to this section shall be maintained completely and accurately for two years from the date of the transaction recorded.

G. Each person authorized to conduct chemical analyses using controlled substances in the Department of Forensic Science shall comply with the inventory requirements set forth in subsections A through F; however, the following substances shall not be required to be included in such inventory: (i) controlled substances on hand at the time of the inventory in a quantity of less than one kilogram, other than a hallucinogenic controlled substance listed in Schedule I of this chapter; or (ii) hallucinogenic controlled substances, other than lysergic acid diethylamide, on hand at the time of the inventory in a quantity of less than 20 grams; or (iii) lysergic acid diethylamide on hand at the time of the inventory in a quantity of less than 0.5 grams. Further, no inventory shall be required of known or suspected controlled substances that have been received as evidentiary materials for analyses by the Department of Forensic Science.

1970, c. 650, § 54-524.56; 1972, c. 798; 1978, c. 833; 1979, c. 435; 1980, c. 203; 1982, c. 278; 1988, c. 765; 1998, c. [105](#); 2004, c. [51](#); 2005, cc. [868](#), [881](#).

§54.1-3405. Access to and copies of records; inspections.

Every person required to prepare or obtain, and keep, records, and any carrier maintaining records with respect to any shipment containing any drug, and every person in charge or having custody of such records shall, upon request of an agent designated by the Board, permit such agent at reasonable times to have access to and copy such records.

Any agent designated by the Superintendent of the Department of State Police to conduct drug diversion investigations shall, for the purpose of such investigations, also be permitted access at reasonable times to all such records relevant to a specific investigation and be allowed to inspect and copy such records. However, agents designated by the Superintendent of the Department of State Police to conduct drug diversion investigations shall not copy and remove patient records unless such patient records are relevant to a specific investigation. Any agent designated by the Superintendent of the Department of State Police shall allow the person or carrier maintaining such records, or agent thereof, to examine any copies of records before their removal from the premises. If the agent designated by the Superintendent of State Police copies records on magnetic storage media, he will deliver a duplicate of the magnetic storage media on which the copies are stored to the person or carrier

maintaining such records or an agent thereof, prior to removing the copies from the premises. If the original of any record is removed by any agent designated by the Superintendent of State Police, a receipt therefor shall be left with the person or carrier maintaining such records or an agent thereof, and a copy of the removed record shall be provided the person or carrier maintaining such records within a reasonable time thereafter.

For the purposes of verification of such records and of enforcement of this chapter, agents designated by the Board or by the Superintendent are authorized, upon presenting appropriate credentials to the owner, operator, or agent in charge, to enter, at reasonable times, any factory, warehouse, establishment, or vehicle in which any drug is held, manufactured, compounded, processed, sold, delivered, or otherwise disposed of; and to inspect, within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished material, containers and labeling, including records, files, papers, processes, controls, and facilities, bearing on violation of this chapter; and to inventory and obtain samples of any stock of any drugs.

If a sample of any drug is obtained, the agent making the inspection shall, upon completion of the inspection and before leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample. No inspection shall extend to financial data, sales data other than shipment data, pricing data, personnel data or research data.

Any information obtained by a designated State Police agent during an inspection under this section which constitutes evidence of a violation of any provision of this chapter shall be reported to the Department of Health Professions upon its discovery.

Any information obtained by an agent designated by the Board during an inspection under this section which constitutes evidence of a violation of Article 1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2 shall be reported to the Department of State Police upon its discovery.

1970, c. 650, § 54-524.57; 1988, cc. 266, 765; 1992, cc. 743, 808 .

§54.1-3406. Records confidential; disclosure of information about violations of federal law.

A. No agent of the Board or agent designated by the Superintendent of the Department of State Police having knowledge by virtue of his office of any prescriptions,

papers, records, or stocks of drugs shall divulge such knowledge, except in connection with a criminal investigation authorized by the Attorney General or attorney for the Commonwealth or with a prosecution or proceeding in court or before a regulatory board or officer, to which investigation, prosecution or proceeding the person to whom such prescriptions, papers or records relate is a subject or party. This section shall not be construed to prohibit the Board president or his designee and the Director of the Department of Health Professions from discharging their duties as provided in this title.

B. Notwithstanding the provisions of § [54.1-2400.2](#), the Board shall have the authority to submit to the U.S. Secretary of Health and Human Services information resulting from an inspection or an investigation indicating that a compounding pharmacy or outsourcing facility may be in violation of federal law or regulations with the exception of compounding for office-based administration in accordance with § [54.1-3410.2](#).

Code 1950, § 54-512; 1970, c. 650; 1983, c. 528, § 54-524.58; 1988, cc. 266, 765; 2015, c. [300](#).

§54.1-3407. Analysis of controlled substances.

A licensed physician or pharmacist may receive controlled substances from or on behalf of a patient for qualitative or quantitative analysis purposes only, without an official order form, if within twenty-four hours of its receipt the physician or pharmacist mails or delivers the entire sample to a laboratory operated by the Commonwealth and designated by the Board to receive such substances. If the sample is mailed, it shall be sent by registered or certified mail, postage prepaid, with return receipt requested. If personally delivered, a receipt shall be obtained from such laboratory. All receipts or returns shall be kept on file for three years and shall be available for inspection by the Board at any reasonable time.

1972, c. 798, § 54-524.59:1; 1988, c. 765.

§54.1-3408. Professional use by practitioners.

A. A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine or a licensed nurse practitioner pursuant to § [54.1-2957.01](#), a licensed physician assistant pursuant to § [54.1-2952.1](#), or a TPA-certified optometrist pursuant to Article 5 (§ [54.1-3222](#) et seq.) of Chapter 32 shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.

B. The prescribing practitioner's order may be on a written prescription or pursuant to an oral prescription as authorized by this chapter. The prescriber may administer drugs and devices, or he may cause drugs or devices to be administered by:

1. A nurse, physician assistant, or intern under his direction and supervision;
2. Persons trained to administer drugs and devices to patients in state-owned or state-operated hospitals or facilities licensed as hospitals by the Board of Health or psychiatric hospitals licensed by the Department of Behavioral Health and Developmental Services who administer drugs under the control and supervision of the prescriber or a pharmacist;
3. Emergency medical services personnel certified and authorized to administer drugs and devices pursuant to regulations of the Board of Health who act within the scope of such certification and pursuant to an oral or written order or standing protocol; or
4. A licensed respiratory therapist as defined in § [54.1-2954](#) who administers by inhalation controlled substances used in inhalation or respiratory therapy.

C. Pursuant to an oral or written order or standing protocol, the prescriber, who is authorized by state or federal law to possess and administer radiopharmaceuticals in the scope of his practice, may authorize a nuclear medicine technologist to administer, under his supervision, radiopharmaceuticals used in the diagnosis or treatment of disease.

D. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered nurses and licensed practical nurses to possess (i) epinephrine and oxygen for administration in treatment of emergency medical conditions and (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.

Pursuant to the regulations of the Board of Health, certain emergency medical services technicians may possess and administer epinephrine in emergency cases of anaphylactic shock.

Pursuant to an order or standing protocol issued by the prescriber within the course of his professional practice, any school nurse, school board employee, employee of a local governing body, or employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine may possess and administer epinephrine.

Pursuant to an order or a standing protocol issued by the prescriber within the course of his professional practice, any employee of a school for students with disabilities, as defined in § [22.1-319](#) and licensed by the Board of Education, or any employee of a private school that is accredited pursuant to § [22.1-19](#) as administered by the Virginia Council for Private Education who is authorized by a prescriber and trained in the administration of epinephrine may possess and administer epinephrine.

Pursuant to an order or a standing protocol issued by the prescriber within the course of his professional practice, any employee of a public institution of higher education or a private institution of higher education who is authorized by a prescriber and trained in the administration of epinephrine may possess and administer epinephrine.

Pursuant to an order issued by the prescriber within the course of his professional practice, an employee of a provider licensed by the Department of Behavioral Health and Developmental Services or a person providing services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services may possess and administer epinephrine, provided such person is authorized and trained in the administration of epinephrine.

Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize pharmacists to possess epinephrine and oxygen for administration in treatment of emergency medical conditions.

E. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed physical therapists to possess and administer topical corticosteroids, topical lidocaine, and any other Schedule VI topical drug.

F. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed athletic trainers to possess and administer topical corticosteroids, topical lidocaine, or other Schedule VI topical drugs; oxygen for use in emergency situations; and epinephrine for use in emergency cases of anaphylactic shock.

G. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, and in accordance with policies and guidelines established by the Department of Health pursuant to § [32.1-50.2](#), such

prescriber may authorize registered nurses or licensed practical nurses under the supervision of a registered nurse to possess and administer tuberculin purified protein derivative (PPD) in the absence of a prescriber. The Department of Health's policies and guidelines shall be consistent with applicable guidelines developed by the Centers for Disease Control and Prevention for preventing transmission of mycobacterium tuberculosis and shall be updated to incorporate any subsequently implemented standards of the Occupational Safety and Health Administration and the Department of Labor and Industry to the extent that they are inconsistent with the Department of Health's policies and guidelines. Such standing protocols shall explicitly describe the categories of persons to whom the tuberculin test is to be administered and shall provide for appropriate medical evaluation of those in whom the test is positive. The prescriber shall ensure that the nurse implementing such standing protocols has received adequate training in the practice and principles underlying tuberculin screening.

The Health Commissioner or his designee may authorize registered nurses, acting as agents of the Department of Health, to possess and administer, at the nurse's discretion, tuberculin purified protein derivative (PPD) to those persons in whom tuberculin skin testing is indicated based on protocols and policies established by the Department of Health.

H. Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize, with the consent of the parents as defined in § [22.1-1](#), an employee of (i) a school board, (ii) a school for students with disabilities as defined in § [22.1-319](#) licensed by the Board of Education, or (iii) a private school accredited pursuant to § [22.1-19](#) as administered by the Virginia Council for Private Education who is trained in the administration of insulin and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse, nurse practitioner, physician, or physician assistant is not present to perform the administration of the medication.

Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize an employee of a public institution of higher education or a private institution of higher education who

is trained in the administration of insulin and glucagon to assist with the administration of insulin or administration of glucagon to a student diagnosed as having diabetes and who requires insulin injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse, nurse practitioner, physician, or physician assistant is not present to perform the administration of the medication.

Pursuant to a written order issued by the prescriber within the course of his professional practice, such prescriber may authorize an employee of a provider licensed by the Department of Behavioral Health and Developmental Services or a person providing services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services to assist with the administration of insulin or to administer glucagon to a person diagnosed as having diabetes and who requires insulin injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia, provided such employee or person providing services has been trained in the administration of insulin and glucagon.

I. A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is not physically present, by (i) licensed pharmacists, (ii) registered nurses, or (iii) licensed practical nurses under the supervision of a registered nurse. A prescriber acting on behalf of and in accordance with established protocols of the Department of Health may authorize the administration of vaccines to any person by a pharmacist, nurse, or designated emergency medical services provider who holds an advanced life support certificate issued by the Commissioner of Health under the direction of an operational medical director when the prescriber is not physically present. The emergency medical services provider shall provide documentation of the vaccines to be recorded in the Virginia Immunization Information System.

J. A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent of the dentist.

Further, pursuant to a written order and in accordance with a standing protocol issued by the dentist in the course of his professional practice, a dentist may authorize a dental hygienist under his general supervision, as defined in § [54.1-2722](#), to possess and administer topical oral fluorides, topical oral anesthetics, topical and

directly applied antimicrobial agents for treatment of periodontal pocket lesions, as well as any other Schedule VI topical drug approved by the Board of Dentistry.

In addition, a dentist may authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia.

K. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered professional nurses certified as sexual assault nurse examiners-A (SANE-A) under his supervision and when he is not physically present to possess and administer preventive medications for victims of sexual assault as recommended by the Centers for Disease Control and Prevention.

L. This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a prescriber's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) an individual receiving services in a program licensed by the Department of Behavioral Health and Developmental Services; (ii) a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; (iii) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (iv) a program participant of an adult day-care center licensed by the Department of Social Services; (v) a resident of any facility authorized or operated by a state or local government whose primary purpose is not to provide health care services; (vi) a resident of a private children's residential facility, as defined in § [63.2-100](#) and licensed by the Department of Social Services, Department of Education, or Department of Behavioral Health and Developmental Services; or (vii) a student in a school for students with disabilities, as defined in § [22.1-319](#) and licensed by the Board of Education.

In addition, this section shall not prevent a person who has successfully completed a training program for the administration of drugs via percutaneous gastrostomy tube approved by the Board of Nursing and been evaluated by a registered nurse as having demonstrated competency in administration of drugs via percutaneous gastrostomy tube from administering drugs to a person receiving services from a program licensed

by the Department of Behavioral Health and Developmental Services to such person via percutaneous gastrostomy tube. The continued competency of a person to administer drugs via percutaneous gastrostomy tube shall be evaluated semiannually by a registered nurse.

M. Medication aides registered by the Board of Nursing pursuant to Article 7 (§ [54.1-3041](#) et seq.) of Chapter 30 may administer drugs that would otherwise be self-administered to residents of any assisted living facility licensed by the Department of Social Services. A registered medication aide shall administer drugs pursuant to this section in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; in accordance with regulations promulgated by the Board of Pharmacy relating to security and recordkeeping; in accordance with the assisted living facility's Medication Management Plan; and in accordance with such other regulations governing their practice promulgated by the Board of Nursing.

N. In addition, this section shall not prevent the administration of drugs by a person who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration and with written authorization of a parent, and in accordance with school board regulations relating to training, security and record keeping, when the drugs administered would be normally self-administered by a student of a Virginia public school. Training for such persons shall be accomplished through a program approved by the local school boards, in consultation with the local departments of health.

O. In addition, this section shall not prevent the administration of drugs by a person to (i) a child in a child day program as defined in § [63.2-100](#) and regulated by the State Board of Social Services or a local government pursuant to § [15.2-914](#), or (ii) a student of a private school that is accredited pursuant to § [22.1-19](#) as administered by the Virginia Council for Private Education, provided such person (a) has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist; (b) has obtained written authorization from a parent or guardian; (c) administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; and (d) administers only those drugs that were dispensed from a pharmacy and main-

tained in the original, labeled container that would normally be self-administered by the child or student, or administered by a parent or guardian to the child or student.

P. In addition, this section shall not prevent the administration or dispensing of drugs and devices by persons if they are authorized by the State Health Commissioner in accordance with protocols established by the State Health Commissioner pursuant to § [32.1-42.1](#) when (i) the Governor has declared a disaster or a state of emergency or the United States Secretary of Health and Human Services has issued a declaration of an actual or potential bioterrorism incident or other actual or potential public health emergency; (ii) it is necessary to permit the provision of needed drugs or devices; and (iii) such persons have received the training necessary to safely administer or dispense the needed drugs or devices. Such persons shall administer or dispense all drugs or devices under the direction, control, and supervision of the State Health Commissioner.

Q. Nothing in this title shall prohibit the administration of normally self-administered drugs by unlicensed individuals to a person in his private residence.

R. This section shall not interfere with any prescriber issuing prescriptions in compliance with his authority and scope of practice and the provisions of this section to a Board agent for use pursuant to subsection G of § [18.2-258.1](#). Such prescriptions issued by such prescriber shall be deemed to be valid prescriptions.

S. Nothing in this title shall prevent or interfere with dialysis care technicians or dialysis patient care technicians who are certified by an organization approved by the Board of Health Professions or persons authorized for provisional practice pursuant to Chapter 27.01 (§ [54.1-2729.1](#) et seq.), in the ordinary course of their duties in a Medicare-certified renal dialysis facility, from administering heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers, for the purpose of facilitating renal dialysis treatment, when such administration of medications occurs under the orders of a licensed physician, nurse practitioner, or physician assistant and under the immediate and direct supervision of a licensed registered nurse. Nothing in this chapter shall be construed to prohibit a patient care dialysis technician trainee from performing dialysis care as part of and within the scope of the clinical skills instruction segment of a supervised dialysis technician training program, provided such trainee is identified as a "trainee" while working in a renal dialysis facility.

The dialysis care technician or dialysis patient care technician administering the medications shall have demonstrated competency as evidenced by holding current valid certification from an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§ [54.1-2729.1](#) et seq.).

T. Persons who are otherwise authorized to administer controlled substances in hospitals shall be authorized to administer influenza or pneumococcal vaccines pursuant to § [32.1-126.4](#).

U. Pursuant to a specific order for a patient and under his direct and immediate supervision, a prescriber may authorize the administration of controlled substances by personnel who have been properly trained to assist a doctor of medicine or osteopathic medicine, provided the method does not include intravenous, intrathecal, or epidural administration and the prescriber remains responsible for such administration.

V. A physician assistant, nurse or a dental hygienist may possess and administer topical fluoride varnish to the teeth of children aged six months to three years pursuant to an oral or written order or a standing protocol issued by a doctor of medicine, osteopathic medicine, or dentistry that conforms to standards adopted by the Department of Health.

W. A prescriber, acting in accordance with guidelines developed pursuant to § [32.1-46.02](#), may authorize the administration of influenza vaccine to minors by a licensed pharmacist, registered nurse, licensed practical nurse under the direction and immediate supervision of a registered nurse, or emergency medical services provider who holds an advanced life support certificate issued by the Commissioner of Health when the prescriber is not physically present.

X. Notwithstanding the provisions of § [54.1-3303](#), pursuant to an oral, written, or standing order issued by a prescriber or a standing order issued by the Commissioner of Health or his designee authorizing the dispensing of naloxone or other opioid antagonist used for overdose reversal in the absence of an oral or written order for a specific patient issued by a prescriber, and in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of Health, a pharmacist may dispense naloxone or other opioid antagonist used for overdose reversal and a person may possess and administer naloxone or other opioid antagonist used for overdose reversal to a person who is believed to be experiencing or about to experience a life-threatening opioid overdose. Law-enforcement officers as defined in § [9.1-101](#), employees of the Department of Forensic Science,

employees of the Office of the Chief Medical Examiner, employees of the Department of General Services Division of Consolidated Laboratory Services, and firefighters who have completed a training program may also possess and administer naloxone in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of Health.

Y. Notwithstanding any other law or regulation to the contrary, a person who is authorized by the Department of Behavioral Health and Developmental Services to train individuals on the administration of naloxone for use in opioid overdose reversal and who is acting on behalf of an organization that provides services to individuals at risk of experiencing an opioid overdose or training in the administration of naloxone for overdose reversal and that has obtained a controlled substances registration from the Board of Pharmacy pursuant to § [54.1-3423](#) may dispense naloxone to a person who has completed a training program on the administration of naloxone for opioid overdose reversal approved by the Department of Behavioral Health and Developmental Services, provided that such dispensing is (i) pursuant to a standing order issued by a prescriber, (ii) in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of Health, and (iii) without charge or compensation. The dispensing may occur at a site other than that of the controlled substance registration provided the entity possessing the controlled substances registration maintains records in accordance with regulations of the Board of Pharmacy. A person to whom naloxone has been dispensed pursuant to this subsection may possess naloxone and may administer naloxone to a person who is believed to be experiencing or about to experience a life-threatening opioid overdose.

Z. Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize, with the consent of the parents as defined in § [22.1-1](#), an employee of (i) a school board, (ii) a school for students with disabilities as defined in § [22.1-319](#) licensed by the Board of Education, or (iii) a private school accredited pursuant to § [22.1-19](#) as administered by the Virginia Council for Private Education who is trained in the administration of injected medications for the treatment of adrenal crisis resulting from a condition causing adrenal insufficiency to administer such medication to a student diagnosed with a condition causing adrenal insufficiency when the student is believed to be experiencing or about to experience an adrenal crisis. Such authorization shall be

effective only when a licensed nurse, nurse practitioner, physician, or physician assistant is not present to perform the administration of the medication.

Code 1950, § 54-497; 1956, c. 225; 1970, c. 650, § 54-524.65; 1973, c. 468; 1976, cc. 358, 614; 1977, c. 302; 1978, c. 224; 1980, cc. 270, 287; 1983, cc. 456, 528; 1984, cc. 141, 555; 1986, c. 81; 1987, c. 226; 1988, c. 765; 1990, c. 309; 1991, cc. 141, 519, 524, 532; 1992, cc. 610, 760, 793; 1993, cc. 15, 810, 957, 993; 1994, c. [53](#); 1995, cc. [88](#), [529](#); 1996, cc. [152](#), [158](#), [183](#), [406](#), [408](#), [490](#); 1997, cc. [272](#), [566](#), [806](#), [906](#); 1998, c. [112](#); 1999, c. [570](#); 2000, cc. [135](#), [498](#), [861](#), [881](#), [935](#); 2003, cc. [465](#), [497](#), [515](#), [794](#), [995](#), [1020](#); 2005, cc. [113](#), [610](#), [924](#); 2006, cc. [75](#), [432](#), [686](#), [858](#); 2007, cc. [17](#), [699](#), [702](#), [783](#); 2008, cc. [85](#), [694](#); 2009, cc. [48](#), [110](#), [506](#), [813](#), [840](#); 2010, cc. [179](#), [245](#), [252](#); 2011, c. [292](#); 2012, cc. [787](#), [803](#), [833](#), [835](#); 2013, cc. [114](#), [132](#), [183](#), [191](#), [252](#), [267](#), [328](#), [336](#), [359](#), [617](#); 2014, cc. [88](#), [491](#); 2015, cc. [302](#), [387](#), [502](#), [503](#), [514](#), [725](#), [732](#), [752](#); 2016, c. [144](#); 2017, cc. [3](#), [55](#), [107](#), [168](#), [174](#), [182](#), [294](#), [304](#), [713](#).

§54.1-3408.01. Requirements for prescriptions.

A. The written prescription referred to in § [54.1-3408](#) shall be written with ink or individually typed or printed. The prescription shall contain the name, address, and telephone number of the prescriber. A prescription for a controlled substance other than one controlled in Schedule VI shall also contain the federal controlled substances registration number assigned to the prescriber. The prescriber's information shall be either preprinted upon the prescription blank, electronically printed, type-written, rubber stamped, or printed by hand.

The written prescription shall contain the first and last name of the patient for whom the drug is prescribed. The address of the patient shall either be placed upon the written prescription by the prescriber or his agent, or by the dispenser of the prescription. If not otherwise prohibited by law, the dispenser may record the address of the patient in an electronic prescription dispensing record for that patient in lieu of recording it on the prescription. Each written prescription shall be dated as of, and signed by the prescriber on, the day when issued. The prescription may be prepared by an agent for the prescriber's signature.

This section shall not prohibit a prescriber from using preprinted prescriptions for drugs classified in Schedule VI if all requirements concerning dates, signatures, and other information specified above are otherwise fulfilled.

No written prescription order form shall include more than one prescription.

However, this provision shall not apply (i) to prescriptions written as chart orders for

patients in hospitals and long-term-care facilities, patients receiving home infusion services or hospice patients, or (ii) to a prescription ordered through a pharmacy operated by or for the Department of Corrections or the Department of Juvenile Justice, the central pharmacy of the Department of Health, or the central outpatient pharmacy operated by the Department of Behavioral Health and Developmental Services; or (iii) to prescriptions written for patients residing in adult and juvenile detention centers, local or regional jails, or work release centers operated by the Department of Corrections.

B. Prescribers' orders, whether written as chart orders or prescriptions, for Schedules II, III, IV, and V controlled drugs to be administered to (i) patients or residents of long-term care facilities served by a Virginia pharmacy from a remote location or (ii) patients receiving parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion therapy and served by a home infusion pharmacy from a remote location, may be transmitted to that remote pharmacy by an electronic communications device over telephone lines which send the exact image to the receiver in hard copy form, and such facsimile copy shall be treated as a valid original prescription order. If the order is for a radiopharmaceutical, a physician authorized by state or federal law to possess and administer medical radioactive materials may authorize a nuclear medicine technologist to transmit a prescriber's verbal or written orders for radiopharmaceuticals.

C. The oral prescription referred to in § [54.1-3408](#) shall be transmitted to the pharmacy of the patient's choice by the prescriber or his authorized agent. For the purposes of this section, an authorized agent of the prescriber shall be an employee of the prescriber who is under his immediate and personal supervision, or if not an employee, an individual who holds a valid license allowing the administration or dispensing of drugs and who is specifically directed by the prescriber.

2000, cc. [135](#), [861](#); 2002, c. [411](#); 2003, c. [639](#); 2006, c. [195](#); 2009, cc. [813](#), [840](#).

§54.1-3408.02. (Effective July 1, 2020) Transmission of prescriptions.

A. Consistent with federal law and in accordance with regulations promulgated by the Board, prescriptions may be transmitted to a pharmacy as an electronic prescription or by facsimile machine and shall be treated as valid original prescriptions.

B. Any prescription for a controlled substance that contains an opiate shall be issued as an electronic prescription.

2000, c. [878](#); 2017, cc. [115](#), [429](#).

§54.1-3408.02. (Effective until July 1, 2020) Transmission of prescriptions.

Consistent with federal law and in accordance with regulations promulgated by the Board, prescriptions may be transmitted to a pharmacy by electronic transmission or by facsimile machine and shall be treated as valid original prescriptions.

2000, c. [878](#).

§54.1-3408.03. Dispensing of therapeutically equivalent drug product permitted.

A. A pharmacist may dispense a therapeutically equivalent drug product for a prescription that is written for a brand-name drug product unless (i) the prescriber indicates such substitution is not authorized by specifying on the prescription, "brand medically necessary" or (ii) the patient insists on the dispensing of the brand-name drug product.

In the case of an oral prescription, the prescriber's oral dispensing instructions regarding substitution shall be followed.

B. Prescribers using prescription blanks printed in compliance with Virginia law in effect on June 30, 2003, having two check boxes and referencing the Virginia Voluntary Formulary, may indicate, until July 1, 2006, that substitution is not authorized by checking the "Dispense as Written" box. If the "Voluntary Formulary Permitted" box is checked on such prescription blanks or if neither box is checked, a pharmacist may dispense a therapeutically equivalent drug product pursuant to such prescriptions.

C. If the pharmacist dispenses a drug product other than the brand name prescribed, he shall so inform the purchaser and shall indicate, unless otherwise directed by the prescriber, on both his permanent record and the prescription label, the brand name or, in the case of a therapeutically equivalent drug product, the name of the manufacturer or the distributor. Whenever a pharmacist dispenses a therapeutically equivalent drug product pursuant to a prescription written for a brand-name product, the pharmacist shall label the drug with the name of the therapeutically equivalent drug product followed by the words "generic for" and the brand name of the drug for which the prescription was written.

D. When a pharmacist dispenses a drug product other than the drug product prescribed, the dispensed drug product shall be at a lower retail price than that of the drug product prescribed. Such retail price shall not exceed the usual and customary

retail price charged by the pharmacist for the dispensed therapeutically equivalent drug product.

2003, c. [639](#).

§54.1-3408.04. Dispensing of interchangeable biosimilars permitted.

A. A pharmacist may dispense a biosimilar that has been licensed by the U.S. Food and Drug Administration as interchangeable with the prescribed product unless (i) the prescriber indicates such substitute is not authorized by specifying on the prescription "brand medically necessary" or (ii) the patient insists on the dispensing of the prescribed biological product. In the case of an oral prescription, the prescriber's oral dispensing instructions regarding dispensing of an interchangeable biosimilar shall be followed. No pharmacist shall dispense a biosimilar in place of a prescribed biological product unless the biosimilar has been licensed as interchangeable with the prescribed biological product by the U.S. Food and Drug Administration.

B. When a pharmacist dispenses an interchangeable biosimilar in the place of a prescribed biological product, the pharmacist or his designee shall inform the patient prior to dispensing the interchangeable biosimilar. The pharmacist or his designee shall also indicate, unless otherwise directed by the prescriber, on both the record of dispensing and the prescription label, the brand name or, in the case of an interchangeable biosimilar, the product name and the name of the manufacturer or distributor of the interchangeable biosimilar. Whenever a pharmacist substitutes an interchangeable biosimilar pursuant to a prescription written for a brand-name product, the pharmacist or his designee shall label the drug with the name of the interchangeable biosimilar followed by the words "Substituted for" and the name of the biological product for which the prescription was written. Records of substitutions of interchangeable biosimilars shall be maintained by the pharmacist and the prescriber for a period of not less than two years from the date of dispensing.

C. [Expired]

D. [Expired]

2013, cc. [412](#), [544](#).

§54.1-3408.05. Use of FDA-approved substance upon publication of final rule.

Except as otherwise provided in this chapter, no person shall be prosecuted under Chapter 7 (§ [18.2-247](#) et seq.) of Title 18.2 for acting in accordance with § [54.1-3421](#) or for prescribing, administering, dispensing, or possessing pursuant to a valid

prescription issued by a prescriber any substance that has been approved as a prescription drug by the U.S. Food and Drug Administration pursuant to 21 U.S.C. § 360bb and 21 U.S.C. § 355 on or after July 1, 2017, in accordance with any final or interim final order or rule issued pursuant to 21 U.S.C. § 811(j). Such immunity from prosecution for a particular substance shall remain in effect until the earlier of (i) nine months as calculated from the latter of the date of the publication in the Federal Register of the interim final order or rule scheduling such substance or the final order or rule scheduling such substance, provided that a final order or rule is issued within nine months of the interim final order or rule, or (ii) such substance being added to a schedule in Article 5 (§ [54.1-3443](#) et seq.) pursuant to § [54.1-3443](#) or by enactment into law.

2017, cc. [416](#), [432](#).

§54.1-3408.1. Prescription in excess of recommended dosage in certain cases.

In the case of a patient with intractable pain, a physician may prescribe a dosage in excess of the recommended dosage of a pain relieving agent if he certifies the medical necessity for such excess dosage in the patient's medical record. Any person who prescribes, dispenses or administers an excess dosage in accordance with this section shall not be in violation of the provisions of this title because of such excess dosage, if such excess dosage is prescribed, dispensed or administered in good faith for accepted medicinal or therapeutic purposes.

Nothing in this section shall be construed to grant any person immunity from investigation or disciplinary action based on the prescription, dispensing or administration of an excess dosage in violation of this title.

1988, c. 870, § 54-524.65:1; 1990, c. 681; 1995, c. [277](#).

§54.1-3408.2. Failure to report administration or dispensing of or prescription for controlled substances; report required; penalty.

Any person authorized to prescribe, dispense, or administer controlled substances pursuant to § [54.1-3408](#) who has reason to suspect that a person has obtained or attempted to obtain a controlled substance or prescription for a controlled substance by fraud or deceit, may report the activity to the local law-enforcement agency for investigation. Any person who, in good faith, makes a report or furnishes information or records to a law-enforcement officer or entity pursuant to this section shall not be liable for civil damages in connection with making such report or furnishing such information or records.

2010, c. [185](#).

§54.1-3408.3. Certification for use of cannabidiol oil or THC-A oil to treat intractable epilepsy.

A. As used in this section:

"Cannabidiol oil" means a processed Cannabis plant extract that contains at least 15 percent cannabidiol but no more than five percent tetrahydrocannabinol, or a dilution of the resin of the Cannabis plant that contains at least 50 milligrams of cannabidiol per milliliter but not more than five percent tetrahydrocannabinol.

"Practitioner" means a practitioner of medicine or osteopathy licensed by the Board of Medicine who is a neurologist or who specializes in the treatment of epilepsy.

"THC-A oil" means a processed Cannabis plant extract that contains at least 15 percent tetrahydrocannabinol acid but not more than five percent tetrahydrocannabinol, or a dilution of the resin of the Cannabis plant that contains at least 50 milligrams of tetrahydrocannabinol acid per milliliter but not more than five percent tetrahydrocannabinol.

B. A practitioner in the course of his professional practice may issue a written certification for the use of cannabidiol oil or THC-A oil for treatment or to alleviate the symptoms of a patient's intractable epilepsy.

C. The written certification shall be on a form provided by the Office of the Executive Secretary of the Supreme Court developed in consultation with the Board of Medicine. Such written certification shall contain the name, address, and telephone number of the practitioner, the name and address of the patient issued the written certification, the date on which the written certification was made, and the signature of the practitioner. Such written certification issued pursuant to subsection B shall expire no later than one year after its issuance unless the practitioner provides in such written certification an earlier expiration.

D. No practitioner shall be prosecuted under § [18.2-248](#) or [18.2-248.1](#) for dispensing or distributing cannabidiol oil or THC-A oil for the treatment or to alleviate the symptoms of a patient's intractable epilepsy pursuant to a written certification issued pursuant to subsection B. Nothing in this section shall preclude the Board of Medicine from sanctioning a practitioner for failing to properly evaluate or treat a patient's medical condition or otherwise violating the applicable standard of care for evaluating or treating medical conditions.

E. A practitioner who issues a written certification to a patient pursuant to this section shall register with the Board. The Board shall, in consultation with the Board of Medicine, set a limit on the number of patients to whom a practitioner may issue a written certification.

F. A patient who has been issued a written certification shall register with the Board or, if such patient is a minor or an incapacitated adult as defined in § [18.2-369](#), a patient's parent or legal guardian shall register and shall register such patient with the Board.

G. The Board shall promulgate regulations to implement the registration process. Such regulations shall include (i) a mechanism for sufficiently identifying the practitioner issuing the written certification, the patient being treated by the practitioner, and, if such patient is a minor or an incapacitated adult as defined in § [18.2-369](#), the patient's parent or legal guardian; (ii) a process for ensuring that any changes in the information are reported in an appropriate timeframe; and (iii) a prohibition for the patient to be issued a written certification by more than one practitioner during any given time period.

H. Information obtained under the registration process shall be confidential and shall not be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.). However, reasonable access to registry information shall be provided to (i) the Chairmen of the House and Senate Committees for Courts of Justice, (ii) state and federal agencies or local law enforcement for the purpose of investigating or prosecuting a specific individual for a specific violation of law, (iii) licensed physicians or pharmacists for the purpose of providing patient care and drug therapy management and monitoring of drugs obtained by a registered patient, (iv) a pharmaceutical processor involved in the treatment of a registered patient, or (v) a registered patient or, if such patient is a minor or an incapacitated adult as defined in § [18.2-369](#), the patient's parent or legal guardian, but only with respect to information related to such registered patient.

2015, cc. [7](#), [8](#); 2017, c. [613](#).

§54.1-3408.4. (Expires July 1, 2022) Prescription of buprenorphine without naloxone; limitation.

Prescriptions for products containing buprenorphine without naloxone shall be issued only (i) for patients who are pregnant, (ii) when converting a patient from methadone to buprenorphine containing naloxone for a period not to exceed seven

days, or (iii) as permitted by regulations of the Board of Medicine, the Board of Nursing, or the Board of Veterinary Medicine.

2017, cc. [794](#), [812](#).

§54.1-3409. Professional use by veterinarians.

A veterinarian may not prescribe controlled substances for human use and shall only prescribe, dispense or administer a controlled substance in good faith for use by animals within the course of his professional practice. He may prescribe, on a written prescription or on oral prescription as authorized by § [54.1-3410](#). He may administer drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued, and shall bear the full name and address of the owner of the animal, and the species of the animal for which the drug is prescribed and the full name, address and registry number, under the federal laws of the person prescribing, if he is required by those laws to be so registered.

Code 1950, § 54-498; 1956, c. 225; 1970, c. 650, § 54-524.66; 1983, c. 528; 1988, c. 765.

§54.1-3410. When pharmacist may sell and dispense drugs.

A. A pharmacist, acting in good faith, may sell and dispense drugs and devices to any person pursuant to a prescription of a prescriber as follows:

1. A drug listed in Schedule II shall be dispensed only upon receipt of a written prescription that is properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal laws of the person prescribing, if he is required by those laws to be so registered. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed;
2. In emergency situations, Schedule II drugs may be dispensed pursuant to an oral prescription in accordance with the Board's regulations;
3. Whenever a pharmacist dispenses any drug listed within Schedule II on a prescription issued by a prescriber, he shall affix to the container in which such drug is dispensed, a label showing the prescription serial number or name of the drug; the date of initial filling; his name and address, or the name and address of the pharmacy; the name of the patient or, if the patient is an animal, the name of the owner

of the animal and the species of the animal; the name of the prescriber by whom the prescription was written, except for those drugs dispensed to a patient in a hospital pursuant to a chart order; and such directions as may be stated on the prescription.

B. A drug controlled by Schedules III through VI or a device controlled by Schedule VI shall be dispensed upon receipt of a written or oral prescription as follows:

1. If the prescription is written, it shall be properly executed, dated and signed by the person prescribing on the day when issued and bear the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name and address of the person prescribing. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed.

2. If the prescription is oral, the prescriber shall furnish the pharmacist with the same information as is required by law in the case of a written prescription for drugs and devices, except for the signature of the prescriber.

A pharmacist who dispenses a Schedule III through VI drug or device shall label the drug or device as required in subdivision A 3 of this section.

C. A drug controlled by Schedule VI may be refilled without authorization from the prescriber if, after reasonable effort has been made to contact him, the pharmacist ascertains that he is not available and the patient's health would be in imminent danger without the benefits of the drug. The refill shall be made in compliance with the provisions of § [54.1-3411](#).

If the written or oral prescription is for a Schedule VI drug or device and does not contain the address or registry number of the prescriber, or the address of the patient, the pharmacist need not reduce such information to writing if such information is readily retrievable within the pharmacy.

D. Pursuant to authorization of the prescriber, an agent of the prescriber on his behalf may orally transmit a prescription for a drug classified in Schedules III through VI if, in such cases, the written record of the prescription required by this subsection specifies the full name of the agent of the prescriber transmitting the prescription.

E. (Effective July 1, 2020) No pharmacist shall dispense a controlled substance that contains an opiate unless the prescription for such controlled substance is issued as an electronic prescription.

1970, c. 650, § 54-524.67; 1972, c. 798; 1976, c. 614; 1977, c. 302; 1983, cc. 395, 612; 1988, c. 765; 1996, c. [408](#); 2003, c. [511](#); 2017, cc. [115](#), [429](#).

§54.1-3410.1. Requirements for radiopharmaceuticals.

A. A pharmacist who is authorized by the Board and acting in good faith, may sell and dispense radiopharmaceuticals pursuant to the order of a physician who is authorized by state or federal law to possess and administer radiopharmaceuticals for the treatment or diagnosis of disease.

B. When an authorized nuclear pharmacist dispenses a radioactive medical material, he shall assure that the outer container (shield) of the radiopharmaceutical shall bear the following information:

1. The name and address of the nuclear pharmacy;
2. The name of the prescriber (authorized user);
3. The date of dispensing;
4. The serial number assigned to the radiopharmaceutical order;
5. The standard radiation symbol;
6. The name of the diagnostic procedure;
7. The words "Caution: Radioactive Material";
8. The name of the radionuclide;
9. The amount of radioactivity and the calibration date and time;
10. The expiration date and time;
11. In the case of a diagnostic radiopharmaceutical, the patient's name or the words "Per Physician's Order"; and
12. In the case of a therapeutic radiopharmaceutical, the patient's name.

C. Orders for radiopharmaceuticals, whether written or verbal, shall include at least the following information:

1. The name of the institution or facility and the name of the person transmitting the order;
2. The date that the radiopharmaceutical will be needed and the calibration time;

3. The name or generally recognized and accepted abbreviation of the radiopharmaceutical;
4. The dose or activity of the radiopharmaceutical at the time of calibration; and
5. In the case of a therapeutic radiopharmaceutical or a radiopharmaceutical blood product, the name of the patient shall be obtained prior to dispensing.

2000, c. [861](#).

§54.1-3410.2. Compounding; pharmacists' authority to compound under certain conditions; labeling and record maintenance requirements.

A. A pharmacist may engage in compounding of drug products when the dispensing of such compounded products is (i) pursuant to valid prescriptions for specific patients and (ii) consistent with the provisions of § [54.1-3303](#) relating to the issuance of prescriptions and the dispensing of drugs.

Pharmacists shall label all compounded drug products that are dispensed pursuant to a prescription in accordance with this chapter and the Board's regulations, and shall include on the labeling an appropriate beyond-use date as determined by the pharmacist in compliance with USP-NF standards for pharmacy compounding.

B. A pharmacist may also engage in compounding of drug products in anticipation of receipt of prescriptions based on a routine, regularly observed prescribing pattern.

Pharmacists shall label all products compounded prior to dispensing with (i) the name and strength of the compounded medication or a list of the active ingredients and strengths; (ii) the pharmacy's assigned control number that corresponds with the compounding record; (iii) an appropriate beyond-use date as determined by the pharmacist in compliance with USP-NF standards for pharmacy compounding; and (iv) the quantity.

C. In accordance with the conditions set forth in subsections A and B, pharmacists shall not distribute compounded drug products for subsequent distribution or sale to other persons or to commercial entities, including distribution to pharmacies or other entities under common ownership or control with the facility in which such compounding takes place; however, a pharmacist may distribute to a veterinarian in accordance with federal law.

Compounded products for companion animals, as defined in regulations promulgated by the Board of Veterinary Medicine, and distributed by a pharmacy to a veterinarian

for further distribution or sale to his own patients shall be limited to drugs necessary to treat an emergent condition when timely access to a compounding pharmacy is not available as determined by the prescribing veterinarian.

A pharmacist may, however, deliver compounded products dispensed pursuant to valid prescriptions to alternate delivery locations pursuant to § [54.1-3420.2](#).

A pharmacist may provide a reasonable amount of compounded products to practitioners of medicine, osteopathy, podiatry, or dentistry to administer to their patients, either personally or under their direct and immediate supervision, if there is a critical need to treat an emergency condition, or as allowed by federal law or regulations. A pharmacist may also provide compounded products to practitioners of veterinary medicine for office-based administration to their patients.

Pharmacists who provide compounded products for office-based administration for treatment of an emergency condition or as allowed by federal law or regulations shall label all compounded products distributed to practitioners other than veterinarians for administration to their patients with (i) the statement "For Administering in Prescriber Practice Location Only"; (ii) the name and strength of the compounded medication or list of the active ingredients and strengths; (iii) the facility's control number; (iv) an appropriate beyond-use date as determined by the pharmacist in compliance with USP-NF standards for pharmacy compounding; (v) the name and address of the pharmacy; and (vi) the quantity.

Pharmacists shall label all compounded products for companion animals, as defined in regulations promulgated by the Board of Veterinary Medicine, and distributed to a veterinarian for either further distribution or sale to his own patient or administration to his own patient with (a) the name and strength of the compounded medication or list of the active ingredients and strengths; (b) the facility's control number; (c) an appropriate beyond-use date as determined by the pharmacist in compliance with USP-NF standards for pharmacy compounding; (d) the name and address of the pharmacy; and (e) the quantity.

D. Pharmacists shall personally perform or personally supervise the compounding process, which shall include a final check for accuracy and conformity to the formula of the product being prepared, correct ingredients and calculations, accurate and precise measurements, appropriate conditions and procedures, and appearance of the final product.

E. Pharmacists shall ensure compliance with USP-NF standards for both sterile and non-sterile compounding.

F. Pharmacists may use bulk drug substances in compounding when such bulk drug substances:

1. Comply with the standards of an applicable United States Pharmacopoeia or National Formulary monograph, if such monograph exists, and the United States Pharmacopoeia chapter on pharmacy compounding; or are drug substances that are components of drugs approved by the FDA for use in the United States; or are otherwise approved by the FDA; or are manufactured by an establishment that is registered by the FDA; and

2. Are distributed by a licensed wholesale distributor or registered nonresident wholesale distributor, or are distributed by a supplier otherwise approved by the Board and the FDA to distribute bulk drug substances if the pharmacist can establish purity and safety by reasonable means, such as lot analysis, manufacturer reputation, or reliability of the source.

G. Pharmacists may compound using ingredients that are not considered drug products in accordance with the USP-NF standards and guidance on pharmacy compounding.

H. Pharmacists shall not engage in the following:

1. The compounding for human use of a drug product that has been withdrawn or removed from the market by the FDA because such drug product or a component of such drug product has been found to be unsafe. However, this prohibition shall be limited to the scope of the FDA withdrawal;

2. The regular compounding or the compounding of inordinate amounts of any drug products that are essentially copies of commercially available drug products. However, this prohibition shall not include (i) the compounding of any commercially available product when there is a change in the product ordered by the prescriber for an individual patient, (ii) the compounding of a commercially manufactured drug only during times when the product is not available from the manufacturer or supplier, (iii) the compounding of a commercially manufactured drug whose manufacturer has notified the FDA that the drug is unavailable due to a current drug shortage, (iv) the compounding of a commercially manufactured drug when the prescriber has indicated in the oral or written prescription for an individual patient that

there is an emergent need for a drug that is not readily available within the time medically necessary, or (v) the mixing of two or more commercially available products regardless of whether the end product is a commercially available product; or

3. The compounding of inordinate amounts of any preparation in cases in which there is no observed historical pattern of prescriptions and dispensing to support an expectation of receiving a valid prescription for the preparation. The compounding of an inordinate amount of a preparation in such cases shall constitute manufacturing of drugs.

I. Pharmacists shall maintain records of all compounded drug products as part of the prescription, formula record, formula book, or other log or record. Records may be maintained electronically, manually, in a combination of both, or by any other readily retrievable method.

1. In addition to other requirements for prescription records, records for products compounded pursuant to a prescription order for a single patient where only manufacturers' finished products are used as components shall include the name and quantity of all components, the date of compounding and dispensing, the prescription number or other identifier of the prescription order, the total quantity of finished product, the signature or initials of the pharmacist or pharmacy technician performing the compounding, and the signature or initials of the pharmacist responsible for supervising the pharmacy technician and verifying the accuracy and integrity of compounded products.

2. In addition to the requirements of subdivision I 1, records for products compounded in bulk or batch in advance of dispensing or when bulk drug substances are used shall include: the generic name and the name of the manufacturer of each component or the brand name of each component; the manufacturer's lot number and expiration date for each component or when the original manufacturer's lot number and expiration date are unknown, the source of acquisition of the component; the assigned lot number if subdivided, the unit or package size and the number of units or packages prepared; and the beyond-use date. The criteria for establishing the beyond-use date shall be available for inspection by the Board.

3. A complete compounding formula listing all procedures, necessary equipment, necessary environmental considerations, and other factors in detail shall be maintained where such instructions are necessary to replicate a compounded product or

where the compounding is difficult or complex and must be done by a certain process in order to ensure the integrity of the finished product.

4. A formal written quality assurance plan shall be maintained that describes specific monitoring and evaluation of compounding activities in accordance with USP-NF standards. Records shall be maintained showing compliance with monitoring and evaluation requirements of the plan to include training and initial and periodic competence assessment of personnel involved in compounding, monitoring of environmental controls and equipment calibration, and any end-product testing, if applicable.

J. Practitioners who may lawfully compound drugs for administering or dispensing to their own patients pursuant to §§ [54.1-3301](#), [54.1-3304](#), and [54.1-3304.1](#) shall comply with all provisions of this section and the relevant Board regulations.

K. Every pharmacist-in-charge or owner of a permitted pharmacy or a registered non-resident pharmacy engaging in sterile compounding shall notify the Board of its intention to dispense or otherwise deliver a sterile compounded drug product into the Commonwealth. Upon renewal of its permit or registration, a pharmacy or non-resident pharmacy shall notify the Board of its intention to continue dispensing or otherwise delivering sterile compounded drug products into the Commonwealth. Failure to provide notification to the Board shall constitute a violation of Chapter 33 (§ [54.1-3300](#) et seq.) or Chapter 34 (§ [54.1-3400](#) et seq.). The Board shall maintain this information in a manner that will allow the production of a list identifying all such sterile compounding pharmacies.

2003, c. [509](#); 2005, c. [200](#); 2012, c. [173](#); 2013, c. [765](#); 2014, c. [147](#); 2015, c. [300](#); 2016, c. [221](#).

§54.1-3411. When prescriptions may be refilled.

Prescriptions may be refilled as follows:

1. A prescription for a drug in Schedule II may not be refilled.
2. A prescription for a drug in Schedules III or IV may not be filled or refilled more than six months after the date on which such prescription was issued and no such prescription may be authorized to be refilled, nor be refilled, more than five times, except that any prescription for such a drug after six months from the date of issue, or after being refilled five times, may be renewed by the prescriber issuing it either in writing, or orally, if promptly reduced to writing and filed by the pharmacist filling it.

3. A prescription in Schedule VI may not be refilled, unless authorized by the prescriber either on the face of the original prescription or orally by the prescriber except as provided in subdivision 4 of this section. Oral instructions shall be reduced promptly to writing by the pharmacist and filed on or with the original prescription.

4. A prescription for a drug controlled by Schedule VI may be refilled without authorization from the prescriber if reasonable effort has been made to communicate with the prescriber, and the pharmacist has determined that he is not available and the patient's health would be in imminent danger without the benefits of the drug. The pharmacist shall inform the patient of the prescriber's unavailability and that the refill is being made without his authorization. The pharmacist shall promptly inform the prescriber of such refill. The date and quantity of the refill, the prescriber's unavailability and the rationale for the refill shall be noted on the reverse side of the prescription.

1970, c. 650, § 54-524.68; 1972, c. 798; 1976, c. 614; 1983, c. 395; 1988, c. 765; 1996, c. [408](#).

§54.1-3411.1. Prohibition on returns, exchanges, or re-dispensing of drugs; exceptions.

A. Drugs dispensed to persons pursuant to a prescription shall not be accepted for return or exchange for the purpose of re-dispensing by any pharmacist or pharmacy after such drugs have been removed from the pharmacy premises from which they were dispensed except:

1. In a hospital with an on-site hospital pharmacy wherein drugs may be returned to the pharmacy in accordance with practice standards;

2. In such cases where official compendium storage requirements are assured and the drugs are in manufacturers' original sealed containers or in sealed individual dose or unit dose packaging that meets official compendium class A or B container requirements, or better, and such return or exchange is consistent with federal law; or

3. When a dispensed drug has not been out of the possession of a delivery agent of the pharmacy.

B. The Board of Pharmacy shall promulgate regulations to establish a Prescription Drug Donation Program for accepting unused previously dispensed prescription drugs that meet the criteria set forth in subdivision A 2, for the purpose of re-dispensing such drugs to indigent patients, either through hospitals, or through clinics organized

in whole or in part for the delivery of health care services to the indigent. Such program shall not authorize the donation of Schedule II-V controlled substances if so prohibited by federal law. No drugs shall be re-dispensed unless the integrity of the drug can be assured.

C. Unused prescription drugs dispensed for use by persons eligible for coverage under Title XIX or Title XXI of the Social Security Act, as amended, may be donated pursuant to this section unless such donation is prohibited.

D. A pharmaceutical manufacturer shall not be liable for any claim or injury arising from the storage, donation, acceptance, transfer, or dispensing of any drug provided to a patient, or any other activity undertaken in accordance with a drug distribution program established pursuant to this section.

E. Nothing in this section shall be construed to create any new or additional liability, or to abrogate any liability that may exist, applicable to a pharmaceutical manufacturer for its products separately from the storage, donation, acceptance, transfer, or dispensing of any drug provided to a patient in accordance with a drug distribution program established pursuant to this section.

2002, c. [632](#); 2005, c. [68](#); 2008, c. [429](#); 2009, cc. [109](#), [114](#).

§54.1-3411.2. Prescription drug disposal programs.

A. As used in this section:

"Authorized pharmacy disposal site" means a pharmacy that qualifies as a collection site pursuant to 21 C.F.R § 1317.40.

"Pharmacy drug disposal program" means any voluntary drug disposal program located at or operated in accordance with state and federal law by a pharmacy.

B. A pharmacy may participate in a pharmacy drug disposal program in accordance with state and federal law regarding proper collection, storage, and destruction of prescription drugs, including controlled and noncontrolled substances. A pharmacy that chooses to participate in a pharmacy drug disposal program shall notify the Board, and the Board shall maintain a list of all pharmacies in the Commonwealth that have chosen to participate in a pharmacy drug disposal program on a website maintained by the Board.

C. No person that participates in a pharmacy drug disposal program shall be liable for any theft, robbery, or other criminal act related to its participation in the pharmacy

drug disposal program nor shall such person be liable for acts of simple negligence in the collection, storage, or destruction of prescription drugs collected through such pharmacy drug disposal program, provided that the pharmacy practice site is acting in good faith and in accordance with applicable state and federal law and regulations.

2016, c. [95](#).

§54.1-3411.2:1. Guidelines for disposal of unused drugs.

The Board of Pharmacy shall develop guidelines for the provision of counseling and information regarding proper disposal of unused dispensed drugs, including information about pharmacy drug disposal programs in which the pharmacy participates pursuant to § [54.1-3411.2](#), by pharmacists to patients for whom a prescription is dispensed.

2017, c. [114](#).

§54.1-3412. Date of dispensing; initials of pharmacist; automated data processing system.

Pursuant to regulations promulgated by the Board, the pharmacist dispensing any prescription shall record the date of dispensing and his initials on the prescription in (i) an automated data processing system used for the storage and retrieval of dispensing information for prescriptions or (ii) on another record that is accurate from which dispensing information is retrievable and in which the original prescription and any information maintained in such data processing system concerning such prescription can be found.

1970, c. 650, § 54-524.69; 1979, c. 388; 1987, c. 198; 1988, c. 765; 2002, c. [411](#).

§54.1-3413. Manufacturing and administering Schedule I drugs.

It shall be lawful for a person to manufacture, and for a practitioner to administer, Schedule I drugs if:

1. The manufacturer and practitioner are expressly authorized to engage in such activities by the Attorney General of the United States, or pursuant to the federal Food, Drug and Cosmetic Act;
2. The manufacturer or dispenser is registered under all appropriate provisions of this chapter;
3. Any Schedule I drug so manufactured is sold or furnished on an official written order to a practitioner or other authorized person only; and

4. The manufacturer and practitioner comply with all other requirements of this chapter.

1970, c. 650, § 54-524.58:1; 1972, c. 798; 1988, c. 765.

§54.1-3414. Official orders for Schedule II drugs.

An official written order for any Schedule II drug shall be signed by the purchasing licensee or by his agent. The original shall be presented to the person who supplies the drug or drugs. If such person accepts the order, each party to the transaction shall preserve his copy of the order for two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. It shall be deemed a compliance with this section if the parties to the transaction have complied with the federal laws respecting the requirements governing the use of order forms. Parties ordering Schedule II drugs electronically shall comply with all requirements of federal law and regulation governing such transactions.

Code 1950, § 54-493; 1970, c. 650, § 54-524.60; 1988, c. 765; 2006, c. [346](#).

§54.1-3415. Distribution of drugs in Schedules II through VI by manufacturers and wholesalers.

A. A permitted manufacturer or wholesaler may distribute Schedule II drugs to any of the following persons, but only on official written orders or pursuant to an electronic order in compliance with federal laws and regulations governing the electronic ordering of Schedule II drugs:

1. To a manufacturer or wholesaler who has been issued permits pursuant to this chapter;
2. To a licensed pharmacist, permitted pharmacy or a licensed practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine;
3. To a person who has been issued a controlled substance registration certificate pursuant to § [54.1-3422](#), if the certificate of such person authorizes such purchase;
4. On a special written order accompanied by a certificate of exemption, as required by the federal laws, to a person in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving or possessing drugs by reason of his official duties;
5. To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or

aircraft when not in port. However, such drugs shall be sold to a master of such ship or person in charge of such aircraft pursuant to a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service; and

6. To a person in a foreign country in compliance with the provisions of the relevant federal laws.

B. A permitted manufacturer or wholesaler may distribute drugs classified in Schedule III through Schedule VI and devices to all persons listed in subsection A of this section without an official written order. However, this section shall not be construed to prohibit the distribution of a Schedule VI drug or device to any person who is otherwise authorized by law to administer, prescribe or dispense such drug or device.

Code 1950, § 54-492; 1970, c. 650; 1972, c. 798, § 54-524.59; 1977, c. 302; 1978, c. 833; 1988, c. 765; 1998, c. [490](#); 2006, c. [346](#).

§54.1-3416. No prescription for preparations listed pursuant to Schedule V.

A preparation listed pursuant to Schedule V may be dispensed without a prescription if:

1. The preparation is dispensed only by a pharmacist directly to the person requesting the preparation;
2. The preparation is dispensed only to a person who is at least eighteen years of age;
3. The pharmacist requires the person requesting the preparation to furnish suitable identification including proof of age when appropriate;
4. The pharmacist does not dispense to any one person, or for the use of any one person or animal, any narcotic drug preparation or preparations, when he knows, or can by reasonable diligence ascertain, that such dispensing will provide the person to whom or for whose use, or the owner of the animal for the use of which, such preparation is dispensed, within 48 consecutive hours, with more than 200 milligrams of opium, or more than 270 milligrams of codeine, or more than 130 milligrams of dihydrocodeinone, or more than 65 milligrams of ethylmorphine, or more than 32 5/10 milligrams of diphenoxylate. In dispensing such a narcotic drug preparation, the pharmacist shall exercise professional discretion to ensure that the preparation is being dispensed for medical purposes only.

Any pharmacist shall, at the time of dispensing, make and keep a record showing the date of dispensing, the name and quantity of the preparation, the name and address of the person to whom the preparation is dispensed, and enter his initials thereon. Such records shall be maintained as set forth in § [54.1-3404](#) and the regulations of the Board.

1970, c. 650, § 54-524.75; 1972, c. 798; 1988, c. 765.

§54.1-3417. Disposing of stocks of Schedules II through V drugs.

The owner of any stocks of drugs included in Schedules II through V obtained in compliance with this chapter, upon discontinuance of dealing in such drugs, may dispose of such stocks only on an official written order as follows:

1. A pharmacy or practitioner or an agent or agents of a pharmacy or practitioner under specific written authorization from the owner of such pharmacy or such practitioner, may dispose of such stocks to a manufacturer or wholesaler holding a valid license to deal in such drugs, or to another pharmacy or practitioner.
2. A manufacturer or wholesaler may dispose of such stocks only to a manufacturer or wholesaler holding a valid permit to deal in such drugs.

1970, c. 650, § 54-524.61; 1976, c. 406; 1988, c. 765.

§54.1-3418. Sale of aqueous or oleaginous solutions.

A pharmacist, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions compounded by the pharmacist, of which the content of narcotic drugs does not exceed a proportion greater than twenty percent of the complete solution, to be used for medical purposes.

Code 1950, § 54-496; 1956, c. 225; 1970, c. 650, § 54-524.62; 1988, c. 765.

§54.1-3419. Dispensing of insulin preparations.

Any insulin preparation shall be dispensed only by or under the supervision of a licensed pharmacist.

1984, c. 723, § 54-524.67:3; 1988, c. 765.

§54.1-3420. Distribution of certain drugs; written request or confirmation of receipt.

No manufacturer or distributor of controlled substances shall distribute or dispense any substance listed on Schedules II through V to any person, whether a practitioner

of the healing arts or some other profession, except with the written request or confirmation of receipt of the practitioner. Such request or confirmation shall be maintained as required by this chapter.

Subject to the foregoing provisions, no person shall be prohibited from distributing controlled substances listed on Schedules II through V for charitable uses or for use in research or investigations.

1984, c. 724, § 54-524.58:2; 1988, c. 765.

§54.1-3420.1. Identification required for filling prescriptions.

A. Before dispensing any drug listed on Schedules III through V, a pharmacist may require proof of identity from any patient presenting a prescription or requesting a refill of a prescription.

B. A pharmacist, or his agent, shall require proof of identity at the time of delivery from any person seeking to take delivery of any drug listed on Schedule II pursuant to a valid prescription, unless such person is known to the pharmacist or to his agent. If the person seeking to take delivery of a drug listed on Schedule II pursuant to a valid prescription is not the patient for whom the drug is prescribed, and the person is not known to the pharmacist or his agent, the pharmacist or his agent shall either make a photocopy or electronic copy of such person's identification or record the full name and address of such person. The pharmacist shall keep records of the names and addresses or copies of proof of identity of persons taking delivery of drugs as required by this subsection for a period of at least one month. For the purposes of this subsection, "proof of identity" means a driver's license, government-issued identification card, or other photo identification along with documentation of the person's current address.

C. Whenever any pharmacist permitted to operate in the Commonwealth or non-resident pharmacist registered to conduct business in the Commonwealth delivers a prescription drug order for any drug listed on Schedule II by mail, common carrier, or delivery service to a Virginia address, the method of delivery employed shall require the signature of the recipient as confirmation of receipt.

1988, c. 400, § 54-524.67:4; 2010, c. [193](#); 2011, cc. [262](#), [318](#).

§54.1-3420.2. Delivery of prescription drug order.

A. Whenever any pharmacy permitted to operate in this Commonwealth or non-resident pharmacy registered to conduct business in the Commonwealth delivers a

prescription drug order by mail, common carrier, or delivery service, when the drug order is not personally hand delivered directly, to the patient or his agent at the person's residence or other designated location, the following conditions shall be required:

1. Written notice shall be placed in each shipment alerting the consumer that under certain circumstances chemical degradation of drugs may occur; and
2. Written notice shall be placed in each shipment providing a toll-free or local consumer access telephone number which is designed to respond to consumer questions pertaining to chemical degradation of drugs.

B. If a prescription drug order for a Schedule VI controlled substance is not personally hand delivered directly to the patient or the patient's agent, or if the prescription drug order is not delivered to the residence of the patient, the delivery location shall hold a current permit, license, or registration with the Board that authorizes the possession of controlled substances at that location. The Board shall promulgate regulations related to the security, access, required records, accountability, storage, and accuracy of delivery of such drug delivery systems. Schedule II through Schedule V controlled substances shall be delivered to an alternate delivery location only if such delivery is authorized by federal law and regulations of the Board.

C. Prescription drug orders dispensed to a patient and delivered to a community services board or behavioral health authority facility licensed by the Department of Behavioral Health and Developmental Services upon the signed written request of the patient or the patient's legally authorized representative may be stored, retained, and repackaged at the facility on behalf of the patient for subsequent delivery or administration. The repackaging of a dispensed prescription drug order retained by a community services board or behavioral health authority facility for the purpose of assisting a client with self-administration pursuant to this subsection shall only be performed by a pharmacist, pharmacy technician, nurse, or other person who has successfully completed a Board-approved training program for repackaging of prescription drug orders as authorized by this subsection. The Board shall promulgate regulations relating to training, packaging, labeling, and recordkeeping for such repackaging.

D. Prescription drug orders dispensed to a patient and delivered to a Virginia Department of Health or local health department clinic upon the signed written request of a

patient, a patient's legally authorized representative, or a Virginia Department of Health district director or his designee may be stored and retained at the clinic on behalf of the patient for subsequent delivery or administration.

E. Prescription drug orders dispensed to a patient and delivered to a program of all-inclusive care for the elderly (PACE) site licensed by the Department of Social Services pursuant to § [63.2-1701](#) and overseen by the Department of Medical Assistance Services in accordance with § [32.1-330.3](#) upon the signed written request of the patient or the patient's legally authorized representative may be stored, retained, and repackaged at the site on behalf of the patient for subsequent delivery or administration. The repackaging of a dispensed prescription drug order retained by the PACE site for the purpose of assisting a client with self-administration pursuant to this subsection shall only be performed by a pharmacist, pharmacy technician, nurse, or other person who has successfully completed a Board-approved training program for repackaging of prescription drug orders as authorized by this subsection. The Board shall promulgate regulations relating to training, packaging, labeling, and recordkeeping for such repackaging.

1998, c. [597](#); 2002, c. [411](#); 2010, c. [28](#); 2015, c. [505](#).

§54.1-3421. New drugs.

A. No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless an application with respect to the drug has been approved and the approval has not been withdrawn under § 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355).

B. This section shall not apply to a drug subject to the federal act intended solely for investigational use and for which a notice of claimed investigational exemption for a new drug has been filed with the U.S. Food and Drug Administration in accordance with 21 C.F.R. Part 312.

1970, c. 650, § 54-524.95; 1988, c. 765; 2000, c. [135](#).

§54.1-3422. Controlled substances registration certificate required in addition to other requirements; exemptions.

A. Every person who manufactures, distributes or dispenses any substance that is controlled in Schedules I through V or who proposes to engage in the manufacture, distribution or dispensing of any such controlled substance except permitted pharmacies, those persons who are licensed pharmacists, those persons who are

licensed physician assistants, and those persons who are licensed practitioners of medicine, osteopathy, podiatry, dentistry, optometry, nursing, or veterinary medicine shall obtain annually a controlled substances registration certificate issued by the Board. This registration shall be in addition to other licensing or permitting requirements enumerated in this chapter or otherwise required by law.

B. Registration under this section and under all other applicable registration requirements shall entitle the registrant to possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by this registration and in conformity with the other provisions of this chapter.

C. The following persons need not register and may possess controlled substances listed on Schedules I through VI:

1. An agent or employee of any holder of a controlled substance registration certificate or of any practitioner listed in subsection A of this section as exempt from the requirement for registration, if such agent or employee is acting in the usual course of his business or employment;
2. A common or contract carrier or warehouseman, or his employee, whose possession is in the usual course of business or employment; or
3. An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a prescriber or in lawful possession of a Schedule V substance.

D. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

1972, c. 798, § 54-524.47:2; 1988, c. 765; 1996, cc. [408](#), [468](#), [496](#); 1998, c. [490](#); 2001, cc. [243](#), [465](#).

§54.1-3423. Board to issue registration unless inconsistent with public interest; authorization to conduct research; application and fees.

A. The Board shall register an applicant to manufacture or distribute controlled substances included in Schedules I through V unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the Board shall consider the following factors:

1. Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

2. Compliance with applicable state and local law;
 3. Any convictions of the applicant under any federal and state laws relating to any controlled substance;
 4. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;
 5. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;
 6. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and
 7. Any other factors relevant to and consistent with the public health and safety.
- B. Registration under subsection A does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.
- C. Practitioners must be registered to conduct research with controlled substances in Schedules II through VI. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this Commonwealth upon furnishing the evidence of that federal registration.
- D. The Board may register other persons or entities to possess controlled substances listed on Schedules II through VI upon a determination that (i) there is a documented need, (ii) the issuance of the registration is consistent with the public interest, (iii) the possession and subsequent use of the controlled substances complies with applicable state and federal laws and regulations, and (iv) the subsequent storage, use, and recordkeeping of the controlled substances will be under the general supervision of a licensed pharmacist, practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine as specified in the Board's regulations. The Board shall consider, at a minimum, the factors listed in subsection A of this section in determining whether the registration shall be issued. Notwithstanding the exceptions listed in [§ 54.1-3422](#) A, the Board may mandate a controlled substances registration for sites maintaining certain types and quantities of Schedules II through VI controlled substances as it may specify in its regulations. The Board shall promulgate regulations related to requirements or criteria for the issuance of such controlled substances registration, storage, security, supervision, and recordkeeping.

E. The Board may register a public or private animal shelter as defined in § [3.2-6500](#) to purchase, possess, and administer certain Schedule II-VI controlled substances approved by the State Veterinarian for the purpose of euthanizing injured, sick, homeless, and unwanted domestic pets and animals; and to purchase, possess, and administer certain Schedule VI controlled substances for the purpose of preventing, controlling, and treating certain communicable diseases that failure to control would result in transmission to the animal population in the shelter. The drugs used for euthanasia shall be administered only in accordance with protocols established by the State Veterinarian and only by persons trained in accordance with instructions by the State Veterinarian. The list of Schedule VI drugs used for treatment and prevention of communicable diseases within the shelter shall be determined by the supervising veterinarian of the shelter and the drugs shall be administered only pursuant to written protocols established or approved by the supervising veterinarian of the shelter and only by persons who have been trained in accordance with instructions established or approved by the supervising veterinarian. The shelter shall maintain a copy of the approved list of drugs, written protocols for administering, and training records of those persons administering drugs on the premises of the shelter.

F. The Board may register a crisis stabilization unit established pursuant to § [37.2-500](#) or [37.2-601](#) and licensed by the Department of Behavioral Health and Developmental Services to maintain a stock of Schedule VI controlled substances necessary for immediate treatment of patients admitted to the crisis stabilization unit, which may be accessed and administered by a nurse pursuant to a written or oral order of a prescriber in the absence of a prescriber. Schedule II through Schedule V controlled substances shall only be maintained if so authorized by federal law and Board regulations.

G. The Board may register an entity at which a patient is treated by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically for the purpose of establishing a bona fide practitioner-patient relationship and is prescribed Schedule II through VI controlled substances when such prescribing is in compliance with federal requirements for the practice of telemedicine and the patient is not in the physical presence of a practitioner registered with the U.S. Drug Enforcement Administration. In determining whether the registration shall be issued, the Board shall consider (i) the factors listed in subsection A, (ii) whether there is a documented need for such registration, and (iii) whether the issuance of the registration is consistent with the public interest.

H. Applications for controlled substances registration certificates and renewals thereof shall be made on a form prescribed by the Board and such applications shall be accompanied by a fee in an amount to be determined by the Board.

I. Upon (i) any change in ownership or control of a business, (ii) any change of location of the controlled substances stock, (iii) the termination of authority by or of the person named as the responsible party on a controlled substances registration, or (iv) a change in the supervising practitioner, if applicable, the registrant or responsible party shall immediately surrender the registration. The registrant shall, within 14 days following surrender of a registration, file a new application and, if applicable, name the new responsible party or supervising practitioner.

1972, c. 798, § 54-524.47:3; 1978, c. 833; 1980, c. 288; 1988, c. 765; 1996, cc. [468](#), [496](#); 1998, c. [490](#); 2009, cc. [149](#), [169](#); 2010, c. [28](#); 2014, c. [148](#); 2017, cc. [58](#), [110](#).

§54.1-3424. Suspension or revocation of registration, license or permit; limitation to particular controlled substance; controlled substances placed under seal; sale of perishables and forfeiture; notification to DEA.

A. A registration to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Board upon a finding that the registrant:

1. Has furnished false or fraudulent material information in an application filed under this chapter;
2. Has been convicted of a felony under any state or federal law relating to any controlled substance;
3. Has had his federal registration to manufacture, distribute or dispense controlled substances suspended or revoked;
4. Has violated or cooperated with others in violating any provision of this chapter or regulations of the Board relating to the manufacture, distribution or dispensing of controlled substances.

B. The Board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

C. If the Board suspends or revokes a registration, or if the license or permit of a person possessing controlled substances under an exemption in § [54.1-3422](#) A is suspended or revoked by the issuing board, all controlled substances owned or

possessed by the registrant, licensee or permittee at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances shall be forfeited to the Commonwealth.

D. The Board shall promptly notify the DEA of all orders suspending or revoking registration and all forfeitures of controlled substances.

1972, c. 798, § 54-524.47:4; 1988, c. 765; 1996, cc. [468](#), [496](#); 1998, c. [490](#).

§54.1-3425. Repealed.

Repealed by Acts 2009, c. [149](#), cl. 2, effective March 6, 2009, and c. [169](#), cl. 2, effective March 23, 2009.

§54.1-3426. Regulations for special packaging.

A. The Board shall adopt standards for special packaging consistent with those promulgated pursuant to the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. § 1471 et seq.). The Board may exempt any drug from the requirements of special packaging and shall exempt any drug exempted pursuant to the Poison Prevention Packaging Act of 1970.

B. A prescriber or a purchaser may direct that a drug, which is subject to being dispensed in special packaging, be dispensed in other than special packaging.

1978, c. 833, § 54-524.67:1; 1988, c. 765; 1996, c. [408](#).

§54.1-3427. Dispensing drugs without safety closure container.

When a pharmacist receives the request of any person that a drug or drugs for such person to be dispensed by the pharmacist not be placed in a safety closure container, the pharmacist may dispense such drug or drugs in such nonsafety closure container. The delivering pharmacist shall not be civilly liable simply by reason of dispensing a drug or drugs in such a container if the recipient signs a release covering a period of time or a single delivery, which release provides that the recipient releases the pharmacist from civil liability for not using the safety closure container, unless the pharmacist acted with willful and wanton disregard of safety.

1978, c. 839, § 54-524.67:2; 1988, c. 765.

§54.1-3428. Dissemination of information.

The Board may disseminate such information regarding drugs, devices, and cosmetics as the Board deems necessary in the interest of public health and the protection of the consumer against fraud. This section shall not be construed to prohibit the Board from collecting, reporting, and illustrating the results of its investigations.

1970, c. 650, § 54-524.100; 1988, c. 765.

§54.1-3429. Revocation of permit issued to manufacturer, wholesaler or distributor.

The Board may revoke a permit issued to a manufacturer, wholesaler or distributor for failure to comply with regulations promulgated pursuant to the provisions of this chapter.

1970, c. 650, § 54-524.46; 1988, c. 765.

§54.1-3430. Display of permit; permits nontransferable; renewal.

Permits issued under the provisions of this chapter shall be displayed in a conspicuous place in the factory or other place of business for which issued.

Permits shall not be transferable and shall be renewed annually.

Code 1950, §§ 54-449, 54-450; 1970, c. 650, § 54-524.38; 1976, c. 614, § 54-524.39; 1988, c. 765.

§54.1-3431. Admission into evidence of certain certificates of analysis.

In any administrative hearing, a certificate of analysis of a chemist, performed in any laboratory operated by the Department of Forensic Science or authorized by such Department to conduct such analysis, when such certificate is attested by such chemist, shall be admissible as evidence. A copy of such certificate shall be delivered to the parties in interest at least seven days prior to the date fixed for the hearing.

Any certificate of analysis purporting to be signed by any chemist shall be admissible as evidence in such hearing without any proof of the seal or signature or of the official character of the chemist whose name is signed to it.

Code 1950, § 54-524.77; 1970, c. 650; 1972, cc. 741, 798, § 54-524.77:1; 1973, c. 479; 1977, c. 633; 1988, c. 765; 1990, c. 825; 2005, cc. [868](#), [881](#).

§54.1-3432. Supervision by pharmacist.

Every pharmacy shall be under the personal supervision of a pharmacist on the premises of the pharmacy.

Code 1950, § 54-478; 1958, c. 551; 1970, c. 650, § 54-524.51; 1988, c. 765.

§54.1-3433. Certain advertising and signs unlawful.

It shall be unlawful for any place of business which is not a pharmacy as defined in this chapter to advertise or to have upon it or in it as a sign the words, "pharmacy," "pharmacist," "apothecary," "drugstore," "druggist," "drugs," "medicine store," "drug sundries," "prescriptions filled" or any like words indicating that drugs are compounded or sold or prescriptions filled. Each day during which such advertisement appears or such sign is allowed to remain upon or in such place of business shall constitute a separate offense under this section. Upon consultation with the Department of Historic Resources, the Board may grant an exception from this section for such signage on an historic building that formerly housed a drugstore or pharmacy if that building is individually listed as a Virginia Historic Landmark, a contributing property in a Virginia Historic Landmark District, or determined to be eligible for listing by the Department of Historic Resources, provided that the signage relates to the historic character of the building.

Code 1950, § 54-477; 1970, c. 650, § 54-524.49; 1988, c. 765; 2005, c. [97](#).

§54.1-3434. Permit to conduct pharmacy.

No person shall conduct a pharmacy without first obtaining a permit from the Board.

The application for such permit shall be made on a form provided by the Board and signed by a pharmacist who will be in full and actual charge of the pharmacy and who will be fully engaged in the practice of pharmacy at the location designated on the application.

The application shall (i) show the corporate name and trade name, (ii) list any pharmacist in addition to the pharmacist-in-charge practicing at the location indicated on the application, and (iii) list the hours during which the pharmacy will be open to provide pharmacy services. Any change in the hours of operation, which is expected to last more than one week, shall be reported to the Board in writing and posted, at least fourteen days prior to the anticipated change, in a conspicuous place to provide notice to the public. The Board shall promulgate regulations to provide exceptions to this prior notification.

If the owner is other than the pharmacist making the application, the type of ownership shall be indicated and shall list any partner or partners, and, if a corporation, then the corporate officers and directors. Further, if the owner is not a pharmacist, he shall not abridge the authority of the pharmacist-in-charge to exercise professional

judgment relating to the dispensing of drugs in accordance with this act and Board regulations.

The permit shall be issued only to the pharmacist who signs the application as the pharmacist-in-charge and as such assumes the full responsibilities for the legal operation of the pharmacy. This permit and responsibilities shall not be construed to negate any responsibility of any pharmacist or other person.

Upon termination of practice by the pharmacist-in-charge, or upon any change in partnership composition, or upon the acquisition, as defined in Board regulations, of the existing corporation by another person or the closing of a pharmacy, the permit previously issued shall be immediately surrendered to the Board by the pharmacist-in-charge to whom it was issued, or by his legal representative, and an application for a new permit may be made in accordance with the requirements of this chapter.

The Board shall promulgate regulations (i) defining acquisition of an existing permitted, registered or licensed facility or of any corporation under which the facility is directly or indirectly organized; (ii) providing for the transfer, confidentiality, integrity, and security of the pharmacy's prescription dispensing records and other patient records, regardless of where located; and (iii) establishing a reasonable time period for designation of a new pharmacist-in-charge. At the conclusion of the time period for designation of a new pharmacist-in-charge, a pharmacy which has failed to designate a new pharmacist-in-charge shall not operate as a pharmacy nor maintain a stock of prescription drugs on the premises. The Director shall immediately notify the owner of record that the pharmacy no longer holds a valid permit and that the owner shall make provision for the proper disposition of all Schedule II through VI drugs and devices on the premises within fifteen days of receipt of this notice. At the conclusion of the fifteen-day period, the Director or his authorized agent shall seize and indefinitely secure all Schedule II through VI drugs and devices still on the premises, and notify the owner of such seizure. The Director may properly dispose of the seized drugs and devices after six months from the date of the notice of seizure if the owner has not claimed and provided for the proper disposition of the property. The Board shall assess a fee of not less than the cost of storage of said drugs upon the owner for reclaiming seized property.

The succeeding pharmacist-in-charge shall cause an inventory to be made of all Schedule I, II, III, IV and V drugs on hand. Such inventory shall be completed as of

the date he becomes pharmacist-in-charge and prior to opening for business on that date.

The pharmacist to whom such permit is issued shall provide safeguards against diversion of all controlled substances.

An application for a pharmacy permit shall be accompanied by a fee determined by the Board. All permits shall expire annually on a date determined by the Board in regulation.

Every pharmacy shall be equipped so that prescriptions can be properly filled. The Board of Pharmacy shall prescribe the minimum of such professional and technical equipment and reference material which a pharmacy shall at all times possess. Nothing shall prevent a pharmacist who is eligible to receive information from the Prescription Monitoring Program from requesting and receiving such information; however, no pharmacy shall be required to maintain Internet access to the Prescription Monitoring Program. No permit shall be issued or continued for the conduct of a pharmacy until or unless there is compliance with the provisions of this chapter and regulations promulgated by the Board.

Every pharmacy shall comply with federal requirements for an electronic, interoperable system to identify, trace, and verify prescription drugs as they are distributed.

Each day during which a person is in violation of this section shall constitute a separate offense.

1970, c. 650, § 54-524.31; 1972, c. 798; 1976, c. 614; 1977, c. 302; 1980, c. 288; 1983, c. 286; 1986, c. 207; 1988, cc. 445, 765; 1994, c. [299](#); 1998, c. [470](#); 2000, c. [135](#); 2008, c. [320](#); 2011, c. [610](#); 2016, c. [221](#).

§54.1-3434.01. Notice of pharmacy closing; change of ownership; penalty.

A. Prior to the closing of a pharmacy for more than one week, the owner shall either (i) post a conspicuous notice at least thirty days prior to the anticipated closing or (ii) mail a notice, at least fourteen days prior to the anticipated closing, to every current pharmacy customer having refill authority. Each notice posted or mailed pursuant to this section shall indicate the date of such closing, if available, and the name of the pharmacy to which prescriptions and other required prescription dispensing records and individual patient records will be transferred unless patients indicate their preference to the contrary. The Board of Pharmacy shall promulgate regulations providing

for a definition of "closing of a pharmacy" and exceptions to the requirements of this section.

B. Upon any change of ownership of a pharmacy, regardless of how such change may be effectuated, the prescription dispensing records and other patient records for at least two years immediately prior to the change of ownership, shall be transferred, in accordance with Board regulations, to the new owner in a manner to ensure the confidentiality, integrity, and security of the pharmacy's prescription dispensing records and other patient records and the continuity of pharmacy services at substantially the same level as that offered by the previous owner.

Refusing to process a request for the prescription dispensing records and other patient records tendered in accordance with law or regulation shall constitute a closing and the requirements of this section shall apply. Such refusal may constitute a violation of § 54. [1-111](#) A 9, depending on the circumstance.

1992, c. 667; 1994, c. [668](#); 1998, c. [470](#).

§54.1-3434.02. Automated drug dispensing systems.

A. Hospitals licensed pursuant to Title 32.1 or Title 37.2 may use automated drug dispensing systems, as defined in § [54.1-3401](#), upon meeting the following conditions:

1. Drugs are placed in the automated drug dispensing system in a hospital and are under the control of a pharmacy providing services to the hospital;
2. The pharmacist-in-charge of the pharmacy providing services to the hospital has established procedures for assuring the accurate stocking and proper storage of drugs in the automated drug dispensing system and for ensuring accountability for and security of all drugs utilized in the automated drug dispensing system until the time such drugs are removed from the automated drug dispensing system for administration to the patients;
3. Removal of drugs from any automated drug dispensing system for administration to patients can only be made pursuant to a valid prescription or lawful order of a prescriber;
4. Adequate security for automated drug dispensing systems is provided, as evidenced by written policies and procedures, for (i) preventing unauthorized access, (ii) complying with federal and state regulations on prescribing and dispensing controlled substances, (iii) maintaining patient confidentiality, and (iv) assuring compliance with the requirements of this section;

5. Accountability for drugs dispensed from automated drug dispensing systems is vested in the pharmacist-in-charge of a pharmacy located within the hospital or the pharmacist-in-charge of any outside pharmacy providing pharmacy services to the hospital;

6. Filling and stocking of all drugs in automated drug dispensing systems shall be performed under the direction of the pharmacist-in-charge. The task of filling and stocking of drugs into an automated drug dispensing system shall be performed by a pharmacist or a registered pharmacy technician, who shall be an employee of the provider pharmacy and shall be properly trained in accordance with established standards set forth in a policy and procedure manual maintained by the provider pharmacy. The pharmacist stocking and filling the automated drug dispensing system or the pharmacist-in-charge, if the automated drug dispensing system is stocked and filled by a registered pharmacy technician, shall be responsible for the proper and accurate stocking and filling of the automated drug dispensing system.

B. Drugs placed into and removed from automated drug dispensing systems for administration to patients shall be in the manufacturer's or distributor's sealed original packaging or in unit-dose containers packaged by the pharmacy. Drugs in multi-dose packaging, other than those administered orally, may be placed in such a device if approved by the pharmacist-in-charge in consultation with a standing hospital committee comprised of pharmacy, medical, and nursing staff.

C. The pharmacist-in-charge in a pharmacy located within a hospital or the pharmacist-in-charge of any outside pharmacy providing pharmacy services to a hospital shall be responsible for establishing procedures for (i) periodically inspecting and auditing automated drug dispensing systems to assure the proper storage, security, and accountability for all drugs placed in and removed from automated drug dispensing systems, and (ii) reviewing the operation and maintenance of automated drug dispensing systems. This monitoring shall be reviewed by a pharmacist while on the premises of the hospital and in accordance with the pharmacist-in-charge's procedures and the Board of Pharmacy's regulations.

D. The Board of Pharmacy shall promulgate regulations establishing minimum requirements for random periodic inspections and monthly audits of automated drug dispensing systems to assure the proper storage, security, and accountability of all drugs placed in and removed from automated drug dispensing systems and for reviewing the operation and maintenance of automated drug dispensing systems.

1999, c. [750](#); 2004, c. [140](#); 2009, c. [100](#).

§54.1-3434.03. Continuous quality improvement program.

Each pharmacy shall implement a program for continuous quality improvement, according to regulations of the Board. Such program shall provide for a systematic, ongoing process of analysis of dispensing errors that uses findings to formulate an appropriate response and to develop or improve pharmacy systems and workflow processes designed to prevent or reduce future errors. The Board shall promulgate regulations to further define the required elements of such program.

Any pharmacy that actively reports to a patient safety organization that has as its primary mission continuous quality improvement under the Patient Safety and Quality Improvement Act of 2005 (P.L. 109-41), shall be deemed in compliance with this section.

2011, c. [124](#).

§54.1-3434.04. Automatic review of certain case decisions.

The Board of Pharmacy shall, in cases in which a monetary fine may be imposed for a violation of the provisions of Article 2 (§ [54.1-3432](#) et seq.) of the Drug Control Act relating to the practice of pharmacy and the pharmacy subject to the fine is affiliated with a free clinic that receives state or local funds, ascertain the factual basis for its decisions of such cases through informal conference or consultation proceedings in accordance with § [2.2-4019](#), unless the named party and the Board agree to resolve the matter through a consent order or the named party consents to waive such a conference or proceeding to go directly to a formal hearing.

2014, c. [345](#).

§54.1-3434.05. Permit to act as an outsourcing facility.

A. No person shall act as an outsourcing facility without first obtaining a permit from the Board.

B. Applications for a permit to act as an outsourcing facility shall be made on a form provided by the Board and signed by a pharmacist who will be in full and actual charge of the outsourcing facility and who will be fully engaged in the compounding performed at the location designated on the application. Such application shall be accompanied by a fee determined by the Board in regulation. All permits shall expire annually on a date determined by the Board in regulation. No permit shall be issued or renewed for an outsourcing facility unless the facility can demonstrate compliance

with all applicable federal and state laws and regulations governing outsourcing facilities.

C. As a prerequisite to obtaining or renewing a permit from the Board, the outsourcing facility shall (i) register as an outsourcing facility with the U.S. Secretary of Health and Human Services in accordance with 21 U.S.C. § 353b and (ii) submit a copy of a current inspection report resulting from an inspection conducted by the U.S. Food and Drug Administration that indicates compliance with the requirements of state and federal law and regulations, including all applicable guidance documents and Current Good Manufacturing Practices published by the U.S. Food and Drug Administration.

The inspection report required pursuant to clause (ii) shall be deemed current for the purposes of this section if the inspection was conducted (a) no more than one year prior to the date of submission of an application for a permit to the Board or (b) no more than two years prior to the date of submission of an application for renewal of a permit to the Board. However, if the outsourcing facility has not been inspected by the U.S. Food and Drug Administration within the required period, the Board may accept an inspection report or other documentation from another entity that is satisfactory to the Board, or the Board may cause an inspection to be conducted by its duly authorized agent and may charge an inspection fee in an amount sufficient to cover the costs of the inspection.

D. Every outsourcing facility shall compound in compliance with the requirements of state and federal law and regulations except § [54.1-3410.2](#), to include all applicable guidance documents and Current Good Manufacturing Practices published by the U.S. Food and Drug Administration.

E. An outsourcing facility shall not engage in compounding of drug products to be dispensed pursuant to a valid prescription for a specific patient without first obtaining a permit to operate a pharmacy.

2015, c. [300](#).

§54.1-3434.1. Nonresident pharmacies to register with Board.

A. Any pharmacy located outside the Commonwealth that ships, mails, or delivers, in any manner, Schedule II through VI drugs or devices pursuant to a prescription into the Commonwealth shall be considered a nonresident pharmacy, shall be registered with the Board, shall designate a pharmacist in charge who is licensed as a

pharmacist in Virginia and is responsible for the pharmacy's compliance with this chapter, and shall disclose to the Board all of the following:

1. The location, names, and titles of all principal corporate officers and the name and Virginia license number of the designated pharmacist in charge, if applicable. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, or pharmacist in charge.
2. That it maintains, at all times, a current unrestricted license, permit, certificate, or registration to conduct the pharmacy in compliance with the laws of the jurisdiction, within the United States or within another jurisdiction that may lawfully deliver prescription drugs directly or indirectly to consumers within the United States, in which it is a resident. The pharmacy shall also certify that it complies with all lawful directions and requests for information from the regulatory or licensing agency of the jurisdiction in which it is licensed as well as with all requests for information made by the Board pursuant to this section.
3. As a prerequisite to registering or renewing a registration with the Board, the non-resident pharmacy shall submit a copy of a current inspection report resulting from an inspection conducted by the regulatory or licensing agency of the jurisdiction in which it is located that indicates compliance with the requirements of this chapter, including compliance with USP-NF standards for pharmacies performing sterile and non-sterile compounding. The inspection report shall be deemed current for the purpose of this subdivision if the inspection was conducted (i) no more than six months prior to the date of submission of an application for registration with the Board or (ii) no more than two years prior to the date of submission of an application for renewal of a registration with the Board. However, if the nonresident pharmacy has not been inspected by the regulatory or licensing agency of the jurisdiction in which it is licensed within the required period, the Board may accept an inspection report or other documentation from another entity that is satisfactory to the Board or the Board may cause an inspection to be conducted by its duly authorized agent and may charge an inspection fee in an amount sufficient to cover the costs of the inspection.
4. For a nonresident pharmacy that dispenses more than 50 percent of its total prescription volume pursuant to an original prescription order received as a result of solicitation on the Internet, including the solicitation by electronic mail, that it is credentialed and has been inspected and that it has received certification from the National Association of Boards of Pharmacy that it is a Verified Internet Pharmacy

Practice Site, or has received certification from a substantially similar program approved by the Board. The Board may, in its discretion, waive the requirements of this subdivision for a nonresident pharmacy that only does business within the Commonwealth in limited transactions.

5. That it maintains its records of prescription drugs or dangerous drugs or devices dispensed to patients in the Commonwealth so that the records are readily retrievable from the records of other drugs dispensed and provides a copy or report of such dispensing records to the Board, its authorized agents, or any agent designated by the Superintendent of the Department of State Police upon request within seven days of receipt of a request.

6. That its pharmacists do not knowingly fill or dispense a prescription for a patient in Virginia in violation of § [54.1-3303](#) and that it has informed its pharmacists that a pharmacist who dispenses a prescription that he knows or should have known was not written pursuant to a bona fide practitioner-patient relationship is guilty of unlawful distribution of a controlled substance in violation of § [18.2-248](#).

7. That it maintains a continuous quality improvement program as required of resident pharmacies, pursuant to § [54.1-3434.03](#).

The requirement that a nonresident pharmacy have a Virginia licensed pharmacist in charge shall not apply to a registered nonresident pharmacy that provides services as a pharmacy benefits administrator.

B. Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in the Commonwealth and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in the Commonwealth.

C. Pharmacies subject to this section shall comply with the reporting requirements of the Prescription Monitoring Program as set forth in § [54.1-2521](#).

D. The registration fee shall be the fee specified for pharmacies within Virginia.

E. A nonresident pharmacy shall only deliver controlled substances that are dispensed pursuant to a prescription, directly to the consumer or his designated agent, or directly to a pharmacy located in Virginia pursuant to regulations of the Board.

F. Pharmacies subject to this section shall comply with the requirements set forth in § [54.1-3408.04](#) relating to dispensing of an interchangeable biosimilar in the place of a prescribed biological product.

G. Every nonresident pharmacy shall comply with federal requirements for an electronic, interoperable system to identify, trace, and verify prescription drugs as they are distributed.

1990, c. 270; 1994, c. [300](#); 2000, c. [882](#); 2005, cc. [115](#), [637](#), [678](#); 2006, c. [397](#); 2008, cc. [79](#), [618](#); 2011, c. [124](#); 2013, cc. [412](#), [544](#), [765](#); 2016, c. [221](#).

§54.1-3434.2. Permit to be issued.

The Board shall only register nonresident pharmacies that maintain a current unrestricted license, certificate, permit, or registration as a pharmacy in a jurisdiction within the United States, or within another jurisdiction that may lawfully deliver prescription drugs directly or indirectly to consumers within the United States.

Applications for a nonresident pharmacy registration, under this section, shall be made on a form furnished by the Board. The Board may require such information as it deems is necessary to carry out the purpose of the section.

The permit or nonresident pharmacy registration shall be renewed annually on a date determined by the Board in regulation. Renewal is contingent upon the nonresident pharmacy providing documentation of a current inspection report in accordance with subdivision A 3 of § [54.1-3434.1](#); continuing current, unrestricted licensure in the resident jurisdiction; and continuing certification if required in subdivision A 4 of § [54.1-3434.1](#).

1990, c. 270; 2005, c. [115](#); 2008, cc. [79](#), [320](#), [618](#); 2013, c. [765](#).

§54.1-3434.3. Denial, revocation, suspension of registration, summary proceedings.

The Board may deny, revoke, suspend, or take other disciplinary actions against a nonresident pharmacy registration as provided for in § [54.1-3316](#).

The Board shall immediately suspend, without a hearing, the registration of any nonresident pharmacy upon receipt of documentation by the licensing agency in the jurisdiction where a nonresident pharmacy registered with the Board is located, that the nonresident pharmacy has had its license, certificate, permit, or registration as a pharmacy revoked or suspended by that agency and has not been reinstated, or if the Board has received notification from the licensing agency that the pharmacy in the

resident state no longer holds a valid unexpired license, permit, certificate, or registration as a pharmacy. The Board shall provide written notice of the suspension to the nonresident pharmacy at the address of record on file with the Board and to the resident-state licensing agency. The nonresident pharmacy may apply for reinstatement of the registration only after it has been reinstated by and holds a current and unrestricted license, certificate, permit, or registration as a pharmacy from the licensing agency in the jurisdiction where it is located. Such nonresident pharmacy shall be entitled to a hearing not later than the next regular meeting of the Board after the expiration of 30 days from the receipt of such application, and shall have the right to be represented by counsel and to summon witnesses to testify on its behalf.

The Board may summarily suspend the registration of any nonresident pharmacy without a hearing, simultaneously with the institution of proceedings for a hearing, if it finds that there is a substantial danger to the public health or safety that warrants such action. The Board may meet by telephone conference call when summarily suspending the registration if a good faith effort to assemble a quorum of the Board has failed and, in the judgment of a majority of the members of the Board, the continued dispensing by the nonresident pharmacy constitutes a substantial danger to the public health or safety. Institution of proceedings for a hearing shall be provided simultaneously with the summary suspension. The hearing shall be scheduled within a reasonable time of the date of the summary suspension. The Board may consider other information concerning possible violations of Virginia law at a hearing, if reasonable notice is given to such nonresident pharmacy of the information.

A nonresident pharmacy with a suspended registration shall not ship, mail, or deliver any Schedule II through VI drugs into the Commonwealth unless reinstated by the Board.

The Board may refer complaints concerning nonresident pharmacies to the regulatory or licensing agency in the jurisdiction where the pharmacy is located. The Board may take other disciplinary action against a nonresident pharmacy in accordance with §§ [54.1-2400](#) and [54.1-3316](#) following notice and the opportunity for a hearing.

1990, c. 270; 2005, c. [115](#); 2007, c. [662](#).

§54.1-3434.4. Prohibited acts.

A. It is unlawful for any person or entity which is not registered under this article to (i) conduct the business of shipping, mailing, or otherwise delivering Schedule II through VI controlled substances into Virginia or (ii) advertise the availability for

purchase of any Schedule II through VI controlled substances by any citizen of the Commonwealth. Further, it shall be unlawful for any person who is a resident of Virginia to advertise the pharmacy services of a nonresident pharmacy or compounding services of an outsourcing facility that has not registered with the Board, with the knowledge that the advertisement will or is likely to induce members of the public in the Commonwealth to use the pharmacy or outsourcing facility to obtain controlled substances.

B. Any controlled substance that is ordered or shipped in violation of any provision of this chapter, shall be considered as contraband and may be seized by any law-enforcement officer or any agent of the Board of Pharmacy.

1990, c. 270; 2005, c. [115](#); 2008, cc. [79](#), [618](#); 2015, c. [300](#).

§54.1-3434.5. Nonresident outsourcing facilities to register with the Board.

A. Any outsourcing facility located outside the Commonwealth that ships, mails, or delivers in any manner Schedule II through VI drugs or devices into the Commonwealth shall be considered a nonresident outsourcing facility and shall be registered with the Board.

B. Applications for registration to act as a non-resident outsourcing facility shall be made on a form provided by the Board and signed by a pharmacist who is licensed as a pharmacist in Virginia and who is in full and actual charge of the outsourcing facility, is fully engaged in the compounding performed at the location stated on the application, and is fully responsible for the outsourcing facility's compliance with state and federal law and regulations. Such application shall be accompanied by a fee determined by the Board in regulation. All registrations shall expire annually on a date determined by the Board in regulation.

C. As a prerequisite to registering or renewing a registration with the Board, the outsourcing facility shall (i) register as an outsourcing facility with the U.S. Secretary of Health and Human Services in accordance with 21 U.S.C. § 353b and (ii) submit a copy of a current inspection report resulting from an inspection conducted by the U.S. Food and Drug Administration that indicates compliance with the requirements of state and federal law and regulations, including all applicable guidance documents and Current Good Manufacturing Practices published by the U.S. Food and Drug Administration.

The inspection report required pursuant to clause (ii) shall be deemed current for the purposes of this section if the inspection was conducted (a) no more than one year prior to the date of submission of an application for registration with the Board or (b) no more than two years prior to the date of submission of an application for renewal of a registration with the Board. However, if the outsourcing facility has not been inspected by the U.S. Food and Drug Administration within the required period, the Board may accept an inspection report or other documentation from another entity that is satisfactory to the Board, or the Board may cause an inspection to be conducted by its duly authorized agent and may charge an inspection fee in an amount sufficient to cover the costs of the inspection.

D. A nonresident outsourcing facility shall not engage in compounding of drug products to be dispensed pursuant to a valid prescription for a specific patient without first obtaining a registration to operate a nonresident pharmacy. The non-resident pharmacy shall comply with all state and federal laws, regulations, and requirements except § [54.1-3410.2](#).

2015, c. [300](#).

§54.1-3435. License to act as wholesale distributor; renewal; fee.

A. It shall be unlawful for any person to engage in the wholesale distribution of prescription drugs in the Commonwealth without a valid unrevoked license issued by the Board. The applicant for licensure as a wholesale distributor, as defined in § [54.1-3401](#), in the Commonwealth shall apply to the Board for a license, using such forms as the Board may furnish; renew such license using such forms as the Board may furnish, if granted, annually on a date determined by the Board in regulation; notify the Board within 30 days of any substantive change in the information reported on the application form previously submitted to the Board; and remit a fee as determined by the Board.

B. A wholesale distributor that ceases distribution of Schedule II through V drugs to a pharmacy, licensed physician dispenser, or licensed physician dispensing facility located in the Commonwealth due to suspicious orders of controlled substances shall notify the Board within five days of the cessation. For the purposes of this section, "suspicious orders of controlled substances" means, relative to the pharmacy's, licensed physician dispenser's, or licensed physician dispensing facility's order history and the order history of similarly situated pharmacies, licensed physician dispensers, or licensed physician dispensing facilities, (i) orders of unusual size, (ii)

orders deviating substantially from a normal pattern, and (iii) orders of unusual frequency.

C. A wholesale distributor shall be immune from civil liability for giving notice in accordance with subsection B unless the notice was given in bad faith or with malicious intent.

D. The Board shall not impose any disciplinary or enforcement action against any licensee or permit holder solely on the basis of a notice received from a wholesale distributor pursuant to subsection B.

E. The Board may promulgate such regulations relating to the storage, handling, and distribution of prescription drugs by wholesale distributors as it deems necessary to implement this section, to prevent diversion of prescription drugs, and to protect the public.

F. Every wholesale distributor shall comply with federal requirements for an electronic, interoperable system to identify, trace, and verify prescription drugs as they are distributed.

1970, c. 650, § 54-524.44; 1976, c. 614; 1980, c. 288; 1988, c. 765; 1992, c. 737; 2008, c. [320](#); 2015, c. [299](#); 2016, c. [221](#).

§54.1-3435.01. Registration of nonresident wholesale distributors; renewal; fee.

A. Any person located outside the Commonwealth who engages in the wholesale distribution of prescription drugs into the Commonwealth shall be registered with the Board. The applicant for registration as a nonresident wholesale distributor shall apply to the Board using such forms as the Board may furnish; renew such registration, if granted, using such forms as the Board may furnish, annually on a date determined by the Board in regulation; notify the Board within 30 days of any substantive change in the information previously submitted to the Board; and remit a fee, which shall be the fee specified for wholesale distributors located within the Commonwealth.

B. The nonresident wholesale distributor shall at all times maintain a valid, unexpired license, permit, or registration in the state in which it is located and shall furnish proof of such upon application and at each renewal.

C. Records of prescription drugs distributed into the Commonwealth shall be maintained in such a manner that they are readily retrievable from records of distributions into other jurisdictions and shall be provided to the Board, its authorized agent, or

any agent designated by the Superintendent of State Police upon request within seven days of receipt of such request.

D. A nonresident wholesale distributor that ceases distribution of Schedule II through V drugs to a pharmacy, licensed physician dispenser, or licensed physician dispensing facility located in the Commonwealth due to suspicious orders of controlled substances shall notify the Board within five days of the cessation. For the purposes of this section, "suspicious orders of controlled substances" means, relative to the pharmacy's, licensed physician dispenser's, or licensed physician dispensing facility's order history and the order history of similarly situated pharmacies, licensed physician dispensers, or licensed physician dispensing facilities, (i) orders of unusual size, (ii) orders deviating substantially from a normal pattern, and (iii) orders of unusual frequency.

E. A nonresident wholesale distributor shall be immune from civil liability for giving notice in accordance with subsection D unless the notice was given in bad faith or with malicious intent.

F. The Board shall not impose any disciplinary or enforcement action against any licensee or permit holder solely on the basis of a notice received from a nonresident wholesale distributor pursuant to subsection D.

G. This section shall not apply to persons who distribute prescription drugs directly to a licensed wholesale distributor located within the Commonwealth.

H. Every nonresident wholesale distributor shall comply with federal requirements for an electronic, interoperable system to identify, trace, and verify prescription drugs as they are distributed.

1994, c. [300](#); 2008, c. [320](#); 2015, c. [299](#); 2016, c. [221](#).

§54.1-3435.02. Certain permitted pharmacies and medical equipment suppliers exempted.

A. A permitted pharmacy may engage in wholesale distributions of small quantities of prescription drugs without being licensed as wholesale distributors when such wholesale distributions are in compliance with federal law as follows: such wholesale distributions of controlled substances do not exceed five percent of the gross annual sales of prescription drugs by the relevant permitted pharmacy or such wholesale distributions of Schedules II through V controlled substances do not exceed five percent

of the total dosage units of the Schedule II through V controlled substances dispensed annually by the relevant permitted pharmacy.

B. A permitted medical equipment supplier may engage in wholesale distributions of small quantities of oxygen without being licensed as a wholesale distributor when such wholesale distributions are in compliance with federal law and such distributions do not exceed five percent of the gross annual sales of oxygen by the relevant permitted medical equipment supplier.

2003, c. [509](#); 2004, c. [854](#).

§54.1-3435.1. Denial, revocation, and suspension of license as wholesale distributor, registration as a nonresident wholesale distributor, or permit as a third-party logistics provider, manufacturer, or nonresident manufacturer.

A. The Board may deny, revoke, suspend, or take other disciplinary actions against a wholesale distributor license, nonresident wholesale distributor registration, third-party logistics provider permit, manufacturer permit, or nonresident manufacturer permit as provided for in § [54.1-3316](#) or the following:

1. Any conviction of the applicant, licensee, or registrant under federal or state laws relating to controlled substances, including, but not limited to, drug samples and wholesale or retail prescription drug distribution;
2. Violations of licensing requirements under previously held licenses;
3. Failure to maintain and make available to the Board or to federal regulatory officials those records required to be maintained by wholesale distributors of prescription drugs; or
4. Violations of the minimum requirements for qualifications, personnel, storage, and handling of prescription drugs and maintenance of prescription drug records as set forth in the federal Drug Supply Chain Security Act of 2013, Title II of P. L. 113-54, and the requirements of Chapter 21 of the Code of Federal Regulations.

B. Wholesale drug distributors, nonresident wholesale drug distributors, third-party logistics providers, manufacturers, and nonresident manufacturers shall allow the Board or its authorized agents to enter and inspect, at reasonable times and in a reasonable manner, their premises and delivery vehicles, and to audit their records and written operating procedures. Such agents shall be required to show appropriate identification prior to being permitted access to wholesale drug distributors' premises and delivery vehicles.

1992, c. 737; 1994, c. [300](#); 2007, c. [662](#); 2016, c. [221](#).

§54.1-3435.2. Permit to act as medical equipment supplier; storage; limitation; regulations.

A. Unless otherwise authorized by this chapter or Chapter 33 (§ [54.1-3300](#) et seq.) of this title, it shall be unlawful for any person to act as a medical equipment supplier, as defined in § [54.1-3401](#), in this Commonwealth without a valid unrevoked permit issued by the Board. The applicant for a permit to act as a medical equipment supplier in this Commonwealth shall apply to the Board for a permit, using such form as the Board may furnish; renew such permit, if granted, annually on a date determined by the Board in regulation; and remit a fee as determined by the Board.

B. Prescription drugs received, stored, and distributed by authority of this section shall be limited to those Schedule VI controlled substances with no medicinal properties which are used for the operation and cleaning of medical equipment, solutions for peritoneal dialysis, and sterile water and saline for irrigation.

C. Distribution of any Schedule VI drug or device or of any hypodermic needle or syringe, or medicinal oxygen by authority of this section is limited to delivery to the ultimate user upon lawful order by a prescriber authorized to prescribe such drugs and devices.

D. The Board may promulgate such regulations relating to the storage, handling, and distribution of prescription drugs, devices and controlled paraphernalia by medical equipment suppliers as it deems necessary to implement this section, to prevent diversion of prescription drugs and devices and controlled paraphernalia, and to protect the public.

1992, c. 737; 1996, c. [408](#); 1997, c. [677](#); 2008, c. [320](#); 2013, c. [504](#).

§54.1-3435.3. Inspection and audit.

Medical equipment suppliers shall allow the Board or its authorized agents to enter and inspect, at reasonable times and in a reasonable manner, their premises and delivery vehicles, and to audit their records and written operating procedures.

1992, c. 737; 2007, c. [662](#).

§54.1-3435.3:1. Registration of nonresident medical equipment suppliers; renewal; fee.

A. Any person located outside the Commonwealth other than a nonresident pharmacy registered pursuant to § [54.1-3434.1](#) that ships, mails, or delivers to a

consumer in the Commonwealth any hypodermic syringes or needles, medicinal oxygen, Schedule VI controlled device, those Schedule VI controlled substances with no medicinal properties that are used for the operation and cleaning of medical equipment, sterile water and saline for irrigation, or solutions for peritoneal dialysis pursuant to a lawful order of a prescriber shall be registered with the Board as a nonresident medical equipment supplier. Registration as a nonresident medical equipment supplier shall be renewed by March 1 of each year. Applicants for registration or renewal of a registration shall submit a fee specified by the Board in regulations at the time of registration or renewal. A nonresident medical equipment supplier registered in accordance with this section shall notify the Board within 30 days of any substantive change in the information previously submitted to the Board.

B. The nonresident medical equipment supplier shall at all times maintain a valid, unexpired license, permit, or registration in the state in which it is located, if required by the resident state, and shall furnish proof of such license, permit, or registration upon application for registration or renewal. If the resident state does not require a license, permit, or registration to engage in direct consumer supply of the medical equipment described in subsection A, the applicant shall furnish proof that it meets the minimum statutory and regulatory requirements for medical equipment suppliers in the Commonwealth.

C. Records of distribution of medical equipment described in subsection A into the Commonwealth shall be maintained in such a manner that they are readily retrievable from records of distribution into other jurisdictions and shall be provided to the Board, its authorized agent, or any agent designated by the Superintendent of State Police upon request within seven days of receipt of such request.

2016, c. [88](#).

§54.1-3435.4. Permit to act as warehouser; regulations.

A. Unless otherwise authorized by this chapter or Chapter 33 (§ [54.1-3300](#) et seq.) of this title, it shall be unlawful for any person to act as a warehouser, as defined in § [54.1-3401](#), in this Commonwealth without a valid unrevoked permit issued by the Board. The applicant for a permit to act as a warehouser in this Commonwealth shall apply to the Board for a permit, using such form as the Board may furnish; renew such permit, if granted, annually on a date determined by the Board in regulation; and remit a fee as determined by the Board.

B. The Board may promulgate such regulations relating to the storage, handling, and distribution of prescription drugs and devices by warehousemen as it deems necessary to implement this section, to prevent diversion of prescription drugs and devices, and to protect the public.

C. Warehousemen shall allow the Board or its authorized agents to enter and inspect, at reasonable times and in a reasonable manner, their premises and delivery vehicles, and to audit their records and written operating procedures. Such agents shall be required to show appropriate identification prior to being permitted access to warehousemen's premises and delivery vehicles.

1992, c. 737; 2008, c. [320](#).

§54.1-3435.4:1. Permitting of third-party logistics provider; renewal.

A. It shall be unlawful for any person to operate as a third-party logistics provider in the Commonwealth without a valid, unrevoked permit issued by the Board. The third-party logistics provider shall renew such permit annually on a date determined by the Board in regulation and shall notify the Board within 30 days of any substantive change in the information reported on the application form previously submitted.

B. The Board shall adopt such regulations relating to the requirements to operate as a third-party logistics provider, including the storage, handling, and distribution of prescription drugs by third-party logistics providers, as it deems necessary to prevent diversion of prescription drugs and to protect the public.

2016, c. [221](#).

§54.1-3435.5. Repealed.

Repealed by Acts 2007, c. [662](#), cl. 2.

§54.1-3436. Repealed.

Repealed by Acts 1992, c. 737 .

§54.1-3437. Permit to manufacture drugs.

It shall be lawful to manufacture, make, produce, pack, package, repack, relabel or prepare any drug not controlled by Schedule I after first obtaining the appropriate permit from the Board. Such permits shall be subject to the Board's regulations on sanitation, equipment, and safeguards against diversion, and shall allow the distribution of the drug manufactured, made, produced, packed, packaged, repackaged, relabeled, or prepared to anyone other than the end user without the need to obtain a whole-

sale distributor permit. This provision shall not apply to manufacturers or packers of medicated feeds who manufacture or package no other drugs.

Code 1950, § 54-448; 1958, c. 551; 1970, c. 650, § 54-524.36; 1988, c. 765; 1996, cc. [37](#), [407](#); 2016, c. [221](#).

§54.1-3437.1. Limited permit for repackaging drugs.

The Board may issue a limited manufacturing permit for the purpose of repackaging drugs, upon such terms and conditions approved by the Board, to the pharmacy directly operated by the Department of Behavioral Health and Developmental Services and which serves clients of the community services boards.

1997, c. [218](#); 2009, cc. [813](#), [840](#).

§54.1-3438. Manufacturing, etc., of drugs or proprietary medicines, to be supervised by pharmacist.

No drugs or proprietary medicines shall be manufactured, made, produced, packed, packaged, repackaged, relabeled or prepared within this Commonwealth, except under the personal and immediate supervision of a pharmacist or such other person as may be approved by the Board of Pharmacy after an investigation and a determination by the Board that they are qualified by scientific or technical training to perform such duties or supervision as may be necessary to protect the public health and safety. This provision shall not apply to manufacturers or packers of medicated feeds who manufacture or pack no other drugs. Medicated feeds are hereby defined as products obtained by mixing a commercial feed and a drug.

Code 1950, § 54-447; 1958, c. 551; 1970, c. 650, § 54-524.37; 1976, c. 614; 1988, c. 765; 1996, cc. [37](#), [407](#).

§54.1-3439. Application for nonrestricted manufacturing permit; fee.

Every person desiring to manufacture any drug or proprietary medicines shall annually apply to the Board for a nonrestricted manufacturing permit. The application shall be accompanied by the required fee. Separate applications shall be made and separate permits issued for each specific place of manufacturing. Each such permit shall expire annually on a date determined by the Board in regulation.

1970, c. 650, § 54-524.40; 1972, c. 798; 1976, c. 614; 1980, c. 288; 1988, c. 765; 1996, cc. [37](#), [407](#); 2008, c. [320](#).

§54.1-3440. Persons to whom nonrestricted permit is granted.

No person shall be granted a nonrestricted permit as a manufacturer unless he is of good moral character and properly equipped as to land, buildings, equipment and safeguards against diversion to carry out the functions of a manufacturer with due regard to the protection of the public safety.

1970, c. 650, § 54-524.41; 1976, c. 614; 1988, c. 765.

§54.1-3441. Restricted manufacturing permit; application; fee; separate application and permit for each place of manufacturing.

Every person desiring to manufacture a proprietary medicine or to repackage medical gases shall apply to the Board for a restricted manufacturing permit. The application shall be accompanied by the required fee. Separate applications shall be made and separate permits issued for each separate place of manufacturing.

1976, c. 614, § 54-524.41:1; 1980, c. 288; 1988, c. 765; 1996, cc. [37](#), [407](#).

§54.1-3442. When permit not to be granted; regulations.

No person shall be granted a restricted manufacturing permit as a manufacturer unless such person is properly equipped as to buildings and equipment to carry out the functions of a manufacturer with due regard to the protection of the public health. The Board shall promulgate regulations in order to carry out the provisions of this section.

1976, c. 614, § 54-524.41:2; 1988, c. 765.

§54.1-3442.01. Registration of nonresident manufacturer; renewal.

A. Any manufacturer located outside the Commonwealth who ships prescription drugs into the Commonwealth shall be registered with the Board. The nonresident manufacturer shall renew such registration annually on a date determined by the Board in regulation and shall notify the Board within 30 days of any substantive change in the information previously submitted.

B. The nonresident manufacturer shall at all times maintain a valid, unexpired license, permit, or registration in the state in which it is located or current registration as a manufacturer or repackager with the federal Food and Drug Administration and shall furnish proof of such upon application and at each renewal.

C. Records of prescription drugs distributed into the Commonwealth shall be maintained in such a manner that they are readily retrievable from records of shipments into other jurisdictions and shall be provided to the Board, its authorized agent, or

any agent designated by the Superintendent of the Department of State Police upon request within seven days of receipt of such request.

2016, c. [221](#).

§54.1-3442.1. Definitions.

As used in this article, unless the context requires a different meaning:

"Investigational drug, biological product, or device" means a drug, biological product, or device that has successfully completed Phase I of a clinical trial but has not been approved for general use by the U.S. Food and Drug Administration and remains under investigation in a clinical trial.

"Terminal condition" means a condition caused by injury, disease, or illness from which, to a reasonable degree of medical probability, a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is in a persistent vegetative state.

"Treating physician" means a physician who is providing or has previously provided medical treatment or evaluation to and has or previously had an ongoing treatment relationship with the person.

2015, cc. [655](#), [656](#).

§54.1-3442.2. Eligibility for expanded access to investigational drugs, biological products, and devices; written, informed consent to treatment.

A. A person shall be eligible for expanded access to investigational drugs, biological products, or devices if:

1. He has a terminal condition, attested to by his treating physician and confirmed by a second physician not previously involved in the treatment of the person who has conducted an independent examination of the person;
2. He has, in consultation with his treating physician, considered all other treatment options currently approved by the U.S. Food and Drug Administration and the treating physician has determined that no reasonable opportunity exists for him to participate in an ongoing clinical trial for his terminal condition;
3. The potential benefits of use of the investigational drug, biological product, or device to treat his terminal condition are greater than the potential risks of the use of the investigational drug, biological product, or device to treat his terminal condition;

4. He has received a recommendation from his treating physician for use of an investigational drug, biological product, or device for treatment of his terminal condition; and

5. He or, if he is incapable of making an informed decision, his legally authorized representative has given written informed consent to use of the investigational drug, biological product, or device for treatment of his terminal condition or, if the person is a minor or lacks capacity to provide informed consent, his parent or legal guardian has given written informed consent to the use of the investigational drug, biological product, or device for treatment of his terminal condition.

Documentation indicating that the person meets the criteria for eligibility for expanded access to investigational drugs, biological products, or devices shall be provided by the person's treating physician and shall be included in the person's medical record.

B. Written informed consent to use of an investigational drug, biological product, or device shall include:

1. An explanation of the currently approved products and treatments for the person's terminal condition;

2. A statement that the person has, in consultation with his treating physician, considered all other treatment options currently approved by the U.S. Food and Drug Administration and the treating physician has determined that no reasonable opportunity exists for the person to participate in an ongoing clinical trial for his terminal condition;

3. An explanation of the specific investigational drug, biological product, or device proposed for treatment of the person's terminal condition;

4. A description of possible outcomes resulting from use of the investigational drug, biological product, or device to treat the person's terminal condition, including a statement that new, unanticipated, different, or worse symptoms might result from and death could be hastened by the proposed treatment, based on the treating physician's knowledge of the proposed treatment in conjunction with an awareness of the person's terminal condition;

5. A statement that the person may be required to pay any costs associated with use of the investigational drug, biological product, or device; and

6. A statement that the person or, if the person is a minor or lacks capacity to provide informed consent, his parent or legal guardian consents to the use of the investigational drug, biological product, or device for treatment of his terminal condition.

2015, cc. [655](#), [656](#).

§54.1-3442.3. Expanded access to investigational drugs, biological products, or devices; cost; insurance coverage.

A. A manufacturer of an investigational drug, biological product, or device may make such investigational drug, biological product, or device available to a person who meets the criteria set forth in subsection A of § [54.1-3442.2](#); however, nothing in this article shall require a manufacturer of an investigational drug, biological product, or device to make such investigational drug, biological product, or device available to such person.

B. A manufacturer that makes an investigational drug, biological product, or device available to a person who meets the criteria set forth in subsection A of § [54.1-3442.2](#) may provide the investigational drug, biological product, or device to the person free of charge or may require the person to pay the costs of, or the costs associated with, the manufacture of the investigational drug, biological product, or device.

C. An insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis, a corporation providing individual or group accident and sickness subscription contracts, or a health maintenance organization providing a health care plan for health care services may provide coverage for costs related to treatment of a person's terminal condition with an investigational drug, biological product, or device; however, nothing in this article shall require an insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis, a corporation providing individual or group accident and sickness subscription contracts, or a health maintenance organization providing a health care plan for health care services to provide coverage for costs related to treatment of a person's terminal condition with an investigational drug, biological product, or device.

2015, cc. [655](#), [656](#).

§54.1-3442.4. Limitation of liability.

A. Notwithstanding any other provision of law to the contrary, a health care provider as defined in § [8.01-581.1](#) who recommends an investigational drug, biological product, or device to a person who meets the criteria set forth in subsection A of § [54.1-3442.2](#) shall be immune from civil liability for any adverse action, condition, or other outcome resulting from the person's use of the investigational drug, biological product, or device.

B. Notwithstanding any other provision of law to the contrary, a manufacturer, distributor, administrator, health care provider as defined in § [8.01-581.1](#), sponsor, or physician who manufactures, supplies, distributes, administers, prescribes, or recommends an investigational drug, biological product, or device to a person who meets the criteria set forth in § [54.1-3442.2](#) shall be immune from suit and liability caused by, arising out of, or relating to the design, development, clinical testing and investigation, manufacture, labeling, distribution, sale, purchase, donation, dispensing, prescription, recommendation, administration, efficacy, or use of such investigational drug, biological product, or device made available to such person.

C. No claim or cause of action against a manufacturer, distributor, administrator, health care provider as defined in § [8.01-581.1](#), sponsor, or physician who manufactures, supplies, distributes, administers, prescribes, or recommends an investigational drug, biological product, or device to a person who meets the criteria set forth in § [54.1-3442.2](#) shall exist in any state court for claims of property, personal injury, or death caused by, arising out of, or relating to the design, development, clinical testing and investigation, manufacture, labeling, distribution, sale, purchase, donation, dispensing, prescription, recommendation, administration, efficacy, or use of such investigational drug, biological product, or device made available to such person.

D. No health care provider as defined in § [8.01-581.1](#) who recommends, prescribes, administers, distributes, or supplies an investigational drug, biological product, or device to a person who meets the criteria set forth in § [54.1-3442.2](#) shall be deemed to have engaged in unprofessional conduct, or shall be adversely affected in any decision relating to licensure, on such grounds.

E. Nothing in this article shall require a person to violate or act in contravention of any federal or state law as such law relates to the prescribing, dispensing, administration, or use of an investigational drug, biological product, or device.

2015, cc. [655](#), [656](#).

§54.1-3442.5. Definitions.

As used in this article:

"Cannabidiol oil" has the same meaning as specified in § [54.1-3408.3](#).

"Pharmaceutical processor" means a facility that (i) has obtained a permit from the Board pursuant to § [54.1-3408.3](#) and (ii) cultivates Cannabis plants intended only for the production of cannabidiol oil or THC-A oil, produces cannabidiol oil or THC-A oil, and dispenses cannabidiol oil or THC-A oil to a registered patient or, if such patient is a minor or an incapacitated adult as defined in § [18.2-369](#), such patient's parent or legal guardian for the treatment of intractable epilepsy.

"Practitioner" has the same meaning as specified in § [54.1-3408.3](#).

"THC-A oil" has the same meaning as specified in § [54.1-3408.3](#).

2017, c. [613](#).

§54.1-3442.6. Permit to operate pharmaceutical processor.

A. No person shall operate a pharmaceutical processor without first obtaining a permit from the Board. The application for such permit shall be made on a form provided by the Board and signed by a pharmacist who will be in full and actual charge of the pharmaceutical processor. The Board shall establish an application fee and other general requirements for such application.

B. Each permit shall expire annually on a date determined by the Board in regulation. The number of permits that the Board may issue or renew in any year is limited to one for each health service area established by the Board of Health. Permits shall be displayed in a conspicuous place on the premises of the pharmaceutical processor.

C. The Board shall adopt regulations establishing health, safety, and security requirements for pharmaceutical processors. Such regulations shall include requirements for (i) physical standards; (ii) location restrictions; (iii) security systems and controls; (iv) minimum equipment and resources; (v) recordkeeping; (vi) labeling and packaging; (vii) quarterly inspections; (viii) processes for safely and securely cultivating Cannabis plants intended for producing cannabidiol oil and THC-A oil, producing cannabidiol oil and THC-A oil, and dispensing and delivering in person cannabidiol oil and THC-A oil to a registered patient or, if such patient is a minor or an incapacitated adult as defined in § [18.2-369](#), such patient's parent or legal guardian; (ix) a maximum number of marijuana plants a pharmaceutical processor may possess at any one time; and (x) the secure disposal of plant remains.

D. Every pharmaceutical processor shall be under the personal supervision of a licensed pharmacist on the premises of the pharmaceutical processor.

E. No person who has been convicted of a felony or of any offense in violation of Article 1 (§ [18.2-247](#) et seq.) or Article 1.1 (§ [18.2-265.1](#) et seq.) of Chapter 7 of Title 18.2 shall be employed by or act as an agent of a pharmaceutical processor.

2017, c. [613](#).

§54.1-3442.7. Dispensing cannabidiol oil and THC-A oil; report.

A. A pharmaceutical processor shall dispense or deliver cannabidiol oil or THC-A oil only in person to (i) a patient who is a Virginia resident, has been issued a valid written certification, and is registered with the Board pursuant to § [54.1-3408.3](#) or (ii) if such patient is a minor or an incapacitated adult as defined in § [18.2-369](#), such patient's parent or legal guardian who is a Virginia resident and is registered with the Board pursuant to § [54.1-3408.3](#). Prior to dispensing, the pharmaceutical processor shall verify that the practitioner issuing the written certification, the patient, and, if such patient is a minor or an incapacitated adult, the patient's parent or legal guardian are registered with the Board. No pharmaceutical processor shall dispense more than a 30-day supply for any patient during any 30-day period. The Board shall establish in regulation an amount of cannabidiol oil or THC-A oil that constitutes a 30-day supply to treat or alleviate the symptoms of a patient's intractable epilepsy.

B. A pharmaceutical processor shall dispense only cannabidiol oil and THC-A oil that has been cultivated and produced on the premises of such pharmaceutical processor.

C. The Board shall report annually by December 1 to the Chairmen of the House and Senate Committees for Courts of Justice on the operation of pharmaceutical processors issued a permit by the Board, including the number of practitioners, patients, and parents or legal guardians of patients who have registered with the Board and the number of written certifications issued pursuant to § [54.1-3408.3](#).

2017, c. [613](#).

§54.1-3442.8. Criminal liability; exceptions.

In any prosecution of an agent or employee of a pharmaceutical processor under § [18.2-248](#), [18.2-248.1](#), [18.2-250](#), or [18.2-250.1](#) for possession or manufacture of marijuana or for possession, manufacture, or distribution of cannabidiol oil or THC-A oil, it shall be an affirmative defense that such agent or employee (i) possessed or manufactured such marijuana for the purposes of producing cannabidiol oil or THC-A

oil in accordance with the provisions of this article and Board regulations or (ii) possessed, manufactured, or distributed such cannabidiol oil or THC-A oil in accordance with the provisions of this article and Board regulations. If such agent or employee files a copy of the permit issued to the pharmaceutical processor pursuant to § [54.1-3442.6](#) with the court at least 10 days prior to trial and causes a copy of such permit to be delivered to the attorney for the Commonwealth, such permit shall be prima facie evidence that (a) such marijuana was possessed or manufactured for the purposes of producing cannabidiol oil or THC-A oil in accordance with the provisions of this article and Board regulations or (b) such cannabidiol oil or THC-A oil was possessed, manufactured, or distributed in accordance with the provisions of this article and Board regulations.

2017, c. [613](#).

§54.1-3443. Board to administer article.

A. The Board shall administer this article and may add substances to or deschedule or reschedule all substances enumerated in the schedules in this article pursuant to the procedures of the Administrative Process Act (§ [2.2-4000](#) et seq.). In making a determination regarding a substance, the Board shall consider the following:

1. The actual or relative potential for abuse;
2. The scientific evidence of its pharmacological effect, if known;
3. The state of current scientific knowledge regarding the substance;
4. The history and current pattern of abuse;
5. The scope, duration, and significance of abuse;
6. The risk to the public health;
7. The potential of the substance to produce psychic or physical dependence; and
8. Whether the substance is an immediate precursor of a substance already controlled under this article.

B. After considering the factors enumerated in subsection A, the Board shall make findings and issue a regulation controlling the substance if it finds the substance has a potential for abuse.

C. If the Board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

D. If the Board, in consultation with the Department of Forensic Science, determines the substance shall be placed into Schedule I or II pursuant to § [54.1-3445](#) or [54.1-3447](#), the Board may amend its regulations pursuant to Article 2 (§ [2.2-4006](#) et seq.) of the Administrative Process Act. Prior to making such amendments, the Board shall conduct a public hearing. At least 30 days prior to conducting such hearing, it shall post notice of the hearing on the Virginia Regulatory Town Hall and shall send notice of the hearing to any persons requesting to be notified of a regulatory action. In the notice, the Board shall include a list of all substances it intends to schedule by regulation. The Board shall notify the House Courts of Justice and Senate Courts of Justice Committees of any new substance added to Schedule I or II pursuant to this subsection. Any substance added to Schedule I or II pursuant to this subsection shall remain on Schedule I or II for a period of 18 months. Upon expiration of such 18-month period, such substance shall be descheduled unless a general law is enacted adding such substance to Schedule I or II. Nothing in this subsection shall preclude the Board from adding substances to or descheduling or rescheduling all substances enumerated in the schedules pursuant to the provisions of subsections A, B, and E.

E. If any substance is designated, rescheduled, or descheduled as a controlled substance under federal law and notice of such action is given to the Board, the Board may similarly control the substance under this chapter after the expiration of 30 days from publication in the Federal Register of a final or interim final order or rule designating a substance as a controlled substance or rescheduling or descheduling a substance by amending its regulations in accordance with the requirements of Article 2 (§ [2.2-4006](#) et seq.) of the Administrative Process Act. Prior to making such amendments, the Board shall post notice of the hearing on the Virginia Regulatory Town Hall and shall send notice of the hearing to any persons requesting to be notified of a regulatory action. The Board shall include a list of all substances it intends to schedule by regulation in such notice.

F. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 4.1.

G. The Board shall exempt any nonnarcotic substance from a schedule if such substance may, under the provisions of the federal Food, Drug, and Cosmetic Act (21

U.S.C. § 301 et seq.) or state law, be lawfully sold over the counter without a prescription.

1972, c. 798, § 54-524.84:1; 1976, c. 614; 1988, c. 765; 1993, c. 866; 1996, c. [408](#); 2014, cc. [674](#), [719](#); 2017, cc. [416](#), [432](#).

§54.1-3444. Controlled substances included by whatever name designated.

The controlled substances listed or to be listed in the schedules in this chapter are included by whatever official, common, usual, chemical, or trade name designated.

1972, c. 798, § 54-524.84:2; 1988, c. 765.

§54.1-3445. Placement of substance in Schedule I.

The Board shall place a substance in Schedule I if it finds that the substance:

1. Has high potential for abuse; and
2. Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

1972, c. 798, § 54-524.84:3; 1988, c. 765.

§54.1-3446. Schedule I.

The controlled substances listed in this section are included in Schedule I:

1. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (other name: PEPAP);

1-methyl-4-phenyl-4-propionoxypiperidine (other name: MPPP);

3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzamide (other name: U-47700);

3,4-dichloro-N- [1-(dimethylamino)cyclohexyl]methyl benzamide (other name: AH-7921);

Acetyl fentanyl (other name: desmethyl fentanyl);

Acetylmethadol;

Allylprodine;

Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

Alphameprodine;

Alphamethadol;

Benzethidine;

Betacetylmethadol;

Betameprodine;

Betamethadol;

Betaprodine;

Clonitazene;

Dextromoramide;

Diampromide;

Diethylthiambutene;

Difenoxin;

Dimenoxadol;

Dimepheptanol;

Dimethylthiambutene;

Dioxaphetylbutyrate;

Dipipanone;

Ethylmethylthiambutene;

Etonitazene;

Etoxadine;

Furethidine;

Hydroxypethidine;

Ketobemidone;

Levomoramide;

Levophenacymorphan;

Morpheridine;

N-[1-[1-methyl-2-(2-thienyl)ethyl]-4-piperidyl]-N-phenylpropanamide (other name: alpha-methylthiofentanyl);

N-[1-(1-methyl-2-phenylethyl)-4-piperidyl]-N-phenylacetamide (other name: acetyl-alpha-methylfentanyl);

N-[1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl]-N-phenylpropanamide (other name: beta-hydroxyfentanyl);

N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide (other names: 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine, alpha-methylfentanyl);

N-(3-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (other name: 3-fluorofentanyl);

N-[3-methyl-1-(2-hydroxy-2-phenylethyl)-4-piperidyl]-N-phenylpropanamide (other name: beta-hydroxy-3-methylfentanyl);

N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide (other name: 3-methylfentanyl);

N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide (other name: 3-methylthiofentanyl);

N-(4-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-butanamide (other name: para-fluorobutyrylfentanyl);

N-(4-fluorophenyl)-N-1-(2-phenylethyl)-4-piperidinyl]-propanamide (other name: para-fluorofentanyl);

Noracymethadol;

Norlevorphanol;

Normethadone;

Norpipanone;

N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-2-furancarboxamide (other name: Furanfentanyl);

N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-butanamide (other name: butyrylfentanyl);

N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny]-pentanamide (other name: Pentanoyl fentanyl);

N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidiny]-propanamide (other name: thiofentanyl);

Phenadoxone;

Phenampromide;

Phenomorphane;

Phenoperidine;

Piritramide;

Proheptazine;

Propiridine;

Propiram;

Racemoramide;

Tilidine;

Trimeperidine.

2. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

Acetorphine;

Acetyldihydrocodeine;

Benzylmorphine;

Codeine methylbromide;

Codeine-N-Oxide;

Cyprenorphine;

Desomorphine;

Dihydromorphine;

Drotebanol;

Etorphine;

Heroin;
Hydromorphenol;
Methyldesorphine;
Methyldihydromorphine;
Morphine methylbromide;
Morphine methylsulfonate;
Morphine-N-Oxide;
Myrophine;
Nicocodeine;
Nicomorphine;
Normorphine;
Pholcodine;
Thebacon.

3. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subdivision only, the term "isomer" includes the optical, position, and geometric isomers):

Alpha-ethyltryptamine (some trade or other names: Monase; a-ethyl-1H-indole-3-ethanamine; 3-2-aminobutyl] indole; a-ET; AET);

4-Bromo-2,5-dimethoxyphenethylamine (some trade or other names: 2-4-bromo-2,5-dimethoxyphenyl]-1-aminoethane; alpha-desmethyl DOB; 2C-B; Nexus);

3,4-methylenedioxy amphetamine;

5-methoxy-3,4-methylenedioxy amphetamine;

3,4,5-trimethoxy amphetamine;

Alpha-methyltryptamine (other name: AMT);

Bufotenine;

Diethyltryptamine;

Dimethyltryptamine;

4-methyl-2,5-dimethoxyamphetamine;

2,5-dimethoxy-4-ethylamphetamine (DOET);

2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);

Ibogaine;

5-methoxy-N, N-diisopropyltryptamine (other name: 5-MeO-DIPT);

Lysergic acid diethylamide;

Mescaline;

Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenz o -b, d] pyran; Synhexyl);

Peyote;

N-ethyl-3-piperidyl benzilate;

N-methyl-3-piperidyl benzilate;

Psilocybin;

Psilocyn;

Salvinorin A;

Tetrahydrocannabinols, except as present in marijuana and dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S.

Food and Drug Administration;

Hashish oil (some trade or other names: hash oil; liquid marijuana; liquid hashish);

2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy- α -methylphenethylamine; 2,5-DMA);

3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers;

3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl- α -methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);

N-hydroxy-3,4-methylenedioxyamphetamine (some other names: N-hydroxy- α -methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA);

4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy- α -methylphenethylamine; 4-bromo-2,5-DMA);

4-methoxyamphetamine (some trade or other names: 4-methoxy- α -methylphenethylamine; paramethoxyamphetamine; PMA);

Ethylamine analog of phencyclidine (some other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);

Pyrrolidine analog of phencyclidine (some other names: 1-(1-phenylcyclohexyl) -pyrrolidine, PCPy, PHP);

Thiophene analog of phencyclidine (some other names: 1-[1-(2-thienyl) -cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP);

1-1-(2-thienyl)cyclohexylpyrrolidine (other name: TCPy);

3,4-methylenedioxypropylvalerone (other name: MDPV);

4-methylmethcathinone (other names: mephedrone, 4-MMC);

3,4-methylenedioxyethylmethcathinone (other name: methylone);

Naphthylpropylvalerone (other name: naphyrone);

4-fluoromethylmethcathinone (other name: flephedrone, 4-FMC);

4-methoxymethylmethcathinone (other names: methedrone; bk-PMMA);

Ethcathinone (other name: N-ethylcathinone);

3,4-methylenedioxyethylmethcathinone (other name: ethylone);

Beta-keto-N-methyl-3,4 benzodioxolylbutanamine (other name: butylone);

N, N-dimethylmethcathinone (other name: metamfepramone);

Alpha-pyrrolidinopropiophenone (other name: alpha-PPP);

4-methoxy-alpha-pyrrolidinopropiophenone (other name: MOPPP);

3,4-methylenedioxy-alpha-pyrrolidinopropiophenone (other name: MDPPP);

Alpha-pyrrolidinovalerophenone (other name: alpha-PVP);

6,7-dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine (other name: MDAI);

3-fluoromethylmethcathinone (other name: 3-FMC);

4-Ethyl-2,5-dimethoxyphenethylamine (other name: 2C-E);
 4-Iodo-2,5-dimethoxyphenethylamine (other name: 2C-I);
 4-Methylethcathinone (other name: 4-MEC);
 4-Ethylmethcathinone (other name: 4-EMC);
 N, N-diallyl-5-methoxytryptamine (other name: 5-MeO-DALT);
 Beta-keto-methylbenzodioxolylpentanamine (other name: Pentylone, bk-MBDP);
 Alpha-methylamino-butyrophenone (other name: Buphedrone);
 Alpha-methylamino-valerophenone (other name: Pentedrone);
 3,4-Dimethylmethcathinone (other name: 3.4-DMMC);
 4-methyl-alpha-pyrrolidinopropiophenone (other name: MPPP);
 4-Iodo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine (other names: 25-I, 25I-NBOMe, 2C-I-NBOMe);
 Methoxetamine (other names: MXE, 3-MeO-2-Oxo-PCE);
 4-Fluoromethamphetamine (other name: 4-FMA);
 4-Fluoroamphetamine (other name: 4-FA);
 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (other name: 2C-D);
 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (other name: 2C-C);
 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (other name: 2C-T-2);
 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (other name: 2C-T-4);
 2-(2,5-Dimethoxyphenyl)ethanamine (other name: 2C-H);
 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (other name: 2C-N);
 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (other name: 2C-P);
 (2-aminopropyl)benzofuran (other name: APB);
 (2-aminopropyl)-2,3-dihydrobenzofuran (other name: APDB);
 4-chloro-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine (other names: 2C-C-NBOMe, 25C-NBOMe, 25C);

4-bromo-2,5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine (other names: 2C-B-NBOMe, 25B-NBOMe, 25B);

Acetoxymethyltryptamine (other names: AcO-Psilocin, AcO-DMT, Psilacetin);

Benocyclidine (other names: BCP, BTCP);

Alpha-pyrrolidinobutylphenone (other name: alpha-PBP);

3,4-methylenedioxy-N, N-dimethylcathinone (other names: Dimethylone, bk-MDDMA);

4-bromomethylcathinone (other name: 4-BMC);

4-chloromethylcathinone (other name: 4-CMC);

4-Iodo-2,5-dimethoxy-N-[(2-hydroxyphenyl)methyl]-benzeneethanamine (other name: 25I-NBOH);

Alpha-Pyrrolidinohexylphenone (other name: alpha-PHP);

Alpha-Pyrrolidinoheptylphenone (other name: PV8);

5-methoxy-N, N-methylisopropyltryptamine (other name: 5-MeO-MIPT);

Beta-keto-N, N-dimethylbenzodioxolylbutylamine (other names: Dibutylone, bk-DMBDB);

1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-1-pentanone (other name: N-ethyl-pentylone);

1-[1-(3-methoxyphenyl)cyclohexyl]piperidine (other name: 3-methoxy PCP);

1-[1-(4-methoxyphenyl)cyclohexyl]piperidine (other name: 4-methoxy PCP);

4-Chloromethylcathinone (other name: 4-CEC);

3-Methoxy-2-(methylamino)-1-(4-methylphenyl)-1-propanone (other name: Mexedrone);

1-propionyl lysergic acid diethylamide (other name: 1P-LSD);

(2-Methylaminopropyl)benzofuran (other name: MAPB).

4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts,

isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

Clonazepam;

Etizolam;

Flubromazepam;

Gamma hydroxybutyric acid (some other names include GHB; gamma hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

Mecloqualone;

Methaqualone.

5. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

2-(3-fluorophenyl)-3-methylmorpholine (other name: 3-fluorophenmetrazine);

Aminorex (some trade or other names; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);

Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, norephedrone), and any plant material from which Cathinone may be derived;

Cis-4-methylaminorex (other name: cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

Ethylamphetamine;

Ethyl phenyl(piperidin-2-yl)acetate (other name: Ethylphenidate);

Fenethylamine;

Methcathinone (some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)-propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR 1432);

N-Benzylpiperazine (some other names: BZP, 1-benzylpiperazine);

N, N-dimethylamphetamine (other names: N, N-alpha-trimethyl-benzeneethanamine, N, N-alpha-trimethylphenethylamine).

6. Any substance that contains one or more cannabimimetic agents or that contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and any preparation, mixture, or substance containing, or mixed or infused with, any detectable amount of one or more cannabimimetic agents.

a. "Cannabimimetic agents" includes any substance that is within any of the following structural classes:

2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent;

3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane with substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent;

3-(1-naphthoyl)pyrrole with substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent;

1-(1-naphthylmethyl)indene with substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent;

3-phenylacetylindole or 3-benzoylindole with substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent;

3-cyclopropoylindole with substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the cyclopropyl ring to any extent;

3-adamantoylindole with substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the adamantyl ring to any extent;

N-(adamantyl)-indole-3-carboxamide with substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the adamantyl ring to any extent; and

N-(adamantyl)-indazole-3-carboxamide with substitution at a nitrogen atom of the indazole ring, whether or not further substituted on the indazole ring to any extent, whether or not substituted on the adamantyl ring to any extent.

b. The term "cannabimimetic agents" includes:

5-(1,1-Dimethylheptyl)-2-[3-hydroxycyclohexyl]-phenol (other name: CP 47,497);

5-(1,1-Dimethylhexyl)-2-[3-hydroxycyclohexyl]-phenol (other name: CP 47,497 C6 homolog);

5-(1,1-Dimethyloctyl)-2-[3-hydroxycyclohexyl]-phenol (other name: CP 47,497 C8 homolog);

5-(1,1-Dimethylnonyl)-2-[3-hydroxycyclohexyl]-phenol (other name: CP 47,497 C9 homolog);

1-pentyl-3-(1-naphthoyl)indole (other names: JWH-018, AM-678);

1-butyl-3-(1-naphthoyl)indole (other name: JWH-073);

1-pentyl-3-(2-methoxyphenylacetyl)indole (other name: JWH-250);

1-hexyl-3-(naphthalen-1-oyl)indole (other name: JWH-019);

1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (other name: JWH-200);

(6aR, 10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7,10,10a-tetrahydrobenzo[c]chromen-1-ol (other name: HU-210);

1-pentyl-3-(4-methoxy-1-naphthoyl)indole (other name: JWH-081);

1-pentyl-3-(4-methyl-1-naphthoyl)indole (other name: JWH-122);

1-pentyl-3-(2-chlorophenylacetyl)indole (other name: JWH-203);

1-pentyl-3-(4-ethyl-1-naphthoyl)indole (other name: JWH-210);

1-pentyl-3-(4-chloro-1-naphthoyl)indole (other name: JWH-398);

1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (other name: AM-694);

1-((N-methylpiperidin-2-yl)methyl)-3-(1-naphthoyl)indole (other name: AM-1220);

1-(5-fluoropentyl)-3-(1-naphthoyl)indole (other name: AM-2201);

1-[(N-methylpiperidin-2-yl)methyl]-3-(2-iodobenzoyl)indole (other name: AM-2233);

Pravadoline (4-methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-yl] methanone (other name: WIN 48,098);

1-pentyl-3-(4-methoxybenzoyl)indole (other names: RCS-4, SR-19);

1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole (other names: RCS-8, SR-18);

1-pentyl-3-(2,2,3,3-tetramethylcyclopropylmethanone)indole (other name: UR-144);

1-(5-fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropylmethanone)indole (other names: XLR-11, 5-fluoro-UR-144);

N-adamantyl-1-fluoropentylindole-3-carboxamide (other name: STS-135);

N-adamantyl-1-pentylindazole-3-carboxamide (other names: AKB48, APINACA);

1-pentyl-3-(1-adamantoyl)indole (other name: AB-001);

(8-quinolinyl)(1-pentylindol-3-yl)carboxylate (other name: PB-22);

(8-quinolinyl)(1-(5-fluoropentyl)indol-3-yl)carboxylate (other name: 5-fluoro-PB-22);

(8-quinolinyl)(1-cyclohexylmethyl-indol-3-yl)carboxylate (other name: BB-22);

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide (other name: AB-PINACA);

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide (other name: AB-FUBINACA);

1-(5-fluoropentyl)-3-(1-naphthoyl)indazole (other name: THJ-2201);

N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide (other name: ADB-PINACA);

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide (other name: AB-CHMINACA);

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)indazole-3-carboxamide (other name: 5-fluoro-AB-PINACA);

N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide (other names: ADB-CHMINACA, MAB-CHMINACA);

Methyl-2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (other name: 5-fluoro-AMB);

1-naphthalenyl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (other name: NM-2201);

1-(4-fluorobenzyl)-3-(2,2,3,3-tetramethylcyclopropylmethanone)indole (other name: FUB-144);

1-(5-fluoropentyl)-3-(4-methyl-1-naphthoyl)indole (other name MAM-2201);

N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide (other name: ADB-FUBINACA);

Methyl 2-[1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate (other name: MDMB-FUBINACA);

Methyl 2-[1-(5-fluoropentyl)-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate (other names: 5-fluoro-ADB, 5-Fluoro-MDMB-PINACA);

Methyl 2-[(1-[(4-fluorophenyl)methyl]-1H-indazole-3-carbonylamino)-3-methylbutanoate (other names: AMB-FUBINACA, FUB-AMB);

N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (other name: FUB-AKB48)

N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (other name: 5F-AKB48);

Naphthalen-1-yl 1-pentyl-1H-indazole-3-carboxylate (other name: SDB-005);

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide (other name: AB-CHMICA).

1972, c. 798, § 54-524.84:4; 1973, c. 479; 1976, c. 614; 1977, c. 302; 1979, cc. 387, 435; 1982, c. 505; 1984, cc. 186, 192; 1986, c. 463; 1988, c. 765; 1994, c. [763](#); 1996, c. [408](#); 1997, c. [594](#); 1999, c. [722](#); 2000, c. [348](#); 2005, c. [119](#); 2008, c. [59](#); 2011, cc. [384](#), [410](#); 2012, cc. [762](#), [816](#); 2013, cc. [295](#), [785](#); 2014, cc. [674](#), [719](#); 2015, cc. [726](#), [757](#); 2016, cc. [103](#), [112](#); 2017, cc. [414](#), [434](#).

§54.1-3447. Placement of substance in Schedule II.

The Board shall place a substance in Schedule II if it finds that:

1. The substance has high potential for abuse;
2. The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
3. The abuse of the substance may lead to severe psychic or physical dependence.

1972, c. 798, § 54-524.84:5; 1988, c. 765.

§54.1-3448. Schedule II.

The controlled substances listed in this section are included in Schedule II:

1. Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone naltrexone and their respective salts, but including the following:

Raw opium;

Opium extracts;

Opium fluid extracts;

Powdered opium;

Granulated opium;

Tincture of opium;

Codeine;

Dihydroetorphine;

Ethylmorphine;

Etorphine hydrochloride;

Hydrocodone;

Hydromorphone;

Metopon;

Oripavine (3-O-demethylthebaine or 6,7,8,14-tetradehydro-4,

5- α -epoxy-6-methoxy-17-methylmorphinan-3-ol);

Morphine;

Oxycodone;

Oxymorphone;

Thebaine.

Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in this subdivision, but not including the isoquinoline alkaloids of opium.

Opium poppy and poppy straw.

Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine; cocaine or any salt or isomer thereof.

Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid or powder form, which contains the phenanthrene alkaloids of the opium poppy.

2. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

Alfentanil;

Alphaprodine;

Anileridine;

Bezitramide;

Bulk dextropropoxyphene (nondosage forms);

Carfentanil;

Dihydrocodeine;

Diphenoxylate;

Fentanyl;

Isomethadone;

Levo-alphacetylmethadol (levo-alpha-acetylmethadol)(levomethadyl acetate)(LAAM);

Levomethorphan;

Levorphanol;

Metazocine;

Methadone;

Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

Pethidine (other name: meperidine);

Pethidine -- Intermediate -- A, 4-cyano-1-methyl-4-phenylpiperidine;

Pethidine -- Intermediate -- B, ethyl-4-phenylpiperidine-4-carboxylate;

Pethidine -- Intermediate -- C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

Phenazocine;

Piminodine;

Racemethorphan;

Racemorphan;

Remifentanil;

Sufentanil;

Tapentadol;

Thiafentanil.

3. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

Amphetamine, its salts, optical isomers, and salts of its optical isomers;

Phenmetrazine and its salts;

Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

Methylphenidate;

Lisdexamfetamine, its salts, isomers, and salts of its isomers.

4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts,

isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Amobarbital;

Glutethimide;

Secobarbital;

Pentobarbital;

Phencyclidine.

5. The following hallucinogenic substance:

Nabilone.

6. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances which are:

a. Immediate precursors to amphetamine and methamphetamine:

Phenylacetone.

b. Immediate precursor to phencyclidine:

1-phenylcyclohexylamine;

1-piperidinocyclohexanecarbonitrile (other name: PCC).

c. Immediate precursor to fentanyl:

4-anilino-N-phenethyl-4-piperidine (ANPP).

1972, c. 798, § 54-524.84:6; 1976, c. 614; 1977, c. 302; 1978, c. 833; 1979, c. 387; 1981, c. 30; 1984, c. 192; 1986, c. 463; 1988, cc. 283, 765; 1992, c. 737; 1994, c. [763](#); 1998, c. [105](#); 2000, c. [135](#); 2005, c. [119](#); 2008, c. [74](#); 2010, c. [423](#); 2011, c. [700](#); 2017, c. [612](#).

§54.1-3449. Placement of substance in Schedule III.

The Board shall place a substance in Schedule III if it finds that:

1. The substance has a potential for abuse less than the substances listed in Schedules I and II;

2. The substance has currently accepted medical use in treatment in the United States; and

3. Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

1972, c. 798, § 54-524.84:7; 1988, c. 765.

§54.1-3450. Schedule III.

The controlled substances listed in this section are included in Schedule III:

1. Unless specifically exempted or listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

Any compound, mixture or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of amobarbital, secobarbital, or pentobarbital and one or more other active medicinal ingredients which are not listed in Schedules II through V;

Any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of amobarbital, secobarbital, or pentobarbital and approved by the Food and Drug Administration for marketing only as a suppository;

Chlorhexadol;

Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355);

Embutramide;

Ketamine, its salts, isomers, and salts of isomers (some other names: [+-] -2-[2-chlorophenyl]-2-[methylamino]-cyclohexanone);

Lysergic acid;

Lysergic acid amide;

Methypylon;

Perampanel [2-(2-oxo-1-phenyl-5-pyridin-2-yl-1, 2-dihydropyridin-3-yl) benxonitrile], including its salts, isomers, and salts of isomers;

Sulfondiethylmethane;

Sulfonethylmethane;

Sulfonmethane; and

Tiletamine-zolazepam combination product or any salt thereof.

2. Nalorphine.

3. Unless specifically excepted or unless listed in another schedule:

a. Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts thereof:

Buprenorphine.

b. Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts,

isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Benzphetamine;

Chlorphentermine;

Clortermine;

Phendimetrazine.

5. The Board may except by regulation any compound, mixture, or preparation containing any stimulation or depressant substance listed in subsection A from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

6. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

Anabolic steroids, including, but not limited to:

3beta, 17-dihydroxy-5a-androstane;

3alpha, 17beta-dihydroxy-5a-androstane;

5alpha-androstan-3, 17-dione;

1-androstenediol (3beta, 17beta-dihydroxy-5alpha-androst-1-ene);

1-androstenediol (3alpha, 17beta-dihydroxy-5alpha-androst-1-ene);

4-androstenediol (3beta, 17beta-dihydroxy-androst-4-ene);

5-androstenediol (3beta, 17beta-dihydroxy-androst-5-ene);

1-androstenedione ([5alpha]-androst-1-en-3, 17-dione);

4-androstenedione (androst-4-en-3, 17-dione);

5-androstenedione (androst-5-en-3, 17-dione);

Bolasterone (7alpha, 17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
 Boldenone (Dehydrotestosterone)(17beta-hydroxyandrost-1, 4, -diene-3-one);
 Boldione (androst-1, 4-diene-3, 17-dione);
 Calusterone (7beta, 17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
 Clostebol (4-Chlorotestosterone)(Chlorotestosterone)(4-chloro-17beta-hydroxyandrost-4-en-3-one);
 Dehydrochloromethyltestosterone (4-chloro-17beta-hydroxy-17alpha-methylandrost-1, 4-dien-3-one) ;
 Delta1-dihydrotestosterone (1-testosterone) (17beta-hydroxy-5alpha-androst-1-en-3-one);
 Desoxymethyltestosterone (madol) (17alpha-methyl-5alpha-androst-2-en-17beta-ol);
 Dromostanolone (Drostanolone) (17beta-hydroxy-2alpha-methyl-5alpha-androstan-3-one);
 Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);
 Fluoxymesterone (9-fluoro-17alpha-methyl-11beta, 17beta-dihydroxyandrost-4-en-3-one);
 Formyldienolone (Formebolone) (2-formyl-17alpha-methyl-11alpha, 17beta-dihydroxyandrost-1, 4-dien-3-one);
 Furazabol (17alpha-methyl-17beta-hydroxyandrostano[2, 3-c]-furazan);
 13-beta-ethyl-17alpha-hydroxygon-4-en-3-one;
 4-hydroxytestosterone (4, 17beta-dihydroxy-androst-4-en-3-one);
 4-hydroxy-19-nortestosterone (4, 17beta-dihydroxy-estr-4-en-3-one);
 Mestanolone (17alpha-methyl-17beta-hydroxy-5-androstan-3-one);
 Mesterolone (1alpha-methyl-17beta-hydroxy-[5alpha]-androstan-3-one);
 Methandriol (methylandrostenediol) (17alpha-methyl-3beta, 17beta-dihydroxyandrost-5-ene);
 Methandrostenolone (Methandienone) (Dehydromethyltestosterone) (17alpha-methyl-17beta-hydroxyandrost-1, 4-dien-3-one);
 Methasterone (2alpha, 17alpha-dimethyl-5alpha-androstan-17beta-ol-3-one);

Methenolone (1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);
 17alpha-methyl-3beta, 17beta-dihydroxy-5a-androstane;
 17alpha-methyl-3alpha, 17beta-dihydroxy-5a-androstane;
 17alpha-methyl-3beta, 17beta-dihydroxyandrost-4-ene);
 17alpha-methyl-4-hydroxynandrolone (17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);
 Methyldienolone (17alpha-methyl-17beta-hydroxyestra-4, 9(10)-dien-3-one);
 Methyltrienolone (17alpha-methyl-17beta-hydroxyestra-4, 9-11-trien-3-one);
 17-Methyltestosterone (Methyltestosterone)(17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);
 Mibolerone (7alpha, 17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);
 17alpha-methyl-delta1-dihydrotestosterone (17beta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one)(17-alpha-methyl-1-testosterone);
 Nandrolone (19-Nortestosterone)(17beta-hydroxyestr-4-en-3-one);
 19-nor-4, 9(10)-androstadienedione(estra-4, 9(10)-diene-3, 17-dione);
 19-nor-4-androstenediol (3beta, 17beta-dihydroxyestr-4-ene);
 19-nor-4-androstenediol (3alpha, 17beta-dihydroxyestr-4-ene);
 19-nor-5-androstenediol (3beta, 17beta-dihydroxyestr-5-ene);
 19-nor-5-androstenediol (3alpha, 17beta-dihydroxyestr-5-ene);
 19-nor-4-androstenedione (estr-4-en-3, 17-dione);
 19-nor-5-androstenedione (estr-5-en-3, 17-dione);
 Norbolethone (13beta, 17alpha-diethyl-17beta-hydroxygon-4-en-3-one);
 Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);
 Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);
 Normethandrolone (17alpha-methyl-17beta-hydroxyestr-4-en-3-one);
 Oxandrolone (17alpha-methyl-17beta-hydroxy-2-oxa-[5alpha]-androstane-3-one);
 Oxymesterone (Oxymestron) (17alpha-methyl-4, 17beta-dihydroxyandrost-4-en-3-one);

Oxymetholone (Anasterone) (17alpha-methyl-2-hydroxymethylene-17beta-hydroxy-[5alpha]-androsta n-3-one);

Prostanazol (17beta-hydroxy-5alpha-androstano[3, 2-c]pyrazole);

Stanolone (4-Dihydrotestosterone) (Dihydrotestosterone) (17beta-hydroxy-androstan-3-one);

Stanozolol (Androstanazole) (17alpha-methyl-17beta-hydroxy-[5alpha]-androst-2-eno[3, 2-c]-pyrazole);

Stenbolone (17beta-hydroxy-2-methyl-[5alpha]-androst-1-en-3-one);

Testolactone (1-Dehydrotestololactone) (13-hydroxy-3-oxo-13, 17-secoandrosta-1 , 4-dien-17-oic acid lactone);

Testosterone (17beta-hydroxandrost-4-en-3-one);

Tetrahydrogestrinone (13beta, 17alpha-diethyl-17beta-hydroxygon-4, 9, 11-trien-3-one);

Trenbolone (Trienbolone) (Trienolone) (17beta-hydroxyestr-4, 9, 11-trien-3-one); and

Any salt, ester, or ether of a drug or substance described or listed in this paragraph. However, such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the United States Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes any such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

7. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.

1972, c. 798, § 54-524.84:8; 1976, c. 614; 1977, c. 302; 1979, c. 387; 1982, c. 505; 1988, cc. 283, 765; 1992, c. 737; 2000, cc. [135](#), [348](#); 2003, c. [640](#); 2005, c. [119](#); 2006, c. [346](#); 2007, c. [14](#); 2010, c. [423](#); 2013, c. [233](#); 2014, c. [74](#); 2015, c. [303](#).

§54.1-3451. Placement of substance in Schedule IV.

The Board shall place a substance in Schedule IV if it finds that:

1. The substance has a low potential for abuse relative to substances in Schedule III;

2. The substance has currently accepted medical use in treatment in the United States; and

3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

1972, c. 798, § 54-524.84:9; 1988, c. 765.

§54.1-3452. Schedule IV.

The controlled substances listed in this section are included in Schedule IV unless specifically excepted or listed in another schedule:

1. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

Alfaxalone (5[alpha]-pregnan-3[alpha]-ol-11, 20-dione), previously spelled "alphaxalone," including its salts, isomers, and salts of isomers;

Alprazolam;

Barbital;

Bromazepam;

Camazepam;

Carisoprodol;

Chloral betaine;

Chloral hydrate;

Chlordiazepoxide;

Clobazam;

Clonazepam;

Clorazepate;

Clotiazepam;

Cloxazolam;

Delorazepam;

Diazepam;

Dichloralphenazone;

Estazolam;
Ethchlorvynol;
Ethinamate;
Ethyl loflazepate;
Fludiazepam;
Flunitrazepam;
Flurazepam;
Fospropofol;
Halazepam;
Haloxazolam;
Ketazolam;
Loprazolam;
Lorazepam;
Lormetazepam;
Mebutamate;
Medazepam;
Methohexital;
Meprobamate;
Methylphenobarbital;
Midazolam;
Nimetazepam;
Nitrazepam;
Nordiazepam;
Oxazepam;
Oxazolam;
Paraldehyde;
Petrichloral;

Phenobarbital;

Pinazepam;

Prazepam;

Quazepam;

Suvorexant ([(7R)-4-(5-chloro-1, 3-benzoxazol-2-yl)-7-methyl-1, 4-diazepan-1 -yl] [5-methyl-2- (2H-1, 2, 3-triazol-2-yl) phenyl]methanone), including its salts, isomers, and salts of isomers;

Temazepam;

Tetrazepam;

Triazolam;

Zaleplon;

Zolpidem;

Zopiclone.

2. Any compound, mixture or preparation which contains any quantity of the following substances including any salts or isomers thereof:

Fenfluramine;

Lorcaserin.

3. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Cathine (+)-norpseudoephedrine;

Diethylpropion;

Fencamfamin;

Fenproporex;

Mazindol;

Mefenorex;

Modafinil;

Phentermine;

Pemoline (including organometallic complexes and chelates thereof);

Pipradrol;

Sibutramine;

SPA (-)-1-dimethylamino-1, 2-diphenylethane.

4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxy butane);

Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

2-[(dimethylamino) methyl]-1-(3-methoxyphenyl) cyclohexanol, its salts, optical and geometric isomers, and salts of such isomers, including tramadol.

5. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts:

Butorphanol (including its optical isomers);

Eluxadolone (including its optical isomers and its salts, isomers, and salts of isomers);

Pentazocine.

6. The Board may except by regulation any compound, mixture, or preparation containing any depressant substance listed in subdivision 1 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

1972, c. 798, § 54-524.84:10; 1976, c. 614; 1977, c. 302; 1978, c. 705; 1979, c. 387; 1982, c. 505; 1986, c. 463; 1988, cc. 283, 765; 1992, c. 737; 1994, c. [763](#); 1998, c. [105](#); 1999, c. [605](#); 2000, c. [135](#); 2003, c. [640](#); 2006, c. [346](#); 2010, c. [423](#); 2012, c. [540](#); 2014, c. [74](#); 2015, c. [303](#); 2016, c. [499](#).

§54.1-3453. Placement of substance in Schedule V.

The Board shall place a substance in Schedule V if it finds that:

1. The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;
2. The substance has currently accepted medical use in treatment in the United States; and
3. The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

1972, c. 798, § 54-524.84:11; 1988, c. 765.

§54.1-3454. Schedule V.

The controlled substances listed in this section are included in Schedule V:

1. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

The Board may except by regulation any compound, mixture, or preparation containing any depressant substance listed in subdivision 1 from the application of all or any part of this chapter and such substances so excepted may be dispensed pursuant to § [54.1-3416](#).

2. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

Pyrovalerone.

3. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact);

Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester]-2779;

Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide];

Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

1972, c. 798, § 54-524.84:12; 1976, c. 614; 1977, c. 302; 1979, c. 387; 1984, c. 186; 1986, c. 463; 1988, c. 765; 1992, c. 737; 1994, c. [763](#); 2003, c. [640](#); 2006, c. [346](#); 2010, c. [423](#); 2012, c. [541](#); 2017, c. [612](#).

§54.1-3455. Schedule VI.

The following classes of drugs and devices shall be controlled by Schedule VI:

1. Any compound, mixture, or preparation containing any stimulant or depressant drug exempted from Schedules III, IV or V and designated by the Board as subject to this section.

2. Every drug, not included in Schedules I, II, III, IV or V, or device, which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts qualified by scientific training and experience to evaluate its safety and efficacy as safe for use except by or under the supervision of a practitioner licensed to prescribe or administer such drug or device.

3. Any drug, not included in Schedules I, II, III, IV or V, required by federal law to bear on its label prior to dispensing, at a minimum, the symbol "Rx only," or which bears the legend "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: Federal Law Restricts This Drug To Use By Or On The Order Of A Veterinarian" or any device which bears the legend "Caution: Federal Law Restricts This Device To Sales By Or On The Order Of A _____." (The blank should be completed with the word "Physician," "Dentist," "Veterinarian," or with the professional designation of any other practitioner licensed to use or order such device.)

1972, c. 798, § 54-524.84:13; 1976, c. 614; 1977, c. 302; 1988, c. 765; 1999, c. [605](#).

§54.1-3456. Controlled substance analog.

A controlled substance analog shall, to the extent intended for human consumption, be treated, for the purposes of any state law, as a controlled substance in Schedule I or II. A controlled substance analog shall be considered to be listed on the same schedule as the drug or class of drugs which it imitates.

1987, c. 447, § 54-524.84:14; 1988, c. 765; 2014, cc. [674](#), [719](#).

§54.1-3456.1. Drugs of concern.

A. The Board may promulgate regulations designating specific drugs and substances, including any controlled substance or other drug or substance where there has been or there is the actual or relative potential for abuse, as drugs of concern. Drugs or substances designated as drugs of concern shall be reported to the Department of Health Professions and shall be subject to reporting requirements for the Prescription Monitoring Program established pursuant to Chapter 25.2 (§ [54.1-2519](#) et seq.).

B. Drugs and substances designated as drugs of concern shall include any material, compound, mixture, or preparation that contains any quantity of the substance tramadol or gabapentin, including its salts. Drugs and substances designated as drugs of concern shall not include any nonnarcotic drug that may be lawfully sold over the counter or behind the counter without a prescription.

2014, c. [664](#); 2017, c. [181](#).

§54.1-3457. Prohibited acts.

The following acts shall be prohibited:

1. The manufacture, sale, delivery, holding, or offering for sale of any drug, device, or cosmetic that is adulterated or misbranded.
2. The adulteration or misbranding of any drug, device, or cosmetic.

3. The receipt in commerce of any drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.
4. The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of § [54.1-3421](#).
5. The dissemination of any false advertisement.
6. The refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record.
7. The giving of a false guaranty or undertaking.
8. The removal or disposal of a detained article in violation of § [54.1-3459](#).
9. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.
10. The forging, counterfeiting, simulating, or falsely representing, or without proper authority using of any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or of the federal act.
11. The using by any person to his own advantage, or revealing, other than to the Board or its authorized representative or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection.
12. The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under § [54.1-3421](#), or that such drug complies with the provisions of such section.
13. In the case of a drug distributed or offered for sale in this Commonwealth, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal

act. This subdivision shall not be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

14. Placing or causing to be placed upon any drug or device or container, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by this section or making, selling, disposing of, or causing to be made, sold, or disposed of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit drug.

15. The doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

16. Dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the permission of the person ordering or prescribing, except as provided in § [54.1-3408.03](#) relating to dispensing of therapeutically equivalent drugs.

17. Dispensing or causing to be dispensed a biosimilar in place of a prescribed biological product or brand of biological product, except as provided in § [54.1-3408.04](#) related to dispensing of interchangeable biosimilars.

1970, c. 650, § 54-524.85; 1988, c. 765; 2003, c. [639](#); 2013, cc. [412](#), [544](#).

§54.1-3458. Violations.

A. Any person who violates any of the provisions of § [54.1-3457](#) shall be guilty of a Class 2 misdemeanor.

B. No person shall be subject to the penalties of this section for having violated subdivisions 1 and 3 of § [54.1-3457](#) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this Commonwealth from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter.

C. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section for the dissemination of such false advertisement, unless he has refused, on the request of the Board, to furnish the Board the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in this Commonwealth who caused him to disseminate such advertisement.

1970, c. 650, § 54-524.87; 1988, c. 765.

§54.1-3459. Tagging of adulterated or misbranded drugs, devices, or cosmetics; condemnation; destruction; expenses.

A. Whenever a duly authorized agent of the Board finds, or has probable cause to believe, that any drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter or is in violation of § [54.1-3457](#), he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded or in violation of § [54.1-3457](#) and has been detained. The tag shall also warn all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by an authorized agent or the court. It shall be unlawful for any person to remove or dispose of such detained article by sale or otherwise without permission.

B. When an article is adulterated or misbranded or is in violation of § [54.1-3421](#), the Board may petition the circuit court in whose jurisdiction the article is detained for condemnation of such article. When an authorized agent finds that an article which has been detained is not adulterated or misbranded, or in violation of § [54.1-3421](#), he shall remove the tag or other marking.

C. If the court finds that a detained article is adulterated or misbranded, or in violation of § [54.1-3421](#), such article shall, after entry of the decree, be destroyed at the expense of the claimant, under the supervision of an authorized agent, and all court costs and fees, and storage and other proper expenses, shall be levied against the claimant or his agent. When the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court shall order the article to be properly labeled or processed. The expense of the supervision shall be paid by the claimant. The article shall be returned to the claimant and the bond shall be discharged on the representation to the court by the Board that the article is no longer

in violation of this chapter, and that the expenses of such supervision have been paid.

1970, c. 650, § 54-524.88; 1988, c. 765.

§54.1-3460. Poisonous or deleterious substance, or color additive.

Any added poisonous or deleterious substance, or any color additive, shall with respect to any particular use or intended use be deemed unsafe with respect to any drug, device, or cosmetic, unless there is a regulation allowing limited use of a quantity of such substance, and the use or intended use of such substance conforms to the terms prescribed by regulation. While such regulations relating to such substance are in effect, a drug or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulations, be considered adulterated.

1970, c. 650, § 54-524.91; 1988, c. 765.

§54.1-3461. Adulterated drug or device.

A. A drug or device shall be deemed to be adulterated:

1. If it consists in whole or in part of any filth, putrid or decomposed substance;
2. If it has been produced, prepared, packed, or held under insanitary conditions whereby it has been contaminated with filth, or whereby it has been rendered injurious to health;
3. If it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter;
4. If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;
5. If it is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or § [54.1-3460](#); or
6. It is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act or § [54.1-3460](#).

B. A drug or device shall be deemed to be adulterated if it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination of strength, quality, or purity shall be made

in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity set forth in such compendium, if the difference in strength, quality, or purity from such standard is plainly stated on its label.

Whenever a drug is recognized in both the United States Pharmacopoeia National Formulary and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia National Formulary unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia National Formulary.

C. A drug or device shall be deemed to be adulterated if it is not subject to the provisions of subsection B of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

D. A drug or device shall be deemed to be adulterated if it is a drug and any substance has been (i) mixed or packed with it so as to reduce its quality or strength or (ii) substituted wholly or in part for it.

Code 1950, § 54-461; 1970, c. 650, § 54-524.92; 1988, c. 765.

§54.1-3462. Misbranded drug or device.

A drug or device shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.
2. If its package does not bear a label containing the name and place of business of the manufacturer, packer, or distributor. However, all prescription drugs intended for human use and devices shall bear a label containing the name and place of business of the manufacturer of the final dosage form of the drug and, if different, the name and place of business of the packer or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. Reasonable variations shall be permitted, and exemptions for small packages shall be allowed in accordance with regulations of the Board.
3. If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed with such conspicuousness, as compared with other words, statements, designs or devices, in the

labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

4. If it is for use by man and contains any quantity of the narcotic or hypnotic substances alpha-eucaine, barbituric acid, beta-eucaine, bromal, carbromal, chloral, coca, cocaine, codeine, morphine, opium, paraldehyde, or sulfonmethane, or any chemical derivative of such substances, which derivative, after investigation has been found to be and designated as, habit forming, by regulations issued by the Board under this chapter, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning -- May Be Habit Forming."

5. If it is a drug, unless its label bears, to the exclusion of any other nonproprietary name, except the applicable systematic chemical name or the chemical formula, the established name of the drug, and in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol, and the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances. However, the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subdivision, shall apply only to prescription drugs. Any prescription drug shall have the established name of the drug or ingredient printed on its label prominently and in type at least half as large as that used for any proprietary name or designation for such drug or ingredient. Exemptions may be allowed under regulations of the Board.

As used in this subdivision, the term "established name," with respect to a drug or ingredient, means the applicable official name designated pursuant to § 508 of the federal act, or if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title in such compendium or if neither exists, then the common or usual name, if any, of such drug or of such ingredient. Whenever, an article is recognized in the United States Pharmacopoeia National Formulary and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia National Formulary

shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply.

6. Unless its labeling bears adequate directions for use and such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users. The Board shall promulgate regulations exempting such drug or device from such requirements when these requirements are not necessary to protect the public health and the articles are also exempted under regulations issued under § 502(f) of the federal act.

7. If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed. The method of packing may be modified with the consent of the Board, or if consent is obtained under the federal act. Whenever a drug is recognized in both the United States Pharmacopoeia National Formulary and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia National Formulary with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia National Formulary. However, in the event of inconsistency between the requirements of this subdivision and those of subdivision 5 as to the name by which the drug or its ingredients shall be designated, the requirements of subdivision 5 shall prevail.

8. If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling or advertising.

9. If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless it is from a batch for which a certificate or release has been issued pursuant to § 506 of the federal act, and such certificate or release is in effect with respect to such drug.

10. If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative, unless it is from a batch, for which a certificate or release has been issued pursuant to § 507 of the federal act, and such certificate or release is in effect for such drug. This subdivision shall not apply to any

drug or class of drugs exempted by regulations promulgated under § 507(c) or (d) of the federal law.

For the purpose of this subdivision the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by microorganisms and which has the capacity to inhibit or destroy microorganisms in dilute solution, including, the chemically synthesized equivalent of any such substance.

11. If it is a color additive, the intended use of which in or on drugs is for coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of the federal act.

12. In the case of any prescription drug distributed or offered for sale in this Commonwealth, unless the manufacturer, packer, or distributor includes in all advertisements and other descriptive printed matter a true statement of (i) the established name, as defined in this section, printed prominently and in type at least half as large as that used for any trade or brand name, (ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under this section, and (iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as are required in regulations issued under the federal act.

13. If a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this chapter if such drugs and devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with regulations issued by the Board.

Code 1950, § 54-463; 1958, c. 551; 1970, c. 650, § 54-524.93; 1976, c. 644; 1988, c. 765.

§54.1-3463. Exemption of drugs dispensed by filling or refilling prescription.

A. Any drug dispensed by filling or refilling a written or oral prescription of a prescriber shall be exempt from the requirements of § [54.1-3462](#) except subdivisions 1, 9, and 10, and the packaging requirements of subdivision 7, if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber and the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription.

B. This section shall not be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marijuana as defined in the applicable federal and state laws relating to narcotic drugs and marijuana.

1970, c. 650, § 54-524.94; 1988, c. 765; 1996, c. [408](#).

§54.1-3464. Adulterated cosmetics.

A cosmetic shall be deemed to be adulterated:

1. If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement, or under such conditions of use as are customary or usual. This provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution -- This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purpose of this subdivision and subdivision 5, the term "hair dye" shall not include eyelash or eyebrow dyes;
2. If it consists in whole or in part of any filthy, putrid, or decomposed substance;
3. If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;
4. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

5. If it is not a hair dye, and it is or it bears or contains a color additive which is unsafe within the meaning of the federal act or § [54.1-3460](#).

Code 1950, § 54-462; 1970, c. 650, § 54-524.96; 1988, c. 765.

§54.1-3465. Misbranded cosmetics.

A cosmetic shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular;
2. If in package form unless it bears a label containing the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. However, reasonable variations shall be permitted, and exemptions for small packages shall be established by the Board;
3. If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
4. If its container is so made, formed or filled as to be misleading;
5. If it is a color additive, unless its packaging and labeling are in conformity with packaging and labeling requirements applicable to such color additive under the provisions of the federal act. This subdivision shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes.

A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter while it is in transit in commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all applicable provisions of this chapter.

Code 1950, § 54-466; 1970, c. 650, § 54-524.97; 1988, c. 765.

§54.1-3466. Possession or distribution of controlled paraphernalia; meaning of controlled paraphernalia; evidence; exceptions.

A. For purposes of this chapter, "controlled paraphernalia" means (i) a hypodermic syringe, needle, or other instrument or implement or combination thereof adapted for the administration of controlled dangerous substances by hypodermic injections under circumstances that reasonably indicate an intention to use such controlled paraphernalia for purposes of illegally administering any controlled drug or (ii) gelatin capsules, glassine envelopes, or any other container suitable for the packaging of individual quantities of controlled drugs in sufficient quantity to and under circumstances that reasonably indicate an intention to use any such item for the illegal manufacture, distribution, or dispensing of any such controlled drug. Evidence of such circumstances shall include, but not be limited to, close proximity of any such controlled paraphernalia to any adulterants or equipment commonly used in the illegal manufacture and distribution of controlled drugs including, but not limited to, scales, sieves, strainers, measuring spoons, staples and staplers, or procaine hydrochloride, mannitol, lactose, quinine, or any controlled drug, or any machine, equipment, instrument, implement, device, or combination thereof that is adapted for the production of controlled drugs under circumstances that reasonably indicate an intention to use such item or combination thereof to produce, sell, or dispense any controlled drug in violation of the provisions of this chapter.

B. Except as authorized in this chapter, it is unlawful for any person to possess controlled paraphernalia.

C. Except as authorized in this chapter, it is unlawful for any person to distribute controlled paraphernalia.

D. A violation of this section is a Class 1 misdemeanor.

E. The provisions of this section shall not apply to persons who have acquired possession and control of controlled paraphernalia in accordance with the provisions of this article or to any person who owns or is engaged in breeding or raising livestock, poultry, or other animals to which hypodermic injections are customarily given in the interest of health, safety, or good husbandry; or to hospitals, physicians, pharmacists, dentists, podiatrists, veterinarians, funeral directors and embalmers, persons to whom a permit has been issued, manufacturers, wholesalers, or their authorized agents or employees when in the usual course of their business, if the controlled paraphernalia lawfully obtained continue to be used for the legitimate purposes for which they were obtained.

1971, Ex. Sess., cc. 210, 245; 1976, c. 614; 1988, c. 765; 2016, c. [229](#).

§54.1-3467. Distribution of hypodermic needles or syringes, gelatin capsules, quinine or any of its salts.

A. Distribution by any method, of any hypodermic needles or syringes, gelatin capsules, quinine or any of its salts, in excess of one-fourth ounce shall be restricted to licensed pharmacists or to others who have received a license or a permit from the Board.

B. (Expires July 1, 2020) Nothing in this section shall prohibit the dispensing or distributing of hypodermic needles and syringes by persons authorized by the State Health Commissioner pursuant to a comprehensive harm reduction program established pursuant to § [32.1-45.4](#) who are acting in accordance with the standards and protocols of such program for the duration of the declared public health emergency.

1971, Ex. Sess., cc. 210, 245; 1988, c. 765; 2017, c. [183](#).

§54.1-3468. Conditions to dispensing device, item, or substance; records.

In dispensing any device, item or substance, the pharmacist or other licensed or permitted person referred to in § [54.1-3467](#) shall:

1. Require the person requesting such device, item or substance to furnish suitable identification, including proof of age when appropriate;
2. Require the person requesting such item, device or substance to furnish written legitimate purposes for which such item, device or substance is being purchased, except in cases of telephone orders for such item, device or substance from customers of known good standing;
3. At the time of dispensing, make and keep a record showing the date of dispensing, the name and quantity of the device, item or substance, the price at which it was sold, the name and address of the person to whom the device, item or substance was dispensed, the reason for its purchase and enter his initials thereon.

No such devices, substances or items shall be sold or distributed to persons under the age of sixteen years except by a physician for legitimate purposes or upon his prescription. Records shall be maintained pursuant to this chapter and the Board's regulations and shall be made available for inspection to any law-enforcement officer or agent of the Board. Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

1971, Ex. Sess., cc. 210, 245; 1988, c. 765.

§54.1-3469. Storage, usage, and disposition of controlled paraphernalia.

Each person, association or corporation which has lawfully obtained possession of any of the controlled paraphernalia mentioned in § [54.1-3467](#) shall exercise reasonable care in the storage, usage and disposition of such devices or substances to ensure that they are not diverted for reuse for any purposes other than those for which they were lawfully obtained. Any person who permits or causes, directly or indirectly, such controlled paraphernalia to be used for any other purpose than that for which it was lawfully obtained shall be guilty of a Class 1 misdemeanor.

1971, Ex. Sess., cc. 210, 245; 1988, c. 765.

§54.1-3470. Obtaining controlled paraphernalia by fraud, etc.

A. No person shall obtain or attempt to obtain any item, device or substance referred to in § [54.1-3467](#) by fraud, deceit, misrepresentation, or subterfuge or by giving a false name or a false address.

B. No person shall furnish false or fraudulent information in or omit any information from, or willfully make a false statement in obtaining or attempting to obtain any of the instruments or substances referred to in § [54.1-3467](#).

C. No person shall, for the purpose of obtaining any such instrument or substance, falsely claim to be a manufacturer, wholesaler, pharmacist, practitioner of the healing arts, funeral director, embalmer or veterinarian.

Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

1971, Ex. Sess., cc. 210, 245; 1988, c. 765.

§54.1-3471. Issuance of permits to certain persons other than registered pharmacists.

The Board shall, upon written application, on a form furnished by the Board, issue a permit to any person other than a licensed pharmacist who in the usual course of business sells any item referred to in § [54.1-3467](#) as a wholesale distributor or distributes at retail to any persons who own or breed or raise livestock, poultry, or other animals to which such items, devices or substances are customarily given to or used upon in the interest of health, safety, or good husbandry. This permit shall not authorize the sale or distribution of these items, devices or substances for human use and the permitted person shall exercise reasonable diligence to assure that the items distributed are not for the purpose of human consumption.

1971, Ex. Sess., cc. 210, 245; 1988, c. 765.

§54.1-3472. Article inapplicable to certain persons.

The provisions of this article shall not apply to legitimate distribution by or possession of controlled paraphernalia by physicians, dentists, podiatrists, veterinarians, funeral directors and embalmers.

1971, Ex. Sess., cc. 210, 245; 1988, c. 765.

Educational Facilities Authority Act

§23-30.39. (Repealed effective October 1, 2016) Declaration of policy.

It is hereby declared that for the benefit of the people of the Commonwealth, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities; that it is essential that institutions for higher education within the Commonwealth be provided with appropriate additional means to assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities; and that it is the purpose of this chapter to provide a measure of assistance and an alternative method to enable institutions for higher education in the Commonwealth to provide the facilities and structures which are sorely needed to accomplish the purposes of this chapter, all to the public benefit and good, to the extent and manner provided herein.

1972, c. 686.

§23-30.40. (Repealed effective October 1, 2016) Title of chapter.

This chapter may be cited as the "Educational Facilities Authority Act."

1972, c. 686.

§23-30.41. (Repealed effective October 1, 2016) Definitions.

As used in this chapter, unless the context requires a different meaning:

(a) "Authority" means the Virginia College Building Authority created by § [23-30.25](#).

(b) "Project" in the case of a participating institution, means a structure or structures suitable for use as a dormitory or other multi-unit housing facility for students, faculty, officers or employees, a dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility,

health care facility, maintenance, storage or utility facility and other structures or facilities related to any of the foregoing or required or useful for the instruction of students or the conducting of research or the operation of an institution of higher education, including parking and other facilities or structures essential or convenient for the orderly conduct of such institution of higher education, and shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended but shall not include such items as books, fuel, supplies or other items the costs of which are customarily deemed to result in a current operating charge, and shall not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

(c) "Costs" as applied to a project or any portion thereof financed under the provisions of this chapter means all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project including all lands, structures, real or personal property, rights, rights-of-way, air rights, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to, during and for a period after completion of such construction and acquisition, provisions for reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, the cost of architectural, engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project and such other expenses as may be necessary or incident to the construction and acquisition of the project, the financing of such construction and acquisition and the placing of the project in operation.

(d) "Bonds" or "revenue bonds" means revenue bonds of the Authority issued under the provisions of this chapter, including revenue refunding bonds, notes and other obligations, notwithstanding that the same may be secured by mortgage or by the full faith and credit or by any other lawfully pledged security of either one or more participating institutions.

(e) "Participating institution" means any (i) organization that is exempt from federal income taxation pursuant to § 501(c)(3) of the Internal Revenue Code and that is owned or controlled by a public institution of higher education or whose purpose is to support or otherwise benefit a public institution of higher education or (ii) non-profit private institution of higher education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education that, pursuant to the provisions of this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of obligations or of a mortgage or of advances as provided in this chapter.

1972, c. 686; 1973, c. 205; 2016, cc. [532](#), [658](#).

§23-30.42. (Repealed effective October 1, 2016) Powers and duties of Authority.

The Authority shall assist participating institutions in the acquisition, construction, and financing, and the refinancing of projects begun after July 1, 1972, and for this purpose the Authority is authorized and empowered. In addition to such other powers as are granted to the Authority by law, it is further empowered:

- (a) To determine the location and character of any project to be financed under the provisions of this chapter, and to construct, reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease, as lessee or lessor, and regulate the same, to enter into contracts for any or all of such purposes, to enter into contracts for the management and operation of a project, and to designate a participating institution as its agent to determine the location and character of a project undertaken by such participating institution under the provisions of this chapter and, as the agent of the Authority, to construct, reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease, as lessee or lessor, and regulate the same, and, as the agent of the Authority, to enter into contracts for any or all of such purposes, including contracts for the management and operation of such project;
- (b) To issue bonds, bond anticipation notes, and other obligations of the Authority for any of its corporate purposes, and to fund or refund the same all as provided in this chapter;
- (c) Generally, to fix and revise from time to time and charge and collect rates, rents, fees, and charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and to contract with any person, partnership, association, or corporation or other body public or private in respect thereof and to

designate a participating institution or a participating hospital as its agent to fix, revise, charge, and collect such rates, rents, fees, and charges and to make such contracts;

(d) To establish rules and regulations for the use of a project or any portion thereof and to designate a participating institution as its agent to establish rules and regulations for the use of a project in which such participating institution is participating;

(e) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment and to fix their compensation;

(f) To receive and accept from any public agency loans or grants for or in aid of the construction of a project or any portion thereof and to receive and accept loans, grants, aid, or contributions from any source of either money, property, labor, or other things of value to be held, used, and applied only for the purposes for which such loans, grants, aid, and contributions are made;

(g) To mortgage any project and the site thereof for the benefit of the holders of revenue bonds issued to finance such project;

(h) To make loans to any participating institution for the cost of a project in accordance with an agreement between the Authority and one or more participating institutions, provided that no such loan shall exceed the total cost of the project as determined by such participating institution and approved by the Authority;

(i) To make loans to participating institutions to refund outstanding obligations, mortgages, or advances issued, made, or given by such participating institutions for the cost of a project;

(j) To charge to and equitably apportion among participating institutions its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter; and

(k) To do all things necessary or convenient to carry out the purposes of this chapter.

In carrying out the purposes of this chapter, the Authority may undertake a joint project for two or more participating institutions and, thereupon, all other provisions of this chapter shall apply to and for the benefit of the Authority and the participants in such joint project or projects.

1972, c. 686; 2016, cc. [532](#), [658](#).

§23-30.43. (Repealed effective October 1, 2016) Expenses of administering chapter.

All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this chapter.

1972, c. 686.

§23-30.44. (Repealed effective October 1, 2016) Acquisition of property.

The Authority is authorized and empowered, directly or by and through a participating institution, as its agent, to acquire by purchase solely from funds provided under the authority of this chapter, or by gifts or devise, such lands, structures, property, real or personal, rights, rights-of-way, air rights, franchises, easements, and other interests in lands, including lands lying under water and riparian rights, that are located within the Commonwealth as it may deem necessary or convenient for the acquisition, construction, or operation of a project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the Authority or in the name of one or more participating institutions as its agent.

1972, c. 686; 2016, cc. [532](#), [658](#).

§23-30.45. (Repealed effective October 1, 2016) Execution of deeds and conveyances.

When the principal of and interest on revenue bonds of the Authority issued to finance the cost of a particular project or projects for one or more participating institutions, including any revenue refunding bonds issued to refund and refinance such revenue bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution or trust agreement authorizing and securing the same have been satisfied and the lien of such resolution or trust agreement has been released in accordance with the provisions thereof, the Authority shall promptly do such things and execute such deeds and conveyances as are necessary and required to convey title to such project or projects to such participating institution, free and clear of all liens and encumbrances, all to the extent that title to such project or projects is not, at the time, vested in such participating institution.

1972, c. 686; 2016, cc. [532](#), [658](#).

§23-30.46. (Repealed effective October 1, 2016) Issuance of negotiable notes.

The Authority may from time to time issue negotiable notes for any corporate purpose and may from time to time renew any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The Authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed and delivered in the same manner as bonds. Any resolution or resolutions authorizing notes of the Authority or any issue thereof may contain any provisions which the Authority is authorized to include in any resolution or resolutions authorizing revenue bonds of the Authority or any issue thereof, and the Authority may include in any notes any terms, covenants or conditions which it is authorized to include in any bonds. All such notes shall be payable solely from the revenues of the Authority, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

1972, c. 686.

§23-30.47. (Repealed effective October 1, 2016) Issuance of revenue bonds.

(a) The Authority may from time to time issue revenue bonds for any corporate purpose and all such revenue bonds, notes, bond anticipation notes, or other obligations of the Authority issued pursuant to this chapter shall be and are hereby declared to be negotiable for all purposes notwithstanding their payment from a limited source and without regard to any other law or laws. In anticipation of the sale of such revenue bonds, the Authority may issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of any such note, including renewals thereof, shall not exceed five years from the date of issue of the original note. Such notes shall be paid from any revenues of the Authority available therefor and not otherwise pledged, or from the proceeds of sale of the revenue bonds of the Authority in anticipation of which they were issued. The notes shall be issued in the same manner as the revenue bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions, or limitations that a bond resolution of the Authority may contain.

(b) The revenue bonds and notes of every issue shall be payable solely out of revenues to the Authority, subject only to any agreements with the holders of particular revenue bonds or notes pledging any particular revenues and subject to any

agreements with any participating institution. Notwithstanding that revenue bonds and notes may be payable from a special fund, they shall be and be deemed to be, for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds and notes for registration.

(c) The revenue bonds may be issued as serial bonds or as term bonds, or the Authority, in its discretion, may issue bonds of both types. The revenue bonds shall be authorized by resolution of the members of the Authority and shall bear such date or dates, mature at such time or times, not exceeding fifty years from their respective dates, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. The revenue bonds or notes may be sold at public or private sale for such price or prices as the Authority shall determine. Pending preparation of the definitive bonds, the Authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(d) Any resolution or resolutions authorizing any revenue bonds or any issue of revenue bonds may contain provisions, which shall be a part of the contract with the holders of the revenue bonds to be authorized, as to:

(1) Pledging all or any part of the revenues of a project or projects, any revenue producing contract or contracts made by the Authority with any individual, partnership, corporation or association or other body, public or private, to secure the payment of the revenue bonds or of any particular issue of revenue bonds, subject to such agreements with bondholders as may then exist; (2) the rentals, fees and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues; (3) the establishment and setting aside of reserves or sinking funds, and the regulation and disposition thereof; (4) limitations on the right of the Authority or its agent to restrict and regulate the use of the project; (5) limitations on the purpose to which the proceeds of sale of any issue of revenue bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the revenue bonds or any issue of the revenue bonds; (6) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding bonds; (7) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated,

the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given; (8) limitations on the amount of moneys derived from the project to be expended for operating, administrative or other expenses of the Authority; (9) defining the acts or omissions to act which shall constitute a default in the duties of the Authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default; (10) the duties, obligations and liabilities of any trustee or paying agent; and (11) the mortgaging of a project and the site thereof for the purpose of securing the bondholders.

(e) Neither the members of the Authority nor any person executing the revenue bonds or notes shall be liable personally on the revenue bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The Authority shall have power out of any funds available therefor to purchase its bonds or notes. The Authority may hold, pledge, cancel or resell such bonds or notes subject to and in accordance with agreements with bondholders.

1972, c. 686; 2016, cc. [532](#), [658](#).

§23-30.48. (Repealed effective October 1, 2016) Security for revenue bonds.

In the discretion of the Authority any revenue bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the Authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within the Commonwealth. Such trust agreement or the resolution providing for the issuance of such revenue bonds may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. Such trust agreement or resolution providing for the issuance of such revenue bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly such provisions as have hereinabove been specifically authorized to be included in any resolution or resolutions of the Authority authorizing revenue bonds thereof. Any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of bonds or of revenues or other moneys may furnish such indemnifying bonds or pledge such securities as may be required by the Authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution

may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of a project.

1972, c. 686.

§23-30.49. (Repealed effective October 1, 2016) Revenue bonds not obligations of Commonwealth or political subdivision.

Revenue bonds issued under the provisions of this chapter shall not be deemed to constitute a debt or liability of the Commonwealth or of any political subdivision thereof or a pledge of the faith and credit of the Commonwealth or of any such political subdivision, but shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the Commonwealth of Virginia nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the project or projects or the portion thereof for which they are issued and that neither the faith and credit nor the taxing power of the Commonwealth of Virginia or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the Commonwealth or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

1972, c. 686.

§23-30.50. (Repealed effective October 1, 2016) Rates, rents, fees and charges; sinking fund.

The Authority may fix, revise, charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by each project and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. Such rates, rents, fees and charges shall be fixed and adjusted in respect of the aggregate of rates, rents, fees and charges from such project so as to provide funds sufficient with other revenues, if any, (i) to pay the cost of maintaining, repairing and operating the project and each and every portion thereof, to the extent that the payment of such cost has not otherwise been adequately provided for, (ii) to pay the principal of and the interest on outstanding revenue bonds of the Authority issued in respect of such project as the same shall become due

and payable and (iii) to create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, such revenue bonds of the Authority. Such rates, rents, fees and charges shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of this Commonwealth other than the Authority. A sufficient amount of the revenues derived in respect of a project, except such part of such revenues as may be necessary to pay the cost of maintenance, repair and operation and to provide reserves and for renewals, replacements, extensions, enlargements and improvements as may be provided for in the resolution authorizing the issuance of any revenue bonds of the Authority or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such revenue bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the rates, rents, fees and charges and other revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking or other similar fund shall be a fund for all such revenue bonds issued to finance a project or projects by one or more participating institutions, without distinction or priority of one over another, provided the Authority in any such resolution or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular project by a participating institution and for the revenue bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of revenue bonds having a subordinate lien in respect of the security herein authorized to other revenue bonds of the Authority and, in such case, the Authority may create separate or other similar funds in respect of such subordinate lien bonds.

1972, c. 686; 2016, cc. [532](#), [658](#).

§23-30.51. (Repealed effective October 1, 2016) Moneys received deemed trust funds.

All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. Any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and the resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide.

1972, c. 686.

§23-30.52. (Repealed effective October 1, 2016) Remedies of bondholders, etc.

Any holder of revenue bonds, notes, bond anticipation notes, other notes or other obligations of the Authority, issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such trust agreement securing, such bonds or other obligations, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the Authority or any officer, employee or agent thereof, including the fixing, charging and collecting of the rates, rents, fees and charges herein authorized and required by the provisions of such resolution or trust agreement to be fixed, established and collected.

1972, c. 686.

§23-30.53. (Repealed effective October 1, 2016) Exemption from taxation.

The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of this Commonwealth, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a project by the Authority or its agent will constitute the performance of an essential public function, neither the Authority nor its agent shall be required to pay any taxes or assessments upon or in respect of a project or any property acquired or used by the Authority or its agent under the

provisions of this chapter or upon the income therefrom, and any bonds issued under the provisions of this chapter, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the Commonwealth and by the municipalities and other political subdivisions in the Commonwealth.

1972, c. 686.

§23-30.54. (Repealed effective October 1, 2016) Issuance of refunding bonds.

(a) The Authority is hereby authorized to provide for the issuance of revenue bonds of the Authority for the purpose of refunding any revenue bonds of the Authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or any subsequent date of redemption, purchase or maturity of such revenue bonds, and, if deemed advisable by the Authority, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project or any portion thereof.

(b) The proceeds of any such revenue bonds issued for the purpose of refunding outstanding revenue bonds may, in the discretion of the Authority, be applied to the purchase or retirement at maturity or redemption of such outstanding revenue bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the Authority.

(c) Any such escrowed proceeds, pending such use, may be invested and reinvested in direct obligations of the United States of America, or in certificates of deposit or time deposits secured by direct obligations of the United States of America, maturing at such time or times as shall be appropriate to assure the prompt payment, as to principal, interest and redemption premium, if any, of the outstanding revenue bonds to be so refunded. The interest, income and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding revenue bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the Authority for use by it in any lawful manner.

(d) The portion of the proceeds of any such revenue bonds issued for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project may be invested and reinvested in direct obligations of the United States of America, or in certificates of deposit or time deposits secured by direct obligations of the United States of America, maturing not later than the time or times when such proceeds will be needed for the purpose of paying all or any part of such cost. The interest, income and profits, if any, earned or realized on such investment may be applied to the payment of all or any part of such cost or may be used by the Authority in any lawful manner.

(e) All such revenue bonds shall be subject to the provisions of this chapter in the same manner and to the same extent as other revenue bonds issued pursuant to this chapter.

1972, c. 686.

§23-30.55. (Repealed effective October 1, 2016) Bonds to be legal investments.

Bonds issued by [the] Authority under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any Commonwealth or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations of the Commonwealth is now or may hereafter be authorized by law.

1972, c. 686.

§23-30.56. (Repealed effective October 1, 2016) Chapter supplemental; application of other laws; Authority not subject to supervision, etc., by other agencies.

The foregoing sections of this chapter shall be deemed to provide a complete, additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws; provided the issuance of revenue bonds and revenue refunding bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. Except as otherwise expressly provided in this chapter,

none of the powers granted to the Authority under the provisions of this chapter shall be subject to the supervision or regulation or require the approval or consent of any municipality or political subdivision or any department, division, commission, board, body, bureau, official or agency thereof or of the Commonwealth.

1972, c. 686.

§23-30.57. (Repealed effective October 1, 2016) Chapter liberally construed.

This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes hereof.

1972, c. 686.

§23-30.58. (Repealed effective October 1, 2016) Chapter controls inconsistent laws.

To the extent that the provisions of this chapter are inconsistent with the provisions of any general statute or special act or parts thereof, the provisions of this chapter shall be deemed controlling.

1972, c. 686; 1973, c. 205; 2015, c. [709](#).

Electric Authorities Act

§15.2-5400. Short title.

This chapter shall be known and may be cited as the "Electric Authorities Act."

1979, c. 416, § 15.1-1603; 1997, c. 587.

§15.2-5401. Intent of General Assembly.

It is the intent of the General Assembly by the passage of this chapter to authorize the creation of electric authorities by localities of this Commonwealth, either acting jointly or separately, in order to provide facilities for the generation, transmission, and distribution of electric power and energy, and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth.

It is further the intent of the General Assembly that in order to achieve the economies and efficiencies made possible by the proper planning, financing, sizing and location of facilities for the generation, transmission, and distribution of electric power and energy which are not practical for any locality or electric authority acting

alone, and to insure an adequate, reliable and economical supply of electric power and energy to the inhabitants of the Commonwealth, electric authorities shall be authorized to jointly cooperate and plan, finance, develop, own and operate with other electric authorities and other public corporations and governmental entities and investor-owned electric power companies and electric power cooperative associations or corporations, within or outside the Commonwealth, electric generation, transmission, and distribution facilities in order to provide for the present and future requirements of the electric authorities and their participating localities. It is further the intent of the General Assembly that an authority that is created by the Town of Elkton and that is limited by its articles of incorporation to having the Town of Elkton as its sole member throughout its life is authorized to become an authority to distribute electric energy for retail sale. The distribution of electric energy for retail sale by an authority that is created by the Town of Elkton and that is limited by its articles of incorporation to having the Town of Elkton as its sole member throughout its life shall be limited to the geographic area that was served as of January 1, 2006, by the Town of Elkton.

Accordingly, it is determined that the exercise of the powers granted herein will benefit the inhabitants of the Commonwealth and serve a valid public purpose in improving and otherwise promoting their health, welfare and prosperity.

This chapter shall be liberally construed in conformity with these intentions.

1979, c. 416, § 15.1-1604; 1997, c. 587; 2006, cc. [929](#), [941](#).

§15.2-5402. Definitions.

Wherever used in this chapter, unless a different meaning clearly appears in the context:

"Authority" means a political subdivision and a body politic and corporate created, organized and existing pursuant to the provisions of this chapter, or if the authority is abolished, the board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers given by this chapter shall be given by law.

"Bonds" or "revenue bonds" means bonds, notes and other evidences of indebtedness of an authority issued by the authority pursuant to the provisions of this chapter.

"Cost" or "cost of a project" means, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment or

extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto, the cost of labor and materials; the cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering and inspection expenses; financing fees, expenses and costs; working capital; costs of fuel and of fuel supply resources and related facilities; interest on bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing authority; establishment of reserves; and all other expenditures of the issuing authority incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project and the placing of the project in operation.

"Governmental unit" means any incorporated city or town in the Commonwealth owning on January 1, 1979, a system or facilities for the generation, transmission or distribution of electric power and energy for public and private uses and engaged in the generation or retail distribution of electricity; any incorporated city in the Commonwealth which on January 1, 1979, has a population of 200,000 or more; or any county or incorporated city or town in the Commonwealth which after January 1, 1979, is authorized to participate in an authority pursuant to an act of the General Assembly.

"Project" means any system of facilities for the generation, transmission, transformation, supply, or distribution of electric power and energy by any means whatsoever, including fuel and fuel supply resources and other related facilities, any interest therein and any right to output, capacity or services thereof, but does not include facilities for the distribution of electric energy for retail sale unless the facilities are owned by an authority created by a governmental unit that is exempt from the referendum requirement of § [15.2-5403](#), and the distribution is limited to retail sales within the geographic area that was served as of January 1, 2006, by the governmental unit that is the sole member of such authority.

"Unit" means any governmental unit; any electric authority; any investor-owned electric power company; any electric cooperative association or corporation; the Commonwealth or any other state; or any department, institution, commission, public instrumentality or political subdivision of the Commonwealth, any other state, or the United States.

1979, c. 416, § 15.1-1605; 1997, c. 587; 2006, cc. [929](#), [941](#).

§15.2-5403. Creation of electric authority; referendum.

The governing body of a governmental unit may by ordinance, or the governing bodies of two or more governmental units may by concurrent ordinances or agreement authorized by ordinance of each of the respective governmental units, create an electric authority, under any appropriate name and title containing the words "electric authority." Upon compliance with the provisions of this section and §§ [15.2-5404](#) and [15.2-5405](#), the authority shall be a political subdivision of the Commonwealth and a body politic and corporate. Any such ordinance shall be adopted in accordance with applicable general or special laws or charter provisions providing for the adoption of ordinances of the particular governmental unit, and shall be published once a week for two successive weeks prior to adoption in a newspaper of general circulation within the governmental unit. The second publication shall not be sooner than one calendar week after the first publication.

No governmental unit shall participate as a member of such an authority unless and until such participation is authorized by a majority of the voters voting in a referendum held in the governmental unit on the question of whether or not the governmental unit should participate in the authority. The referendum shall be held as provided in §§ [24.2-682](#) and [24.2-684](#). The foregoing referendum requirement shall not apply to the Town of Elkton if the Town creates an authority by an ordinance that includes articles of incorporation which comply with the provisions of § [15.2-5404](#) and also set forth a statement that such authority shall have only the Town as its sole member throughout its life.

1979, c. 416, § 15.1-1606; 1997, c. 587; 2006, cc. [929](#), [941](#).

§15.2-5404. Articles of incorporation.

Each ordinance or agreement providing for the creation of an authority shall include articles of incorporation which shall set forth:

1. The name of the authority and the address of its principal office;
2. The names of the governmental units which are to be the initial members of the authority;
3. The purpose or purposes for which the authority is to be created;
4. The number of directors who shall initially serve on the board of directors which shall exercise the powers of the authority, the number of directors from each member

governmental unit, and the names, addresses and terms of office of the initial directors of the authority; and

5. Any other provisions for regulating the business of the authority or the conduct of its affairs, including provisions for amendment of the articles of incorporation.

1979, c. 416, § 15.1-1607; 1997, c. 587.

§15.2-5405. Certificate of incorporation or charter; addition and withdrawal of members; board of directors; indemnification of directors, officers or employees.

A. After adoption or approval of the ordinances or agreement providing for the creation of an authority, the articles of incorporation of the authority shall be filed with the State Corporation Commission. If the State Corporation Commission finds that the articles of incorporation conform to law, and the creation of such an authority is in the public interest, a certificate of incorporation or charter shall forthwith be issued, and thereupon the authority shall constitute a political subdivision of the Commonwealth and a body politic and corporate and shall be deemed to have been lawfully and properly created, established and authorized to exercise the powers granted under this chapter.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract or action of the authority, the authority, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the State Corporation Commission. A copy of such certificate, duly certified by the State Corporation Commission, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive evidence of the filing and contents thereof.

Notice of the issuance of such certificate by the State Corporation Commission shall be given to each of the member governmental units of the authority by the State Corporation Commission.

B. After the creation of an authority, any other governmental unit may become a member thereof upon application to such authority after the adoption of an ordinance by the governing body of the governmental unit authorizing such governmental unit to become a member of the authority, and with the unanimous consent of the members of the authority evidenced by ordinances of their respective governing

bodies. Except for an authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#), any governmental unit may withdraw from an authority; however, all contractual rights acquired and obligations incurred while a governmental unit was a member shall remain in full force and effect.

In the case of the joining of a new member governmental unit to an authority, or in the case of the withdrawal of an existing member governmental unit from an authority, the articles of incorporation of the authority shall be amended to evidence such joinder or withdrawal, as the case may be, and such amendment shall be filed with the State Corporation Commission. Thereupon, the State Corporation Commission shall issue a certificate of joinder or withdrawal, as the case may be, to which shall be attached a copy of the amendment to the articles of incorporation. The joining or withdrawal shall become effective upon the issuance of such certificate.

C. The powers of each authority created by the governing body of a single governmental unit shall be exercised by a board of five directors, or, at the option of the governing body of the particular governmental unit, a number of directors equal to the number of persons on the governing body of the governmental unit. The powers of each authority created by the governing bodies of two or more governmental units shall be exercised by a board of such number of directors specified in its articles of incorporation, which shall be not less than one member for each governmental unit and not less than a total of five directors. The directors of an authority shall be selected in the manner and for the terms provided by the ordinance of a single governmental unit, or the concurrent ordinances or agreement of two or more of the governmental units creating the authority. No director shall be appointed for a term of more than four years but a director may be reappointed and succeed himself or herself. Directors shall hold office until their successors have been appointed. When one or more additional governmental units join an existing authority, each of such joining governmental units shall appoint not less than one director of the authority.

The directors of the authority shall elect one of their number chairman of the authority, and shall elect a secretary and treasurer and such other officers as are deemed necessary who need not be directors of the authority. The offices of secretary and treasurer may be combined. A majority of the directors of the authority shall constitute a quorum, and the vote of a majority of the directors shall be necessary for any action taken by the authority. No vacancy in the board of directors of the authority shall impair the right of a quorum to exercise all the rights and perform all the

duties of the authority. If a vacancy occurs by reason of the death, disqualification or resignation of a director, the governing body of the governmental unit which appointed such director shall appoint a successor to fill his unexpired term. In the event of a vacancy in the board of directors for any reason, a successor shall be appointed within six months of the date on which such vacancy occurred.

Whenever a governmental unit withdraws from an authority, the term of any director appointed to the board of directors from such governmental unit shall immediately terminate, and, if such termination results in less than five directors of the authority, additional directors shall be selected in the manner and for the terms provided by the ordinances or agreement creating the authority so as to comply with the requirements of this section. No elected official of a member governmental unit shall be a director of an authority. No person shall serve as a director unless he resides within the governmental unit which has appointed him. Directors shall receive such compensation as shall be fixed from time to time by resolution or resolutions of the governing body or bodies of the member governmental unit or units of the authority, and shall be reimbursed for any actual expenses necessarily incurred in the performance of their duties.

D. An authority may defend, indemnify against loss or liability and save harmless any of its directors, officers or employees whenever a claim or demand is made or threatened, or whenever proceeded against in any investigation or before any court, board, commission or other public body to defend or maintain his official position or a position taken in the course of the execution of his duties or because of any act or omission arising out of the performance of his official duties if the director, officer or employee acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the authority. If it is ultimately determined that a director, officer or employee of an authority is entitled to be indemnified by the authority as authorized in this section, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith. Expenses, including attorneys' fees, incurred in defending a civil action, suit or proceeding may be paid by an authority in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in this section upon receipt of an undertaking by or on behalf of the director, officer or employee, to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the authority as authorized in this section.

The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer or employee, and shall inure to the benefit of the heirs, executors and administrators of such person. An authority shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer or employee of the authority against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the authority would have the power to indemnify him against such liability under the provisions of this section.

1979, c. 416, § 15.1-1608; 1997, c. 587; 2006, cc. [929](#), [941](#).

§15.2-5405.1. Applicability of personnel and procurement procedures to certain authorities.

The provisions of the Virginia Personnel Act (§ [2.2-2900](#) et seq.) and the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) shall apply to an authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#) in the exercise of any power conferred under this article only to the extent that such provisions would have applied to the sole member of such authority in the exercise of such power directly.

2006, cc. [929](#), [941](#).

§15.2-5406. Rights, powers and duties of authority.

An authority shall have all of the rights and powers necessary and convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the rights and powers:

1. To adopt bylaws or rules for the regulation of its affairs and the conduct of its business;
2. To adopt an official seal and alter the same at pleasure;
3. To maintain an office at such place or places as it may designate;
4. To sue and be sued;
5. To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

6. To study, plan, research, develop, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, lease, own, operate and maintain any project or any interest in any project, within or outside the Commonwealth, including the acquisition of an ownership interest in any project as a tenant in common with any other unit or units whether public or private, and to enter into and perform contracts with respect thereto, and if the authority acquires an ownership interest as a tenant in common in any project within the Commonwealth, the surrender or waiver by any such owner of its right to partition such property for a period not exceeding the period for which the property is used or useful for electric utility purposes shall not be invalid and unenforceable by reason of length of such period or as unduly restricting the alienation of such property;

7. To acquire by private negotiated purchase or lease or otherwise an existing project, a project under construction, or other property within or outside the Commonwealth, either individually or jointly with any other unit or units whether public or private; to acquire by private negotiated purchase or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, transportation, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; and to enter into agreements by private negotiation or otherwise, for such period as the authority shall determine, for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water;

8. To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;

9. To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

10. To dispose of by private negotiated sale or lease or otherwise an existing project, a project under construction, or other property owned either individually or jointly, and to dispose of by private negotiated sale or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, transportation, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water;

11. To borrow money and issue revenue bonds of the authority in the manner hereinafter provided;
12. To accept advice and money from any member governmental unit of the authority;
13. To apply and contract for and to expend assistance from the United States or other public or private sources, whether in form of a grant or loan or otherwise;
14. To fix, charge and collect rents, rates, fees and charges for output or capacity of any project and for the use of, or for, the other services, facilities and commodities sold, furnished or supplied through any project;
15. To authorize the acquisition, construction, operation or maintenance of any project by any unit or individual on such terms as the authority shall deem proper, and, in connection with any project which is owned jointly by the authority and one or more units, to act as agent, or designate one or more of the other units to act as agent, for all the owners of the project for the construction, operation or maintenance of such project;
16. To generate, produce, transmit, deliver, exchange, purchase or sell electric power and energy at wholesale or retail, and to enter into contracts for any or all such purposes;
17. To negotiate and enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy at wholesale or retail with any unit within or outside the Commonwealth;
18. To purchase power and energy and related services from any source on behalf of its member governmental units and other customers and to sell the same to its member governmental units and other customers in such amounts, with such characteristics, for such periods of time and under such terms and conditions as the authority shall determine;
19. In the event of any annexation by a governmental unit which is not a member governmental unit of the authority of lands, areas, or territory in which the authority's projects exist, to continue to do business and to exercise jurisdiction over its properties and facilities in and upon or over such lands, areas or territory as long as any bonds remain outstanding or unpaid, or any contracts or other obligations remain in force;

20. To amend the articles of incorporation with respect to the name or powers of such authority or in any other manner not inconsistent with this chapter by following the procedure prescribed by law for the creation of an authority;
21. To enter into contracts with any unit on such terms as the authority shall deem proper for the purposes of acting as a billing and collecting agent for electric service or electric service fees, rents or charges imposed by any such unit;
22. To pledge or assign any moneys, fees, rents, charges or other revenues and any proceeds derived by the authority from the sales of bonds, property, insurance or condemnation awards;
23. To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this chapter, including contracts with persons, firms, corporations and others;
24. To apply to the appropriate agencies of the Commonwealth, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary, to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals; and to obtain, hold and use such licenses, permits, certificates and approvals in the same manner as any other person or operating unit;
25. To employ such persons as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor; and
26. To do all acts and things necessary and convenient to carry out the purposes and to exercise the powers granted to the authority herein.

In undertaking a project, an authority shall apply to the appropriate agencies of the Commonwealth, the United States, or any state therein, for such permits, licenses, certificates, or approvals as may be necessary, including, in any event, those referred to in §§ [56-46.1](#), [56-234.3](#), and [56-265.2](#); former § [62.1-3](#); and Chapter 7 (§ [62.1-80](#) et seq.) of Title 62.1 of the Code of Virginia. An authority shall construct, maintain and operate such projects in accordance with such permits, licenses, certificates and approvals. The foregoing sentence shall apply to an authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#) only to the extent that it would have applied to the governmental unit that is the sole member of such authority if the governmental unit had directly undertaken the project.

In determining which project or projects to undertake in furtherance of its purposes and powers under this chapter, an authority shall take into account estimated future power requirements of member governmental units which have entered into, or propose to enter into, contracts with the authority for the purchase of output, capacity, use or services of such project or projects, and in making such determinations the authority shall consider the following:

1. Economies and efficiencies to be achieved in constructing, on a large scale, facilities for the generation and distribution of electric power and energy;
2. Needs of the authority for reserve and peaking capacity and to meet obligations under pooling and reserve-sharing agreements reasonably related to its needs for power and energy to which the authority is or may become a party;
3. Estimated useful life of such project;
4. Estimated time necessary for the planning, development, acquisition, or construction of such project and length of time required in advance to obtain, acquire or construct an additional power supply for the member governmental units of the authority; and
5. Reliability and availability of alternative power supply sources and cost of such alternative power supply sources.

Nothing herein contained shall prevent an authority from undertaking studies to determine whether there is a need for a project or whether such project is feasible.

1979, c. 416, § 15.1-1609; 1997, c. 587; 2006, cc. [929](#), [941](#).

§15.2-5406.1. Retail distribution of electric energy limited to certain authorities.

Notwithstanding any other provision in this chapter to the contrary, an authority is not authorized to distribute electric energy for retail sale unless the authority is an authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#). Such distribution shall be limited to retail sales within the geographic area that was, as of January 1, 2006, by the governmental unit of such authority.

Nothing in this chapter shall be construed to impair or abridge the exclusive territorial electric distribution rights or property rights of any certificated incumbent public service company operating in the Commonwealth. No such authority is authorized or empowered to take by condemnation, eminent domain, or otherwise, the electric distribution system, utility facilities, or other utility property of any public service company without the consent of such public service company.

2006, cc. [929](#), [941](#).

§15.2-5406.2. Tort claims against certain authorities.

An authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#) shall be subject to tort liability only to the extent that the governmental unit that is the sole member of such authority is subject to such liability.

2006, cc. [929](#), [941](#).

§15.2-5407. Membership in more than one authority.

Nothing herein contained shall prohibit any governmental unit from being a member of more than one authority for the purpose of obtaining an adequate electric power supply.

1979, c. 416, § 15.1-1610; 1997, c. 587.

§15.2-5408. Sale of power and energy, including capacity and output to member governmental units by authority; duration of contracts; source of payments; furnishing of money, property or services by member governmental units.

Any member governmental unit of an authority may contract to buy from the authority power and energy required for its present or future requirements, including the capacity and output of one or more specified projects. Any such contract may provide that the governmental unit so contracting shall be obligated to make payments required by the contract whether or not a project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or non-performance by the authority or any other member governmental unit under the contract or any other instrument. Such contracts with respect to any project may also provide, in the event of default by any member governmental unit which is a party to any such contract for such project in the performance of its obligations thereunder, for other member governmental units which are parties to any such contract for such project to succeed to the rights and interests and assume the obligations of the defaulting party, pro rata or otherwise as may be agreed upon in such contracts.

Notwithstanding the provisions of any other law or local charter provision to the contrary, any such contracts with respect to the sale or purchase of capacity, output, power or energy from a project may extend for a period not exceeding fifty years from

the date a project is estimated to be placed in normal continuous operation; the execution and effectiveness thereof shall not be subject to any authorizations or approvals by the Commonwealth or any agency, commission or instrumentality or political subdivision thereof except as specifically required and provided in this chapter.

Payments by a governmental unit under any contract for the purchase of capacity and output from an authority shall be made solely from, and may be secured by a pledge of and lien upon, the revenues derived by such governmental unit from the ownership and operation of the electric system of such governmental unit, and such payments may be made as an operating expense of such electric system. No obligation under such contract shall constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the governmental unit or upon any of its income, receipts or revenues, except the revenues of its electric system, and neither the faith and credit nor the taxing power of the governmental unit are, or may be, pledged for the payment of any obligation under any such contract. A governmental unit shall be obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through its electric system sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on bonds of such governmental unit heretofore or hereafter issued for purposes related to its electric system. Any pledge made by a governmental unit pursuant to this paragraph shall be governed by the laws of the Commonwealth.

Any member governmental unit of an authority may furnish the authority with money and provide the authority with personnel, equipment and property, both real and personal. Any member governmental unit may also provide any services to an authority. Any member governmental unit may contract for, advance or contribute funds to an authority as may be agreed upon by the authority, and the member governmental unit and the authority shall repay such advances or contributions from proceeds of bonds, from operating revenues or from any other funds of the authority, together with interest thereon as may be agreed upon by the member governmental units and authority.

1979, c. 416, § 15.1-1611; 1997, c. 587.

§15.2-5409. Sale of capacity and output to nonmembers; limitations.

An authority may sell or exchange the capacity or output of a project not then required by any of its member governmental units for such consideration, for such period, and upon such other terms and conditions as may be determined by the parties, to any person, firm, association or corporation, public or private within or outside the Commonwealth; however, this shall not authorize retail sales by an authority to any nongovernmental end user of electric capacity or energy, except as set forth in § [15.2-5406.1](#), and sales of such capacity or output of a project shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government.

1979, c. 416, § 15.1-1612; 1997, c. 587; 2006, cc. [929](#), [941](#).

§15.2-5410. Contents of agreement as to joint ownership of project; designation of party to agreement as agent for construction, operation and maintenance of project; powers and duties of agent.

Any agreement between an authority and a unit with respect to the joint ownership of a project shall provide that each party to the agreement shall own a percentage of the project equal to the percentage of the money furnished or the value of property supplied by the respective parties for the acquisition and construction thereof and shall own and control a like percentage of the output thereof. The agreement shall further provide that an authority shall be liable only for its own acts thereunder and that no moneys or other contributions supplied by an authority shall be applied in any way to the account of any other party to the agreement. Any such agreement may contain such terms, conditions, and provisions as the board of directors of an authority shall deem to be in the best interest of such authority.

The agreement may include, but shall not be limited to, provisions for the construction, operation and maintenance of a project by one of the parties thereto, which shall be designated in or pursuant to such agreement as agent on behalf of itself and the other parties, or by such other means as may be determined by the parties and provisions for a uniform method of determining, and allocating among the parties, costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such project. In carrying out its functions and activities as such agent with respect to the construction, operation, and maintenance of such a project, including without limitation the letting of contracts therefor, the

agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other parties. Notwithstanding the provisions of any other law to the contrary, the authority may delegate its powers and duties with respect to the construction, operation and maintenance of such project to such agent, and all actions taken by the agent in accordance with the provisions of such agreement shall be binding upon each of the parties without further action or approval by their respective boards of directors or governing bodies. The agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice.

As used in this section, "prudent utility practice" means any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition.

1979, c. 416, § 15.1-1613; 1997, c. 587.

§15.2-5411. Contracts for planning, acquisition, construction, etc., of projects.

An authority may contract for the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, and improvement of a project or may contract with one or more units to perform these functions, by advertising for bids, preparing plans and specifications in advance of construction, or securing performances and payment bonds to the extent that its board of directors determines that these actions are desirable in furtherance of the purposes of this chapter. Except as otherwise provided by this section, no contract shall be invalid or unenforceable by reason of nonperformance of the conditions required by any other law relating to public contracts.

1979, c. 416, § 15.1-1614; 1997, c. 587.

§15.2-5412. Issuance of bonds by authority.

An authority may issue from time to time its bonds in such principal amounts as the authority shall deem necessary to provide sufficient funds to carry out any of its corporate purposes and powers, including but not limited to the payment of all or any part of the cost of a project or projects. The principal of, redemption premium, if any,

and interest on such bonds shall be payable solely from, and may be secured solely by, a pledge of and lien upon the revenues, or any portion thereof, derived or to be derived by the authority from one or more of its projects, or contributions or advances from its members, or moneys derived from any source, as the authority shall determine. Bonds of the authority shall be authorized by a resolution adopted by its board of directors, and such resolution shall be spread upon its minutes. The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding fifty years from their date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the authority, at such price or prices and under such terms and conditions, as may be determined by the authority. The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or outside the Commonwealth. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, his signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form, or both, as the authority may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The authority may sell such bonds in such manner, either, at public or at private sale, and for such price as it may determine to be for the best interest of the authority and the member governmental units to be served thereby.

The issuance of such bonds shall not be subject to any limitations or conditions contained in any other law, and bonds may be issued without obtaining the consent of the Commonwealth or any political subdivisions, or of any agency, commission or instrumentality of either thereof, and without any other approvals, proceedings or the happening of any conditions or things other than those specifically required by this chapter and the provisions of the resolution authorizing the issuance of such bonds or the trust agreement securing the same.

1979, c. 416, § 15.1-1615; 1997, c. 587.

§15.2-5413. Interim receipts and temporary bonds; lost, stolen and destroyed bonds.

Prior to the preparation of definitive bonds, the authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

Should any bond issued under this chapter or any coupon appertaining thereto become mutilated or be lost, stolen or destroyed, the authority may cause a new bond or coupon of like date, number and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of such mutilated bond or coupon, or in lieu of and in substitution for such lost, stolen or destroyed bond or coupon. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen or destroyed bond or coupon has (i) paid the reasonable expense and charges in connection therewith; (ii) in the case of a lost, stolen or destroyed bond or coupon, filed with the authority or its fiduciary evidence satisfactory to such authority or its fiduciary that such bond or coupon was lost, stolen or destroyed and that the holder was the owner thereof; and (iii) furnished indemnity satisfactory to the authority.

1979, c. 416, § 15.1-1616; 1997, c. 587.

§15.2-5414. Bonds not debts of Commonwealth or member governmental unit.

Bonds issued under the provisions of this chapter shall not be deemed to constitute a pledge of the faith and credit of the Commonwealth or of any governmental unit thereof. All such bonds shall contain a statement on their face substantially to the effect that neither the faith and credit of the Commonwealth nor the faith and credit of any governmental unit of the Commonwealth is pledged to the payment of the principal of or the interest on such bonds. The issuance of bonds under the provisions of this chapter shall not directly, indirectly or contingently obligate the Commonwealth or any governmental unit of the Commonwealth to levy any taxes whatever therefor or to make any appropriation for their payment.

1979, c. 416, § 15.1-1617; 1997, c. 587.

§15.2-5415. Security for bonds; trust agreement; bond resolution.

In the discretion of any authority, any revenue bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the authority and a corporate trustee. Such corporate trustee, and any depository of funds of the authority, may be any trust company or bank having the powers of a trust company within

the Commonwealth. The resolution authorizing the issuance of the bonds or the trust agreement may pledge or assign all or a portion of the revenues to be received by the authority in respect of any project or projects but shall not convey or mortgage any project, may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

1. The pledge of all or any part of the revenues derived from the project or projects to be financed by the bonds or from the electric system or facilities of the authority;
2. The rents, rates, fees and charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants and funds received or to be received by the authority;
3. The setting aside of reserves and the investment, regulation and disposition thereof;
4. The custody, collection, securing, investment, and payment of any moneys held for the payment of bonds;
5. Limitations or restrictions on the purposes to which the proceeds of the sale of bonds then or thereafter to be issued may be applied;
6. Limitations or restrictions on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured or the refunding of outstanding or other bonds;
7. The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the bondholders of which must consent thereto, and the manner in which such consent may be given;
8. Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this chapter shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;
9. The preparation and maintenance of a budget;
10. The retention or employment of consulting engineers, independent auditors, and other technical consultants;

11. Limitations on or the prohibition of free service to any person, firm or corporation, public or private;
12. The acquisition and disposal of property, and the appointment of a receiver of the funds and property of the authority in the event of a default;
13. Provisions for insurance and for accounting reports and the inspection and audit thereof; and
14. The continuing operation and maintenance of the project or projects.

Any pledge made by an authority pursuant to this chapter shall be governed by the laws of the Commonwealth.

1979, c. 416, § 15.1-1618; 1997, c. 587.

§15.2-5416. Rents, rates, fees and other charges.

The authority is hereby authorized to fix, charge and collect rents, rates, fees and other charges for the purchase of output or capacity of, or for the use of and for the electric power and energy or services, facilities and commodities sold, furnished or supplied by, any project. Such rates, fees and charges shall be so fixed and revised as to provide funds, with other funds available for such purposes, sufficient at all times to (i) pay the cost of maintaining, operating and repairing the project or projects on account of which such bonds are issued, including reserves for such purposes and for replacement and depreciation and necessary extensions; (ii) pay the principal of and redemption premium, if any, and interest on the revenue bonds as the same shall become due and to create and maintain reserves therefor; (iii) comply with the terms of any resolution or trust agreement securing bonds of the authority; and (iv) pay any and all amounts which the authority may be obligated to pay from such revenues by law or contract.

In fixing rents, rates, fees and other charges as provided in this section, the authority shall hold a public hearing, advertised as required in § [15.2-5403](#), at which hearing the public may submit comments with respect to such rents, rates, fees and other charges to the authority. The authority shall charge and collect the rates, fees and charges so fixed or revised. Rates, rentals, fees and charges for the sale or purchase of output or capacity of, or for the use of and for the electric power and energy or services, facilities and commodities sold, furnished or supplied by a project may be fixed and revised and charged and collected by the authority under this chapter without obtaining the approval or consent of any department, division, commission, board,

bureau or agency of the Commonwealth, and without any other proceeding or the happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this chapter.

1979, c. 416, § 15.1-1619; 1997, c. 587.

§15.2-5417. Moneys received deemed trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The resolution authorizing the issuance of bonds or the trust agreement securing such bonds may provide that any of such moneys may be temporarily invested and reinvested, pending the disbursement thereof, in such securities and other investments as shall be provided in such resolution or trust agreement, and shall provide that any officer with whom, or any bank or trust company with which, such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and the resolution or trust agreement may provide.

1979, c. 416, § 15.1-1620; 1997, c. 587.

§15.2-5418. Bondholders' and trustees' remedies.

Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder, or, to the extent permitted by law, under such trust agreement or resolution authorizing the issuance of such bonds or under any agreement or other contract executed by the authority pursuant to this chapter, and may enforce and compel the performance of all duties required by this chapter or by such trust agreement or resolution to be performed by any authority or by any officer thereof, including the fixing, charging and collecting of rents, rates, fees and charges for the purchase of output or capacity of any project or for the use of or for the electric power and energy or services furnished by any project.

1979, c. 416, § 15.1-1621; 1997, c. 587.

§15.2-5419. Refunding bonds.

An authority created hereunder is hereby authorized to provide by resolution for the issuance of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds then outstanding and issued under the provisions of this chapter, whether or not such outstanding bonds have matured or are then subject to redemption. Each such authority is further authorized to provide by resolution for the issuance of a single issue of revenue bonds of the authority for the combined purposes of (i) paying the cost of any project and (ii) refunding the revenue bonds of the authority which have been issued under the provisions of this chapter and are then outstanding, whether or not such outstanding bonds have matured or are then subject to redemption. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the authority with respect to the bonds, shall be governed by the foregoing provisions of this chapter insofar as they are applicable.

1979, c. 416, § 15.1-1622; 1997, c. 587.

§15.2-5420. Status of bonds under Uniform Commercial Code.

Notwithstanding any of the provisions of this chapter or any recitals in any bonds issued under this chapter, all such bonds shall be deemed to be investment securities under the Uniform Commercial Code as enacted in this Commonwealth, subject only to the provisions of the bonds pertaining to registration.

1979, c. 416, § 15.1-1623; 1997, c. 587.

§15.2-5421. Bonds as legal investments and lawful security.

The bonds issued pursuant to this chapter shall be and are hereby declared to be legal and authorized investments for banks, savings institutions, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and guardians and for all public funds of the Commonwealth or other political corporations or subdivisions of the Commonwealth. Such bonds shall be eligible to secure the deposit of any and all public funds of the Commonwealth and any and all public funds of localities, school districts or other political corporations or subdivisions of the Commonwealth, and such bonds shall be lawful and sufficient security for such deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto.

1979, c. 416, § 15.1-1624; 1996, c. [77](#); 1997, c. 587.

§15.2-5422. Bonds exempt from taxation.

Bonds, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be exempt from all taxation by the Commonwealth or any political subdivision thereof, except inheritance or gift taxes.

1979, c. 416, § 15.1-1625; 1997, c. 587.

§15.2-5423. Payments in lieu of property taxes; license tax.

A project owned by an authority shall be exempt from property taxes. However, an authority, other than an authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#), owning a project shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes, the amount which would be assessed as taxes on real and personal property of a project if such project were otherwise subject to valuation and assessment by the State Corporation Commission, in the same manner as are public utility companies. Such payments in lieu of taxes shall be due and shall bear interest, if unpaid, as in the cases of taxes on other property. Authorities, other than an authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#), shall pay the annual state license tax imposed by § [58.1-2626](#), or an equal amount in lieu of such tax, to the same extent as if § [58.1-2626](#) were by its terms expressly applicable to authorities. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law. The retail sales of an authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#) shall be subject to the taxes imposed under § [58.1-2900](#). Except as herein expressly provided with respect to projects owned by an authority, no other property of such authority used or useful in the generation, transmission, transformation, and distribution of electric power and energy shall be subject to payment in lieu of taxes.

1979, c. 416, § 15.1-1626; 1997, c. 587; 2006, cc. [929](#), [941](#).

§15.2-5423.1. Exemption from taxation for certain authorities.

An authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#) is hereby declared to be performing a public function on behalf of the governmental unit that is the sole member of such authority with respect to which the authority is created and to be a public instrumentality of such governmental unit. Accordingly, an authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#) shall be exempt from state and local

taxation to the same extent that the governmental unit that is the sole member of such authority is exempt from such taxation.

2006, cc. [929](#), [941](#).

§15.2-5424. Transfer, etc., of property of political subdivisions upon request of authority.

The governing body of any political subdivision, notwithstanding any contrary provision of law, is hereby authorized to transfer jurisdiction over, to permit the use of, lease, lend, grant or convey to the authority upon the request of the authority, upon such terms and conditions as the governing body of such subdivision may agree with the authority as reasonable and fair, such real or personal property as may be necessary or desirable in connection with the acquisition, construction, improvement, operation or maintenance of any project by the authority, including public roads and other property already donated to public use. However, the authority must pay full market value for any such real or personal property conveyed by the governing body of any political subdivision to the authority. Whenever any railroad tracks, pipes, poles, wires, conduits or other structures or facilities which are located in, along, across, over or under any public road, street, highway, alley or other public right-of-way shall become an obstruction to, interfere with or be endangered by the construction, operation or maintenance of any project of the authority, the political subdivision having ownership, control or jurisdiction over such public road, street, highway, alley or other public right-of-way may, as the exercise of an essential governmental function, order the safeguarding, maintaining, relocating, rebuilding, removing and replacing of such railroad tracks, pipes, poles, wires, conduits or other structures or facilities by the owner thereof at the expense of the authority, and subject to the provisions of § [25.1-102](#).

1979, c. 416, § 15.1-1627; 1997, c. 587.

§15.2-5425. Eminent domain.

An authority created under the provisions of this chapter is hereby vested with the power of eminent domain and the same authority to exercise the power of eminent domain as is granted in Chapter 2 (§ [25.1-200](#) et seq.) of Title 25.1 and as is granted in Chapter 3 (§ [25.1-300](#) et seq.) of Title 25.1, subject to the provisions of § [25.1-102](#), provided that this power shall not be used to acquire existing power supply facilities or plants held for future use. Furthermore, no authority may condemn property outside of the territorial limits of its member governmental units without obtaining

the consent of the governing body of the locality in which such property is located; however, in any case in which the approval by such locality is withheld, the authority seeking such approval may petition for the convening of a special court, pursuant to §§ [15.2-2135](#) through [15.2-2141](#).

1979, c. 416, § 15.1-1628; 1997, c. 587; 2003, c. [940](#).

§15.2-5426. Annual reports.

Each authority, promptly following the close of the calendar year, shall submit an annual report of its activities for the preceding year to the governing body of its member governmental unit. Each such report shall set forth a complete operating and financial statement covering the operation of the authority during such year. The authority shall cause an audit of its books and accounts to be made at least once each year by a certified public accountant, and the cost thereof may be treated as part of the cost of a project, or otherwise as part of the expense of operation of the project by such audit.

1979, c. 416, § 15.1-1629; 1997, c. 587.

§15.2-5427. Liability of members or officers.

No member of any authority or officer of any governing body of any member governmental unit creating such authority, or person or persons acting in their behalf, while acting within the scope of their authority shall be subject to any personal liability by reason of his carrying out of any of the powers expressly given in this chapter.

1979, c. 416, § 15.1-1630; 1997, c. 587.

§15.2-5428. Dissolution of authority.

Whenever the board of directors of an authority and its member governmental units determines that the purposes for which it was created have been substantially fulfilled or are impractical or impossible to accomplish and that all bonds theretofore issued and all other obligations theretofore incurred by the authority have been paid or that cash or a sufficient amount of United States government securities has been deposited for their payment, the board of directors of the authority and the governing bodies of the member governmental units may adopt resolutions or ordinances declaring and finding that the authority should be dissolved, and that appropriate articles of dissolution shall be filed with the State Corporation Commission. Upon the filing of such articles of dissolution by the authority, such dissolution shall become effect-

ive, and the title to all funds and other property owned by the authority at the time of such filing shall vest in the member governmental units of the authority.

1979, c. 416, § 15.1-1631; 1997, c. 587.

§15.2-5429. Legislative consent to application of laws of other states.

Legislative consent is hereby given (i) to the application of the laws of other states with respect to taxation, payments in lieu of taxes, and the assessment thereof, to any authority created pursuant to this chapter, which has acquired or has an interest in a project, real or personal, situated outside the Commonwealth or which owns or operates a project outside the Commonwealth pursuant to this chapter and (ii) to the application of regulatory and other laws of other states and of the United States to any authority which owns or operates a project outside the Commonwealth.

1979, c. 416, § 15.1-1632; 1997, c. 587.

§15.2-5430. Provisions of chapter cumulative; construction.

Neither this chapter nor anything herein contained shall be construed as a restriction or limitation upon any powers which an authority or governmental unit acting under the provisions of this chapter might otherwise have under any laws of this Commonwealth, but shall be construed as cumulative of any such powers. This chapter shall be construed as complete and independent authority for the performance of each and every act and thing authorized by this chapter. No proceedings, notice or approval shall be required for the organization of an authority or the issuance of any bonds or any instrument as security therefor, except as herein provided, any other law to the contrary notwithstanding. However, nothing herein shall be construed to deprive the Commonwealth and its political subdivisions of their respective police powers over properties of an authority or to impair any power thereover of any official or agency of the Commonwealth and its political subdivisions which may be otherwise provided by law. Nothing contained in this chapter shall be deemed to authorize an authority to occupy or use any land, streets, buildings, structures or other property of any kind, owned or used by any political subdivision within its jurisdiction, or any public improvement or facility maintained by such political subdivision for the use of its inhabitants, without first obtaining the consent of the governing body thereof.

1979, c. 416, § 15.1-1633; 1997, c. 587.

§15.2-5431. Provisions of chapter controlling over other statutes and charters.

Any provision of this chapter which is found to be in conflict with any other statute or charter shall be controlling and shall supersede such other statute or charter to the extent of such conflict.

1979, c. 416, § 15.1-1634; 1997, c. 587; 2015, c. [709](#).

Emergency Petroleum Products Supply Act

§59.1-21.18:2. Definitions.

As used in this chapter, unless the context requires otherwise, the following terms and phrases shall have the following meanings:

1. "Petroleum products" shall mean kerosene and number one and two heating oils;
2. "Supplier" shall mean any person, partnership, company, corporation or association engaged in the refining and subsequent sale of petroleum products to any distributor in the Commonwealth;
3. "Distributor" shall mean any distributor, wholesaler, jobber, consignee or commission agent who purchases or otherwise acquires possession of or an interest in petroleum products under a contract of supply in the Commonwealth from a supplier for redistribution or wholesale sale;
4. "Monthly allocation" shall mean the monthly amount of petroleum products sold or otherwise supplied to a distributor under applicable U.S. Department of Energy regulations and rules, or which the supplier may otherwise be allocating to its distributors;
5. "To discontinue" shall mean the failure or refusal to sell a monthly allocation as defined herein to a distributor for a period of six consecutive months unless such failure or refusal is the direct and proximate result of force majeure;
6. "To reduce" shall mean the failure or refusal of a supplier to deliver at least seventy-five per centum of a monthly allocation to a distributor for a period of two consecutive months unless such failure or refusal is the direct and proximate result of an allocation percentage factor applied by the supplier to all its distributors or force majeure;

7. "Force majeure" means an act of God or any other cause not reasonably within the control of the supplier.

1980, c. 457.

§59.1-21.18:3. Prohibited acts.

Except in the event of failure by any distributor in the Commonwealth to comply with the material requirements imposed upon him by a contract or agreement with the supplier, other than a failure caused by force majeure; or except as may be required by an agency of the federal or state government responsible for regulating allocations of petroleum products; or except as provided in § [59.1-21.18:4](#), it shall be unlawful for any supplier:

1. To discontinue monthly allocations of petroleum products to a distributor, his successors in interest or qualified assigns provided that such successors in interest or qualified assigns meet the supplier's usual contract acceptance criteria; or
2. To reduce monthly allocations of petroleum products to a Virginia distributor, his successors in interest or qualified assigns provided that such successors in interest or qualified assigns meet the supplier's usual contract acceptance criteria.

1980, c. 457.

§59.1-21.18:4. Exemptions under chapter.

A supplier shall be authorized to reduce or discontinue monthly allocations of petroleum products with any Virginia distributor if the supplier:

1. Furnishes the distributor with an alternative source of monthly allocations of petroleum products of equal type, grade, quantity and equivalent delivery location; or
2. Agrees to supply the distributor with monthly allocations of petroleum products for a period of twelve months and furnishes the distributor and the Governor of the Commonwealth with written notice of its intention to discontinue or reduce such allocations at least twelve months in advance of such discontinuance or reduction.

1980, c. 457.

Emergency Services and Disaster Law

§44-146.13. Short title.

This chapter may be cited as the "Commonwealth of Virginia Emergency Services and Disaster Law of 2000."

1973, c. 260; 2000, c. [309](#).

§44-146.14. Findings of General Assembly.

(a) Because of the ever present possibility of the occurrence of disasters of unprecedented size and destructiveness resulting from enemy attack, sabotage or other hostile action, resource shortage, or from fire, flood, earthquake, or other natural causes, and in order to insure that preparations of the Commonwealth and its political subdivisions will be adequate to deal with such emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property and economic well-being of the people of the Commonwealth, it is hereby found and declared to be necessary and to be the purpose of this chapter:

(1) To create a State Department of Emergency Management, and to authorize the creation of local organizations for emergency management in the political subdivisions of the Commonwealth;

(2) To confer upon the Governor and upon the executive heads or governing bodies of the political subdivisions of the Commonwealth emergency powers provided herein; and

(3) To provide for rendering of mutual aid among the political subdivisions of the Commonwealth and with other states and to cooperate with the federal government with respect to the carrying out of emergency service functions.

(b) It is further declared to be the purpose of this chapter and the policy of the Commonwealth that all emergency service functions of the Commonwealth be coordinated to the maximum extent possible with the comparable functions of the federal government, other states, and private agencies of every type, and that the Governor shall be empowered to provide for enforcement by the Commonwealth of national emergency services programs, to the end that the most effective preparation and use may be made of the nation's resources and facilities for dealing with any disaster that may occur.

1973, c. 260; 1974, c. 4; 1975, c. 11; 2000, c. [309](#).

§44-146.15. Construction of chapter.

Nothing in this chapter is to be construed to:

- (1) Limit, modify, or abridge the authority of the Governor to exercise any powers vested in him under other laws of this Commonwealth independent of, or in conjunction with, any provisions of this chapter;
- (2) Interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including, but not limited to, radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with actual or pending disaster;
- (3) Empower the Governor, any political subdivision, or any other governmental authority to in any way limit or prohibit the rights of the people to keep and bear arms as guaranteed by Article I, Section 13 of the Constitution of Virginia or the Second Amendment of the Constitution of the United States, including the otherwise lawful possession, carrying, transportation, sale, or transfer of firearms except to the extent necessary to ensure public safety in any place or facility designated or used by the Governor, any political subdivision of the Commonwealth, or any other governmental entity as an emergency shelter or for the purpose of sheltering persons;
- (4) Affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States or any personnel thereof, when on active duty; but state, local and interjurisdictional agencies for emergency services shall place reliance upon such forces in the event of declared disasters; or
- (5) Interfere with the course of conduct of a labor dispute except that actions otherwise authorized by this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety.

1973, c. 260; 2000, c. [309](#); 2006, c. [458](#); 2012, cc. [42](#), [158](#).

§44-146.16. Definitions.

As used in this chapter unless the context requires a different meaning:

"Communicable disease of public health threat" means an illness of public health significance, as determined by the State Health Commissioner in accordance with regulations of the Board of Health, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or tuberculosis, unless used as a

bioterrorism weapon. "Individual" shall include any companion animal. Further, whenever "person or persons" is used in Article 3.02 (§ [32.1-48.05](#) et seq.) of Chapter 2 of Title 32.1, it shall be deemed, when the context requires it, to include any individual;

"Disaster" means (i) any man-made disaster including any condition following an attack by any enemy or foreign nation upon the United States resulting in substantial damage of property or injury to persons in the United States and may be by use of bombs, missiles, shell fire, nuclear, radiological, chemical, or biological means or other weapons or by overt paramilitary actions; terrorism, foreign and domestic; also any industrial, nuclear, or transportation accident, explosion, conflagration, power failure, resources shortage, or other condition such as sabotage, oil spills, and other injurious environmental contaminations that threaten or cause damage to property, human suffering, hardship, or loss of life; and (ii) any natural disaster including any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, communicable disease of public health threat, or other natural catastrophe resulting in damage, hardship, suffering, or possible loss of life;

"Discharge" means spillage, leakage, pumping, pouring, seepage, emitting, dumping, emptying, injecting, escaping, leaching, fire, explosion, or other releases;

"Emergency" means any occurrence, or threat thereof, whether natural or man-made, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property or natural resources and may involve governmental action beyond that authorized or contemplated by existing law because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens or the environment of the Commonwealth or some clearly defined portion or portions thereof;

"Emergency services" means the preparation for and the carrying out of functions, other than functions for which military forces are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions. These functions include, without limitation, fire-fighting services, police services, medical and health services, rescue, engineering, warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, emergency resource management, existing or properly assigned

functions of plant protection, temporary restoration of public utility services, and other functions related to civilian protection. These functions also include the administration of approved state and federal disaster recovery and assistance programs;

"Hazard mitigation" means any action taken to reduce or eliminate the long-term risk to human life and property from natural hazards;

"Hazardous substances" means all materials or substances which now or hereafter are designated, defined, or characterized as hazardous by law or regulation of the Commonwealth or regulation of the United States government;

"Interjurisdictional agency for emergency management" is any organization established between contiguous political subdivisions to facilitate the cooperation and protection of the subdivisions in the work of disaster prevention, preparedness, response, and recovery;

"Local emergency" means the condition declared by the local governing body when in its judgment the threat or actual occurrence of an emergency or disaster is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby; provided, however, that a local emergency arising wholly or substantially out of a resource shortage may be declared only by the Governor, upon petition of the local governing body, when he deems the threat or actual occurrence of such an emergency or disaster to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby; provided, however, nothing in this chapter shall be construed as prohibiting a local governing body from the prudent management of its water supply to prevent or manage a water shortage;

"Local emergency management organization" means an organization created in accordance with the provisions of this chapter by local authority to perform local emergency service functions;

"Major disaster" means any natural catastrophe, including any: hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought, or regardless of cause, any fire, flood, or explosion, in any part of the United States, which, in the determination of the President of the United States is, or thereafter determined to be, of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act

(P.L. 93-288 as amended) to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby and is so declared by him;

"Political subdivision" means any city or county in the Commonwealth and for the purposes of this chapter, the Town of Chincoteague and any town of more than 5,000 population that chooses to have an emergency management program separate from that of the county in which such town is located;

"Resource shortage" means the absence, unavailability or reduced supply of any raw or processed natural resource, or any commodities, goods or services of any kind that bear a substantial relationship to the health, safety, welfare and economic well-being of the citizens of the Commonwealth;

"State of emergency" means the condition declared by the Governor when in his judgment, the threat or actual occurrence of an emergency or a disaster in any part of the Commonwealth is of sufficient severity and magnitude to warrant disaster assistance by the Commonwealth to supplement the efforts and available resources of the several localities, and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1978, c. 60; 1979, c. 193; 1981, c. 116; 1984, c. 743; 1993, c. 671; 2000, c. [309](#); 2004, cc. [773](#), [1021](#); 2008, cc. [121](#), [157](#).

§44-146.17. Powers and duties of Governor.

The Governor shall be Director of Emergency Management. He shall take such action from time to time as is necessary for the adequate promotion and coordination of state and local emergency services activities relating to the safety and welfare of the Commonwealth in time of disasters.

The Governor shall have, in addition to his powers hereinafter or elsewhere prescribed by law, the following powers and duties:

(1) To proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of this chapter including, but not limited to such measures as are in his judgment required to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resources under any state or federal emergency services programs.

He may adopt and implement the Commonwealth of Virginia Emergency Operations Plan, which provides for state-level emergency operations in response to any type of disaster or large-scale emergency affecting Virginia and that provides the needed framework within which more detailed emergency plans and procedures can be developed and maintained by state agencies, local governments and other organizations.

He may direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life, implement emergency mitigation, preparedness, response or recovery actions; prescribe routes, modes of transportation and destination in connection with evacuation; and control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein.

Executive orders, to include those declaring a state of emergency and directing evacuation, shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

Such executive orders declaring a state of emergency may address exceptional circumstances that exist relating to an order of quarantine or an order of isolation concerning a communicable disease of public health threat that is issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ [32.1-48.05](#) et seq.) of Chapter 2 of Title 32.1.

Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and emergencies, no rule, regulation, or order issued under this section shall have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly but the same or a similar rule, regulation, or order may thereafter be issued again if not contrary to law;

(2) To appoint a State Coordinator of Emergency Management and authorize the appointment or employment of other personnel as is necessary to carry out the provisions of this chapter, and to remove, in his discretion, any and all persons serving hereunder;

- (3) To procure supplies and equipment, to institute training and public information programs relative to emergency management and to take other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces in time of need;
- (4) To make such studies and surveys of industries, resources, and facilities in the Commonwealth as may be necessary to ascertain the capabilities of the Commonwealth and to plan for the most efficient emergency use thereof;
- (5) On behalf of the Commonwealth enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of the Commonwealth. After a state of emergency is declared in another state and the Governor receives a written request for assistance from the executive authority of that state, the Governor may authorize the use in the other state of personnel, equipment, supplies, and materials of the Commonwealth, or of a political subdivision, with the consent of the chief executive officer or governing body of the political subdivision;
- (6) To delegate any administrative authority vested in him under this chapter, and to provide for the further delegation of any such authority, as needed;
- (7) Whenever, in the opinion of the Governor, the safety and welfare of the people of the Commonwealth require the exercise of emergency measures due to a threatened or actual disaster, he may declare a state of emergency to exist;
- (8) To request a major disaster declaration from the President, thereby certifying the need for federal disaster assistance and ensuring the expenditure of a reasonable amount of funds of the Commonwealth, its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting from the disaster;
- (9) To provide incident command system guidelines for state agencies and local emergency response organizations; and
- (10) Whenever, in the opinion of the Governor or his designee, an employee of a state or local public safety agency responding to a disaster has suffered an extreme personal or family hardship in the affected area, such as the destruction of a personal residence or the existence of living conditions that imperil the health and safety of an immediate family member of the employee, the Governor may direct the Comptroller of the Commonwealth to issue warrants not to exceed \$2,500 per month, for

up to three calendar months, to the employee to assist the employee with the hardship.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1981, c. 116; 1990, c. 95; 1997, c. [893](#); 2000, c. [309](#); 2004, cc. [773](#), [1021](#); 2006, c. [140](#); 2007, cc. [729](#), [742](#); 2008, cc. [121](#), [157](#).

§44-146.17:1. Transmittal to General Assembly of rules, regulations, and orders.

The Governor shall cause copies of any order, rule, or regulation proclaimed and published by him pursuant to § [44-146.17](#) to be transmitted forthwith to each member of the General Assembly.

1981, c. 160.

§44-146.17:2. Annual statewide drill.

The Governor shall conduct an annual statewide drill on response to a large-scale disaster including, but not limited to, electrical power outages. Such drill shall include the participation of local governments, affected state agencies, public utilities, law-enforcement agencies, and other entities as determined by the Governor. The Governor shall submit a report to the General Assembly on the results of the drill by November 30 of each year. The report shall be delivered to the chairs of the House Committee on Militia, Police and Public Safety and the Senate Committee on General Laws.

2004, c. [430](#).

§44-146.18. Department of Emergency Services continued as Department of Emergency Management; administration and operational control; coordinator and other personnel; powers and duties.

A. The State Office of Emergency Services is continued and shall hereafter be known as the Department of Emergency Management. Wherever the words "State Department of Emergency Services" are used in any law of the Commonwealth, they shall mean the Department of Emergency Management. During a declared emergency this Department shall revert to the operational control of the Governor. The Department shall have a coordinator who shall be appointed by and serve at the pleasure of the Governor and also serve as State Emergency Planning Director. The Department shall employ the professional, technical, secretarial, and clerical employees necessary for the performance of its functions.

B. The Department of Emergency Management shall in the administration of emergency services and disaster preparedness programs:

1. In coordination with political subdivisions and state agencies, ensure that the Commonwealth has up-to-date assessments and preparedness plans to prevent, respond to and recover from all disasters including acts of terrorism;
2. Conduct a statewide emergency management assessment in cooperation with political subdivisions, private industry and other public and private entities deemed vital to preparedness, public safety and security. The assessment shall include a review of emergency response plans, which include the variety of hazards, natural and man-made. The assessment shall be updated annually;
3. Submit to the Governor and to the General Assembly, no later than the first day of each regular session of the General Assembly, an annual executive summary and report on the status of emergency management response plans throughout the Commonwealth and other measures taken or recommended to prevent, respond to and recover from disasters, including acts of terrorism. This report shall be made available to the Division of Legislative Automated Systems for the processing of legislative documents and reports. Information submitted in accordance with the procedures set forth in subdivision 14 of § [2.2-3705.2](#) shall not be disclosed unless:
 - a. It is requested by law-enforcement authorities in furtherance of an official investigation or the prosecution of a criminal act;
 - b. The agency holding the record is served with a proper judicial order; or
 - c. The agency holding the record has obtained written consent to release the information from the Department of Emergency Management;
4. Promulgate plans and programs that are conducive to adequate disaster mitigation preparedness, response and recovery programs;
5. Prepare and maintain a State Emergency Operations Plan for disaster response and recovery operations that assigns primary and support responsibilities for basic emergency services functions to state agencies, organizations and personnel as appropriate;
6. Coordinate and administer disaster mitigation, preparedness, response and recovery plans and programs with the proponent federal, state and local government agencies and related groups;

7. Provide guidance and assistance to state agencies and units of local government in developing and maintaining emergency management and continuity of operations (COOP) programs, plans and systems;
8. Make necessary recommendations to agencies of the federal, state, or local governments on preventive and preparedness measures designed to eliminate or reduce disasters and their impact;
9. Determine requirements of the Commonwealth and its political subdivisions for those necessities needed in the event of a declared emergency which are not otherwise readily available;
10. Assist state agencies and political subdivisions in establishing and operating training programs and programs of public information and education regarding emergency services and disaster preparedness activities;
11. Consult with the Board of Education regarding the development and revision of a model school crisis and emergency management plan for the purpose of assisting public schools in establishing, operating, and maintaining emergency services and disaster preparedness activities;
12. Consult with the State Council of Higher Education in the development and revision of a model institutional crisis and emergency management plan for the purpose of assisting public and private two-year and four-year institutions of higher education in establishing, operating, and maintaining emergency services and disaster preparedness activities and, as needed, in developing an institutional crisis and emergency management plan pursuant to § [23.1-804](#);
13. Develop standards, provide guidance and encourage the maintenance of local and state agency emergency operations plans, which shall include the requirement for a provision that the Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund be contacted immediately to deploy assistance in the event of an emergency as defined in the emergency response plan when there are victims as defined in § [19.2-11.01](#). The Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund shall be the lead coordinating agencies for those individuals determined to be victims, and the plan shall also contain current contact information for both agencies;
14. Prepare, maintain, coordinate or implement emergency resource management plans and programs with federal, state and local government agencies and related

groups, and make such surveys of industries, resources, and facilities within the Commonwealth, both public and private, as are necessary to carry out the purposes of this chapter;

15. Coordinate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention, mitigation, preparation, response, and recovery;

16. Establish guidelines pursuant to § [44-146.28](#), and administer payments to eligible applicants as authorized by the Governor;

17. Coordinate and be responsible for the receipt, evaluation, and dissemination of emergency services intelligence pertaining to all probable hazards affecting the Commonwealth;

18. Coordinate intelligence activities relating to terrorism with the Department of State Police; and

19. Develop an emergency response plan to address the needs of individuals with household pets and service animals in the event of a disaster and assist and coordinate with local agencies in developing an emergency response plan for household pets and service animals.

The Department of Emergency Management shall ensure that all such plans, assessments, and programs required by this subsection include specific preparedness for, and response to, disasters resulting from electromagnetic pulses and geomagnetic disturbances.

C. The Department of Emergency Management shall during a period of impending emergency or declared emergency be responsible for:

1. The receipt, evaluation, and dissemination of intelligence pertaining to an impending or actual disaster;

2. Providing facilities from which state agencies and supporting organizations may conduct emergency operations;

3. Providing an adequate communications and warning system capable of notifying all political subdivisions in the Commonwealth of an impending disaster within a reasonable time;

4. Establishing and maintaining liaison with affected political subdivisions;

5. Determining requirements for disaster relief and recovery assistance;

6. Coordinating disaster response actions of federal, state and volunteer relief agencies;

7. Coordinating and providing guidance and assistance to affected political subdivisions to ensure orderly and timely response to and recovery from disaster effects.

D. The Department of Emergency Management shall be provided the necessary facilities and equipment needed to perform its normal day-to-day activities and coordinate disaster-related activities of the various federal, state, and other agencies during a state of emergency declaration by the Governor or following a major disaster declaration by the President.

E. The Department of Emergency Management is authorized to enter into all contracts and agreements necessary or incidental to performance of any of its duties stated in this section or otherwise assigned to it by law, including contracts with the United States, other states, agencies and government subdivisions of the Commonwealth, and other appropriate public and private entities.

F. The Department of Emergency Management shall encourage private industries whose goods and services are deemed vital to the public good to provide annually updated preparedness assessments to the local coordinator of emergency management on or before April 1 of each year, to facilitate overall Commonwealth preparedness. For the purposes of this section, "private industry" means companies, private hospitals, and other businesses or organizations deemed by the State Coordinator of Emergency Management to be essential to the public safety and well-being of the citizens of the Commonwealth.

G. The Department of Emergency Management shall establish a Coordinator of Search and Rescue. Powers and duties of the Coordinator shall include:

1. Coordinating the search and rescue function of the Department of Emergency Management;

2. Coordinating with local, state, and federal agencies involved in search and rescue;

3. Coordinating the activities of search and rescue organizations involved in search and rescue;

4. Maintaining a register of search and rescue certifications, training, and responses;

5. Establishing a memorandum of understanding with the Virginia Search and Rescue Council and its respective member agencies regarding search and rescue efforts;

6. Providing on-scene search and rescue coordination when requested by an authorized person;
7. Providing specialized search and rescue training to police, fire-rescue, EMS, emergency managers, volunteer search and rescue responders, and others who might have a duty to respond to a search and rescue emergency;
8. Gathering and maintaining statistics on search and rescue in the Commonwealth;
9. Compiling, maintaining, and making available an inventory of search and rescue resources available in the Commonwealth;
10. Periodically reviewing search and rescue cases and developing best professional practices; and
11. Providing an annual report to the Secretary of Public Safety and Homeland Security on the current readiness of Virginia's search and rescue efforts.

Nothing in this chapter shall be construed as authorizing the Department of Emergency Management to take direct operational responsibilities from local, state, or federal law enforcement in the course of search and rescue or missing person cases.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1979, c. 193; 1984, c. 720; 1985, cc. 443, 447; 1997, c. [893](#); 2000, c. [309](#); 2001, c. [841](#); 2003, c. [622](#); 2004, c. [690](#); 2005, cc. [165](#), [490](#); 2007, c. [902](#); 2008, cc. [450](#), [526](#); 2009, cc. [222](#), [269](#); 2012, c. [418](#); 2015, cc. [97](#), [205](#), [223](#); 2017, c. [778](#).

§44-146.18:1. Virginia Disaster Response Funds disbursements; reimbursements.

There is hereby created a nonlapsing revolving fund which shall be maintained as a separate special fund account within the state treasury, and administered by the Coordinator of Emergency Management, consistent with the purposes of this chapter. All expenses, costs, and judgments recovered pursuant to this section, and all moneys received as reimbursement in accordance with applicable provisions of federal law, shall be paid into the fund. Additionally, an annual appropriation to the fund from the general fund or other unrestricted nongeneral fund, in an amount determined by the Governor, may be authorized to carry out the purposes of this chapter. All recoveries from occurrences prior to March 10, 1983, and otherwise qualifying under this section, received subsequent to March 10, 1983, shall be paid into the fund. No moneys shall be credited to the balance in the fund until they have been received by the fund. An accounting of moneys received and disbursed shall be kept and furnished to the Governor or the General Assembly upon request.

Disbursements from the fund may be made for the following purposes and no others:

1. For costs and expenses, including, but not limited to personnel, administrative, and equipment costs and expenses directly incurred by the Department of Emergency Management or by any other state agency or political subdivision or other entity, acting at the direction of the Coordinator of Emergency Management, in and for preventing or alleviating damage, loss, hardship, or suffering caused by emergencies, resource shortages, or disasters; and
2. For procurement, maintenance, and replenishment of materials, equipment, and supplies, in such quantities and at such location as the Coordinator of Emergency Management may deem necessary to protect the public peace, health, and safety and to preserve the lives and property and economic well-being of the people of the Commonwealth; and
3. For costs and expenses incurred by the Department of Emergency Management or by any other state agency or political subdivision or other entity, acting at the direction of the Coordinator of Emergency Management, in the recovery from the effects of a disaster or in the restoration of public property or facilities.

The Coordinator of Emergency Management shall promptly seek reimbursement from any person causing or contributing to an emergency or disaster for all sums disbursed from the fund for the protection, relief and recovery from loss or damage caused by such person. In the event a request for reimbursement is not paid within 60 days of receipt of a written demand, the claim shall be referred to the Attorney General for collection. The Coordinator of Emergency Management shall be allowed to recover all legal and court costs and other expenses incident to such actions for collection. The Coordinator is authorized to recover any sums incurred by any other state agency or political subdivision acting at the direction of the Coordinator as provided in this paragraph.

1983, c. 48; 2000, c. [309](#); 2008, cc. [121](#), [157](#).

§44-146.18:2. Authority of Coordinator of Emergency Management in undeclared emergency.

In an emergency which does not warrant a gubernatorial declaration of a state of emergency, the Coordinator of Emergency Management, after consultation with and approval of the Secretary of Public Safety and Homeland Security, may enter into contracts and incur obligations necessary to prevent or alleviate damage, loss, hardship,

or suffering caused by such emergency and to protect the health and safety of persons and property. In exercising the powers vested by this section, the Coordinator may proceed without regard to normal procedures pertaining to entering into contracts, incurring of obligations, rental of equipment, purchase of supplies and materials, and expenditure of public funds; however, mandatory constitutional requirements shall not be disregarded.

1985, c. 443; 1990, cc. 1, 317; 2000, c. [309](#); 2014, cc. [115](#), [490](#).

§44-146.18:3. First informer broadcasters; coordination with Department of Emergency Management.

A. For purposes of this section, unless the context requires otherwise, "first informer" means the critical radio or television personnel of a radio or television broadcast station engaged in (i) the process of broadcasting; (ii) the maintenance or repair of broadcast station equipment, transmitters, and generators; or (iii) the transportation of fuel for generators of broadcast stations.

B. Unless it is shown to endanger public safety or inhibit recovery efforts, or is otherwise prohibited by state or federal law, state and local government agencies shall permit first informer radio or television personnel with proper identification cards to access their broadcasting station within any area declared a state emergency area by the Governor for the purpose of provision of news, public service and public safety information and repairing or resupplying their facility or equipment.

First informer identification cards shall be issued by the Virginia Association of Broadcasters. A list of those first informers who have been issued identification cards shall be furnished to the Virginia Department of Emergency Management and the Secretary of Veterans and Defense Affairs by the Virginia Association of Broadcasters prior to December 30 of each year.

C. Nothing in this section shall be construed to limit or impair the right or ability of any news organization or its personnel to gather and report the news.

2014, c. [561](#).

§44-146.19. Powers and duties of political subdivisions.

A. Each political subdivision within the Commonwealth shall be within the jurisdiction of and served by the Department of Emergency Management and be responsible for local disaster mitigation, preparedness, response and recovery. Each political subdivision shall maintain in accordance with state disaster preparedness plans and

programs an agency of emergency management which, except as otherwise provided under this chapter, has jurisdiction over and services the entire political subdivision.

B. Each political subdivision shall have a director of emergency management who, after the term of the person presently serving in this capacity has expired and in the absence of an executive order by the Governor, shall be the following:

1. In the case of a city, the mayor or city manager, who shall appoint a coordinator of emergency management with consent of council;
2. In the case of a county, a member of the board of supervisors selected by the board or the chief administrative officer for the county, who shall appoint a coordinator of emergency management with the consent of the governing body;
3. A coordinator of emergency management shall be appointed by the council of any town to ensure integration of its organization into the county emergency management organization;
4. In the case of the Town of Chincoteague and of towns with a population in excess of 5,000 having an emergency management organization separate from that of the county, the mayor or town manager shall appoint a coordinator of emergency services with consent of council;
5. In Smyth County and in York County, the chief administrative officer for the county shall appoint a director of emergency management, with the consent of the governing body, who shall appoint a coordinator of emergency management with the consent of the governing body.

C. Whenever the Governor has declared a state of emergency, each political subdivision within the disaster area may, under the supervision and control of the Governor or his designated representative, control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resource systems which fall only within the boundaries of that jurisdiction and which do not impact systems affecting adjoining or other political subdivisions, enter into contracts and incur obligations necessary to combat such threatened or actual disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster. In exercising the powers vested under this section, under the supervision and control of the Governor, the political subdivision may proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional

requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, levying of taxes, and appropriation and expenditure of public funds.

D. The director of each local organization for emergency management may, in collaboration with (i) other public and private agencies within the Commonwealth or (ii) other states or localities within other states, develop or cause to be developed mutual aid arrangements for reciprocal assistance in case of a disaster too great to be dealt with unassisted. Such arrangements shall be consistent with state plans and programs and it shall be the duty of each local organization for emergency management to render assistance in accordance with the provisions of such mutual aid arrangements.

E. Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional emergency operations plan for its area. The plan shall include, but not be limited to, responsibilities of all local agencies and shall establish a chain of command, and a provision that the Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund shall be contacted immediately to deploy assistance in the event of an emergency as defined in the emergency response plan when there are victims as defined in § [19.2-11.01](#). The Department of Criminal Justice Services and the Virginia Criminal Injuries Compensation Fund shall be the lead coordinating agencies for those individuals determined to be victims, and the plan shall also contain current contact information for both agencies. Every four years, each local and interjurisdictional agency shall conduct a comprehensive review and revision of its emergency operations plan to ensure that the plan remains current, and the revised plan shall be formally adopted by the locality's governing body. In the case of an interjurisdictional agency, the plan shall be formally adopted by the governing body of each of the localities encompassed by the agency. Each political subdivision having a nuclear power station or other nuclear facility within 10 miles of its boundaries shall, if so directed by the Department of Emergency Management, prepare and keep current an appropriate emergency plan for its area for response to nuclear accidents at such station or facility.

F. All political subdivisions shall provide an annually updated emergency management assessment to the State Coordinator of Emergency Management on or before July 1 of each year.

G. By July 1, 2005, all localities with a population greater than 50,000 shall establish an alert and warning plan for the dissemination of adequate and timely warning to the public in the event of an emergency or threatened disaster. The governing body of the locality, in consultation with its local emergency management organization, shall amend its local emergency operations plan that may include rules for the operation of its alert and warning system, to include sirens, Emergency Alert System (EAS), NOAA Weather Radios, or other personal notification systems, amateur radio operators, or any combination thereof.

H. Localities that have established an agency of emergency management shall have authority to require the review of, and suggest amendments to, the emergency plans of nursing homes, assisted living facilities, adult day care centers, and child day care centers that are located within the locality.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1978, c. 495; 1982, c. 5; 1990, cc. 404, 945; 1993, cc. 621, 671, 781; 2000, c. [309](#); 2003, c. [622](#); 2004, c. [302](#); 2005, cc. [6](#), [205](#); 2006, c. [138](#); 2007, cc. [97](#), [129](#), [138](#); 2009, cc. [222](#), [269](#); 2012, c. [418](#).

§44-146.20. Joint action by political subdivisions.

If two or more political subdivisions find that disaster operation plans and programs would be better served by interjurisdictional arrangements in planning for, preventing, or responding to disaster in that area, then direct steps may be taken as necessary, including creation of an interjurisdictional relationship, a joint emergency operations plan, mutual aid, or such other activities as necessary for planning and services. Any political subdivision may provide or receive assistance in the event of a disaster or emergency, pursuant to this chapter, under the provisions of any local mutual aid agreement or by the Statewide Mutual Aid program if agreed to by resolution of the governing body. The action of the governing body may include terms and conditions deemed necessary by the governing body for participation in the program. The governing body may withdraw from participation in the Statewide Mutual Aid program by adoption of a resolution or ordinance upon a finding that participation is no longer in the public interest. The locality shall immediately notify the State Coordinator of Emergency Services of the adoption of a participation or withdrawal resolution.

1973, c. 260; 2000, cc. [309](#), [437](#).

§44-146.21. Declaration of local emergency.

A. A local emergency may be declared by the local director of emergency management with the consent of the governing body of the political subdivision. In the event the governing body cannot convene due to the disaster or other exigent circumstances, the director, or in his absence, the deputy director, or in the absence of both the director and deputy director, any member of the governing body may declare the existence of a local emergency, subject to confirmation by the governing body at its next regularly scheduled meeting or at a special meeting within 45 days of the declaration, whichever occurs first. The governing body, when in its judgment all emergency actions have been taken, shall take appropriate action to end the declared emergency.

B. A declaration of a local emergency as defined in § [44-146.16](#) shall activate the local Emergency Operations Plan and authorize the furnishing of aid and assistance thereunder.

C. Whenever a local emergency has been declared, the director of emergency management of each political subdivision or any member of the governing body in the absence of the director, if so authorized by the governing body, may control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resource systems which fall only within the boundaries of that jurisdiction and which do not impact systems affecting adjoining or other political subdivisions, enter into contracts and incur obligations necessary to combat such threatened or actual disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster, and proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and other expenditures of public funds, provided such funds in excess of appropriations in the current approved budget, unobligated, are available. Whenever the Governor has declared a state of emergency, each political subdivision affected may, under the supervision and control of the Governor or his designated representative, enter into contracts and incur obligations necessary to combat such threatened or actual disaster beyond the capabilities of local government, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster. In exercising the powers vested under this section, under the supervision and control of the Governor, the political subdivision may proceed without regard to time-consuming procedures and formalities prescribed by law

pertaining to public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, levying of taxes, and appropriation and expenditure of public funds.

D. No interjurisdictional agency or official thereof may declare a local emergency. However, an interjurisdictional agency of emergency management shall provide aid and services to the affected political subdivision authorizing such assistance in accordance with the agreement as a result of a local or state declaration.

E. None of the provisions of this chapter shall apply to the Emergency Disaster Relief provided by the American Red Cross or other relief agency solely concerned with the provision of service at no cost to the citizens of the Commonwealth.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1976, c. 594; 1986, c. 24; 1990, c. 945; 1994, c. [75](#); 2000, c. [309](#); 2016, c. [555](#).

§44-146.22. Development of measures to prevent or reduce harmful consequences of disasters; disclosure of information.

A. In addition to disaster prevention measures included in state, local and interjurisdictional emergency operations plans, the Governor shall consider, on a continuing basis, hazard mitigation or other measures that could be taken to prevent or reduce the harmful consequences of disasters. At his direction, and pursuant to any other authority, state agencies, including, but not limited to, those charged with responsibilities in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, critical infrastructure protection, land use and land-use planning, and construction standards, shall make studies of disaster prevention. The Governor, from time to time, shall make recommendations to the General Assembly, local governments, and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

B. The Governor or agencies acting on his behalf may receive information, voluntarily submitted from both public and nonpublic entities, related to the protection of the nation's critical infrastructure sectors and components that are located in Virginia or affect the health, safety, and welfare of the citizens of Virginia. Information submitted by any public or nonpublic entity in accordance with the procedures set forth in subdivision 14 of § [2.2-3705.2](#) shall not be disclosed unless:

1. It is requested by law-enforcement authorities in furtherance of an official investigation or the prosecution of a criminal act;
2. The agency holding the record is served with a proper judicial order; or
3. The agency holding the record has obtained the written consent to release the information from the entity voluntarily submitting it.

1973, c. 260; 1974, c. 4; 1975, c. 11; 2000, c. [309](#); 2003, c. [848](#); 2004, c. [690](#); 2017, c. [778](#).

§44-146.23. Immunity from liability.

A. Neither the Commonwealth, nor any political subdivision thereof, nor federal agencies, nor other public or private agencies, nor, except in cases of willful misconduct, public or private employees, nor representatives of any of them, engaged in any emergency services activities, while complying with or attempting to comply with this chapter or any rule, regulation, or executive order promulgated pursuant to the provisions of this chapter, shall be liable for the death of, or any injury to, persons or damage to property as a result of such activities. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ [65.2-100](#) et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. For the purposes of the immunity conferred by this subsection, representatives of public or private employees shall include, but shall not be limited to, volunteers in state and local services who are persons who serve in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT).

B. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons, of emergency access or of other uses relating to emergency services shall, together with his successors in interest, if any, not be liable for negligently causing the death of, or injury to any person on or about such real estate or premises or for loss of or damage to the property of any person on or about such real estate or premises during such actual or impending disaster.

C. If any person holds a license, certificate, or other permit issued by any state, or political subdivision thereof, evidencing the meeting of qualifications for

professional, mechanical, or other skills, the person, without compensation other than reimbursement for actual and necessary expenses, may render aid involving that skill in the Commonwealth during a disaster, and such person shall not be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from such service.

D. No person, firm or corporation which gratuitously services or repairs any electronic devices or equipment under the provisions of this section after having been approved for the purposes by the State Coordinator shall be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from any defect or imperfection in any such device or equipment so gratuitously serviced or repaired.

E. Notwithstanding any law to the contrary, no individual, partnership, corporation, association, or other legal entity shall be liable in civil damages as a result of acts taken voluntarily and without compensation in the course of rendering care, assistance, or advice with respect to an incident creating a danger to person, property, or the environment as a result of an actual or threatened discharge of a hazardous substance, or in preventing, cleaning up, treating, or disposing of or attempting to prevent, clean up, treat, or dispose of any such discharge, provided that such acts are taken under the direction of state or local authorities responding to the incident. This section shall not preclude liability for civil damages as a result of gross negligence, recklessness or willful misconduct. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ [65.2-100](#) et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. The immunity provided by the provisions of this paragraph shall be in addition to, not in lieu of, any immunities provided by § [8.01-225](#).

F. No individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, fraternal organization, religious organization, charitable organization, or any other legal or commercial entity and any successor, officer, director, representative, or agent thereof, who, without compensation other than reimbursement for actual and necessary expenses, provides services, goods, real or personal property, or facilities:

1. Pursuant to a Governor-declared emergency or during a formal exercise or training of the State Department of Emergency Management or a responsible county or city emergency management entity; and

2. At the request and direction of the State Department of Emergency Management or a county or city employee whose responsibilities include emergency management;

shall be liable for the death of or injury to any person or for the loss of, or damage to, the property of any person where such death, injury, loss, or damage was proximately caused by the circumstances of the actual emergency or its subsequent conditions, or the circumstances of the formal exercise or training if such formal exercise or training simulates conditions of an actual emergency. This subsection shall not preclude liability for civil damages as a result of gross negligence, recklessness, or willful misconduct. The immunities of this subsection shall not extend to any manufacturer or to any retailer or distributor substantially involved in the manufacture or design of any product or good. The provisions of this subsection shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the Workers' Compensation Act (§ [65.2-100](#) et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. The immunity provided by this subsection shall be in addition to, and not in lieu of, any immunities provided by § [8.01-225](#).

1973, c. 260; 1979, c. 193; 1984, c. 743; 2005, c. [474](#); 2008, cc. [121](#), [157](#); 2009, c. [233](#).

§44-146.24. Cooperation of public agencies.

In carrying out the provisions of the chapter, the Governor, the heads of state agencies, the local directors and governing bodies of the political subdivisions of the Commonwealth are directed to utilize the services, equipment, supplies and facilities of existing departments, offices, and agencies of the Commonwealth and the political subdivisions thereof to the maximum extent practicable consistent with state and local emergency operation plans. The officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and facilities to the Governor and to the State Department of Emergency Management upon request.

1973, c. 260; 1974, c. 4; 1975, c. 11; 2000, c. [309](#).

§44-146.25. Repealed.

Repealed by Acts 2015, c. [221](#), cl. 2.

§44-146.26. Duties of emergency management organizations.

It shall be the duty of every organization for emergency management established pursuant to this chapter and of the officers thereof to execute and enforce such orders, rules and regulations as may be made by the Governor under authority of this chapter. Each organization shall have available for inspection at its office all such orders, rules and regulations.

1973, c. 260; 2000, c. [309](#).

§44-146.27. Supplementing federal funds; assistance of federal agencies; acceptance of gifts and services; appropriations by local governing bodies.

A. If the federal government allots funds for the payment of a portion of any disaster programs, projects, equipment, supplies or materials or other related costs, the remaining portion may be paid with a combination of state and local funds available for this purpose and consistent with state emergency management plans and program priorities.

B. Whenever the federal government or any agency or officer thereof offers to the Commonwealth, or through the Commonwealth to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan for purposes of emergency services, the Commonwealth, acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its local director or governing body, may accept such offer and agree to the terms of the offer and the rules and regulations, if any, of the agency making the offer, including, but not limited to, requirements to hold and save the United States free from damages and to indemnify the federal government against any claims arising from the services, equipment, supplies, materials, or funds provided. Upon such acceptance, the Governor or local director or governing body of such political subdivision may authorize any officer of the Commonwealth or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the Commonwealth or such political subdivision, in accordance with the terms of the agreement, and subject to the rules and regulations, if any, of the agency making the offer.

C. Whenever any person, firm or corporation offers to the Commonwealth or to any political subdivision thereof services, equipment, supplies, materials, or funds by way of gift, grant or loan, for purposes of emergency management, the Commonwealth, acting through the Governor, or such political subdivision, acting through its local

director or governing body, may accept such offer and upon such acceptance the Governor or local director or governing body of such political subdivision may authorize any officer of the Commonwealth or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the Commonwealth or such political subdivision, and subject to the terms of the offer.

D. The governing bodies of the counties, cities and towns are hereby authorized to appropriate funds for expenditure by any local or regional organization for emergency management established pursuant to this chapter and for local or regional disaster service activities.

1973, c. 260; 1999, cc. [6](#), [7](#); 2000, c. [309](#).

§44-146.28. Authority of Governor and agencies under his control in declared state of emergency.

(a) In the case of a declaration of a state of emergency as defined in § [44-146.16](#), the Governor is authorized to expend from all funds of the state treasury not constitutionally restricted, a sum sufficient. Allotments from such sum sufficient may be made by the Governor to any state agency or political subdivision of the Commonwealth to carry out disaster service missions and responsibilities. Allotments may also be made by the Governor from the sum sufficient to provide financial assistance to eligible applicants located in an area declared to be in a state of emergency, but not declared to be a major disaster area for which federal assistance might be forthcoming. This shall be considered as a program of last resort for those local jurisdictions that cannot meet the full cost.

The Virginia Department of Emergency Management shall establish guidelines and procedures for determining whether and to what extent financial assistance to local governments may be provided.

The guidelines and procedures shall include, but not be limited to, the following:

(1) Participants may be eligible to receive financial assistance to cover a percentage of eligible costs if they demonstrate that they are incapable of covering the full cost. The percentage may vary, based on the Commission on Local Government's fiscal stress index. The cumulative effect of recent disasters during the preceding twelve months may also be considered for eligibility purposes.

(2) Only eligible participants that have sustained an emergency or disaster as defined in § [44-146.16](#) with total eligible costs of four dollars or more per capita may receive

assistance except that (i) any town with a total population of less than 3,500 shall be eligible for disaster assistance for incurred eligible damages of \$15,000 or greater and (ii) any town with a population of 3,500 or more, but less than 5,000 shall be eligible for disaster assistance for incurred eligible damages of \$20,000 or greater and (iii) any town with a population of 5,000 or greater with total eligible costs of four dollars or more per capita may receive assistance. No site or facility may be included with less than \$1,000 in eligible costs. However, the total cost of debris clearance may be considered as costs associated with a single site.

(3) Eligible participants shall be fully covered by all-risk property and flood insurance policies, including provisions for insuring the contents of the property and business interruptions, or shall be self-insured, in order to be eligible for this assistance. Insurance deductibles shall not be covered by this program.

(4) Eligible costs incurred by towns, public service authorities, volunteer fire departments and volunteer emergency medical services agencies may be included in a county's or city's total costs.

(5) Unless otherwise stated in guidelines and procedures, eligible costs are defined as those listed in the Public Assistance component of Public Law 93-288, as amended, excluding beach replenishment and snow removal.

(6) State agencies, as directed by the Virginia Department of Emergency Management, shall conduct an on-site survey to validate damages and to document restoration costs.

(7) Eligible participants shall maintain complete documentation of all costs in a manner approved by the Auditor of Public Accounts and shall provide copies of the documentation to the Virginia Department of Emergency Management upon request.

If a jurisdiction meets the criteria set forth in the guidelines and procedures, but is in an area that has neither been declared to be in a state of emergency nor been declared to be a major disaster area for which federal assistance might be forthcoming, the Governor is authorized, in his discretion, to make an allotment from the sum sufficient to that jurisdiction without a declaration of a state of emergency, in the same manner as if a state of emergency declaration had been made.

The Governor shall report to the Chairmen of the Senate Finance Committee, the House Appropriations Committee, and the House Finance Committee within thirty days of authorizing the sum sufficient pursuant to this section. The Virginia

Department of Emergency Management shall report annually to the General Assembly on the local jurisdictions that received financial assistance and the amount each jurisdiction received.

(b) Public agencies under the supervision and control of the Governor may implement their emergency assignments without regard to normal procedures (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials and expenditures of public funds.

(c) Allotments may be made by the Governor from a sum sufficient to provide financial assistance to Virginia state agencies and political subdivisions responding to a declared state of emergency in another state as provided by § [44-146.17](#), whether or not a state of emergency is declared in the Commonwealth pursuant to § [44-146.16](#).

(d) Allotments may be made by the Governor from a sum sufficient for the deployment of personnel and materials for the Virginia National Guard and the Virginia Defense Force to prepare for a response to any of the circumstances set forth in subdivisions A 1 through A 5 of § [44-75.1](#), whether or not a state of emergency is declared in the Commonwealth pursuant to § [44-146.16](#). However, preparation authorized by this subsection shall be limited to the deployment of no more than 300 personnel, and shall be limited to no more than five days, unless a state of emergency is declared.

1973, c. 260; 1974, c. 4; 1975, c. 11; 1997, c. [893](#); 2000, cc. [309](#), [1023](#); 2007, cc. [729](#), [742](#); 2011, cc. [53](#), [69](#); 2015, cc. [502](#), [503](#).

§44-146.28:1. Compact enacted into law; terms.

The Emergency Management Assistance Compact is hereby enacted into law and entered into by the Commonwealth of Virginia with all other states legally joining therein, in the form substantially as follows:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I. PURPOSE AND AUTHORITIES.

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this compact, the term "states" is taken to mean the several states, the Com-

monwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II. GENERAL IMPLEMENTATION.

Each party state entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the Governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III. PARTY STATE RESPONSIBILITIES.

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

1. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resources shortages, civil disorders, insurgency, or enemy attack;
2. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;
3. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;
4. Assist in warning communities adjacent to or crossing the state boundaries;
5. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;
6. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and
7. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

1. A description of the emergency service function for which assistance is needed, including, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

2. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed; and
3. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV. LIMITATIONS.

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state emergency or disaster by the governor of the party state that is to receive assistance or upon commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

ARTICLE V. LICENSES AND PERMITS.

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state

requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the Governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI. LIABILITY.

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII. SUPPLEMENTARY AGREEMENTS.

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this compact contains elements of a broad base common to all states, and nothing herein shall preclude any state entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII. COMPENSATION.

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX. REIMBURSEMENT.

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such

requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this article.

ARTICLE X. EVACUATION.

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI. IMPLEMENTATION.

A. This compact shall become effective immediately upon its enactment into law by any two states. Thereafter, this compact shall become effective as to any other state upon enactment by such state.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the Governor of the withdrawing state has given notice in writing of such withdrawal to the

Governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII. VALIDITY.

This compact shall be construed to effectuate the purposes stated in Article I. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected.

ARTICLE XIII. ADDITIONAL PROVISIONS.

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under § 1385 of Title 18 of the United States Code.

1995, c. [280](#).

§44-146.28:2. Disaster relief assistance by out-of-state businesses and employees.

A. As used in this section, unless the context requires a different meaning:

"Critical infrastructure" means real and personal property and equipment owned or used to provide public utility or communications services, including communications networks, electric generation facilities, transmission and distribution systems, gas distribution systems, lines, poles, pipes, structures, towers, water and sewage pipelines and systems, and related support facilities, buildings, offices, and equipment.

"Declared disaster or emergency" means a disaster or emergency as defined in § [44-146.16](#) for which a state of emergency as defined in § [44-146.16](#) has been declared

for the Commonwealth by the Governor or by an official authorized by federal law to make such declarations.

"Disaster-related or emergency-related work" means repairing, renovating, installing, building, or rendering services or other activities necessary to mitigate damage to critical infrastructure resulting from a declared disaster or emergency during the disaster response period. "Disaster-related or emergency-related work" does not include (i) any activities that an out-of-state business or an out-of-state employee is paid to perform by the Commonwealth, a locality in the Commonwealth, or a registered business in Virginia or (ii) the sale of goods by an out-of-state business or an out-of-state employee to the Commonwealth, a locality in the Commonwealth, or a registered business in the Commonwealth.

"Disaster response period" means a period that begins 10 days prior to the first day of the declared disaster or emergency and extends for a period of 60 days after the end of the declared disaster or emergency, or any longer period as declared by the Governor.

"Out-of-state business" means a business entity (i) whose services are requested by a registered business, the Commonwealth, or a local government for purposes of performing disaster-related or emergency-related work in the Commonwealth; (ii) that, except for declared disaster-related or emergency-related work, has no presence in and conducts no business in the Commonwealth; and (iii) that had not obtained from the State Corporation Commission a certificate of authority or registration to transact business in the Commonwealth and had no registrations or tax filings or nexus in the Commonwealth other than disaster-related or emergency-related work during the tax year immediately preceding the declared disaster or emergency. A business entity that otherwise meets the definition of an out-of-state business maintains that status even though it is affiliated with a registered business if such affiliation is solely through common ownership.

"Out-of-state employee" means an employee who, except for disaster-related or emergency-related work during the disaster response period, does not work in the Commonwealth.

"Registered business" means a domestic or foreign business entity that is listed in the business entity records maintained in the office of the clerk of the State Corporation Commission, provides public utility or communications services, and was in existence or had obtained from the State Corporation Commission a certificate of

authority or registration to transact business in the Commonwealth prior to the declared disaster or emergency.

B. Except as provided in subsection C:

1. Disaster-related or emergency-related work performed by an out-of-state business within the Commonwealth shall not be considered in determining and shall not result in (i) any requirement that the business file, remit, or pay any state or local taxes or fees, including any filing required for a unitary or combined group of which the out-of-state business may be a part, or (ii) any requirement that the business or its out-of-state employees be licensed or registered in any manner by the Commonwealth or local governments. These taxes, fees, and registration requirements include but are not limited to fees assessed and collected, and authorizations or registrations issued by the State Corporation Commission; unemployment insurance premiums; income taxes; state registration fees; local business, professional, and occupational taxes; and collection of sales and use tax; and

2. Disaster-related or emergency-related work performed by an out-of-state employee shall not be considered to have established such person's residency or a presence in the Commonwealth that would require that person or that person's employer to file and pay income taxes or to be subject to tax withholdings or to file and pay any other state or local tax or fee during the disaster response period. However, nothing in this section shall be construed to affect or alter the responsibility of the out-of-state employee, or that person's employer, to file and pay income taxes or be subject to tax withholdings in the employee's home state on income earned in the Commonwealth during the disaster response period.

C. The provisions of this section shall not apply to any applicable transaction taxes and fees, including motor fuels taxes, sales and use taxes, transient occupancy taxes, and car rental taxes or fees, based on purchases, leases, or consumption in the Commonwealth.

D. The provisions of this section shall not apply to any out-of-state business or out-of-state employee for any period of presence or transaction of business in the Commonwealth after the disaster response period ends.

2015, c. [595](#).

§44-146.29. Expired.

Expired.

§44-146.29:1. Expired.

Expired.

Enforcement of Illegal Sale or Distribution of Cigarettes Act

§58.1-1031. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition.

"Department" means the Department of Taxation.

"Importer" means the same as that term is defined in 26 U.S.C. § 5702 (k).

"Package" means the same as that term is defined in 15 U.S.C. § 1332 (4).

2000, cc. [880](#), [901](#).

§58.1-1032. Applicability.

The provisions of this chapter shall not apply to (i) cigarettes allowed to be imported or brought into the United States for personal use or (ii) cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. § 1555 (b) and any implementing regulations. This section, however, shall apply to cigarettes described in clause (ii) that are brought back into the customs territory for resale within the customs territory.

2000, cc. [880](#), [901](#).

§58.1-1033. Prohibited acts.

It shall be unlawful for any person to:

1. Sell or distribute in the Commonwealth, acquire, hold, own, possess, or transport, for sale or distribution in the Commonwealth, or import, or cause to be imported, into the Commonwealth for sale or distribution in the Commonwealth (i) any cigarettes the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only," "U.S. Tax-Exempt," "For Use Outside U.S.," or similar wording; (ii) any cigarettes the package of which does not comply with (a) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333, or (b) all federal trademark and copyright laws; (iii) any cigarettes imported into the United States in violation of 26 U.S.C. § 5754 or 19 U.S.C. § 1681 -1681b, or any other federal law or regulations; (iv) any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States; or (v) any cigarettes for which there has not been submitted to the Secretary of the U.S. Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1335a;

2. Alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure (i) any statement, label, stamp, sticker, or notice described in clause (i) of subdivision 1 or (ii) any health warning that is not specified in, or does not conform with the requirements of, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333; or

3. Affix any stamp required pursuant to Chapter 10 (§ [58.1-1000](#) et seq.) of this title to the package of any cigarettes described in subdivision 1 of this section or altered in violation of subdivision 2 of this section.

2000, cc. [880](#), [901](#); 2002, c. [821](#).

§58.1-1034. Records to be kept; filing with Department.

A. Any person who acquires, holds, owns, possesses, transports in or imports into the Commonwealth cigarettes which are subject to this chapter shall, with respect to such cigarettes, maintain and keep all records required pursuant to Chapter 10 (§ [58.1-1000](#) et seq.) of this title.

B. Between the first and tenth business day of each month, each person licensed to affix the state tax stamp to cigarettes shall file with the Department, for all cigarettes imported into the United States to which such person has affixed the tax stamp in the preceding month, (i) a copy of the permit issued pursuant to the Internal Revenue Code, 26 U.S.C. § 5713, to the person importing such cigarettes into the United States allowing such person to import such cigarettes, and the customs form containing, with respect to such cigarettes, the internal revenue tax information required by the U.S. Bureau of Alcohol, Tobacco and Firearms; (ii) a statement, signed by such person under the penalty of perjury, which shall be treated as confidential by the Department and shall be exempt from disclosure under the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.), identifying the brand and brand styles of all such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale; however, if such licensed person has already provided to the Department the identical information required by this clause as part of its monthly reporting required by Chapter 10 (§ [58.1-1000](#) et seq.) of this title, then such monthly reporting shall be deemed to have also been made simultaneously under the provisions of this clause, and duplicate copies need not be provided to the Department; and (iii) a statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with the package health warning and ingredient reporting requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1333 and 1335a, with respect to such cigarettes and §§ [3.2-4200](#) and [3.2-4201](#) of the Code of Virginia, including a statement indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of § [3.2-4200](#).

2000, cc. [880](#), [901](#); 2002, c. [821](#).

§58.1-1035. Revocation or suspension of permit by Department; civil penalties; sharing of information.

A. The Department may revoke or suspend the permit of any wholesale dealer, as defined in § [58.1-1000](#), for a violation of this chapter or any rule adopted by the Department as provided in § [58.1-1011](#).

B. In addition, the Department may impose a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes involved or \$5,000 upon finding a violation of this chapter and may assess the tax due and any

interest on the product acquired, possessed, sold, or offered for sale in violation of this chapter.

C. For the purpose of enforcing this chapter, the Department may request or share information with any federal, state or local agency, including any agency of another state or local agency thereof.

2000, cc. [880](#), [901](#).

§58.1-1036. Other penalties for violation; civil actions.

A. Any violation of § [58.1-1033](#) or § [58.1-1034](#) shall constitute a prohibited practice as provided in § [59.1-200](#), and, in addition to any remedies or penalties set forth in this chapter, shall be subject to any remedies or penalties available for a violation of that section.

B. Any person who commits any of the acts prohibited by § [58.1-1033](#), either knowingly or having reason to know he is doing so, or who fails to comply with any of the requirements of § [58.1-1034](#), shall be guilty of a Class 5 felony.

C. In addition to any other remedy provided by law, any person may bring an action for appropriate injunctive or other equitable relief for a violation of this chapter, for actual damages, if any, sustained by reason of the violation, and, as determined by the court, interest on the damages from the date of the complaint, and taxable costs. If the court finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained by reason of the violation.

2000, cc. [880](#), [901](#).

§58.1-1037. Seizure.

Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in the Commonwealth in violation of this chapter shall be deemed contraband and shall be subject to seizure, forfeiture, destruction, or court-ordered assignment for use by a law-enforcement undercover operation. Such cigarettes shall be deemed contraband whether or not the violation of this chapter is with knowledge.

2000, cc. [880](#), [901](#); 2012, cc. [362](#), [472](#).

Enterprise Zone Act

§59.1-270. Expired.

Expired.

§59.1-272. Repealed.

Repealed by Acts 2005, cc. [863](#) and [884](#), cl. 2.

§59.1-279. Eligibility.

A. Any business firm may be designated a "qualified business firm" for purposes of this chapter if:

1. (i) It establishes within an enterprise zone a trade or business not previously conducted in the Commonwealth by such taxpayer and (ii) 25 percent or more of the employees employed at the business firm's establishment or establishments located within the enterprise zone either have incomes below 80 percent of the median income for the jurisdiction prior to employment or are residents of an enterprise zone.
2. It (i) is actively engaged in the conduct of a trade or business in an area immediately prior to such an area being designated as an enterprise zone and (ii) increases the average number of full-time employees employed at the business firm's establishment or establishments located within the enterprise zone by at least 10 percent over the lower of the preceding two years' employment with no less than 25 percent of such increase being employees who either have incomes below 80 percent of the median income for the jurisdiction prior to employment or are residents of an enterprise zone. Current employees of the business firm that are transferred directly to the enterprise zone facility from another site within the state resulting in a net loss of employment at that site shall not be included in calculating the increase in the average number of full-time employees employed by the business firm within the enterprise zone.
3. It (i) is actively engaged in the conduct of a trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone and (ii) increases the average number of full-time employees employed at the business firm's establishment or establishments within the enterprise zone by at least ten percent over the lower of the preceding two years' employment of the business firm prior to relocation with no less than 25 percent of such increase being employees who either have incomes below eighty percent of the median income for the jurisdiction prior to employment or are residents of an enterprise zone. Current employees of the business firm that are transferred directly to the enterprise zone

facility from another site within the state resulting in a net loss of employment at that site shall not be included in calculating the increase in the average number of full-time employees employed by the business firm within the enterprise zone.

4. For the purposes of this section, the term "full-time employee" means (i) an individual employed by a business firm and who works the normal number of hours a week as required by the firm or (ii) two or more individuals who together share the same job position and together work the normal number of hours a week as required by the business firm for that one position. For the purposes of this section, the term "jurisdiction" means the county, city or town which made the application under § [59.1-274](#) to have the enterprise zone. In the case of a joint application, jurisdiction means all parties making such application.

B. After designation as a qualified business firm pursuant to this section, each business firm in an enterprise zone shall submit annually to the Department a statement requesting one or more of the tax incentives provided in § [59.1-280](#) or [59.1-282](#). Such a statement shall be accompanied by an approved form supplied by the Department and completed by an independent certified public accountant licensed by the Commonwealth which states that the business firm met the definition of a "qualified business firm" and continues to meet the requirements for eligibility as a qualified business firm in effect at the time of its designation. A copy of the statement submitted by each business firm to the Department shall be forwarded to the zone administrator.

C. The form referred to in subsection B of this section, prepared by an independent certified public accountant licensed by the Commonwealth, shall be prima facie evidence of the eligibility of a business firm for the purposes of this section, but the evidence of eligibility shall be subject to rebuttal. The Department or the Department of Taxation or State Corporation Commission, as applicable, may at its discretion require any business firm to provide supplemental information regarding the firm's eligibility (i) as a qualified business firm or (ii) for a tax credit claimed pursuant to this chapter.

D. The provisions of this section shall apply only as follows:

1. To those qualified business firms that have initiated use of enterprise zone tax credits pursuant to this section on or before July 1, 2005;

2. To those small qualified business firms and large qualified business firms that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with this section on or before July 1, 2005; provided that in the case of small qualified business firms, the signed agreements must be based on proposals developed by the Commonwealth prior to November 1, 2004.

1982, c. 275; 1983, c. 572; 1988, cc. 236, 374; 1995, c. [792](#); 1997, cc. [497](#), [517](#), [808](#); 2005, cc. [863](#), [884](#).

§59.1-279.1. Repealed.

Repealed by Acts 2005, cc. [863](#) and [884](#), cl. 2.

§59.1-280. Enterprise zone business tax credit.

A. As used in this section:

"Business tax credit" means a credit against any tax due under Articles 2 (§ [58.1-320](#) et seq.) and 10 (§ [58.1-400](#) et seq.) of Chapter 3, Chapter 12 (§ [58.1-1200](#) et seq.), Article 1 (§ [58.1-2500](#) et seq.) of Chapter 25, or Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26 of Title 58.1 due from a business firm.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of \$15 million when such qualified zone investments result in the creation of at least 50 permanent full-time positions. "Qualified zone investment" and "permanent full-time position" shall have the meanings provided in subsection A of § [59.1-280.1](#).

"Small qualified business firm" means any qualified business firm other than a large qualified business firm.

B. The Department shall certify annually to the Commissioner of the Department of Taxation, or in the case of business firms subject to tax under Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26 of Title 58.1 to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the business tax credit provided herein for a qualified business firm. Any certification by the Department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the qualified business firm is not entitled to such tax credit. The Department of Taxation or State Corporation Commission shall notify the Department in writing upon determining that a business firm is ineligible for such tax credit.

C. Small qualified business firms shall be allowed a business tax credit in an amount equal to 80 percent of the tax due to the Commonwealth for the first tax year and 60 percent of the tax due the Commonwealth for the second tax year through the tenth tax year.

D. Large qualified business firms shall be allowed a business tax credit in a percentage amount determined by agreement between the Department and the large qualified business firm, provided such percentage amounts shall not exceed the percentages provided for small qualified business firms as set forth in subsection C.

E. Any business tax credit not usable may not be applied to future tax years.

F. When a partnership or a small business corporation making an election pursuant to Subchapter S of the Internal Revenue Code is eligible for a tax credit under this section, each partner or shareholder shall be eligible for the tax credit provided for in this section on his individual income tax in proportion to the amount of income received by that partner from the partnership, or shareholder from his corporation, respectively.

G. Tax credits provided for in this section shall only apply to taxable income of a qualified business firm attributable to the conduct of business within the enterprise zone. Any qualified business firm having taxable income from business activity both within and without the enterprise zone shall allocate and apportion its Virginia taxable income attributable to the conduct of business as follows:

1. The portion of a qualified business firm's Virginia taxable income allocated and apportioned to business activities within an enterprise zone shall be determined by multiplying its Virginia taxable income by a fraction, the numerator of which is the sum of the property factor and the payroll factor, and the denominator of which is two.

- a. The property factor is a fraction. The numerator is the average value of real and tangible personal property of the business firm which is used in the enterprise zone. The denominator is the average value of real and tangible personal property of the business firm used everywhere in the Commonwealth.

- b. The payroll factor is a fraction. The numerator is the total amount paid or accrued within the enterprise zone during the taxable period by the business firm for compensation. The denominator is the total compensation paid or accrued everywhere in the Commonwealth during the taxable period by the business firm for compensation.

2. The property factor and the payroll factor shall be determined in accordance with the procedures established in §§ [58.1-409](#) through [58.1-413](#) for determining the Virginia taxable income of a corporation having income from business activities which is taxable both within and without the Commonwealth, mutatis mutandis.

3. If a qualified business firm believes that the method of allocation and apportionment hereinbefore prescribed as administered has operated or will operate to allocate or apportion to an enterprise zone a lesser portion of its Virginia taxable income than is reasonably attributable to business conducted within the enterprise zone, it shall be entitled to file with the Department of Taxation a statement of its objections and of such alternative method of allocation or apportionment as it believes to be appropriate under the circumstances with such detail and proof and within such time as the Department of Taxation may reasonably prescribe. If the Department of Taxation concludes that the method of allocation or apportionment employed is in fact inequitable or inapplicable, it shall redetermine the taxable income by such other method of allocation or apportionment as best seems calculated to assign to an enterprise zone the portion of the qualified business firm's Virginia taxable income reasonably attributable to business conducted within the enterprise zone.

H. Tax credits awarded under this section and under § [59.1-280.1](#) shall not exceed \$7.5 million annually until the end of fiscal year 2019.

I. The provisions of this section shall apply only as follows:

1. To those qualified business firms that have initiated use of enterprise zone tax credits pursuant to this section on or before July 1, 2005;

2. To those small qualified business firms and large qualified business firms that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with this section on or before July 1, 2005; provided that in the case of small qualified business firms, the signed agreements must be based on proposals developed by the Commonwealth prior to November 1, 2004.

1982, c. 275; 1983, c. 572; 1988, c. 236; 1992, c. 301; 1995, c. [792](#); 1996, c. [77](#); 1997, c. [517](#); 1998, c. [759](#); 2003, c. [676](#); 2005, cc. [863](#), [884](#); 2009, cc. [207](#), [271](#); 2011, c. [850](#).

§59.1-280.1. Enterprise zone real property investment tax credit.

A. As used in this section:

"Large qualified zone resident" means a qualified zone resident making qualified zone investments in excess of \$100 million when such qualified zone investments result in the creation of at least 200 permanent full-time positions.

"Permanent full-time position" means a job of an indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone, and requiring either (i) a minimum of 35 hours of an employee's time a week for the entire normal year of the business firm's operations, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Seasonal or temporary positions, or a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions.

"Qualified zone improvements" means the amount expended for improvements to rehabilitate or expand depreciable real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) \$50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. "Qualified zone expenditures" includes any such expenditure regardless of whether it is considered properly chargeable to a capital account or deductible as a business expense under federal Treasury Regulations.

Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to expand or rehabilitate a building for commercial or industrial use and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other land improvements. Qualified zone improvements shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning, and cleanup.

Qualified zone improvements shall not include:

1. The cost of acquiring any real property or building; however, the cost of any newly constructed depreciable nonresidential real property (excluding land, land improvements, paving, grading, driveways, and interest) shall be considered to be a qualified

zone improvement eligible for the credit if the total amount of such expenditure is at least \$250,000 with respect to a single facility.

2. (i) The cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility hook-up or access fees; (viii) out-buildings; or (ix) the cost of any well or septic or sewer system.

3. The basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom acquired or Internal Revenue Code § 1014 (a).

"Qualified zone investments" means the sum of qualified zone improvements and the cost of machinery, tools and equipment used in manufacturing tangible personal property within an enterprise zone. For purposes of this section, machinery, tools and equipment shall only be deemed to include the cost of such property which is placed in service in the enterprise zone on or after July 1, 1995. Machinery, tools and equipment shall not include the basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or part by reference to the basis of such property in the hands of the person from whom acquired, or Internal Revenue Code § 1014 (a).

"Qualified zone resident" means an owner or tenant of real property located in an enterprise zone who expands or rehabilitates such real property to facilitate the conduct of a trade or business within the enterprise zone.

"Real property investment tax credit" means a credit against the taxes imposed by Articles 2 (§ [58.1-320](#) et seq.) and 10 (§ [58.1-400](#) et seq.) of Chapter 3, Chapter 12 (§

[58.1-1200](#) et seq.), Article 1 (§ [58.1-2500](#) et seq.) of Chapter 25, or Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26 of Title 58.1.

"Small qualified zone resident" means any qualified zone resident other than a large qualified zone resident.

B. For all taxable years beginning on and after July 1, 1995, but before July 1, 2005, a qualified zone resident shall be allowed a real property investment tax credit as set forth in this section.

C. For any small qualified zone resident, a real property investment tax credit shall be allowed in an amount equaling 30 percent of the qualified zone improvements. Any tax credit granted pursuant to this subsection is refundable; however, in no event shall the cumulative credit allowed to a small qualified zone resident pursuant to this subsection exceed \$125,000 in any five-year period.

D. For any large qualified zone resident, a real property investment tax credit shall be allowed in an amount of up to five percent of such qualified zone investments. The percentage amount of the real property investment tax credit granted to a large qualified zone resident shall be determined by agreement between the Department and the large qualified zone resident, provided such percentage amount shall not exceed five percent. The real property investment tax credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any credit not usable for the taxable year generated may be carried over until the full amount of such credit has been utilized.

E. The Department shall certify the nature and amount of qualified zone improvements and qualified zone investments eligible for a real property investment tax credit in any taxable year. Only qualified zone improvements and qualified zone investments that have been properly certified shall be eligible for the credit. Any form filed with the Department of Taxation or State Corporation Commission for the purpose of claiming the credit shall be accompanied by a copy of the certification furnished to the taxpayer by the Department. Any certification by the Department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the taxpayer is not entitled to such tax credit. The Department of Taxation or State Corporation Commission shall notify the Department in writing upon determining that a taxpayer is ineligible for such tax credit.

F. In the case of a partnership, limited liability company or S corporation, the term "qualified zone resident" as used in this section means the partnership, limited liability company or S corporation. Credits granted to a partnership, limited liability company or S corporation shall be passed through to the partners, members or shareholders, respectively.

G. The Tax Commissioner shall have the authority to issue regulations relating to the computation and carryover of the credit provided under this section.

H. In the first taxable year only, the credit provided in this section shall be prorated equally against the taxpayer's estimated payments made in the third and fourth quarters and the final payment, if such taxpayer is required to make quarterly payments.

I. Tax credits awarded under this section and under § [59.1-280](#) shall not exceed \$7.5 million annually until the end of fiscal year 2019.

J. The provisions of this section shall apply only as follows:

1. To those large qualified zone residents that have initiated use of enterprise zone tax credits pursuant to this section on or before July 1, 2005;

2. To those large qualified zone residents that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with this section on or before July 1, 2005.

1995, c. [792](#); 1997, cc. [517](#), [634](#), [669](#); 1998, c. [759](#); 2005, cc. [863](#), [884](#); 2017, c. [451](#).

§59.1-280.2. Repealed.

Repealed by Acts 2005, cc. [863](#) and [884](#), cl. 2.

§59.1-281. Repealed.

Repealed by Acts 1983, c. 572.

§59.1-282. Repealed.

Repealed by Acts 2005, cc. [863](#) and [884](#), cl. 2.

§59.1-282.1. Repealed.

Repealed by Acts 2009, cc. [207](#) and [271](#), cl. 3.

§59.1-282.3. Repealed.

Repealed by Acts 2005, cc. [863](#) and [884](#), cl. 2.

Enterprise Zone Grant Program

§59.1-538. Short title.

This chapter shall be known and may be cited as the "Enterprise Zone Grant Act."
2005, cc. [863](#), [884](#).

§59.1-539. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Housing and Community Development.

"Department" means the Department of Housing and Community Development.

"Enterprise zone" means an area declared by the Governor to be eligible for the benefits of this chapter.

"Local zone administrator" means the chief executive of the county or city in which the enterprise zone is located, or his designee.

2005, cc. [863](#), [884](#).

§59.1-540. Administration.

The Department shall administer this chapter and shall have the following powers and duties:

1. To establish the criteria for determining what areas qualify as enterprise zones. Such criteria shall include, but not be limited to, the distress criteria specified in § [59.1-545](#);
2. To monitor the implementation and operation of this chapter;
3. To evaluate and report on the Enterprise Zone Program;
4. To administer, enforce, and interpret the regulations promulgated by the Board; and
5. To allocate grant funds in accordance with the provisions of this chapter.

2005, cc. [863](#), [884](#).

§59.1-541. Rules and regulations.

Rules and regulations prescribing procedures implementing the purpose of this chapter shall be promulgated by the Board in accordance with the Administrative Process Act.

2005, cc. [863](#), [884](#).

§59.1-542. Enterprise zone designation.

A. Upon the Department's announcement of periodic zone designation competitions, the governing body of any county or city may make written application to the Department to have an area or areas declared an enterprise zone. Such application shall include a description of the area or areas to be included, the development potential of these areas, the need for special state incentives, the local incentives that shall be provided to support new economic activity, and other information that the Department deems necessary to assess requests for designation.

B. Two or more adjacent localities may file a joint application for an enterprise zone. Localities applying for a joint zone shall demonstrate a regional need for an enterprise zone and a regional impact that could not be achieved through a single jurisdiction zone. Applicants for a joint zone shall also specify what mechanisms will be used to ensure that the economic benefits of such a zone are shared among the applicant localities.

C. An enterprise zone may consist of no more than three noncontiguous areas. The aggregate size of these noncontiguous zone areas shall be specified by regulation. Localities shall be limited to three enterprise zone designations.

D. A joint enterprise zone shall consist of no more than three noncontiguous zone areas for each participating locality. The aggregate size of these noncontiguous areas shall be specified by regulation.

E. Upon recommendation of the Director of the Department, the Governor may designate up to 30 enterprise zones in accordance with the provisions of this chapter. Such designations are to be done in coordination with the expiration of existing zones designated under earlier Enterprise Zone Program provisions. The initial round of six zone designation applications and approval may be conducted prior to adoption of final program regulations provided that the process is consistent with the provisions of this chapter. Enterprise zones shall be designated for an initial 10-year period except as provided for in subsections A and B of § [59.1-546](#). Upon recommendation of the Director of the Department, the Governor may renew zones for up to two five-year renewal periods. Recommendations for five-year renewals shall be based on the locality's performance of its enterprise zone responsibilities, the continued need for such a zone, and its effectiveness in creating jobs and capital investment.

F. Localities that have zone designations are responsible for providing the local incentives specified in their applications, providing timely submission of enterprise

zone reports and evaluations as required by regulation, verifying that businesses and properties seeking enterprise zone incentives are physically located within their zones, and implementing an active local enterprise zone program within the context of overall economic development efforts.

2005, cc. [863](#), [884](#).

§59.1-543. Local incentives.

A. Local governments submitting applications for enterprise zone designation shall propose local incentives that address the economic conditions within their locality and that will help stimulate real property improvements and new job creation. Such local incentives include, but are not limited to: (i) reduction of permit fees; (ii) reduction of user fees; (iii) reduction of business, professional and occupational license tax; (iv) partial exemption from taxation of substantially rehabilitated real estate pursuant to § [58.1-3221](#); and (v) adoption of a local enterprise zone development taxation program pursuant to Article 4.2 (§ [58.1-3245.6](#) et seq.) of Chapter 32 of Title 58.1. The extent and duration of such incentives shall conform to the requirements of the Constitution of Virginia and the Constitution of the United States. In making application for designation as an enterprise zone, the application may also contain proposals for regulatory flexibility, including but not limited to: (a) special zoning districts, (b) permit process reform, (c) exemptions from local ordinances, and (d) other public incentives proposed in the locality's application which shall be binding upon the locality upon designation of the enterprise zone.

B. A locality may establish eligibility criteria for local incentives that differ from the criteria required to qualify for the incentives provided in this chapter.

2005, cc. [863](#), [884](#).

§59.1-544. Amendment of enterprise zones; redesignation of certain joint enterprise zones.

A. Once an enterprise zone has been designated, the local government may make written application to the Department to amend the zone boundaries in accordance with the requirements of § [59.1-542](#). Such boundary amendments are subject to Department approval. Local governing bodies may amend their local enterprise zone incentives with the approval of the Department provided that the proposed incentive is equal to or superior to that in the original application or any previous amendment approved by the Department.

B. The Department may redesignate an existing joint enterprise zone consisting of two localities for the purpose of expanding the zone provided (i) all of the local governing bodies of the localities in which the proposed redesignated zone will be located have submitted to the Department resolutions supporting the proposed redesignation and applications for redesignation of the joint enterprise zone and (ii) the area of the locality added to the redesignated zone is contiguous to the existing joint enterprise zone and includes a revenue-sharing district that has experienced the loss of 900 permanent full-time positions within a 12-month period.

C. When a county or city was previously added to an existing enterprise zone to create a joint enterprise zone, the Department shall redesignate the enterprise zone when the term of the joint enterprise zone expires. The duration of the enterprise zone redesignated pursuant to this subsection shall be equal to the length of time the original enterprise zone existed before the county or city was added to create the joint enterprise zone.

D. As used in this section, "joint enterprise zone" means an enterprise zone located in two or more adjacent localities.

E. Any redesignation of an existing joint enterprise zone shall be in compliance with all applicable regulations promulgated by the Department.

2005, cc. [863](#), [884](#); 2011, cc. [254](#), [310](#); 2013, c. [514](#).

§59.1-545. Application review.

A. After announcement of a periodic zone designation application process, the Department shall review each application upon receipt and secure any additional information that it deems necessary for the purpose of evaluating the need and potential impact of a zone designation.

B. The Department shall complete review of the applications within 60 days of the last date designated for receipt of an application. After review of the applications the Director of the Department shall recommend to the Governor those applications with the greatest potential for accomplishing the purpose of this chapter. If an application is denied, the governing body shall be informed of that fact, along with the reasons for the denial.

C. Consideration for enterprise zone designations shall be based upon the locality-wide need and impact of such a designation. Need shall be assessed in part by the following distress factors: (i) the average unemployment rate for the locality over the

most recent three-year period, (ii) the average median adjusted gross income for the locality over the most recent three-year period, and (iii) the average percentage of public school students within the locality receiving free or reduced price lunches over the most recent three-year period. These distress factors shall account for at least 50 percent of the consideration given to local governments' applications for enterprise zone designation.

2005, cc. [863](#), [884](#).

§59.1-546. Review and termination of enterprise zones.

A. If the local governing body is unable or unwilling to provide the specified local incentives as proposed in its application for zone designation or as approved by the Department in an amendment, the zone designation shall terminate. Qualified business firms located in such enterprise zone shall be eligible to receive the incentives provided by this chapter even though the zone designation has terminated. No business firm may become a qualified business firm after the date of zone termination.

B. If no business firms have qualified for incentives as provided for in this chapter within a five-year period, the Department shall terminate that enterprise zone designation.

C. The Department shall review the effectiveness in creating jobs and capital investment and activity occurring within designated enterprise zones and shall annually report its findings to the Senate Finance Committee, the Senate Committee on Commerce and Labor, the House Appropriations Committee, and the House Committee on Commerce and Labor.

2005, cc. [863](#), [884](#).

§59.1-547. Enterprise zone job creation grants.

A. As used in this section:

"Base year" means either of the two calendar years immediately preceding a qualified business firm's first year of grant eligibility, at the choice of the business firm.

"Federal minimum wage" means the minimum wage standard as currently defined by the United States Department of Labor in the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. Such definition applies to permanent full-time employees paid on an hourly or wage basis. For those permanent full-time employees filling permanent full-time, salaried positions, the minimum wage is defined as the employee's annual salary divided by 52 weeks per year divided by 35 hours per week.

"Full month" means the number of days that a permanent full-time position must be filled in order to count in the calculation of the job creation grant amount. A full month is calculated by dividing the total number of days in the calendar year by 12. A full month for the purpose of calculating job creation grants is equivalent to 30.416666 days.

"Grant eligible position" means a new permanent full-time position created above the threshold number at an eligible business firm. Positions in retail, personal service or food and beverage service shall not be considered grant eligible positions.

"Permanent full-time position" means a job of indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone; and requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the business firm's operation, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time per week for the portion of the calendar year in which the employee was initially hired for or transferred to the business firm, or (iii) a minimum of 1,680 hours per year. Such position shall not include (i) seasonal, temporary or contract positions, (ii) a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located within an enterprise zone, (iii) any position that previously existed in the Commonwealth, or (iv) positions created by a business that is simultaneously closing facilities in other areas of the Commonwealth.

"Qualified business firm" means a business firm designated as a qualified business firm by the Department pursuant to § [59.1-542](#).

"Report to work" means that the employee filling a permanent full-time position reports to the business' zone establishment on a regular basis.

"Subsequent base year" means the base year for calculating the number of grant eligible positions in a second or subsequent five consecutive calendar year grant period. If a second or subsequent five-year grant period is requested within two years after the previous five-year grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant eligible positions in the final year of the previous grant period. If a business firm applies for subsequent five consecutive calendar year grant periods beyond the two years immediately following

the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as the subsequent base year, at the choice of the business firm.

"Threshold number" means an increase of four permanent full-time positions over the number of permanent full-time positions in the base year or subsequent base year.

B. A business firm shall be eligible to receive enterprise zone job creation grants for any and all years in which the business firm qualifies in the five consecutive calendar years period commencing with the first year of grant eligibility. A business firm may be eligible for subsequent five consecutive calendar year grant periods if it creates new grant eligible positions above the threshold for its subsequent base year.

C. The amount of the grant for which a business firm is eligible shall be calculated as follows:

1. Either (i) \$800 per year for up to five consecutive years for each grant eligible position that during such year is paid a minimum of 200 percent of the federal minimum wage and that is provided with health benefits, or (ii) \$500 per year for up to five years for each grant eligible position that during such year is paid less than 200 percent of the federal minimum wage, but at least 175 percent of the federal minimum wage, and that is provided with health benefits. In areas with an unemployment rate that is one and one-half times or more the state average, the business firm will receive \$500 per year for up to five years for each grant eligible position that during such year is paid at least 150 percent of the federal minimum wage and that is provided with health benefits. Unemployment rates used to determine eligibility for the reduced wage rate threshold shall be based on the most recent annualized unemployment data published by the Virginia Employment Commission. A business firm may receive grants for up to a maximum of 350 grant eligible jobs annually.

2. Positions paying less than 175 percent of the federal minimum wage or that are not provided with health benefits shall not be eligible for enterprise zone job creation grants.

D. Job creation grants shall be based on a calendar year. The amount of the grant for which a qualified business firm is eligible with respect to any permanent full-time position that is filled for less than a full calendar year shall be prorated based on the number of full months worked.

E. The amount of the job creation grant for which a qualified business firm is eligible in any year shall not include amounts for grant eligible positions in any year other than the preceding calendar year. Job creation grants shall not be available for any calendar year prior to 2005.

F. Permanent full-time positions that have been used to qualify for any other enterprise zone incentive pursuant to former §§ [59.1-270](#) through [59.1-284.01](#) shall not be eligible for job creation grants and shall not be counted as a part of the minimum threshold of four new positions.

G. Any qualified business firm receiving a major business facility job tax credit pursuant to § [58.1-439](#) shall not be eligible to receive an enterprise zone job creation grant under this section for any job used to qualify for the major business facility job tax credit.

2005, cc. [863](#), [884](#); 2006, c. [668](#); 2010, c. [328](#); 2012, c. [445](#).

§59.1-548. Enterprise zone real property investment grants.

A. As used in this section:

"Facility" means a complex of buildings, co-located at a single physical location within an enterprise zone, all of which are necessary to facilitate the conduct of the same trade or business. This definition applies to new construction as well as to the rehabilitation and expansion of existing structures.

"Mixed use" means a building incorporating residential uses in which a minimum of 30 percent of the useable floor space will be devoted to commercial, office or industrial use.

"Qualified real property investment" means the amount expended for improvements to rehabilitate, expand or construct depreciable real property placed in service during the calendar year within an enterprise zone provided that the total amount of such improvements equals or exceeds (i) \$100,000 with respect to a single building or a facility in the case of rehabilitation or expansion or (ii) \$500,000 with respect to a single building or a facility in the case of new construction. "Qualified real property investment" includes any such expenditure regardless of whether it is considered properly chargeable to a capital account or deductible as a business expense under federal Treasury Regulations.

Qualified real property investments include expenditures associated with (a) any exterior, interior, structural, mechanical or electrical improvements necessary to

construct, expand or rehabilitate a building for commercial, industrial or mixed use; (b) excavations; (c) grading and paving; (d) installing driveways; and (e) landscaping or land improvements. Qualified real property investments shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup.

Qualified real property investment shall not include:

1. The cost of acquiring any real property or building.
2. Other costs including: (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.
3. The basis of any property: (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § [59.1-280.1](#) was previously granted; (iii) which was previously placed in service in Virginia by the qualified zone investor, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iv) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or Internal Revenue Code § 1014 (a).

"Qualified zone investor" means an owner or tenant of real property located within an enterprise zone who expands, rehabilitates or constructs such real property for commercial, industrial or mixed use. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the building or facility for which the tenant holds a valid lease. In the case of an owner of an individual unit within a horizontal property regime, the amounts of qualified zone investments specified in this section shall relate to that proportion of the building for which the owner holds title and not to common elements.

B. Grants shall be calculated at a rate of 20 percent of the amount of qualified real property investment in excess of \$500,000 in the case of the construction of a new building or facility. Grants shall be calculated at a rate of 20 percent of the amount of qualified real property investment in excess of \$100,000 in the case of the rehabilitation or expansion of an existing building or facility. For any qualified zone investor making \$5 million or less in qualified real property investment, a real property investment grant shall not exceed \$100,000 within any five-year period for any individual building or facility. For any qualified zone investor making more than \$5 million in qualified real property investment, a real property investment grant shall not exceed \$200,000 within any five-year period for any individual building or facility.

C. A qualified zone investor shall apply for a real property investment grant in the calendar year following the year in which the property was placed in service.

2005, cc. [863](#), [884](#); 2007, cc. [242](#), [287](#); 2009, cc. [207](#), [271](#); 2017, c. [451](#).

§59.1-549. Policies and procedures for allocation of enterprise zone incentive grants.

A. Qualified business firms and qualified zone investors shall be eligible to receive enterprise zone incentive grants provided for in this chapter to the extent that they apply for and are approved for grant allocations through the Department.

B. If the sum of (i) the total amount of grants for which qualified business firms are eligible under § [59.1-547](#) plus (ii) the total amount of grants for which qualified zone investors are eligible under § [59.1-548](#) exceeds the total annual appropriation for the payment of all grants under this chapter for the relevant year, then the amount of the grant that each qualified business firm and qualified zone investor is eligible for shall be prorated in a proportional manner. The Department shall prioritize allocations to fully fund the grants under § [59.1-547](#) with any remaining funds to be allocated to grants under § [59.1-548](#). In such cases, the amount of the grant that each qualified zone investor is eligible for under § [59.1-548](#) shall be prorated in a proportional manner based on the funds remaining in the annual appropriation after full payment of the grants under § [59.1-547](#).

C. Qualified zone businesses and qualified zone investors shall make application to the Department each year for which they seek eligibility for enterprise zone incentive grants. Such application is to be in accordance with regulations promulgated by the

Board on forms supplied by the Department and in accordance with dates specified by the Department.

D. The accuracy and validity of information on qualified real property investments, permanent full-time positions, wage rates and provision of health benefits provided in such applications are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the Department. Business firms with base year employment of 100 or fewer permanent full-time positions and that create in a qualification year 25 or fewer grant eligible positions seeking to qualify for Job Creation Grants as provided for in § [59.1-547](#) shall be exempt from the attestation requirement for that qualification year. The permanent full-time positions, wage rates, and provision of health benefits of such business firms shall be subject to verification by the Department.

E. Applicants for enterprise zone incentive grants under this chapter must have the local zone administrator verify that the location of their business or property is in the enterprise zone using a form supplied by the Department. The local zone administrator shall make this verification in accordance with dates specified by the Department.

F. The Department may at any time review qualified zone businesses and qualified zone investors to assure that information provided in the application process is accurate.

G. Qualified zone businesses shall maintain all documentation regarding qualification for enterprise zone job creation grants for at least one year after the final year of their five-year grant period. Qualified zone investors shall maintain all documentation regarding qualification for enterprise zone incentive grants for a minimum of three years following the receipt of any grant.

H. Enterprise zone incentive grants that do not have adequate documentation regarding qualified real property investments, permanent full-time positions, wage rates and provision of health benefits may be subject to repayment by the qualified zone business or qualified zone investor.

I. Actions of the Department relating to the approval or denial of applications for enterprise zone incentive grants under this chapter shall be exempt from the

provisions of the Administrative Process Act pursuant to subdivision B 4 of § [2.2-4002](#).

2005, cc. [863](#), [884](#); 2009, cc. [207](#), [271](#); 2010, c. [328](#); 2011, cc. [202](#), [320](#).

Extended Service Contract Act

§59.1-435. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services or his designee.

"Consumer product" means tangible personal property primarily used for personal, family, or household purposes.

"Extended service contract" or "contract" means a written contract or agreement for a specific duration in return for the payment of a segregated charge by the purchaser to perform the repair or replacement of any consumer product, including a motor vehicle, or indemnification for repair or replacement, for the operational or structural failure of any consumer product, including a motor vehicle, due to a defect in materials, workmanship, inherent defect, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental, and emergency road service and road hazard protection. Extended service contracts may provide for any one or more of the following:

1. The repair or replacement of any consumer product for damage resulting from power surges or interruption or accidental damage from handling;
2. The repair or replacement of tires or wheels, or both, on a motor vehicle damaged as the result of coming into contact with a road hazard;
3. The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting;
4. The repair of chips or cracks in, or the replacement of, a motor vehicle windshield as a result of damage caused by a road hazard;

5. The replacement of a motor vehicle key or key fob in the event that the key or key fob becomes inoperable or is lost or stolen;
6. The installation on or application to a motor vehicle of a protective chemical, substance, device, or system that (i) is designed to prevent loss or damage to the motor vehicle from a specific cause and (ii) includes, within or as an accompaniment to the extended service contract, an agreement that provides for payment to or on behalf of the purchaser of incidental costs in the event that the protective chemical, substance, device, or system fails to prevent loss or damage as specified, provided that the reimbursement of incidental costs under such agreement is tied to the purchase of a protective chemical, substance, device, or system that is formulated or designed to make the specified loss or damage less likely to occur; or
7. Any other service that may be designated by the Board as provided in subsection B of § [59.1-438](#).

"Extended service contract" does not include a contract or agreement that provides (i) for the application of fuel additives, oil additives, or other chemical products to the engine, transmission, or fuel system of a motor vehicle or (ii) coverage for (a) the repair of damage to the interior surfaces of a motor vehicle or the replacement of the interior surfaces of a motor vehicle, or both, or (b) the repair of damage to the exterior paint finish of a motor vehicle or the replacement of the exterior paint finish of a motor vehicle, or both, unless the coverage is provided under a product warranty included in connection with the sale of a protective chemical, substance, device, or system described in subdivision 6.

"Extended service contract provider" or "provider" means any person or entity other than a public service corporation supervised by the State Corporation Commission, who is the original manufacturer or seller and who solicits, offers, advertises, or executes extended service contracts. Such definition includes the obligor of the contract sold, solicited, offered, advertised or executed by the original manufacturer, seller or obligor.

"Obligor" means the person who is contractually obligated to the purchaser to provide services under the extended service contract and who is (i) the original manufacturer or seller of the merchandise covered by the extended service contract, (ii) acting through or with the written consent of the original manufacturer, seller or purchaser of the merchandise covered by the extended service contract, or (iii) acting through or

with the written consent of a manufacturer or seller of merchandise similar to the merchandise covered by the extended service contract.

"Purchaser" means a person who enters into an extended service contract with an extended service contract provider.

"Road hazard" means a hazard that is encountered while driving a motor vehicle, including potholes, rocks, wood debris, metal parts, glass, plastic, curbs, and composite scraps.

1991, c. 654; 1996, c. [966](#); 2008, c. [524](#); 2014, c. [193](#).

§59.1-436. Registration; fees; exemptions.

A. It shall be unlawful for any extended service contract provider to offer, advertise, or execute or cause to be executed by the purchaser any extended service contract for a consumer product in this Commonwealth unless the obligor at the time of the solicitation, offer, advertisement, sale, or execution of a contract has been properly registered with the Commissioner. The registration shall (i) disclose the address, ownership, and nature of business of the obligor; (ii) be renewed annually on July 1; and (iii) be accompanied by a fee of \$300 per registration and annual renewal. A registration application or registration renewal will not be considered filed until all required information and fees are received by the Commissioner. Any obligor who fails to register prior to the sale of an extended service contract shall pay a late filing fee of \$100 for each 30-day period, or portion thereof, that the registration is late. An obligor who fails to timely renew its registration shall pay a late fee of \$50 for each 30-day period, or portion thereof, that the annual renewal filing is late. The late fees authorized by this subsection shall be in addition to all other penalties authorized by law.

B. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

C. Any matter subject to the insurance regulatory authority of the State Corporation Commission pursuant to Title 38.2 shall not be subject to the provisions of this chapter.

D. Licensed or registered motor vehicle dealers, as defined in § [46.2-1500](#), shall not be subject to the provisions of this chapter.

E. Extended service contract providers who comply with this section and the employees of such providers who market, sell or offer to sell extended service contracts on behalf of the provider shall not be subject to the provisions of Title 38.2.

F. (Effective January 1, 2018) Providers of a home service contract, as those terms are defined in § [59.1-434.1](#), that are registered and regulated pursuant to Chapter 33.1 (§ [59.1-434.1](#) et seq.) shall not be subject to the provisions of this chapter.

1991, c. 654; 1996, c. [966](#); 1997, c. [30](#); 2005, c. [407](#); 2017, c. [727](#).

§59.1-437. Bond or letter of credit required.

A. Every extended service contract obligor, before it is registered, shall file and maintain with the Commissioner, in form and substance satisfactory to him, a bond with corporate surety, from a company authorized to transact business in the Commonwealth or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation, in the amount of \$10,000. Additional bond or letter of credit amounts shall be similarly filed with the Commissioner and shall be adjusted from time to time, in accordance with the following schedule:

Total Amount of Unexpired Extended Service Contracts	Amount of Bond or Letter of Credit
\$50,001 to \$300,000	\$40,000
\$300,001 to \$750,000	\$65,000
\$750,001 or more	\$90,000

The total amount of unexpired extended service contracts shall be the total consideration paid by all purchasers to the extended service obligor for all extended service contracts currently in effect.

B. The bond or letter of credit required by subsection A of this section shall be in favor of the Commonwealth for the benefit of purchasers of extended service contracts for consumer products in the event that the extended service contract obligor does not fulfill its obligations under such contracts for any reason, including insolvency or bankruptcy.

C. The aggregate liability of the bond or letter of credit to all persons for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be cancelled or terminated except with the consent of the Commissioner.

D. In order to ensure the faithful performance of a third party obligor's obligations to its contract holders, each third party obligor shall furnish proof of its financial stability by complying with either of the following:

1. The third party obligor shall show that it has a net worth of at least \$100 million by providing the Commissioner with a copy of the third party obligor's most recent annual audited financial statement; or

2. The third party obligor shall show a net worth of the third party obligor or its parent company of at least \$100 million by providing the Commissioner with a copy of the third party obligor's, or if the third party obligor's financial statements are consolidated with those of its parent company, the third party obligor's parent company's, most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission, provided the Form 10-K or Form 20-F was filed with the Securities and Exchange Commission within the last calendar year. If the third party obligor's parent company's Form 10-K or Form 20-F is filed to meet the third party obligor's financial stability requirement, then the parent company shall agree to guarantee the obligations of the third party obligor relating to service contracts sold by the third party obligor in this Commonwealth.

E. In lieu of compliance with subsection D, a third party obligor may demonstrate financial responsibility by filing with the Commissioner a copy of a liability insurance policy issued by an insurer authorized to transact business in this Commonwealth and which covers 100 percent of the obligor's service contract liabilities, including the administration of claims and the cost for such administration. Reimbursement insurance policies filed pursuant to this section may not be cancelled by either the third party obligor or the issuing insurer without providing 60 days' notice to the Commissioner.

1991, c. 654; 1996, c. [966](#); 2003, c. [411](#).

§59.1-438. Regulations.

A. The Board is authorized to adopt reasonable regulations in order to implement provisions in this chapter relating to extended service contracts. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.).

B. Without limiting the authority of the Board under subsection A, the Board is authorized to adopt reasonable regulations that designate services, in addition to

those enumerated in the definition of extended service contract in § [59.1-435](#), that may be provided under an extended service contract, provided that the designation of the additional services is not inconsistent with the provisions of this chapter.

1991, c. 654; 2014, c. [193](#).

§59.1-439. Investigations.

A. The Commissioner may, with respect to extended service contracts:

1. Make necessary public and private investigations within or without this Commonwealth to determine whether any person has violated the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter;
2. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter under investigation; and
3. Administer oaths or affirmations, and upon motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter produced to ascertain material evidence, shall take place within the City of Richmond.

C. If any person fails to obey the subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

1991, c. 654 .

§59.1-440. Production of records.

Every extended service contract obligor, upon written request of the Commissioner, shall make available to the Commissioner its extended service contract records for inspection and copying to enable the Commissioner to reasonably determine

compliance with this chapter. Every obligor shall maintain a true copy of each contract executed between the obligor and a purchaser, and each contract shall be maintained for its term.

1991, c. 654; 1996, c. [966](#).

§59.1-440.1. Extended service contracts not insurance.

Extended service contracts are (i) not contracts of insurance in the Commonwealth and (ii) not subject to regulation under Title 38.2.

2014, c. [193](#).

§59.1-441. Violations of chapter; penalty.

A. Any extended service provider who knowingly and willfully violates any provision of this chapter shall be guilty of a Class 3 misdemeanor.

B. Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § [59.1-200](#) and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ [59.1-196](#) et seq.) of this title.

1991, c. 654 .

Fair Employment Contracting Act

§2.2-4200. Declaration of policy; discrimination prohibited in awarding contracts; definitions.

A. It is declared to be the policy of the Commonwealth to eliminate all discrimination on account of race, color, religion, sex, or national origin from the employment practices of the Commonwealth, its agencies, and government contractors.

B. In the awarding of contracts, contracting agencies shall not engage in an unlawful discriminatory practice as defined in § [2.2-3901](#).

C. As used in this chapter, unless the context requires a different meaning:

"Agency" means any agency or instrumentality, corporate or otherwise, of the government of the Commonwealth.

"Contractor" means any individual, partnership, corporation or association that performs services for or supplies goods, materials, or equipment to the Commonwealth or any agency thereof.

1975, c. 626, §§ 2.1-374, 2.1-375, 2.1-376.1; 2001, cc. [45](#), [844](#).

§2.2-4201. Required contract provisions.

All contracting agencies shall include in every government contract of over \$10,000 the following provisions:

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over \$10,000.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such contractor is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this chapter.

The contractor shall include the provisions of the subdivisions 1 and 2 in every subcontract or purchase order of over \$10,000, so that such provisions shall be binding upon each subcontractor or vendor.

Nothing contained in this chapter shall be deemed to empower any agency to require any contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance that may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by such contractor in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the Commonwealth.

1975, c. 626, § 2.1-376; 2001, c. [844](#).

Firefighters and Emergency Medical

Technicians Procedural Guarantee Act

§9.1-300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Emergency medical services personnel" means any person who holds a valid certificate issued by the Commissioner and who is employed solely within the fire department, emergency medical services agency, or public safety department of an employing agency as a full-time emergency medical services personnel whose primary responsibility is the provision of emergency care to the sick and injured, using either basic or advanced techniques. Emergency medical services personnel may also provide fire protection services and assist in the enforcement of the fire prevention code.

"Employing agency" means any municipality of the Commonwealth or any political subdivision thereof, including authorities and special districts, that employs firefighters and emergency medical services personnel.

"Firefighter" means any person who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires, the protection of life and property, and the enforcement of local and state fire prevention codes and laws pertaining to the prevention and control of fires.

"Interrogation" means any questioning of a formal nature as used in Chapter 4 (§ [9.1-500](#) et seq.) that could lead to dismissal, demotion, or suspension for punitive reasons of a firefighter or emergency medical services personnel.

1987, c. 509, § 2.1-116.9:1; 2001, c. [844](#); 2015, cc. [502](#), [503](#).

§9.1-301. Conduct of interrogation.

The provisions of this section shall apply whenever a firefighter or emergency medical services personnel are subjected to an interrogation that could lead to dismissal, demotion, or suspension for punitive reasons:

1. The interrogation shall take place at the facility where the investigating officer is assigned, or at the facility that has jurisdiction over the place where the incident under investigation allegedly occurred, as designated by the investigating officer.

2. No firefighter or emergency medical services personnel shall be subjected to interrogation without first receiving written notice of sufficient detail of the investigation in order to reasonably apprise the firefighter or emergency medical services personnel of the nature of the investigation.

3. All interrogations shall be conducted at a reasonable time of day, preferably when the firefighter or individual who meets the definition of "emergency medical services personnel" in § [32.1-111.1](#) is on duty, unless the matters being investigated are of such a nature that immediate action is required.

4. The firefighter or emergency medical services personnel under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during any interrogation.

5. Interrogation sessions shall be of reasonable duration, and the firefighter or emergency medical services personnel shall be permitted reasonable periods for rest and personal necessities. The firefighter or emergency medical services personnel may have an observer of his choice present during the interrogation, as long as the interview is not unduly delayed. This observer may not participate or represent the employee, may not be involved in the investigation, and must be an active or retired member of the department, for purposes of confidentiality.

6. The firefighter or emergency medical services personnel being interrogated shall not be subjected to offensive language or offered any incentive as an inducement to answer any questions.

7. If a recording of any interrogation is made, and if a transcript of the interrogation is made, the firefighter or emergency medical services personnel under investigation shall be entitled to a copy without charge. Such record may be electronically recorded.

8. No firefighter or emergency medical services personnel shall be discharged, disciplined, demoted, denied promotion or seniority, or otherwise disciplined or discriminated against in regard to his employment, or be threatened with any such treatment as retaliation for his exercise of any of the rights granted or protected by this chapter.

Nothing contained in this section shall prohibit a local governing body from granting its employees rights greater than those contained herein.

1987, c. 509, § 2.1-116.9:2; 2001, c. [844](#); 2010, c. [779](#); 2015, cc. [502](#), [503](#); 2016, c. [419](#).

§9.1-302. Breach of procedures.

Any breach of the procedures required by this chapter shall not exclude any evidence from being presented in any case against a firefighter or individual who meets the definition of "emergency medical services personnel" in § [32.1-111.1](#) and shall not cause any charge to be dismissed unless the firefighter or emergency medical services personnel demonstrates that the breach prejudiced his case.

1987, c. 509, § 2.1-116.9:5; 2001, c. [844](#); 2015, cc. [502](#), [503](#).

§9.1-303. Informal counseling not prohibited.

Nothing in this chapter shall be construed to prohibit the informal counseling of a firefighter or emergency medical services personnel by a supervisor in reference to a minor infraction of policy or procedure that does not result in disciplinary action being taken against the firefighter or emergency medical services personnel.

1987, c. 509, § 2.1-116.9:3; 2001, c. [844](#); 2015, cc. [502](#), [503](#).

§9.1-304. Rights nonexclusive.

The rights of firefighters and emergency medical technicians as set forth in this chapter shall not be construed to diminish the rights and privileges of firefighters or emergency medical technicians that are guaranteed to all citizens by the Constitution and laws of the United States and the Commonwealth or limit the granting of broader rights by other law, ordinance or rule.

This section shall not abridge or expand the rights of firefighters or emergency medical technicians to bring civil suits for injuries suffered in the course of their employment as recognized by the courts, nor is it designed to abrogate any common law or statutory limitation on the rights of recovery.

1987, c. 509, § 2.1-116.9:4; 2001, c. [844](#).

Forest Products Tax

§58.1-1600. Short title.

This chapter shall be known and may be cited as the "Forest Products Tax Act."

1984, c. 675.

§58.1-1601. Definitions.

As used in this chapter, unless the context clearly shows otherwise:

"Fixed place of business" means a mill, plant, yard, or other location at which occurs a regular and continuous course of dealing. The use of portable machinery or equipment alone at the place of severance of forest products does not constitute a fixed place of business.

"F.o.b. loading out point" means loaded on a railroad car, loaded on a barge or boat, or delivered to place of use by truck.

"Forest product" means wood, derived from trees severed in Virginia for commercial purposes, of any type or form, including but not limited to logs, timber, pulpwood, excelsior wood, chemical wood, woodchips, biomass chips, fuel chips, mulch, bolts, billets, crossties, switch ties, poles, piles, fuel wood, posts, all cooperage products, tanbark, mine ties, mine props, and all other types of forest products used in mines.

"Manufacturer" means any person that for commercial purposes at a fixed place of business (i) processes forest products into various sizes and forms, including chips; (ii) processes forest products into other products; (iii) uses or consumes forest products; or (iv) stores forest products for sale or shipment out of state.

"Shipper" means any person in this Commonwealth that sells or ships outside the Commonwealth by railroad, truck, barge, boat, or any other means of transportation any forest product in an unmanufactured condition, whether as owner, lessee, wood-yard operator, agent, or contractor.

"Severer" means any person in this Commonwealth that fells, cuts, or otherwise separates timber or any other such forest product from the soil.

Code 1950, § 58-838.1; 1970, c. 770; 1984, c. 675; 2015, c. [170](#).

§58.1-1602. Levy of tax for forest conservation.

A. To provide further for the conservation of the natural resources of the Commonwealth by the protection and development of forest resources and reforestation of forest lands, there is hereby levied, in addition to all other taxes imposed, a forest products tax on all forest products. The tax shall be paid once on any forest product. Unless the tax has previously been paid by a severer, the tax shall be paid by the first manufacturer using, consuming, processing, or storing the forest products for sale or shipment out-of-state. No manufacturer shall be liable for the tax if the manufacturer has received proper documentation from a severer that the tax has been paid as provided in subsection B. A severer that sells or delivers forest products to any person that is not a manufacturer registered for the forest products tax shall be liable for

the tax. A signed agreement, bill of sale, or invoice between the severer and a manufacturer stating that the manufacturer is registered and liable for the tax on any forest products sold or delivered to the manufacturer shall relieve the severer of liability for the tax on such forest products.

B. Each manufacturer purchasing or receiving forest products upon which the tax imposed by this chapter has been paid shall obtain written documentation of the payment, such as a signed agreement, bill of sale, or invoice, from the severer showing or including (i) the severer's name, address, and Virginia forest products tax registration number; (ii) the date of sale or delivery; (iii) a description of the products sold or delivered; and (iv) a statement that the Virginia forest products tax has been paid with regard to the forest products sold or delivered.

C. Any out-of-state manufacturer may register to pay the forest products tax and shall be liable for the tax until, upon his request or otherwise, his registration is terminated by the Department.

Code 1950, § 58-838.2; 1970, c. 770; 1984, c. 675; 2015, c. [170](#).

§58.1-1603. Lien.

Such tax, together with interest and penalties imposed by this chapter, shall be a lien upon the forest products so severed or assembled for shipment, and upon the product manufactured therefrom, until the tax shall have been paid, or until such forest product or the product manufactured therefrom shall have been sold by the manufacturer thereof.

Code 1950, § 58-838.4; 1970, c. 770; 1984, c. 675.

§58.1-1604. Tax rates.

The tax hereby imposed shall be assessed at the following rates:

1. On pine lumber in its various sizes and forms, including railroad switch ties, bridge timber, and dimension stock, the rate per 1000 board feet measure shall be \$1.15; or at the election of the taxpayer, 20 cents per ton of logs received.
2. On hardwood, cypress and all other species of lumber the rate per 1000 board feet measure shall be 22 1/2 cents; or at the election of the taxpayer, 4 cents per ton of logs received.
3. On timber sold as logs and not converted into lumber or other products in the Commonwealth, the rate per 1000 feet log scale, International 1/4" Kerf Rule, shall

be \$1.15 on pine; and 22 1/2 cents on other species; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

4. On logs to be converted into veneer the rate per 1000 board feet log scale, International 1/4" Kerf Rule, shall be \$1.15 for pine and 22 1/2 cents for other species; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

5. On pulpwood, excelsior wood, chemical wood, bolts or billets, fuel wood, tanbark, and other products customarily sold by the cord, the rate per standard cord of 128 cubic feet shall be 47 1/2 cents for pine, 11 1/4 cents per cord on all other species; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

6. On chips and mulch, including products such as biomass chips and fuel chips, the rate shall be \$0.20 per ton for pine, \$0.04 per ton for other species, and \$0.10 per ton for loads consisting of both pine and other species.

7. On railroad crossties the rate per piece shall be 3 8/10 cents on pine, and one cent on all other species; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

8. On posts, mine ties, mine props, round mine collars, and other types of timber used in connection with mining and ordinarily sold by the piece, the rate per 100 pieces shall be as follows: 38 cents for pine, and 9 cents for other species, where each piece is 4' or less in length; 61 3/4 cents for pine and 14 1/4 cents for other species, where each piece is more than 4' but not over 8' in length; and 76 cents for pine and 18 cents for other species, where each piece is more than 8' in length. If the taxpayer so elects, he may pay the taxes due on the above forest products at the rate of \$1.045 for pine and 24 3/4 cents for other species, per 1000 lineal feet; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

9. On piling and poles of all types the rate shall equal 2.31 percent of invoice value f.o.b. loading out point; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

10. On keg staves the rate per standard 400-inch bundle shall be 3 8/10 cents for pine and 1 1/2 cents for other species; the rate per 100 keg heads shall be 11 5/10

cents on pine and 4 1/2 cents for other species; and on tight cooperage, 4 1/2 cents per 100 staves and 9 cents per 100 heads; or at the election of the taxpayer, 20 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

11. On any other type of forest product not herein enumerated, severed or separated from the soil, the Commissioner shall determine a fair unit tax rate, based on the cubic foot wood volume relationship between the product and the cubic foot volume of 1000 feet board measure of pine when the product is pine, or on the unit rate of cedar or hardwood lumber when the product is a species other than pine.

Code 1950, § 58-838.5:2; 1971, Ex. Sess., c. 179; 1978, c. 72; 1981, c. 372; 1984, cc. 675, 715; 1998, c. [420](#); 2015, c. [170](#).

§58.1-1605. Alternative for rates.

On or before November 1, in the last year of each biennium, the State Forester shall submit to the Governor a report of the total revenues collected from the forest products tax for the immediately preceding two years. If the General Assembly fails to appropriate for such next biennium from the general fund for the reforestation of timberland activity a sum which equals or exceeds such revenues, the tax hereby imposed shall, beginning on July 1 of such next biennium, be at the rates set forth below. Such rates shall remain in effect until an appropriation from the general fund for any biennium equals or exceeds the revenues actually collected from this tax for the immediately preceding biennium at the rates imposed by § [58.1-1604](#).

1. On pine lumber in its various sizes and forms, including railroad switch ties, bridge timber, and dimension stock the rate per 1000 board feet measure shall be 15 cents; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received.

2. On hardwood, cypress, and all other species of lumber the rate per 1000 board feet measure shall be 22 1/2 cents; or at the election of the taxpayer, 4 cents per ton of logs received.

3. On timber sold as logs and not converted into lumber or other products in this Commonwealth, the rate per 1000 log feet scale, International 1/4" Kerf Rule, shall be 15 cents on pine and 22 1/2 cents on other species; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

4. On logs to be converted into veneer the rate per 1000 board feet log scale, International 1/4" Kerf Rule, shall be 15 cents for pine, and 22 1/2 cents for other species;

or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

5. On pulpwood, excelsior wood, chemical wood, bolts or billets, fuel wood, tanbark, and other products customarily sold by the cord, the rate per standard cord of 128 cubic feet shall be 7 1/2 cents for pine and 11 1/4 cents per cord on all other species; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

6. On chips and mulch, including products such as biomass chips and fuel chips, the rate shall be \$0.026 per ton for pine, \$0.04 per ton for other species, and \$0.03 per ton for loads consisting of both pine and other species.

7. On railroad crossties, the rate shall be one-half cent per piece on species of pine and one cent per piece on all other species; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

8. On posts, mine ties, mine props, round mine collars, and other types of timber used in connection with mining and ordinarily sold by the piece, the rate per 100 pieces shall be as follows: 6 cents for pine and 9 cents for other species, where each piece is 4' or less in length; 9 3/4 cents for pine and 14 1/4 cents for other species, where each piece is more than 4' in length but not over 8' in length; and 12 cents for pine and 18 cents for other species, where each piece is more than 8' in length. If the taxpayer so elects, he may pay the taxes due on the abovementioned forest products at the rate of 16 1/2 cents per 1000 lineal feet for pine and 24 3/4 cents for other species; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

9. On piling and poles of all types the rate shall equal two-sevenths of one percent of invoice value f.o.b. loading out point; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

10. On keg staves the rate per standard 400-inch bundle shall be 1 1/2 cents; the rate per 100 keg heads shall be 4 1/2 cents; and on tight cooperage, 4 1/2 cents per 100 staves and 9 cents per 100 heads; or at the election of the taxpayer, 2 6/10 cents per ton of pine logs received; and 4 cents per ton of logs of other species received.

11. On any other type of forest product not herein enumerated, severed or separated from the soil the Commissioner shall determine a fair unit tax rate, based on the

cubic foot wood volume relationship between the product and the cubic foot volume of 1000 board feet measure of pine lumber when the product is pine or on the unit rate of hardwood lumber when the product is a species other than pine.

Code 1950, § 58-838.5:2; 1971, Ex. Sess., c. 179; 1978, c. 72; 1981, c. 372; 1984, cc. 675, 715; 1998, c. [420](#); 2015, c. [170](#).

§58.1-1606. Optional rates for certain manufacturers and severers.

Notwithstanding the provisions of §§ [58.1-1604](#) and [58.1-1605](#), any manufacturer of rough lumber who during any one calendar year, manufactures 500,000 or less board feet may elect to pay a flat tax of \$460 when the amount cut is between 500,000' and 300,000', and a flat tax of \$230 when the amount cut is 300,000 board feet or less. The tax shall be payable to the Department within thirty days after December 31 of each year and the manufacturer shall submit to the Department with said tax, forms prescribed by the Department, certifying that he had actually manufactured a quantity of rough lumber in accordance with the foregoing schedule during the preceding calendar year.

Any person who severs for sale 100 or less cords of fuel wood, or 500 or less posts for fish net poles, during any one calendar year may elect to pay the tax due within the thirty days after December 31 of each year and submit to the Department with said tax, forms prescribed by the Department, certifying the quantity of product severed during the preceding calendar year.

Such manufacturer or severers shall not be required to keep and preserve such records as are required in § [58.1-1617](#).

Code 1950, § 58-838.8; 1956, c. 61; 1970, c. 770; 1972, c. 316; 1983, c. 109; 1984, c. 675.

§58.1-1607. Limitation on tax for certain manufacturers taxable under § 58.1-1605.

Manufacturers taxed pursuant to the provisions of § [58.1-1605](#) shall not in any one calendar year of a biennium be liable for a tax under this chapter in excess of sixty dollars when the amount of rough lumber manufactured is 500,000 board feet or less, or in excess of thirty dollars when the amount of rough lumber manufactured is 300,000 board feet or less. Any tax collected in excess of such amounts shall be promptly refunded by the Tax Commissioner to the taxpayer who has paid such excess.

Code 1950, § 58-838.8; 1956, c. 61; 1970, c. 770; 1972, c. 316; 1983, c. 109; 1984, c. 675.

§58.1-1608. Exemptions.

A. The tax levied by this chapter shall not apply to individual owners of timber who occasionally sever or cut such timber from their own premises. Such owners, however, in order to qualify for the exemption must use the timber in the construction or repair of their own structures, buildings, or improvements, or for their home consumption, or in the processing of their own farm products.

B. The tax imposed by this chapter shall apply to any forest products severed from land owned either by this Commonwealth or the United States, where the forest products severed enter commercial channels of trade for competitive markets. Such tax shall not apply to forest products severed from land owned by this Commonwealth and used by state educational institutions for experimentation in and teaching of forestry where severance is necessary for or incidental to such experimentation and teaching.

Code 1950, §§ 58-838.6, 58-838.19; 1952, c. 462; 1984, c. 675.

§58.1-1609. Payment, collection, and disposition of tax.

A. All taxes collected by the Department pursuant to § [58.1-1604](#) shall be paid into the state treasury. The Comptroller shall credit as special revenues, to the "Reforestation of Timberlands State Fund" of the Department of Forestry the following amounts on forest products of pine:

1. One dollar per 1,000 board feet measure on lumber; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;
2. One dollar per 1,000 board feet log scale, International 1/4" Kerf Rule, on logs not converted into lumber or other products in this Commonwealth; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;
3. One dollar per 1,000 board feet log scale, International 1/4" Kerf Rule, on logs to be converted into veneer; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;
4. Forty cents per standard cord on pulpwood, excelsior wood, chemical wood, bolts or billets, fuel wood, tanbark, and other products customarily sold by the standard cord; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;

5. Eighty-three hundredths cent per 100 pounds of chips manufactured from round-wood;
6. Three and three-tenths cents per piece on railroad crossties; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;
7. On posts, mine ties, mine props, round mine collars, and other types of timber used with mining and ordinarily sold by the piece:
 - a. Thirty-two cents where each piece is four feet or less in length;
 - b. Fifty-two cents where each piece is more than four feet but not over eight feet in length;
 - c. Sixty-four cents where each piece is more than eight feet in length;
 - d. Eighty-eight cents per 1,000 lineal feet where sold on the lineal feet basis; or
 - e. At the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;
8. Two and two-hundredths percent of invoice value f.o.b. loading out point on piling and poles; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received;
9. Three and three-tenths cents per standard 400-inch bundle of keg staves; or 17 4/10 cent(s) per ton when the taxpayer has elected to pay tax on the basis of weight of logs received;
10. Ten cents per 100 on keg heads; or at the election of the taxpayer, 17 4/10 cent(s) per ton of logs received; and
11. A proportionate amount between total tax paid per item as specified in § [58.1-1604](#) and the rate per item above set forth on any other type of forest product not herein enumerated.

B. All special revenues deposited into the "Reforestation of Timberlands State Fund" shall be used for the sole purpose of reforesting privately owned timberlands in the Commonwealth as provided in Article 10 (§ [10.1-1170](#) et seq.) of Chapter 11 of Title 10.1. No portion of the revenues shall revert to the general fund of the Commonwealth at the end of any fiscal year.

C. The remainder of the tax shall be cited by the Comptroller, as special revenues, to the "Protection and Development of Forest Resources of the State Fund" of the Department of Forestry for expenditure for the protection and development of the forest resources in accordance with law. Such funds shall be used for the sole purpose

of raising, planting, and propagating seedling trees, both hardwood and softwood, forest fire protection, forestry education of the public in the use of forest harvesting methods, and rendering forestry service to the timber landowners of the Commonwealth. No portion of such special revenues shall revert to the general fund of the Commonwealth at the end of any fiscal year.

D. The Tax Commissioner shall apportion the cost of collecting taxes deposited in the "Reforestation of Timberlands State Fund" and the "Protection and Development of Forest Resources State Fund" based on the proportion of the tax deposited in each fund. Each fund shall pay to the Department of Taxation its apportioned collection cost.

Code 1950, § 58-838.7:1; 1971, Ex. Sess., c. 179; 1978, c. 72; 1981, c. 372; 1984, cc. 675, 750; 1986, c. 567; 1998, c. [420](#).

§58.1-1610. Alternative payment, collection and disposition of tax.

A. All taxes collected by the Department of Taxation pursuant to § [58.1-1605](#) shall be paid into the state treasury. The Comptroller shall credit such taxes as special revenues to the "Protection and Development of Forest Resources of the State Fund" of the Department of Forestry for expenditure solely for the protection and development of the forest resources of the Commonwealth, to be used for raising, planting, and propagating seedling trees, both hardwood and softwood, forest fire protection, forestry education of the public in the use of forest harvesting methods, and rendering forestry service to timber landowners of the Commonwealth. No portion of such special revenues shall revert to the general fund of the Commonwealth at the end of any fiscal year.

B. The costs of collecting the taxes levied hereby shall be paid out of the special fund created by this section to the Department.

Code 1950, § 58-838.7:1; 1971, Ex. Sess., c. 179; 1978, c. 72; 1981, c. 372; 1984, cc. 675, 750; 1990, c. 196 .

§58.1-1611. Allocation of tax to localities.

Notwithstanding the provisions of §§ [58.1-1609](#) and [58.1-1610](#), fifty percent of tax collected within any county or city shall be allocated for expenditure within such county or city. Such sums shall be used within such county or city for the same purposes for which the tax was levied. Any sums not so expended within a two-year

period shall revert to the "Reforestation of Timberlands State Fund" for expenditure on a statewide basis at the end of each fiscal year.

Code 1950, § 58-838.7:1; 1971, Ex. Sess., c. 179; 1978, c. 72; 1981, c. 372; 1984, cc. 675, 750.

§58.1-1612. Returns to be filed by manufacturer and severers; time of payment of tax.

Every manufacturer or severer liable for the forest products tax, within 30 days after the expiration of each quarter, expiring respectively on the last day of March, June, September, and December of each year, shall file with the Department a return on forms prescribed by the Department showing:

1. The kinds and gross quantity of forest products severed, used, consumed, processed, or stored during the preceding quarter upon which the person is liable for the tax;
2. The county or counties in which such products were severed from the soil;
3. The gross quantity of forest products severed from soil outside this Commonwealth; and
4. Other reasonable and necessary information pertaining thereto as the Department may require for the proper enforcement of the provisions of this chapter.

At the time of rendering such quarterly returns, the manufacturer or severer liable for the tax shall pay to the Department the forest products tax on all forest products severed from the soil in this Commonwealth and embraced in such return.

Code 1950, § 58-838.8; 1956, c. 61; 1970, c. 770; 1972, c. 316; 1983, c. 109; 1984, c. 675; 2015, c. [170](#).

§58.1-1613. Repealed.

Repealed by Acts 2015, c. [170](#), cl. 2.

§58.1-1615. When Department may make return for delinquent taxpayer; penalty.

If any person fails to make any return herein required, the Department may issue written notice, by registered mail, to such person to make such return forthwith. If such person fails or refuses to make such return, within thirty days from the date of such notice, then the Department may make such return upon such information as it may reasonably obtain, and shall assess the taxes due thereon, and add a penalty

equalling twenty-five percent of such tax due and interest determined in accordance with § [58.1-15](#) from the date such taxes were due.

Code 1950, § 58-838.15; 1977, c. 396; 1984, c. 675.

§58.1-1616. Absconding taxpayer.

If the Department finds that a person liable for tax under any provision of this chapter designs quickly to depart from the Commonwealth or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect such tax unless such proceeding be brought without delay, the Department shall cause notice of such finding to be given such person together with a demand for an immediate return and immediate payment of such tax. Thereupon such tax shall become immediately due and payable. If such person is not in default of making such return or paying any tax prescribed by this chapter, and furnishes evidence satisfactory to the Department in accordance with regulations which shall be prescribed by the Department, that he will duly return and pay the tax to which the Department's findings relate, then such tax shall not be payable prior to the time otherwise fixed for payment.

Code 1950, § 58-838.18; 1984, c. 675.

§58.1-1617. Records to be kept.

It shall be the duty of every manufacturer and severer to keep and preserve records and other such books or accounts as may be necessary to determine the amount of tax for which it is liable, under the provisions of this chapter. Such records shall be organized so that the forest products handled are grouped into classifications that conform to the various tax rates levied by this chapter. Such records and books shall be kept and preserved for a period of three years and shall be open for examination at any time by the Department or its duly authorized agents.

Code 1950, § 58-838.10; 1970, c. 770; 1984, c. 675; 2015, c. [170](#).

§58.1-1618. Penalty for failure to make return, keep records, or permit examination of records.

Any person subject to the provisions of this chapter who fails to make the returns, refuses to permit examination of his records by the Department or its duly authorized agents, or fails to keep the records as required herein shall be guilty, upon conviction, of a Class 2 misdemeanor. Each month of failure to make such returns or

keep such records and each refusal of a written demand of the Department to examine, inspect or audit such records shall constitute a separate offense.

Code 1950, §§ 58-838.11, 58-838.12; 1984, c. 675; 1992, c. 763 .

§58.1-1619. Penalty and interest for failure to pay tax when due.

Any person who fails to pay the tax herein levied within the time required by this chapter shall pay, in addition to the tax a penalty of five percent of the amount of tax due. Six months from the date at which the tax herein levied became due and payable, interest shall be assessed upon the entire amount due in accordance with § [58.1-15](#). Such penalty and interest shall be assessed and collected as a part of the tax.

Code 1950, § 58-838.14; 1977, c. 396; 1984, c. 675.

§58.1-1620. Refunds and deficiency payments; penalty for deficiency.

As soon as practicable after the return is filed, the Department shall examine it and ascertain the proper amount of the tax due as shown by the return. If the amount paid is greater than the amount due, as shown by the return, the excess shall be refunded to the taxpayer, or credited on any deficiency previously due by the taxpayer, under such rules and regulations as the Department shall adopt and promulgate. All refunds made under this section, or under any other section of this chapter, shall be paid out of the special funds created by §§ [58.1-1609](#) and [58.1-1610](#). If the amount paid is less than the amount due, as shown by the return, the Department shall immediately notify the taxpayer of such deficiency and shall add thereto such penalty and interest as required by § [58.1-1619](#).

Code 1950, § 58-838.13; 1984, c. 675.

§58.1-1621. Proceedings in case of previous incorrect payments.

Whenever the Department, in examining and auditing the records of any taxpayer, or from other information, shall ascertain that the amount, or amounts, previously paid by any taxpayer for any period, is incorrect, the Department shall compute the correct amount of tax due. If it appears that the amount paid by the taxpayer is in excess of the correct amount due, such excess shall be refunded to the taxpayer under the rules and regulations of the Department. If it appears that the amount paid by such taxpayer is less than the amount due, the Department shall compute the amount of such deficiency and shall notify the taxpayer, and shall demand payment therefor. If such deficiency is not paid within thirty days from the date of such demand, the Department shall make an assessment against the taxpayer of the amount due and shall add

a penalty of one-half of one percent per month from the date such taxes, or any part thereof, became due; provided, however, that if the Department be of the opinion that there was a wilful or fraudulent intent by the taxpayer to evade the tax due, it may assess a penalty of twenty-five percent of the tax.

Code 1950, § 58-838.16; 1984, c. 675.

§58.1-1622. Repealed.

Repealed by Acts 2015, c. [170](#), cl. 2.

General Assembly Conflicts of Interests Act

§30-100. Declaration of legislative policy; construction.

The General Assembly, recognizing that our system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers, finds and declares that the citizens are entitled to be assured that the judgment of the members of the General Assembly will not be compromised or affected by inappropriate conflicts.

The provisions of this chapter do not preclude prosecution for any violation of any criminal law of the Commonwealth, including Articles 2 (Bribery and Related Offenses, § [18.2-438](#) et seq.) and 3 (Bribery of Public Servants and Party Officials, § [18.2-446](#) et seq.) of Chapter 10 of Title 18.2, and do not constitute a defense to any prosecution for such a violation.

This chapter shall apply to the members of the General Assembly.

This chapter shall be liberally construed to accomplish its purpose.

1987, Sp. Sess., c. 1, § 2.1-639.30; 2001, c. [844](#); 2014, cc. [792](#), [804](#).

§30-101. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or

officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Candidate" means a person who seeks or campaigns for election to the General Assembly in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. The candidate shall become subject to the provisions of this section upon the filing of a statement of qualification pursuant to § [24.2-501](#). The State Board of Elections shall notify each such candidate of the provisions of this chapter.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly or a political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the legislator's own governmental agency.

"Council" means the Virginia Conflict of Interest and Ethics Advisory Council established in § [30-355](#).

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in subsection A of § [13.1-501](#), or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

"Gift" does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly

received and reported pursuant to Chapter 9.3 (§ [24.2-945](#) et seq.) of Title 24.2; (v) any gift related to the private profession or occupation or volunteer service of a legislator or of a member of his immediate family; (vi) food or beverages consumed while attending an event at which the filer is performing official duties related to his public service; (vii) food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service; (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act (§ [24.2-945](#) et seq.); (xi) travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state; (xii) travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House Committee on Rules or its Chairman or the Senate Committee on Rules or its Chairman; (xiii) travel related to an official meeting of, or any meal provided for attendance at such meeting by, the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment; (xiv) gifts with a value of less than \$20; (xv) attendance at a reception or similar function where food, such as hors d'oeuvres, and beverages that can be conveniently consumed by a person while standing or walking are offered; or (xvi) gifts from relatives or personal friends. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee's brother's or sister's spouse or the donee's son-in-law or daughter-in-law. For the purpose of this definition, "personal friend" does not include any person that the filer knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ [2.2-418](#) et seq.) of Chapter 4 of Title 2.2 or (b) a lobbyist's principal as defined in § [2.2-419](#).

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department,

authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties.

"Immediate family" means (i) a spouse and (ii) any other person who resides in the same household as the legislator and who is a dependent of the legislator.

"Legislator" means a member of the General Assembly.

"Personal interest" means a financial benefit or liability accruing to a legislator or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$5,000 annually; (iv) ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv).

"Personal interest in a contract" means a personal interest that a legislator has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.

"Personal interest in a transaction" means a personal interest of a legislator in any matter considered by the General Assembly. Such personal interest exists when a legislator or a member of his immediate family has a personal interest in property or a business, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. A "personal interest in a transaction" exists only if the legislator or member of his immediate family or an individual or business represented or served by the legislator is affected in a way that is substantially different from the general public or from persons comprising a profession, occupation, trade, business or other comparable and

generally recognizable class or group of which he or the individual or business he represents or serves is a member.

"Transaction" means any matter considered by the General Assembly, whether in a committee, subcommittee, or other entity of the General Assembly or before the General Assembly itself, on which official action is taken or contemplated.

1987, Sp. Sess., c. 1, § 2.1-639.31; 1994, c. [724](#); 1996, c. [77](#); 2001, c. [844](#); 2014, cc. [792](#), [804](#); 2015, cc. [763](#), [777](#); 2016, cc. [773](#), [774](#); 2017, cc. [829](#), [832](#).

§30-102. Application.

This article applies to generally prohibited conduct which shall be unlawful.

1987, Sp. Sess., c. 1, § 2.1-639.32; 2001, c. [844](#).

§30-103. Prohibited conduct.

No legislator shall:

1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid to him by the General Assembly. This prohibition shall not apply to the acceptance of special benefits which may be authorized by law;
2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;
3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;
4. Use for his own economic benefit or that of another party confidential information which he has acquired by reason of his public position and which is not available to the public;
5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties. This subdivision shall not apply to any political contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9.3 (§ [24.2-945](#) et seq.) of Title 24.2;

6. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;

7. During the one year after the termination of his service as a legislator, represent a client or act in a representative capacity on behalf of any person or group, for compensation, on any matter before the General Assembly or any agency of the legislative branch of government. The prohibitions of this subdivision shall apply only to persons engaged in activities that would require registration as a lobbyist under § [2.2-422](#). Any person subject to the provisions of this subdivision may apply to the Attorney General, as provided in § [30-122](#), for an advisory opinion as to the application of the restriction imposed by this subdivision on any post-public employment position or opportunity;

8. Accept any honoraria for any appearance, speech, or article in which the legislator provides expertise or opinions related to the performance of his official duties. The term "honoraria" shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time;

9. Accept appointment to serve on a body or board of any corporation, company or other legal entity, vested with the management of the corporation, company or entity, and on which two other members of the General Assembly already serve, which is operated for profit and regulated by the State Corporation Commission as (i) a financial institution, (ii) a mortgage lender or broker, (iii) any business under Chapter 5 (§ [13.1-501](#) et seq.) of Title 13.1, (iv) any business under Title 38.2, or (v) any business under Title 56;

10. Accept a gift from a person who has interests that may be substantially affected by the performance of the legislator's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the legislator's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties; or

11. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties.

1987, Sp. Sess., c. 1, § 2.1-639.33; 1994, cc. [633](#), [727](#), [776](#), [815](#), [851](#); 2001, c. [844](#); 2006, cc. [787](#), [892](#).

§30-103.1. Certain gifts prohibited.

A. For purposes of this section:

"Widely attended event" means an event at which at least 25 persons have been invited to attend or there is a reasonable expectation that at least 25 persons will attend the event and the event is open to individuals (i) who are members of a public, civic, charitable, or professional organization, (ii) who are from a particular industry or profession, or (iii) who represent persons interested in a particular issue.

B. No legislator or candidate for the General Assembly required to file the disclosure form prescribed in § [30-111](#) or a member of his immediate family shall solicit, accept, or receive any single gift for himself or a member of his immediate family with a value in excess of \$100 or any combination of gifts with an aggregate value in excess of \$100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Article 3 (§ [2.2-418](#) et seq.) of Chapter 4 of Title 2.2 or (ii) a lobbyist's principal as defined in § [2.2-419](#). Gifts with a value of less than \$20 are not subject to aggregation for purposes of this prohibition.

C. Notwithstanding the provisions of subsection B, a legislator or candidate or a member of his immediate family may accept or receive a gift of food and beverages, entertainment, or the cost of admission with a value in excess in \$100 when such gift is accepted or received while in attendance at a widely attended event and is associated with the event. Such gifts shall be reported on the disclosure form prescribed in § [30-111](#).

D. Notwithstanding the provisions of subsection B, a legislator or a member of his immediate family may accept or receive a gift from a foreign dignitary with a value exceeding \$100 for which the fair market value or a gift of greater or equal value has not been provided or exchanged. Such gift shall be accepted on behalf of the Commonwealth and archived in accordance with guidelines established by the Library of Virginia. Such gift shall be disclosed as having been accepted on behalf of the Commonwealth, but the value of such gift shall not be required to be disclosed.

E. Notwithstanding the provisions of subsection B, a legislator or candidate or a member of his immediate family may accept or receive certain gifts with a value in excess

of \$100 from a person listed in subsection B if such gift was provided to the legislator or candidate or a member of his immediate family on the basis of a personal friendship. Notwithstanding any other provision of law, a person listed in subsection B may be a personal friend of the legislator or candidate or his immediate family for purposes of this subsection. In determining whether a person listed in subsection B is a personal friend, the following factors shall be considered: (i) the circumstances under which the gift was offered; (ii) the history of the relationship between the person and the donor, including the nature and length of the friendship and any previous exchange of gifts between them; (iii) to the extent known to the person, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iv) whether the donor has given the same or similar gifts to other persons required to file the disclosure form prescribed in § [2.2-3117](#) or [30-111](#).

F. Notwithstanding the provisions of subsection B, a legislator or candidate or a member of his immediate family may accept or receive gifts of travel, including travel-related transportation, lodging, hospitality, food or beverages, or other thing of value, with a value in excess of \$100 that is paid for or provided by a person listed in subsection B when the legislator or candidate has submitted a request for approval of such travel to the Council and has received the approval of the Council pursuant to § [30-356.1](#). Such gifts shall be reported on the disclosure form prescribed in § [30-111](#).

G. The \$100 limitation imposed in accordance with this section shall be adjusted by the Council every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, rounded to the nearest whole dollar.

2014, cc. [792](#), [804](#); 2015, cc. [763](#), [777](#); 2017, cc. [829](#), [832](#).

§30-103.2. Return of gifts.

No person shall be in violation of any provision of this chapter prohibiting the acceptance of a gift if the gift is not used by such person and the gift or its equivalent in money is returned to the donor or delivered to a charitable organization within a reasonable period of time upon the discovery of the value of the gift and is not claimed as a charitable contribution for federal income tax purposes or (ii) consideration is given by the donee to the donor for the value of the gift within a reasonable period of time upon the discovery of the value of the gift provided that such

consideration reduces the value of the gift to an amount not in excess of \$100 as provided in subsection B of § [30-103.1](#).

2015, cc. [763](#), [777](#).

§30-104. Application.

This article proscribes certain conduct relating to contracts.

1987, Sp. Sess., c. 1, § 2.1-639.34; 2001, c. [844](#).

§30-105. Prohibited contracts by legislators.

A. No legislator shall have a personal interest in a contract with the legislative branch of state government.

B. No legislator shall have a personal interest in a contract with any governmental agency of the executive or judicial branches of state government, other than in a contract of regular employment, unless such contract is awarded as a result of competitive sealed bidding or competitive negotiation as set forth in § [2.2-4302.1](#) or [2.2-4302.2](#) or is exempted from competitive sealed bidding or competitive negotiation pursuant to § [2.2-4344](#).

C. No legislator shall have a personal interest in a contract with any governmental agency of local government, other than in a contract of regular employment, unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as set forth in § [2.2-4302.1](#) or [2.2-4302.2](#) or is awarded as a result of a procedure embodying competitive principles as authorized by subdivision A 10 or A 11 of § [2.2-4343](#); (ii) exempted from competitive sealed bidding, competitive negotiation, or a procedure embodying competitive principles pursuant to § [2.2-4344](#); or (iii) awarded after a finding, in writing, by the administrative head of the local governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

D. The provisions of this section shall not apply to contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public.

E. The provisions of this section shall not apply to a legislator's personal interest in a contract between a public institution of higher education in the Commonwealth and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him solely because he has authored or otherwise created such textbooks or materials.

1987, Sp. Sess., c. 1, § 2.1-639.35; 2001, c. [844](#); 2013, c. [583](#); 2017, cc. [829](#), [832](#).

§30-106. Further exceptions.

A. The provisions of § [30-105](#) shall not apply to:

1. The sale, lease or exchange of real property between a legislator and a governmental agency, provided the legislator does not participate in any way as a legislator in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof. The legislator shall disclose any lease with a state governmental agency in his statement of economic interests as provided in § [30-111](#);
2. The publication of official notices;
3. A legislator whose sole personal interest in a contract with an agency of the legislative branch is by reason of income from the contracting firm or General Assembly in excess of \$5,000 per year, provided the legislator or member of his immediate family does not participate and has no authority to participate in the procurement or letting of the contract on behalf of the contracting firm and the legislator either does not have authority to participate in the procurement or letting of the contract on behalf of the agency or he disqualifies himself as a matter of public record and does not participate on behalf of the agency in negotiating the contract or in approving the contract;
4. Contracts between a legislator's governmental agency and a public service corporation, financial institution, or company furnishing public utilities in which the legislator has a personal interest, provided he disqualifies himself as a matter of public record and does not participate on behalf of the agency in negotiating the contract or in approving the contract;
5. Contracts for the purchase of goods or services when the contract does not exceed \$500; or
6. Grants or other payments under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency.

B. Neither the provisions of this chapter nor, unless expressly provided otherwise, any amendments thereto shall apply to those employment contracts or renewals thereof or to any other contracts entered into prior to August 1, 1987, which were in compliance with either the former Virginia Conflict of Interests Act, Chapter 22 (§

2.1-347 et seq.) or the former Comprehensive Conflict of Interests Act, Chapter 40 (§ 2.1-599 et seq.) of Title 2.1 at the time of their formation and thereafter. Those contracts shall continue to be governed by the provisions of the appropriate prior Act. Notwithstanding the provisions of subdivision (f)(4) of former § 2.1-348 of Chapter 22 of Title 2.1 in effect prior to July 1, 1983, the employment by the same governmental agency of a legislator and spouse or any other relative residing in the same household shall not be deemed to create a material financial interest except when one of such persons is employed in a direct supervisory or administrative position, or both, with respect to such spouse or other relative residing in his household, and the annual salary of such subordinate is \$15,000 or more.

1987, Sp. Sess., c. 1, § 2.1-639.36; 1994, c. [735](#); 2001, c. [844](#); 2017, cc. [829](#), [832](#).

§30-107. Application.

This article relates to conduct by legislators having a personal interest in a transaction.

1987, Sp. Sess., c. 1, § 2.1-639.37; 2001, c. [844](#).

§30-108. Prohibited conduct concerning personal interest in a transaction.

A legislator who has a personal interest in a transaction shall disqualify himself from participating in the transaction.

Unless otherwise prohibited by the rules of his house, the disqualification requirement of this section shall not prevent any legislator from participating in discussions and debates, provided (i) he verbally discloses the fact of his personal interest in the transaction at the outset of the discussion or debate or as soon as practicable thereafter and (ii) he does not vote on the transaction in which he has a personal interest.

1987, Sp. Sess., c. 1, § 2.1-639.38; 2001, c. [844](#).

§30-109. Application.

This article requires disclosure of certain personal and financial interests by legislators.

1987, Sp. Sess., c. 1, § 2.1-639.39; 2001, c. [844](#).

§30-110. Disclosure.

A. In accordance with the requirements set forth in § [30-111.1](#), every legislator and legislator-elect shall file, as a condition to assuming office, a disclosure statement of his personal interests and such other information as is required on the form

prescribed by the Council pursuant to § [30-111](#) and thereafter shall file such a statement annually on or before February 1. Disclosure forms shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council at least 30 days prior to the filing deadline. Disclosure forms shall be filed electronically with the Virginia Conflict of Interest and Ethics Advisory Council in accordance with the standards approved by it pursuant to § [30-356](#). The disclosure forms of the members of the General Assembly shall be maintained as public records for five years in the office of the Virginia Conflict of Interest and Ethics Advisory Council. Such forms shall be made public no later than six weeks after the filing deadline.

B. Candidates for the General Assembly shall file a disclosure statement of their personal interests as required by §§ [24.2-500](#) through [24.2-503](#).

C. Any legislator who has a personal interest in any transaction pending before the General Assembly and who is disqualified from participating in that transaction pursuant to § [30-108](#) and the rules of his house shall disclose his interest in accordance with the applicable rule of his house.

1987, Sp. Sess., c. 1, § 2.1-639.40; 2001, c. [844](#); 2006, c. [779](#); 2014, cc. [792](#), [804](#); 2015, cc. [763](#), [777](#); 2016, cc. [773](#), [774](#); 2017, cc. [829](#), [832](#).

§30-110.1. Report of gifts.

Every legislator shall file, on or before May 1, a report of gifts accepted or received by him or a member of his immediate family during the period beginning on January 1 complete through adjournment sine die of the regular session of the General Assembly. The gift report shall be on a form prescribed by the Council and shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § [30-356](#). For purposes of this section, "adjournment sine die" means adjournment on the last legislative day of the regular session and does not include the ensuing reconvened session. Any gifts reported pursuant to this section shall not be listed on the annual disclosure form prescribed by the Council pursuant to § [30-111](#).

2016, cc. [773](#), [774](#).

§30-111. Disclosure form.

A. The disclosure form to be used for filings required by subsections A and B of § [30-110](#) shall be prescribed by the Council. All completed forms shall be filed elec-

tronically with the Council in accordance with the standards approved by it pursuant to [§ 30-356](#).

B. Any legislator who knowingly and intentionally makes a false statement of a material fact on the Statement of Economic Interests is guilty of a Class 5 felony and shall be subject to disciplinary action for such violations by the house in which the legislator sits.

C. The Statement of Economic Interests of all members of each house shall be reviewed by the Council. If a legislator's Statement is found to be inadequate as filed, the legislator shall be notified in writing and directed to file an amended Statement correcting the indicated deficiencies, and a time shall be set within which such amendment shall be filed. If the Statement of Economic Interests, in either its original or amended form, is found to be adequate as filed, the legislator's filing shall be deemed in full compliance with this section as to the information disclosed thereon.

D. Ten percent of the membership of a house, on the basis of newly discovered facts, may in writing request the house in which those members sit, in accordance with the rules of that house, to review the Statement of Economic Interests of another member of that house in order to determine the adequacy of his filing. In accordance with the rules of each house, each Statement of Economic Interests shall be promptly reviewed, the adequacy of the filing determined, and notice given in writing to the legislator whose Statement is in issue. Should it be determined that the Statement requires correction, augmentation or revision, the legislator involved shall be directed to make the changes required within such time as shall be set under the rules of each house.

If a legislator, after having been notified in writing in accordance with the rules of the house in which he sits that his Statement is inadequate as filed, fails to amend his Statement so as to come into compliance within the time limit set, he shall be subject to disciplinary action by the house in which he sits. No legislator shall vote on any question relating to his own Statement.

1987, Sp. Sess., c. 1, § 2.1-639.41; 1988, c. 849; 1994, cc. [724](#), [733](#), [735](#), [777](#), [793](#); 1995, c. [763](#); 1996, c. [77](#); 1997, cc. [577](#), [844](#); 1998, c. [732](#); 2001, c. [844](#); 2003, c. [610](#); 2006, cc. [779](#), [787](#), [892](#); 2007, cc. [620](#), [627](#); 2010, cc. [418](#), [474](#), [670](#); 2014, cc. [792](#), [804](#); 2015, cc. [763](#), [777](#); 2016, cc. [773](#), [774](#).

§30-111.1. Disclosure form; filing requirements.

A. A legislator or legislator-elect required to file an annual disclosure on or before February 1 pursuant to this article shall disclose his personal interests and other information as required on the form prescribed by the Council for the preceding calendar year complete through December 31. A legislator or legislator-elect required to file a disclosure as a condition to assuming office shall file such disclosure on or before the day such office is assumed and disclose his personal interests and other information as required on the form prescribed by the Council for the preceding 12-month period complete through the last day of the month immediately preceding the month in which the office is assumed; however, any legislator or legislator-elect who assumes office in January shall be required to only file an annual disclosure on or before February 1 for the preceding calendar year complete through December 31.

B. When the deadline for filing any disclosure pursuant to this article falls on a Saturday, Sunday, or legal holiday, the deadline for filing shall be the next day that is not a Saturday, Sunday, or legal holiday.

2017, cc. [829](#), [832](#).

§30-112. Senate and House Ethics Advisory Panels; membership; terms; quorum; compensation and expenses.

A. The Senate Ethics Advisory Panel and the House Ethics Advisory Panel are established in the legislative branch of state government. The provisions of §§ [30-112](#) through [30-119](#) shall be applicable to each panel.

B. The Senate Ethics Advisory Panel shall be composed of five nonlegislative citizen members: three of whom shall be former members of the Senate; and two of whom shall be citizens of the Commonwealth at large who have not previously held such office. All members of the Panel shall be citizens of the Commonwealth. No member shall engage in activities requiring him to register as a lobbyist under § [2.2-422](#) during his tenure on the Panel.

The members shall be nominated by the Committee on Rules of the Senate and confirmed by the Senate by a majority vote of (i) the members present of the majority party and (ii) the members present of the minority party. After initial appointments, all appointments shall be for terms of four years each except for unexpired terms. Nominations shall be made so as to assure bipartisan representation on the Panel.

C. The House Ethics Advisory Panel shall be composed of five nonlegislative citizen members: one of whom shall be a retired justice or judge of a court of record; two of

whom shall be former members of the House of Delegates; and two of whom shall be citizens of the Commonwealth at large, at least one of whom shall not have previously held such office. All members of the Panel shall be citizens of the Commonwealth. No member shall engage in activities requiring him to register as a lobbyist under § [2.2-422](#) during his tenure on the Panel.

The members shall be nominated by the Speaker of the House of Delegates and confirmed by the House of Delegates by a majority vote of (i) the members present of the majority party and (ii) the members present of the minority party. After initial appointments, all appointments shall be for terms of four years each except for unexpired terms. Nominations shall be made so as to assure bipartisan representation on the Panel.

D. Each panel shall elect its own chairman and vice-chairman from among its membership.

E. No member shall serve more than three successive four-year terms. Vacancies shall be filled only for the unexpired term. Vacancies shall be filled in the same manner as the original appointments. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

F. Three members shall constitute a quorum on each panel. A vacancy shall not impair the right of the remaining members to exercise all powers of the Panel. Meetings of each panel shall be held at the call of the chairman or whenever the majority of the members so request.

G. The members of each panel, while serving on the business of the Panel, are performing legislative duties and shall be entitled to the compensation and reimbursement of expenses to which members of the General Assembly are entitled when performing legislative duties pursuant to §§ [2.2-2813](#), [2.2-2825](#), and [30-19.12](#). Funding for the cost of compensation and expenses of the members of the Senate Ethics Advisory Panel shall be provided by the Office of the Clerk of the Senate and the funding for the cost of compensation and expenses of the House Ethics Advisory Panel shall be provided by the Office of the Clerk of the House of Delegates.

1987, Sp. Sess., c. 1, §§ 2.1-639.42, 2.1-639.43, 2.1-639.44, 2.1-639.51; 1992, c. 443; 2001, c. [844](#); 2004, c. [1000](#); 2010, c. [876](#); 2014, cc. [792](#), [804](#).

§30-113. Powers and duties of Panel.

The powers and duties of the Panel shall be applied and used only in relation to members of the respective house of the General Assembly for which it is created. The Panel shall establish its rules of procedure, including rules for the conduct of open meetings and hearings.

1987, Sp. Sess., c. 1, § 2.1-639.45; 2001, c. [844](#); 2010, c. [876](#).

§30-113.1. Records.

If a complaint is dismissed during the preliminary investigation, such records shall remain confidential and be retained for a period of five years and then destroyed. Records related to a complaint that has proceeded to an inquiry beyond a preliminary investigation shall be made available to the public and retained in a manner prescribed by the Virginia Public Records Act (§ [42.1-76](#) et seq.).

2010, c. [876](#).

§30-114. Filing of complaints; procedures; disposition.

A. In response to the signed and sworn complaint of any citizen of the Commonwealth, which is subscribed by the maker as true under penalty of perjury, submitted to the Panel, the Panel shall inquire into any alleged violation of Articles 2 (§ [30-102](#) et seq.) through 5 (§ [30-109](#) et seq.) by any member of the respective house of the General Assembly in his current term or his immediate prior term. Complaints shall be filed with the Virginia Conflict of Interest and Ethics Advisory Council, which shall promptly (i) submit the complaint to the chairman of the appropriate Panel and (ii) forward a copy of the complaint to the legislator named in the complaint. The chairman shall promptly notify the Panel of the complaint. No complaint shall be filed with the Panel 60 or fewer days before a primary election or other nominating event or before a general election in which the cited legislator is running for office, and the Panel shall not accept or act on any complaint received during this period.

B. The Panel shall determine, during its preliminary investigation, whether the facts stated in the complaint taken as true are sufficient to show a violation of Articles 2 (§ [30-102](#) et seq.) through 5 (§ [30-109](#) et seq.). If the facts, as stated in the complaint, fail to give rise to such a violation, then the Panel shall dismiss the complaint. If the facts, as stated in the complaint, give rise to such a violation, then the Panel shall request that the complainant appear and testify under oath as to the complaint and the allegations therein. After hearing the testimony and reviewing any other evidence provided by the complainant, the Panel shall dismiss the complaint if the Panel fails

to find by a preponderance of the evidence that such violation has occurred. If the Panel finds otherwise, it shall proceed with the inquiry.

C. If after such preliminary investigation, the Panel determines to proceed with an inquiry into the conduct of any legislator, the Panel (i) shall immediately notify in writing the individual who filed the complaint and the cited legislator as to the fact of the inquiry and the charges against the legislator and (ii) shall schedule one or more hearings on the matter. The legislator shall have the right to present evidence, cross-examine witnesses, face and examine the accuser, and be represented by counsel at any hearings. In its discretion, the Panel may grant the legislator any other rights or privileges not specifically enumerated in this subsection. Once the Panel has determined to proceed with an inquiry, its meetings and hearings shall be open to the public.

D. Once the Panel determines to proceed with an inquiry into the conduct of any legislator, the Panel shall complete its investigations and dispose of the matter as provided in § [30-116](#) notwithstanding the resignation of the legislator during the course of the Panel's proceedings.

1987, Sp. Sess., c. 1, § 2.1-639.46; 2001, c. [844](#); 2003, c. [649](#); 2010, c. [876](#); 2014, cc. [792](#), [804](#).

§30-115. Subpoenas.

The Panel may issue subpoenas to compel the attendance of witnesses or the production of documents, books or other records. The Panel may apply to the Circuit Court of the City of Richmond to compel obedience to the subpoenas of the Panel. Notwithstanding any other provisions of law, every state and local governmental agency, and units and subdivisions thereof shall make available to the Panel any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Panel designates as being necessary for the exercise of its powers and duties.

1987, Sp. Sess., c. 1, § 2.1-639.47; 2001, c. [844](#).

§30-116. Disposition of cases.

Within 120 days of the chairman's forwarding the signed and sworn complaint to the Panel, the Panel, or a majority of its members acting in its name, shall dispose of the matter in one of the following ways:

1. a. If the Panel determines in its preliminary investigation that the complaint is without merit, the Panel shall dismiss the complaint, so advise the complainant and legislator, and take no further action. In such case, the Panel shall retain its records and findings in confidence unless the legislator under inquiry requests in writing that the records and findings be made public.

b. If the Panel determines in the course of its proceedings that the facts and evidence show that the complaint is without merit, the Panel shall dismiss the complaint, so advise the complainant and legislator, and report its action to the Clerk of the appropriate house, for the information of the House or Senate.

2. If the Panel determines that there is a reasonable basis to conclude that the legislator has violated the provisions of this chapter but that the violation was not made knowingly, the Panel shall refer the matter by a written report setting forth its findings and the reasons therefor to the appropriate house of the General Assembly for appropriate action. All Panel reports, which are advisory only, shall be delivered to the Clerk of the appropriate house, who shall refer the report to the Committee on Privileges and Elections in accordance with the rules of the appropriate house. Said Committee shall in all cases report, after due hearings and consideration, its determination of the matter and its recommendations and reasons for its resolves to the appropriate house. If the Committee deems disciplinary action warranted, it shall report a resolution to express such action. The appropriate house as a whole shall then consider the resolution, and if it finds the legislator in violation of any provision of this chapter, it may by recorded vote take such disciplinary action as it deems warranted.

3. If the Panel determines that there is a reasonable basis to conclude that the legislator knowingly violated any provision of Article 2 (§ [30-102](#) et seq.), 3 (§ [30-104](#) et seq.), 4 (§ [30-107](#) et seq.) or 5 (§ [30-109](#) et seq.) of this chapter, except § [30-108](#) or subsection C of § [30-110](#), it shall refer the matter by a written report setting forth its findings and the reasons therefor to the Attorney General for such action he deems appropriate. The Panel shall also file its report with the Clerk of the appropriate house, who shall refer the report in accordance with the rules of his house. In the event the Attorney General determines not to prosecute the alleged violation, he shall notify the Clerk of the appropriate house of his determination and the Clerk shall send the report to the Committee on Privileges and Elections. The matter shall thereafter be handled in accordance with the provisions of subdivision 2.

4. If the Panel determines that there is a reasonable basis to conclude that the legislator has violated § [30-108](#) or subsection C of § [30-110](#), it shall refer the matter by a written report to the appropriate house pursuant to subdivision 2. As its first order of business other than organizational matters and committee work, the house in which the member sits shall immediately upon the convening of the next regular or special session take up and dispose of the matter by taking one or more of the following actions: (i) dismiss the complaint; (ii) sustain the complaint and reprimand the member; (iii) sustain the complaint, censure the member, and strip the member of his seniority; (iv) sustain the complaint and expel the member by a two-thirds vote of the elected members; (v) in the event the house finds a knowing violation, it shall refer the matter to the Attorney General pursuant to subdivision 3.

5. The Panel shall make public any report that it makes pursuant to the provisions of subdivision 1 b, 2, 3 or 4 on the date it refers its report.

1987, Sp. Sess., c. 1, § 2.1-639.48; 2001, c. [844](#); 2003, c. [649](#); 2010, cc. [427](#), [876](#).

§30-117. Confidentiality of proceedings.

All proceedings during the investigation of any complaint by the Panel shall be confidential. This rule of confidentiality shall apply to Panel members and their staff, the Committee on Privileges and Elections and its staff, and the Virginia Conflict of Interest and Ethics Advisory Council.

1987, Sp. Sess., c. 1, § 2.1-639.49; 2001, c. [844](#); 2014, cc. [792](#), [804](#).

§30-118. Staff for Panel.

The Panel may hire staff and outside counsel to assist the Panel and to conduct examinations of witnesses, subject to the approval of the President Pro Tempore of the Senate for the Senate Ethics Advisory Panel and subject to the approval of the Speaker of the House of Delegates for the House Ethics Advisory Panel.

1987, Sp. Sess., c. 1, § 2.1-639.50; 2001, c. [844](#); 2010, c. [876](#); 2014, cc. [792](#), [804](#).

§30-119. Jurisdiction of Panel.

The Senate and House Ethics Advisory Panels shall have jurisdiction over any complaint alleging a violation of Articles 2 (§ [30-102](#) et seq.) through 5 (§ [30-109](#) et seq.) of this chapter that occurs on or after August 1, 1987, and over any complaint alleging a violation of the Comprehensive Conflict of Interests Act occurring after July 1, 1984, and prior to August 1, 1987.

1987, Sp. Sess., c. 1, § 2.1-639.52; 2001, c. [844](#).

§30-120. Senate and House Committees on Standards of Conduct.

Either house of the General Assembly may establish, in its rules, a Committee on Standards of Conduct to be appointed as provided in its rules and consisting of three members, one of whom shall be a member of the minority party. The Committee shall consider any request by a member of its house for an advisory opinion as to whether the facts in a particular case would constitute a violation of the provisions of this chapter and may consider other matters assigned to it pursuant to the rules of its house.

1987, Sp. Sess., c. 1, § 2.1-639.53; 2001, c. [844](#).

§30-121. Adoption of rules governing procedures and disciplinary sanctions.

Each house of the General Assembly shall adopt rules governing procedures and disciplinary sanctions for members who have committed alleged violations of this chapter.

1987, Sp. Sess., c. 1, § 2.1-639.53:1; 2001, c. [844](#).

§30-122. Enforcement.

The provisions of this chapter shall be enforced by the Attorney General. In addition to any other powers and duties prescribed by law, the Attorney General shall have the following powers and duties:

1. If he determines that any legislator has knowingly violated any provision of this chapter, he shall designate an attorney for the Commonwealth who shall have complete and independent discretion in the prosecution of the legislator; and
2. He shall render advisory opinions to any legislator who seeks advice as to whether the facts in a particular case would constitute a violation of the provisions of this chapter. He shall determine which of his opinions or portions thereof are of general interest to the public and which may, from time to time, be published.

Irrespective of whether an opinion of the Attorney General has been requested and rendered, any legislator has the right to seek a declaratory judgment or other judicial relief as provided by law.

1987, Sp. Sess., c. 1, § 2.1-639.59; 2001, c. [844](#).

§30-123. Knowing violation of chapter a misdemeanor.

Any legislator who knowingly violates any of the provisions of Articles 2 through 5 (§§ [30-102](#) through [30-111](#)) of this chapter shall be guilty of a Class 1 misdemeanor.

A knowing violation under this section is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter. There shall be no prosecution for a violation of § [30-108](#) or subsection C of § [30-110](#) unless the house in which the member sits has referred the matter to the Attorney General as provided in subdivision 4 of § [30-116](#).

1987, Sp. Sess., c. 1, § 2.1-639.54; 2001, c. [844](#).

§30-124. Advisory opinions.

A legislator shall not be prosecuted or disciplined for a violation of this chapter if his alleged violation resulted from his good faith reliance on a written opinion of a committee on standards of conduct established pursuant to § [30-120](#), an opinion of the Attorney General as provided in § [30-122](#), or a formal opinion or written informal advice of the Council established pursuant to § [30-355](#), and the opinion or advice was made after his full disclosure of the facts regardless of whether such opinion or advice is later withdrawn provided the alleged violation occurred prior to the withdrawal of the opinion or advice.

1987, Sp. Sess., c. 1, § 2.1-639.55; 2001, c. [844](#); 2014, cc. [792](#), [804](#); 2015, cc. [763](#), [777](#); 2017, cc. [829](#), [832](#).

§30-125. Invalidation of contract; rescision of sales.

A. Any contract made in violation of § [30-103](#) or § [30-105](#) may be declared void and may be rescinded by the contracting or selling governmental authority within five years of the date of the contract. In cases in which the contract is invalidated, the contractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of rescision of a contract of sale, any refund or restitution shall be made to the contracting or selling governmental agency.

B. Any purchase made in violation of § [30-103](#) or § [30-105](#) may be rescinded by the contracting or selling governmental agency within five years of the date of the purchase.

1987, Sp. Sess., c. 1, § 2.1-639.56; 2001, c. [844](#).

§30-126. Civil penalty from violation of this chapter.

A. In addition to any other fine or penalty provided by law, any money or other thing of value derived by a legislator from a violation of §§ [30-103](#) through [30-108](#) shall be

forfeited and, in the event of a knowing violation, there may also be imposed a civil penalty in an amount equal to the amount of money or thing of value forfeited to the Commonwealth. If the thing of value received by the legislator in violation of this chapter should enhance in value between the time of the violation and the time of discovery of the violation, the greater value shall determine the amount of the civil penalty.

B. A legislator who fails to file the disclosure form required by § [30-111](#) within the time period prescribed shall be assessed a civil penalty in an amount equal to \$250. The Council shall notify the Attorney General of any legislator's failure to file the required form within 30 days of the deadline for filing and the Attorney General shall assess and collect the civil penalty. All civil penalties collected pursuant to this subsection shall be deposited into the general fund and used exclusively to fund the Council.

1987, Sp. Sess., c. 1, § 2.1-639.57; 2001, c. [844](#); 2012, cc. [283](#), [756](#); 2015, cc. [763](#), [777](#).

§30-127. Criminal prosecutions.

A. Violations of this chapter may be prosecuted notwithstanding the jurisdiction of, or any pending proceeding before, the House or Senate Ethics Advisory Panel.

B. Nothing in this chapter shall limit or affect the application of other criminal statutes and penalties as provided in the Code of Virginia, including but not limited to bribery, embezzlement, perjury, conspiracy, fraud, and violations of the Campaign Finance Disclosure Act Chapter 9.3 (§ [24.2-945](#) et seq.) of Title 24.2.

1987, Sp. Sess., c. 1, § 2.1-639.61; 2001, c. [844](#); 2006, cc. [787](#), [892](#).

§30-128. Limitation of actions.

The statute of limitations for the criminal prosecution of a legislator for violation of any provision of this chapter shall be one year from the time the Attorney General has actual knowledge of the violation or five years from the date of the violation, whichever event first occurs.

1987, Sp. Sess., c. 1, § 2.1-639.58; 2001, c. [844](#).

§30-129. Venue.

Any prosecution for a violation of this chapter shall be brought in the circuit court of the jurisdiction in which the legislator resides, or the jurisdiction in which he resided

at the time of the alleged violation if he is no longer a resident of the Commonwealth.

1987, Sp. Sess., c. 1, § 2.1-639.60; 2001, c. [844](#).

§30-129.1. Orientation sessions on ethics and conflicts of interests.

The Council shall conduct an orientation session (i) for new and returning General Assembly members preceding each even-numbered year regular session and (ii) for any new General Assembly member who is elected in a special election and whose term commences after the date of the orientation session provided for in clause (i) and at least six months before the date of the next such orientation session within three months of his election. Attendance at the full orientation session shall be mandatory for newly elected members. Attendance at a refresher session shall be mandatory for returning members and may be accomplished by online participation. There shall be no penalty for the failure of a member to attend the full or refresher orientation session, but the member must disclose his attendance pursuant to § [30-111](#).

2014, cc. [792](#), [804](#); 2017, cc. [829](#), [832](#).

§30-129.2. Content of orientation sessions.

The orientation session shall provide information and training for the members on ethics and conflicts of interests, on the provisions of the General Assembly Conflicts of Interests Act (§ [30-100](#) et seq.), on relevant federal law provisions, and on related issues involving lobbying. Refresher sessions may be offered online.

2014, cc. [792](#), [804](#).

§30-129.3. Orientation session preparations.

Those conducting the orientation sessions may call on other agencies in the legislative or executive branches for assistance, may invite experts to assist in the sessions, and shall, upon request of a member who holds a professional license or certification, apply for continuing education credits with the appropriate licensing or certifying entity for the sessions.

2014, cc. [792](#), [804](#).

Government Data Collection and

Dissemination Practices Act

§2.2-3800. Short title; findings; principles of information practice.

A. This chapter may be cited as the "Government Data Collection and Dissemination Practices Act."

B. The General Assembly finds that:

1. An individual's privacy is directly affected by the extensive collection, maintenance, use and dissemination of personal information;
2. The increasing use of computers and sophisticated information technology has greatly magnified the harm that can occur from these practices;
3. An individual's opportunities to secure employment, insurance, credit, and his right to due process, and other legal protections are endangered by the misuse of certain of these personal information systems; and
4. In order to preserve the rights guaranteed a citizen in a free society, legislation is necessary to establish procedures to govern information systems containing records on individuals.

C. Recordkeeping agencies of the Commonwealth and political subdivisions shall adhere to the following principles of information practice to ensure safeguards for personal privacy:

1. There shall be no personal information system whose existence is secret.
2. Information shall not be collected unless the need for it has been clearly established in advance.
3. Information shall be appropriate and relevant to the purpose for which it has been collected.
4. Information shall not be obtained by fraudulent or unfair means.
5. Information shall not be used unless it is accurate and current.
6. There shall be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.

7. There shall be a clearly prescribed and uncomplicated procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.

8. Any agency holding personal information shall assure its reliability and take precautions to prevent its misuse.

9. There shall be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.

10. The Commonwealth or any agency or political subdivision thereof shall not collect personal information except as explicitly or implicitly authorized by law.

1976, c. 597, §§ 2.1-377, 2.1-378; 1987, c. 506; 2001, c. [844](#); 2003, cc. [791](#), [914](#), [918](#), [927](#); 2009, cc. [849](#), [867](#).

§2.2-3801. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency" means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government including counties, cities, towns, regional governments, and the departments thereof, and includes constitutional officers, except as otherwise expressly provided by law. "Agency" shall also include any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the operation of a system of personal information to accomplish an agency function. Any such entity included in this definition by reason of a contractual relationship shall only be deemed an agency as relates to services performed pursuant to that contractual relationship, provided that if any such entity is a consumer reporting agency, it shall be deemed to have satisfied all of the requirements of this chapter if it fully complies with the requirements of the Federal Fair Credit Reporting Act as applicable to services performed pursuant to such contractual relationship.

"Data subject" means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in an information system.

"Disseminate" means to release, transfer, or otherwise communicate information orally, in writing, or by electronic means.

"Information system" means the total components and operations of a record-keeping process, including information collected or managed by means of computer

networks and the Internet, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject.

"Personal information" means all information that (i) describes, locates or indexes anything about an individual including, but not limited to, his social security number, driver's license number, agency-issued identification number, student identification number, real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, or (ii) affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution. "Personal information" shall not include routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject nor does the term include real estate assessment information.

"Purge" means to obliterate information completely from the transient, permanent, or archival records of an agency.

1976, c. 597, § 2.1-379; 1983, c. 372; 1999, c. [41](#); 2001, c. [844](#); 2003, c. [272](#); 2006, c. [474](#); 2008, cc. [840](#), [843](#); 2009, cc. [849](#), [867](#).

§2.2-3802. Systems to which chapter inapplicable.

The provisions of this chapter shall not apply to personal information systems:

1. Maintained by any court of the Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ [9.1-126](#) through [9.1-137](#) or in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1, except to the extent that information is required to be posted on the Internet pursuant to § [9.1-913](#);
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ [16.1-222](#) through [16.1-225](#);
5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth to engage in the practice of any profession, in which case the names

and addresses of persons applying for or possessing the license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing the licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided the disseminating agency is reasonably assured that the use of the information will be so limited;

6. (Effective until January 15, 2018) Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, and the Department of Alcoholic Beverage Control;

6. (Effective January 15, 2018) Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, and the Virginia Alcoholic Beverage Control Authority;

7. Maintained by any of the following and that deal with investigations and intelligence gathering related to criminal activity:

a. The Department of State Police;

b. The police department of the Chesapeake Bay Bridge and Tunnel Commission;

c. Police departments of cities, counties, and towns;

d. Sheriff's departments of counties and cities; and

e. Campus police departments of public institutions of higher education as established by Article 3 (§ [23.1-809](#) et seq.) of Chapter 8 of Title 23.1;

8. Maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;

9. Maintained by the Virginia Port Authority as provided in § [62.1-132.4](#) or [62.1-134.1](#);

10. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Tourism Authority is reasonably assured that the use of the information will be so limited;

11. Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the Department of Forensic Science, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § [9.1-1104](#) may apply;

12. Maintained by the Department of Corrections or the Office of the State Inspector General that deal with investigations and intelligence gathering by persons acting under the provisions of Chapter 3.2 (§ [2.2-307](#) et seq.);

13. Maintained by (i) the Office of the State Inspector General or internal audit departments of state agencies or institutions that deal with communications and investigations relating to the Fraud, Waste and Abuse Hotline or (ii) an auditor appointed by the local governing body of any county, city, or town or a school board that deals with local investigations required by § [15.2-2511.2](#);

14. Maintained by the Department of Social Services or any local department of social services relating to public assistance fraud investigations; and

15. Maintained by the Department of Social Services related to child welfare, adult services or adult protective services, or public assistance programs when requests for personal information are made to the Department of Social Services. Requests for information from these systems shall be made to the appropriate local department of social services, which is the custodian of that record. Notwithstanding the language in this section, an individual shall not be prohibited from obtaining information from the central registry in accordance with the provisions of § [63.2-1515](#).

1976, c. 597, § 2.1-384; 1979, c. 685; 1980, c. 752; 1981, cc. 461, 464, 504, 589; 1982, c. 225; 1983, c. 289; 1984, c. 750; 1986, c. 62; 1990, c. 825; 1992, c. 620; 1993, cc. 205, 963; 1996, cc. [154](#), [590](#), [598](#), [952](#); 2001, c. [844](#); 2003, c. [406](#); 2005, cc. [868](#), [881](#); 2006, cc. [196](#), [857](#), [914](#); 2009, c. [573](#); 2011, cc. [798](#), [871](#); 2012, cc. [229](#), [268](#); 2013, cc. [572](#), [690](#), [717](#), [723](#); 2015, cc. [38](#), [730](#); 2017, c. [702](#).

§2.2-3803. Administration of systems including personal information; Internet privacy policy; exceptions.

A. Any agency maintaining an information system that includes personal information shall:

1. Collect, maintain, use, and disseminate only that personal information permitted or required by law to be so collected, maintained, used, or disseminated, or necessary to accomplish a proper purpose of the agency;

2. Collect information to the greatest extent feasible from the data subject directly;
3. Establish categories for maintaining personal information to operate in conjunction with confidentiality requirements and access controls;
4. Maintain information in the system with accuracy, completeness, timeliness, and pertinence as necessary to ensure fairness in determinations relating to a data subject;
5. Make no dissemination to another system without (i) specifying requirements for security and usage including limitations on access thereto, and (ii) receiving reasonable assurances that those requirements and limitations will be observed. This subdivision shall not apply, however, to a dissemination made by an agency to an agency in another state, district or territory of the United States where the personal information is requested by the agency of such other state, district or territory in connection with the application of the data subject therein for a service, privilege or right under the laws thereof, nor shall this apply to information transmitted to family advocacy representatives of the United States Armed Forces in accordance with subsection N of § [63.2-1503](#);
6. Maintain a list of all persons or organizations having regular access to personal information in the information system;
7. Maintain for a period of three years or until such time as the personal information is purged, whichever is shorter, a complete and accurate record, including identity and purpose, of every access to any personal information in a system, including the identity of any persons or organizations not having regular access authority but excluding access by the personnel of the agency wherein data is put to service for the purpose for which it is obtained;
8. Take affirmative action to establish rules of conduct and inform each person involved in the design, development, operation, or maintenance of the system, or the collection or use of any personal information contained therein, about all the requirements of this chapter, the rules and procedures, including penalties for non-compliance, of the agency designed to assure compliance with such requirements;
9. Establish appropriate safeguards to secure the system from any reasonably foreseeable threat to its security; and
10. Collect no personal information concerning the political or religious beliefs, affiliations, and activities of data subjects that is maintained, used or disseminated in or

by any information system operated by any agency unless authorized explicitly by statute or ordinance.

B. Every public body, as defined in § [2.2-3701](#), that has an Internet website associated with that public body shall develop an Internet privacy policy and an Internet privacy policy statement that explains the policy to the public. The policy shall be consistent with the requirements of this chapter. The statement shall be made available on the public body's website in a conspicuous manner. The Secretary of Technology or his designee shall provide guidelines for developing the policy and the statement, and each public body shall tailor the policy and the statement to reflect the information practices of the individual public body. At minimum, the policy and the statement shall address (i) what information, including personally identifiable information, will be collected, if any; (ii) whether any information will be automatically collected simply by accessing the website and, if so, what information; (iii) whether the website automatically places a computer file, commonly referred to as a "cookie," on the Internet user's computer and, if so, for what purpose; and (iv) how the collected information is being used or will be used.

C. Notwithstanding the provisions of subsection A, the Virginia Retirement System may disseminate information as to the retirement status or benefit eligibility of any employee covered by the Virginia Retirement System, the Judicial Retirement System, the State Police Officers' Retirement System, or the Virginia Law Officers' Retirement System, to the chief executive officer or personnel officers of the state or local agency by which he is employed.

D. Notwithstanding the provisions of subsection A, the Department of Social Services may disseminate client information to the Department of Taxation for the purposes of providing specified tax information as set forth in clause (ii) of subsection C of § [58.1-3](#).

E. Notwithstanding the provisions of subsection A, the State Council of Higher Education for Virginia may disseminate student information to agencies acting on behalf or in place of the U.S. government to gain access to data on wages earned outside the Commonwealth or through federal employment, for the purposes of complying with § [23.1-204.1](#).

1976, c. 597, § 2.1-380; 1978, c. 409, § 2.1-384.1; 1989, c. 547; 2000, cc. [405](#), [500](#); 911; 2001, c. [844](#); 2002, c. [747](#); 2006, cc. [159](#), [590](#); 2017, c. [376](#).

§2.2-3804. Military recruiters to have access to student information, school buildings, etc.

If a public school board or public institution of higher education provides access to its buildings and grounds and the student information directory to persons or groups that make students aware of occupational or educational options, the board or institution shall provide access on the same basis to official recruiting representatives of the armed forces of the Commonwealth and the United States for the purpose of informing students of educational and career opportunities available in the armed forces.

1981, c. 377, § 2.1-380.1; 2001, c. [844](#).

§2.2-3805. Dissemination of reports.

Any agency maintaining an information system that disseminates statistical reports or research findings based on personal information drawn from its system, or from other systems shall:

1. Make available to any data subject or group, without revealing trade secrets, methodology and materials necessary to validate statistical analysis, and
2. Make no materials available for independent analysis without guarantees that no personal information will be used in any way that might prejudice judgments about any data subject.

1976, c. 597, § 2.1-381; 2001, c. [844](#).

§2.2-3806. Rights of data subjects.

A. Any agency maintaining personal information shall:

1. Inform an individual who is asked to supply personal information about himself whether he is legally required, or may refuse, to supply the information requested, and also of any specific consequences that are known to the agency of providing or not providing the information.
2. Give notice to a data subject of the possible dissemination of part or all of this information to another agency, nongovernmental organization or system not having regular access authority, and indicate the use for which it is intended, and the specific consequences for the individual, which are known to the agency, of providing or not providing the information. However documented permission for dissemination in the hands of the other agency or organization shall satisfy the requirement of this

subdivision. The notice may be given on applications or other data collection forms prepared by data subjects.

3. Upon request and proper identification of any data subject, or of his authorized agent, grant the data subject or agent the right to inspect, in a form comprehensible to him:

a. All personal information about that data subject except as provided in subdivision 1 of § [2.2-3705.1](#), subdivision 1 of § [2.2-3705.4](#), and subdivision 1 of § [2.2-3705.5](#).

b. The nature of the sources of the information.

c. The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority, except that if the recipient has obtained the information as part of an ongoing criminal investigation such that disclosure of the investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made to the data subject.

4. Comply with the following minimum conditions of disclosure to data subjects:

a. An agency shall make disclosures to data subjects required under this chapter, during normal business hours, in accordance with the procedures set forth in subsections B and C of § [2.2-3704](#) for responding to requests under the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.) or within a time period as may be mutually agreed upon by the agency and the data subject.

b. The disclosures to data subjects required under this chapter shall be made (i) in person, if he appears in person and furnishes proper identification, or (ii) by mail, if he has made a written request, with proper identification. Copies of the documents containing the personal information sought by a data subject shall be furnished to him or his representative at reasonable charges for document search and duplication in accordance with subsection F of § [2.2-3704](#).

c. The data subject shall be permitted to be accompanied by a person of his choosing, who shall furnish reasonable identification. An agency may require the data subject to furnish a written statement granting the agency permission to discuss the individual's file in such person's presence.

5. If the data subject gives notice that he wishes to challenge, correct, or explain information about him in the information system, the following minimum procedures shall be followed:

a. The agency maintaining the information system shall investigate, and record the current status of that personal information.

b. If, after such investigation, the information is found to be incomplete, inaccurate, not pertinent, not timely, or not necessary to be retained, it shall be promptly corrected or purged.

c. If the investigation does not resolve the dispute, the data subject may file a statement of not more than 200 words setting forth his position.

d. Whenever a statement of dispute is filed, the agency maintaining the information system shall supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use of the information in question, clearly note that it is disputed and supply the statement of the data subject along with the information.

e. The agency maintaining the information system shall clearly and conspicuously disclose to the data subject his rights to make such a request.

f. Following any correction or purging of personal information the agency shall furnish to past recipients notification that the item has been purged or corrected whose receipt shall be acknowledged.

B. Nothing in this chapter shall be construed to require an agency to disseminate any recommendation or letter of reference from or to a third party that is a part of the personnel file of any data subject nor to disseminate any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by any public body.

As used in this subsection, "test or examination" includes (i) any scoring key for any such test or examination and (ii) any other document that would jeopardize the security of the test or examination. Nothing contained in this subsection shall prohibit the release of test scores or results as provided by law, or to limit access to individual records as provided by law; however, the subject of the employment tests shall be entitled to review and inspect all documents relative to his performance on those employment tests.

When, in the reasonable opinion of the public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. Minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

C. Neither any provision of this chapter nor any provision of the Freedom of Information Act (§ [2.2-3700](#) et seq.) shall be construed to deny public access to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to any public officer, official or employee at any level of state, local or regional government in the Commonwealth. The provisions of this subsection shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

D. Nothing in this section or in this chapter shall be construed to require an agency to disseminate information derived from tax returns prohibited from release pursuant to § [58.1-3](#).

1976, c. 597, § 2.1-382; 1978, c. 810; 1979, cc. 683, 688, 689; 1983, c. 372; 1995, c. [400](#); 2001, c. [844](#); 2004, c. [690](#); 2007, c. [232](#); 2017, c. [778](#).

§2.2-3807. Agencies to report concerning systems operated or developed; publication of information.

Every agency shall make report of the existence of any information system that it operates or develops that shall include a description of the nature of the data in the system and purpose for which it is used. An inventory listing or similar display of the information shall be made available for inspection by the general public in the office of the head of each agency. Copies of the information shall be provided upon request and a fee shall be charged for them sufficient to cover the reasonable costs of reproduction.

1976, c. 597, § 2.1-383; 1977, c. 279; 1979, c. 683; 2001, c. [844](#).

§2.2-3808. Collection, disclosure, or display of social security number.

A. It shall be unlawful for any agency to:

1. Require an individual to disclose or furnish his social security number not previously disclosed or furnished, for any purpose in connection with any activity, or to

refuse any service, privilege, or right to an individual wholly or partly because the individual does not disclose or furnish such number, unless the disclosure or furnishing of such number is specifically required by state law in effect prior to January 1, 1975, or is specifically authorized or required by federal law; or

2. Collect from an individual his social security number or any portion thereof unless the collection of such number is (i) authorized or required by state or federal law and (ii) essential for the performance of that agency's duties. Nothing in this subdivision shall be construed to prohibit the collection of a social security number for the sole purpose of complying with the Virginia Debt Collection Act (§ [2.2-4800](#) et seq.) or the Setoff Debt Collection Act (§ [58.1-520](#) et seq.).

B. Agency-issued identification cards, student identification cards, or license certificates issued or replaced on or after July 1, 2003, shall not display an individual's entire social security number except as provided in § [46.2-703](#).

C. Any agency-issued identification card, student identification card, or license certificate that was issued prior to July 1, 2003, and that displays an individual's entire social security number shall be replaced no later than July 1, 2006, except that voter registration cards issued with a social security number and not previously replaced shall be replaced no later than the December 31st following the completion by the state and all localities of the decennial redistricting following the 2010 census. This subsection shall not apply to (i) driver's licenses and special identification cards issued by the Department of Motor Vehicles pursuant to Chapter 3 (§ [46.2-300](#) et seq.) of Title 46.2 and (ii) road tax registrations issued pursuant to § [46.2-703](#).

D. No agency, as defined in § [42.1-77](#), shall send or deliver or cause to be sent or delivered, any letter, envelope, or package that displays a social security number on the face of the mailing envelope or package or from which a social security number is visible, whether on the outside or inside of the mailing envelope or package.

E. The provisions of subsections A and C shall not be applicable to licenses issued by the State Corporation Commission's Bureau of Insurance until such time as a national insurance producer identification number has been created and implemented in all states. Commencing with the date of such implementation, the licenses issued by the State Corporation Commission's Bureau of Insurance shall be issued in compliance with subsection A of this section. Further, all licenses issued prior to the date of such implementation shall be replaced no later than 12 months following the date of such implementation.

1976, c. 597, § 2.1-385; 2001, c. [844](#); 2003, c. [974](#); 2008, cc. [840](#), [843](#); 2009, cc. [849](#), [867](#); 2010, c. [749](#).

§2.2-3808.1. Agencies' disclosure of certain account information prohibited.

Notwithstanding Chapter 37 (§ [2.2-3700](#) et seq.) of this title, it shall be unlawful for any agency to disclose the social security number or other identification numbers appearing on driver's licenses or information on credit cards, debit cards, bank accounts, or other electronic billing and payment systems that was supplied to an agency for the purpose of paying fees, fines, taxes, or other charges collected by such agency. The prohibition shall not apply where disclosure of such information is required (i) to conduct or complete the transaction for which such information was submitted or (ii) by other law or court order.

2001, c. [415](#), § 2.1-385.1; 2007, cc. [548](#), [626](#).

§2.2-3808.2. Repealed.

Repealed by Acts 2007, cc. [548](#) and [626](#), cl. 5.

§2.2-3809. Injunctive relief; civil penalty; attorneys' fees.

Any aggrieved person may institute a proceeding for injunction or mandamus against any person or agency that has engaged, is engaged, or is about to engage in any acts or practices in violation of the provisions of this chapter. The proceeding shall be brought in the district or circuit court of any county or city where the aggrieved person resides or where the agency made defendant has a place of business.

In the case of any successful proceeding by an aggrieved party, the agency enjoined or made subject to a writ of mandamus by the court shall be liable for the costs of the action together with reasonable attorneys' fees as determined by the court.

In addition, if the court finds that a violation of subsection A of § [2.2-3808](#) was willfully and knowingly made by a specific public officer, appointee, or employee of any agency, the court may impose upon such individual a civil penalty of not less than \$250 nor more than \$1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$1,000 nor more than \$2,500. For a violation of subsection A of § [2.2-3808](#) by any agency, the court may impose a civil penalty of not less than \$250 nor more than \$1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$1,000 nor more than \$2,500.

1976, c. 597, § 2.1-386; 2001, c. [844](#); 2008, cc. [840](#), [843](#).

Government Employees Deferred Compensation Plan Act

§51.1-600. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Act" means the Government Employees Deferred Compensation Plan Act.

"Board" means the Board of Trustees of the Virginia Retirement System.

"Deferred compensation plan" means a plan established pursuant to the provisions of § 457(b) of the Internal Revenue Code of 1986, as amended, that may provide for elective and non-elective deferrals of compensation by or on behalf of employees and may include a qualified Roth contribution program as described in § 402A of the Internal Revenue Code of 1986, as amended.

"Employee" means, in the case of the plan described in § [51.1-602](#), all persons employed by a participating employer, including appointed or elected officials. In the case of a plan adopted by a county, municipality, authority or other political subdivision pursuant to § [51.1-603](#), an employee shall be defined by such county, municipality, authority or other political subdivision, subject to the approval of the Board.

"Participating employer" means the Commonwealth or any political subdivision that has elected pursuant to § [51.1-603.1](#) to participate in the deferred compensation plan established by the Board pursuant to this chapter.

1974, c. 461, § 51-111.67:15; 1987, c. 619; 1990, c. 832; 1992, c. 276; 1999, cc. [980](#), [984](#); 2002, c. [311](#); 2007, c. [253](#); 2014, cc. [356](#), [747](#).

§51.1-601. Contract for deferred compensation.

In accordance with a plan of deferred compensation, the Commonwealth, or any state agency, county, municipality, authority, or other political subdivision may contract with any employee to defer all or any portion of that employee's otherwise payable compensation and, pursuant to the terms of the plan and in such proportions as may be designated or directed under the plan, place such deferred compensation in investment products selected by the Commonwealth and its agencies, county, municipality, authority, or other political subdivision. All investment products shall be

offered in compliance with applicable federal and state laws and regulations by persons who are duly authorized by applicable state and federal authorities.

1974, c. 461, § 51-111.67:16; 1987, c. 619; 1990, c. 832; 1992, c. 276; 2002, c. [311](#); 2007, c. [253](#).

§51.1-601.1. Participation in plan by certain employees.

All employees of the Commonwealth and its agencies commencing employment or who are reemployed on or after January 1, 2008, in a position covered by the Virginia Retirement System, and who (i) have not elected to participate in a plan established pursuant to § 403(b) of the Internal Revenue Code of 1986, as amended, or (ii) do not participate in the hybrid retirement program described in § [51.1-169](#), shall participate in the plan described in § [51.1-602](#), unless such employee elects, in a manner prescribed by the Board, not to participate in such plan. The amount of the deferral for any such employee participating in the plan shall equal, on a semi-monthly basis, \$20 of otherwise payable compensation, unless the employee elects to defer a different amount.

2007, c. [253](#); 2012, cc. [701](#), [823](#); 2013, c. [463](#).

§51.1-602. Deferred compensation plan for employees of the Commonwealth; administered by the Board.

A. The Board shall establish and administer a deferred compensation plan for employees of the Commonwealth and its agencies. The Virginia Retirement System Director shall be the chief administrative officer of the plan. The Board may contract with private corporations or institutions subject to the standards set forth in § [51.1-124.30](#) to provide investment products as well as any other goods and services related to the administration of the deferred compensation plan. The Virginia Retirement System is hereby authorized to perform related services including, but not limited to, providing consolidated billing, individual and collective record keeping and accountings, and asset purchase, control, and safekeeping. In accordance with such plan, and upon contract or agreement with an eligible employee, deferrals of compensation may be accomplished by payroll deductions made by the appropriate officer of the Commonwealth, with such funds being thereafter held and administered in accordance with the plan. Administrative fees related to the VRS program oversight that otherwise would be charged to an employee participating in the plan shall be paid by the participating employer under procedures established by the Board. Any political subdivision participating in the plan pursuant to § [51.1-603.1](#) may collect

the administrative fee imposed by the Virginia Retirement System from employees participating in the plan.

B. If it deems it advisable, the Board may create a trust or other special fund for the segregation of the funds or assets resulting from compensation deferred at the request of employees of the Commonwealth or its agencies and for the implementation of such program.

C. The Department of Accounts shall be responsible for the (i) accounting and reconciliations associated with state employees' contributions to the plan through payroll deductions and (ii) timely transfer of withheld funds to the private corporation or institution designated by the Board pursuant to subsection A. However, any state agency that has decentralized its payroll function and any political subdivision of the Commonwealth participating in the plan pursuant to § [51.1-603.1](#) shall be responsible for the (i) accounting and reconciliations associated with their employees' contributions to the plan through payroll deductions and (ii) timely transfer of withheld funds to the private corporation or institution designated by the Board pursuant to subsection A.

1974, c. 461, § 51-111.67:17; 1984, cc. 662, 746; 1985, c. 448; 1987, c. 619; 1990, c. 832; 1992, c. 276; 1997, c. [174](#); 1998, c. [658](#); 2000, c. [395](#); 2004, c. [86](#); 2008, c. [245](#).

§51.1-603. Local deferred compensation plans.

A. Any county, municipality, authority, or other political subdivision of the Commonwealth may by ordinance or resolution adopt and establish for itself and its employees a deferred compensation plan. Any such deferred compensation plan may include constitutional officers and their employees. The ordinance or resolution adopting or establishing such plan shall create or designate an appropriate board or officer to administer the plan, and shall confer upon such board or officer the authority to do all things by way of supervision, administration, and implementation of the plan, including the power to contract with private corporations or institutions for services in connection therewith. The deferral of compensation may be accomplished by payroll deductions by the appropriate officer of the county, municipality, authority, or other political subdivision.

B. If it deems it advisable, any county, municipality, authority, or other political subdivision of the Commonwealth, which by ordinance or resolution adopts and establishes for itself and its employees a deferred compensation plan, may (i) create a trust or other special fund for the segregation of the funds or assets resulting from

compensation deferred at the request of its employees for the implementation of such plan or (ii) provide that its employees who commence employment or reemployment on or after a specified date, and who have not affirmatively elected to participate in such deferred compensation plan or in a plan established by such political subdivision pursuant to § 403(b) of the Internal Revenue Code of 1986, as amended, shall participate in either such deferred compensation plan or 403(b) plan, as determined by the political subdivision, at such initial default amount or rate of deferral as it may determine, unless such employee elects, in a manner prescribed by the plan administrator, not to participate in the plan.

1974, c. 461, § 51-111.67:18; 1982, c. 364; 1987, c. 619; 1990, c. 832; 1991, c. 379; 1997, c. [174](#); 2012, c. [660](#).

§51.1-603.1. Participation by employees of political subdivisions in deferred compensation plan of Virginia Retirement System.

A. The Virginia Retirement System may enter into an agreement with any political subdivision of the Commonwealth to permit participation by the political subdivision's employees in the deferred compensation plan established and administered by the Board pursuant to § [51.1-602](#), except that political subdivisions of the Commonwealth otherwise participating in the retirement system pursuant to Article 5 (§ [51.1-130](#) et seq.) of Chapter 1 shall participate in the deferred compensation plan established and administered by the Board pursuant to § [51.1-602](#) to the extent necessary to provide benefits under the hybrid retirement program described in § [51.1-169](#).

B. The political subdivision may provide in the agreement that its employees who (i) commence employment or reemployment on or after a specified date occurring on or after the effective date of this provision in the agreement, (ii) are not participating in the hybrid retirement program described in § [51.1-169](#), and (iii) have not affirmatively elected to participate in the plan described in § [51.1-602](#) or a plan established by such political subdivision pursuant to § 403(b) of the Internal Revenue Code of 1986, as amended, shall participate in either such plan described in § [51.1-602](#) or a 403(b) plan, as determined by the political subdivision, unless such employee elects, in a manner prescribed by the Board, not to participate in such plan. The amount of the deferral for any such employee participating in the plan shall equal, on a semi-monthly basis, \$20 of otherwise payable compensation, unless the employee elects to defer a greater amount.

1997, c. [174](#); 2012, cc. [660](#), [701](#), [823](#); 2013, c. [463](#).

§51.1-604. Standards for deferred compensation plans.

No deferred compensation plan shall become effective until the Board, county, municipality, authority or other political subdivision of the Commonwealth is satisfied, by opinion of its respective counsel, such federal agency or agencies as may be deemed necessary, or otherwise, that the contributions thereunder and/or the investment products purchased pursuant to the plan (i) will not be included in the employee's taxable income under federal or state law until it is actually received by the employee under the terms of the plan, provided that such contributions will nonetheless be deemed compensation at the time of deferral for the purposes of social security coverage, for the purposes of the Virginia Retirement System, and for any other retirement, pension, or benefit program established by law, or (ii) are designated Roth contributions as defined in § 402A of the Internal Revenue Code of 1986, as amended.

1974, c. 461, § 51-111.67:19; 1987, c. 619; 1990, c. 832; 1992, c. 276; 2002, c. [311](#); 2014, c. [747](#).

§51.1-605. Other retirement, pension, etc., systems not affected; annual report.

Any deferred compensation program established by this chapter, and any plan adopted hereunder, shall exist and serve in addition to any other retirement, pension, or benefit system established by the Commonwealth, its agencies, counties, municipalities, authorities, or other political subdivisions, and shall not supersede, make inoperative, or reduce any benefits provided by the Virginia Retirement System or by any other retirement, pension, or benefit program established by law.

The Virginia Retirement System shall submit an annual report to the Governor and the General Assembly advising them of the condition of the Commonwealth's fund and all operational costs associated with such fund. This report shall be submitted annually on or before December 31.

The Board shall have the authority to establish a plan pursuant to § 401 (a) or § 403 (b) of the Internal Revenue Code of 1986, as amended, for the purpose of implementation of this section.

1974, c. 461, § 51-111.67:20; 1987, c. 619; 1990, c. 832; 1992, c. 276; 2002, c. [311](#); 2006, c. [66](#).

§51.1-606. Repealed.

Repealed by Acts 2002, c. [311](#), cl. 2.

Government Non-Arbitrage Investment Act

§2.2-4700. Authorization to Treasury Board to provide certain assistance.

A. This chapter shall be known, and may be cited, as the "Government Non-Arbitrage Investment Act."

B. The General Assembly authorizes the Treasury Board to make available to the Commonwealth, to counties, cities and towns in the Commonwealth, and to their agencies, institutions, and authorities or any combination of the foregoing assistance as provided in this chapter in making and accounting for such investments.

1988, c. 498, § 2.1-234.9:1; 1990, c. 516; 1991, c. 245; 2001, c. [844](#).

§2.2-4701. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Bonds" means bonds or other obligations issued by the Commonwealth, by counties, cities and towns, and by their agencies, institutions, and authorities or by any combination of the foregoing under the provisions of the Public Finance Act (§ [15.2-2600](#) et seq.), or otherwise, the interest on which is intended to be excludable from the gross income of the recipients thereof for federal income tax purposes.

"Depository institution" means any commercial bank, trust company, or savings institution insured by an agency or instrumentality of the United States government.

"Issuers" means the Commonwealth, counties, cities and towns in the Commonwealth, and their agencies, institutions, and authorities.

"Official handling public funds" or "official" means the treasurer of the issuer or, if there is no officer known as treasurer of the issuer, the chief financial officer of the issuer, and any person or entity described in § [58.1-3123](#).

1988, c. 498, § 2.1-234.9:2; 1990, c. 516; 1991, c. 245; 1996, c. [77](#); 2001, c. [844](#).

§2.2-4702. Powers of the Treasury Board under this chapter.

The Treasury Board shall have power to:

1. Provide assistance to issuers in the management of and accounting for their funds, including, without limitation, bond proceeds, reserves and sinking funds, and the investment thereof, any portion of the investment earnings on which is or may be subject to rebate to the federal government.
2. Manage, acquire, hold, trade and sell investment obligations, for and on behalf of issuers or a pool or pools, and not for its own account, that are authorized investments for issuer bond proceeds, reserves, sinking funds or other funds, as the case may be.
3. Establish one or more pools of the issuer bond proceeds, reserves, sinking funds or other funds that are placed in the custody of the State Treasurer for investment and reinvestment in authorized investments.
4. Adopt regulations necessary and proper for the efficient administration of the pools authorized by this chapter without complying with the Administrative Process Act (§ [2.2-4000](#) et seq.), provided that notice and an opportunity to submit written comments on such regulations be given to officials handling public funds.
5. Formulate policies for the investment and reinvestment of funds under management, including funds in the pool or pools, and the acquisition, retention, management and disposition of investments.
6. Delegate the administration of this chapter to the State Treasurer, subject to the regulations and guidelines adopted by the Treasury Board.
7. Retain employees and engage and enter into contracts with independent investment managers, accountants, counsel, depository institutions and other advisors and agents, as may be necessary or convenient.
8. Enter into contracts with issuers with respect to the performance of investment services.
9. Charge issuers for the costs of its investment services and for its expenses.
10. Do any and all other acts and things necessary, appropriate or incidental in carrying out the purposes of this chapter.

1988, c. 498, § 2.1-234.9:3; 1990, c. 516; 2001, c. [844](#).

§2.2-4703. Powers of issuers.

Any provision of any general or special law or of any charter to the contrary notwithstanding, issuers may use the investment services of the Treasury Board and for that purpose may enter into contracts with the Treasury Board and its agents.

1988, c. 498, § 2.1-234.9:4; 1990, c. 516; 2001, c. [844](#).

§2.2-4704. Alternative method.

This chapter shall be deemed to provide an additional, alternative method for the performance of actions authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing.

1988, c. 498, § 2.1-234.9:5; 2001, c. [844](#).

§2.2-4705. Liberal construction; inconsistent laws inapplicable.

A. This chapter, being necessary for the welfare of the people of the Commonwealth, shall be liberally construed to effect the purposes thereof.

B. Insofar as the provisions of this chapter are inconsistent with the provisions of any general or special laws or charters, or parts thereof, the provisions of this chapter shall control.

1988, c. 498, §§ 2.1-234.9:6, 2.1-234.9:7; 2001, c. [844](#).

Ground Water Management Act of 1992

§62.1-254. Findings and purpose.

The General Assembly hereby determines and finds that, pursuant to the Ground-water Act of 1973, the continued, unrestricted usage of ground water is contributing and will contribute to pollution and shortage of ground water, thereby jeopardizing the public welfare, safety and health. It is the purpose of this Act to recognize and declare that the right to reasonable control of all ground water resources within this Commonwealth belongs to the public and that in order to conserve, protect and beneficially utilize the ground water of this Commonwealth and to ensure the public welfare, safety and health, provision for management and control of ground water resources is essential.

1992, c. 812 .

§62.1-255. Definitions.

As used in this chapter, unless the context requires otherwise:

"Beneficial use" includes, but is not limited to, domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Ground water withdrawal permit" means a certificate issued by the Board permitting the withdrawal of a specified quantity of ground water in a ground water management area.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

1992, c. 812 .

§62.1-255.1. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this chapter the Board or the Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Board or the Department may be sent by regular mail.

2011, c. [566](#).

§62.1-256. Duties of Board.

The Board shall have the following duties and powers:

1. To issue ground water withdrawal permits in accordance with regulations adopted by the Board;
2. To issue special orders as provided in § [62.1-268](#);
3. To study, investigate and assess ground water resources and all problems concerned with the quality and quantity of ground water located wholly or partially in

the Commonwealth, and to make such reports and recommendations as may be necessary to carry out the provisions of this chapter;

4. To require any person withdrawing ground water for any purpose anywhere in the Commonwealth, whether or not declared to be a ground water management area, to furnish to the Board such information with regard to such ground water withdrawal and the use thereof as may be necessary to carry out the provisions of this chapter, excluding ground water withdrawals occurring in conjunction with activities related to exploration for and production of oil, gas, coal or other minerals regulated by the Department of Mines, Minerals and Energy;

5. To prescribe and enforce requirements that naturally flowing wells be plugged or destroyed, or be capped or equipped with valves so that flow of ground water may be completely stopped when said ground water is not currently being applied to a beneficial use;

6. To enter at reasonable times and under reasonable circumstances, any establishment or upon any property, public or private, for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells and springs, and to duly authorize agents to do the same, to ensure compliance with any permits, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish to carry out the provisions of this chapter;

7. To issue special exceptions pursuant to § [62.1-267](#);

8. To adopt such regulations as it deems necessary to administer and enforce the provisions of this chapter; and

9. To delegate to its Executive Director any of the powers and duties invested in it to administer and enforce the provisions of this chapter except the adoption and promulgation of rules, standards or regulations; the revocation of permits; and the issuance, modification, or revocation of orders except in case of an emergency as provided in subsection B of § [62.1-268](#).

1992, c. 812 .

§62.1-256.1. (Expires January 1, 2018) Eastern Virginia Groundwater Management Advisory Committee established.

A. The Eastern Virginia Groundwater Management Advisory Committee (the Committee) is hereby established as an advisory committee to assist the State Water Commission and the Department of Environmental Quality in developing, revising, and

implementing a management strategy for ground water in the Eastern Virginia Groundwater Management Area. The Committee shall be appointed by the Director of the Department of Environmental Quality and shall be composed of nonlegislative citizen members consisting of representatives of industrial and municipal water users; representatives of public and private water providers; developers and representatives from the economic development community; representatives of agricultural, conservation, and environmental organizations; state and federal agencies' officials; and faculty of baccalaureate institutions of higher education and citizens with expertise in water resources-related issues. The Committee shall meet at least four times each calendar year.

Members of the Committee shall receive no compensation for their service and shall not be entitled to reimbursement for expenses incurred in the performance of their duties.

B. The Committee shall examine (i) options for developing long-term alternative water sources, including water reclamation and reuse, ground water recharge, desalination, and surface water options, including creation of storage reservoirs; (ii) the interaction between the Department of Environmental Quality's ground water management programs and local and regional water supply plans within the Eastern Virginia Groundwater Management Area for purposes of determining water demand and possible solutions for meeting that demand; (iii) potential funding options both for study and for implementation of management options; (iv) alternative management structures, such as a water resource trading program, formation of a long-term ground water management committee, and formation of a commission; (v) additional data needed to more fully assess aquifer health and sustainable ground water management strategies; (vi) potential future ground water permitting criteria; and (vii) other policies and procedures that the Director of the Department of Environmental Quality determines may enhance the effectiveness of ground water management in the Eastern Virginia Groundwater Management Area. The Committee shall develop specific statutory, budgetary, and regulatory recommendations, as necessary, to implement its recommendations.

C. The Committee shall report the results of its examination and related recommendations to the State Water Commission and the Director of the Department of Environmental Quality no later than August 1, 2017. The Director of the Department of Environmental Quality shall issue a report responding to the Committee's

recommendations to the Governor, the State Water Commission, the Chairman of the House Committee on Agriculture, Chesapeake and Natural Resources, the Chairman of the Senate Committee on Agriculture, Conservation and Natural Resources, and the Joint Legislative Audit and Review Commission no later than November 1, 2017.

2015, cc. [262](#), [613](#).

§62.1-257. When Board may initiate a ground water management area study proceeding; hearing required.

A. The Board upon its own motion or, in its discretion, upon receipt of a petition by any county, city or town within the area in question, may initiate a ground water management area proceeding, whenever in its judgment there may be reason to believe that:

1. Ground water levels in the area are declining or are expected to decline excessively;
2. The wells of two or more ground water users within the area are interfering or may reasonably be expected to interfere substantially with one another;
3. The available ground water supply has been or may be overdrawn; or
4. The ground water in the area has been or may become polluted. Such pollution includes any alteration of the physical, chemical or biological properties of ground water which has a harmful or detrimental effect on the quality or quantity of such waters.

B. If the Board finds that any one of the conditions required above exists, and further finds that the public welfare, safety and health require that regulatory efforts be initiated, the Board shall by regulation declare the area in question to be a ground water management area. The Board shall include in its regulation a definition of the boundaries of the ground water management area. The Board shall mail a copy of the regulation to the mayor or chairman of the governing body of each county, city or town within which any part of the area lies.

1992, c. 812 .

§62.1-258. Use of ground water in ground water management area; registration of well construction required.

It is unlawful in a ground water management area for any person to withdraw, attempt to withdraw, or allow the withdrawal of any ground water, other than in

accordance with a ground water withdrawal permit or as provided in § [62.1-259](#), subsections C, D and F of § [62.1-260](#), and subsection C of § [62.1-261](#). Each private well, as defined in § [32.1-176.3](#), constructed in a ground water management area shall be registered by the certified water well systems provider with the Board within 30 days of the completion of the construction. Such registration shall be in a format prescribed by the Board; however, the Board and the Board of Health shall develop joint private well forms and processes. The Department of Health shall provide the Board annually with a list of private wells that have received permits during the previous year. The list shall include each well's characteristics and location. The Board shall provide the Department of Health annually with a list of wells registered during the previous year.

1992, c. 812; 2015, c. [465](#).

§62.1-259. Certain withdrawals; permit not required.

No ground water withdrawal permit shall be required for (i) withdrawals of less than 300,000 gallons a month; (ii) temporary construction dewatering; (iii) temporary withdrawals associated with a state-approved ground water remediation; (iv) the withdrawal of ground water for use by a ground water heat pump where the discharge is reinjected into the aquifer from which it is withdrawn; (v) the withdrawal from a pond recharged by ground water without mechanical assistance; (vi) the withdrawal of water for geophysical investigations, including pump tests; (vii) the withdrawal of ground water coincident with exploration for and extraction of coal or activities associated with coal mining regulated by the Department of Mines, Minerals and Energy; (viii) the withdrawal of ground water coincident with the exploration for or production of oil, gas or other minerals other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or other ground water users within a ground water management area; (ix) the withdrawal of ground water in any area not declared a ground water management area; or (x) the withdrawal of ground water pursuant to a special exception issued by the Board.

1992, c. 812 .

§62.1-260. Permits for existing ground water withdrawals in existing ground water management areas.

A. Persons holding a certificate of ground water right or a permit to withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore Ground-water Management Areas and currently withdrawing ground water pursuant to said

certificate or permit shall file an application for a ground water withdrawal permit on or before December 31, 1992, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1987, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation; however, with respect to a political subdivision, an authority serving a political subdivision or a community waterworks regulated by the Department of Health, the permit shall be issued for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1980, and June 30, 1992, together with such savings as can be demonstrated to have been achieved through water conservation.

B. Persons holding a certificate of ground water right issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and currently withdrawing ground water pursuant to the certificate shall file an application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1988, and June 30, 1993, together with such savings as can be demonstrated to have been achieved through water conservation.

C. Persons holding a permit to withdraw ground water issued on or after July 1, 1991, and prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas shall not be required to apply for a ground water withdrawal permit until the expiration of the term of the permit to withdraw ground water as provided in subsection C of § [62.1-266](#), and may withdraw ground water pursuant to the terms and conditions of the permit to withdraw ground water. Such persons may apply for a ground water withdrawal permit allowing greater withdrawals of ground water than are allowed under an existing permit, and the Board in its discretion may issue a permit for such greater withdrawals, upon consideration of the factors set forth in § [62.1-263](#).

D. Persons holding a certificate of ground water right issued prior to July 1, 1992, or a permit to withdraw ground water issued prior to July 1, 1991, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, who have not withdrawn ground water prior to July 1, 1992, may initiate a withdrawal on or after July 1, 1992,

pursuant to the terms and conditions of the certificate or permit. The persons shall file an application for a ground water withdrawal permit on or before December 31, 1995, and may continue withdrawing ground water under the terms and conditions of their certificate or permit until the required ground water withdrawal permit application is acted on by the Board, provided that the ground water withdrawal permit application is filed on or before December 31, 1995. The Board shall issue a ground water withdrawal permit for the total amount of ground water withdrawn and applied to a beneficial use during any consecutive twelve-month period between July 1, 1992, and June 30, 1995, together with (i) such savings as can be demonstrated to have been achieved through water conservation and (ii) such amount as the Board in its discretion deems appropriate upon consideration of the factors set forth in § [62.1-263](#). This subsection shall not apply to a political subdivision, or an authority serving a political subdivision, holding a permit or certificate for a public water supply well for supplemental water during drought conditions, which shall apply for a ground water withdrawal permit as provided in § [62.1-265](#).

E. Persons withdrawing ground water for agricultural or livestock watering purposes in the Eastern Virginia or Eastern Shore Groundwater Management Areas on or before July 1, 1992, shall file an application for a ground water withdrawal permit on or before December 31, 1993, in order to obtain a permit for withdrawals. The Board shall issue ground water withdrawal permits for the total amount of ground water withdrawn during any consecutive twelve-month period between July 1, 1983 and June 30, 1993, together with such savings as can be demonstrated to have been achieved through water conservation.

F. Persons withdrawing ground water for agricultural or livestock watering purposes, or pursuant to certificates of ground water right or permits to withdraw ground water issued prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, may continue such withdrawal until the required permit application is acted on by the Board, provided that the permit application is filed by the appropriate deadline.

G. Persons applying for a ground water withdrawal permit may request that they be permitted to withdraw more ground water than the amount to which they may be entitled based on their historic usage and water conservation as set forth in this section. The Board in its discretion may issue a permit for a greater amount than that

which is based on historic usage and water conservation, upon consideration of the factors set forth in § [62.1-263](#).

H. Failure by any person covered by the provisions of subsection A, B, D or E to file an application for a ground water withdrawal permit prior to the expiration of the applicable period creates a presumption that any claim to withdraw ground water based on history of usage has been abandoned. In reviewing any application for a ground water withdrawal permit subsequently made by such a person, the Board shall consider the factors set forth in § [62.1-263](#).

1992, c. 812; 1994, cc. [513](#), [592](#).

§62.1-261. Permits for existing ground water withdrawals in newly established ground water management areas.

A. Persons withdrawing ground water in any area declared a ground water management area on or after July 1, 1992, shall file an application within six months after the ground water management area has been declared in order to obtain a permit for withdrawals. The Board shall issue permits for the total amount of ground water withdrawn during any consecutive twelve-month period in the five years preceding said declaration, together with such savings as can be demonstrated to have been achieved through water conservation.

B. Persons withdrawing ground water for agricultural or livestock watering purposes in any area declared a ground water management area on or after July 1, 1992, shall file an application within six months after the ground water management area has been declared in order to obtain a permit for withdrawals. The Board shall issue permits for the total amount of ground water withdrawn during any consecutive twelve-month period in the ten-year period preceding such declaration, together with such savings as can be demonstrated to have been achieved through water conservation.

C. Persons withdrawing ground water in any area declared a ground water management area on or after July 1, 1992, may continue such withdrawal until the required permit application is acted on by the Board, provided that the permit application is filed within the six-month period following the declaration.

D. Persons applying for a ground water withdrawal permit issued pursuant to this section may request that they be permitted to withdraw more ground water than the amount to which they may be entitled based on their historic usage as set forth in this section. The Board in its discretion may issue a permit for a greater amount than

that which is based on historic usage, upon consideration of factors set forth in § [62.1-263](#).

E. Failure by any person covered by the provisions of subsection A or B to file an application for a ground water withdrawal permit within the six months following the declaration of the ground water management area creates a presumption that any claim to withdraw ground water based on history of usage has been abandoned. In reviewing any application for a ground water withdrawal permit subsequently made by such a person, the Board shall consider the factors set forth in § [62.1-263](#).

1992, c. 812 .

§62.1-262. Permits for other ground water withdrawals.

Any application for a ground water withdrawal permit, except as provided in §§ [62.1-260](#) and [62.1-261](#), shall include a water conservation and management plan approved by the Board. A water conservation and management plan shall include: (i) use of water-saving plumbing and processes including, where appropriate, use of water-saving fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water-loss reduction program; (iii) a water-use education program; and (iv) mandatory reductions during water-shortage emergencies including, where appropriate, ordinances prohibiting waste of water generally and providing for mandatory water-use restrictions, with penalties, during water-shortage emergencies. The Board shall approve all water conservation plans in compliance with subdivisions (i) through (iv) of this section.

1992, c. 812 .

§62.1-263. Criteria for issuance of permits.

When reviewing an application for a permit to withdraw ground water, or an amendment to a permit, the Board may consider the nature of the proposed beneficial use, the proposed use of alternate or innovative approaches such as aquifer storage and recovery systems and surface and ground water conjunctive uses, climatic cycles, unique requirements for nuclear power stations, economic cycles, population projections, the status of land use and other necessary approvals, and the adoption and implementation of the applicant's water conservation and management plan. In no case shall a permit be issued for more ground water than can be applied to the proposed beneficial use.

When proposed uses of ground water are in conflict or when available supplies of ground water are insufficient for all who desire to use them, preference shall be given to uses for human consumption, over all others.

In evaluating permit applications, the Board shall ensure that the maximum possible safe supply of ground water will be preserved and protected for all other beneficial uses.

In evaluating the available ground water with respect to permit applications for new or expanded withdrawals in the Eastern Virginia or Eastern Shore Groundwater Management Areas, the Board shall use the average of the actual historical ground water usage from the inception of the ground water withdrawals of a political subdivision or authority operating a ground water and surface water conjunctive use system and shall not use the total permit capacity of such system in determining such availability.

1992, c. 812; 1994, cc. [513](#), [592](#).

§62.1-264. Permits for public water supplies.

To ensure that any ground water withdrawal permit issued for a public water supply does not impact a waterworks operation permit issued pursuant to § [32.1-172](#), the maximum permitted daily withdrawal shall be set by the Board at a level consistent with the requirements and conditions contained in the waterworks operation permit. This section shall not limit the authority of the Board to reduce or eliminate ground water withdrawals by a waterworks if necessary to protect human health or the environment. In promulgating regulations to implement this section, and in administering such regulations and this chapter, the Board shall consult and cooperate with the State Health Department to the end that effective, equitable management of ground water and safeguarding of public health will be attained to the maximum extent possible.

1992, c. 812 .

§62.1-265. Drought relief wells.

A political subdivision, or an authority serving a political subdivision, holding a certificate of ground water right issued prior to July 1, 1992, or a permit to withdraw ground water issued prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas, for the operation of a public water supply well for the purpose of providing supplemental water during drought conditions, shall file an

application for a ground water withdrawal permit on or before December 31, 1992. The Board shall issue ground water withdrawal permits for supplemental drought relief wells for the amount of ground water needed annually to meet human consumption needs as documented by a water conservation and management plan approved by the Board as provided in § [62.1-262](#). Any ground water withdrawal permits for supplemental drought relief wells shall be issued with the condition that withdrawals may only be made at times that mandatory water use restrictions have been implemented pursuant to the water conservation and management plan.

1992, c. 812 .

§62.1-266. Ground water withdrawal permits.

A. The Board may issue any ground water withdrawal permit upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health.

B. Applications for ground water withdrawal permits shall be in a form prescribed by the Board and shall contain such information, consistent with this chapter, as the Board deems necessary.

C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed term not to exceed ten years. The term of a ground water withdrawal permit issued by the Board shall not be extended by modification beyond the maximum duration, and the permit shall expire at the end of the term unless a complete application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit. Any permit to withdraw ground water issued by the Board on or after July 1, 1991, and prior to July 1, 1992, shall expire ten years after the date of its issuance.

D. Renewed ground water withdrawal permits shall be for a withdrawal amount that includes such savings as can be demonstrated to have been achieved through water conservation, provided that a beneficial use of the permitted ground water can be demonstrated for the following permit term.

E. Any permit issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The permittee has violated any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit, any provision of

this chapter, or any order of a court, where such violation presents a hazard or potential hazard to human health or the environment or is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, or requirements;

2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a permit, or in any other report or document required under this chapter or under the ground water withdrawal regulations of the Board;

3. The activity for which the permit was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the permit; or

4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of the withdrawal controlled by the permit necessary to protect human health or the environment.

F. No application for a ground water withdrawal permit shall be considered complete unless the applicant has provided the Executive Director of the Board with notification from the governing body of the county, city or town in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ [15.2-2200](#) et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant exempt from compliance under Chapter 22 (§ [15.2-2200](#) et seq.) of Title 15.2.

G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of ground water through a single well or system of wells, including a backup well or wells, or such other means as the withdrawer specifies.

1992, c. 812 .

§62.1-267. Issuance of special exceptions.

A. The Board may issue special exceptions to allow the withdrawal of ground water in cases of unusual situations where requiring the user to obtain a ground water withdrawal permit would be contrary to the intended purpose of the Act.

B. In reviewing an application for a special exception, the Board may consider the amount and duration of the proposed withdrawal, the beneficial use intended for the

ground water, the return of the ground water to the aquifer, and the effect of the withdrawal on human health and the environment. Any person requesting a special exception shall submit an application to the Board containing such information as the Board shall require by regulation adopted pursuant to this chapter.

C. Any special exception issued by the Board shall state the terms pursuant to which the applicant may withdraw ground water, including the amount of ground water that may be withdrawn in any period and the duration of the special exception. No special exception shall be issued for a term exceeding ten years.

D. A violation of any term or provision of a special exception shall subject the holder thereof to the same penalties and enforcement procedures as would apply to a violation of a ground water withdrawal permit.

E. The Board shall have the power to amend or revoke any special exception after notice and opportunity for hearing on the grounds set forth in subsection D of § [62.1-266](#) for amendment or revocation of a ground water withdrawal permit.

1992, c. 812 .

§62.1-268. Issuance of special orders.

A. The Board may issue special orders (i) requiring any person who has violated the terms and provisions of a ground water withdrawal permit issued by the Board to comply with such terms and provisions; (ii) requiring any person who has failed to comply with a directive from the Board to comply with such directive; or (iii) requiring any person who has failed to comply with the provisions of this chapter or any decision of the Board pertaining to ground water to comply with such provision or decision.

B. Such special orders are to be issued only after a hearing with at least thirty days' notice to the affected person of the time, place and purpose thereof, and they shall become effective not less than fifteen days after service by certified mail, sent to the last known address of such person, with the time limits counted from the date of such mailing; however, if the Board finds that any such person is grossly affecting or presents an imminent and substantial danger to (i) the public welfare, safety or health; (ii) a public water supply; or (iii) commercial, industrial, agricultural or other beneficial uses, it may issue, without advance notice or hearing, an emergency special order directing the person to cease such withdrawal immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place

thereof to the person, to affirm, modify, amend or cancel such emergency special order. If a person who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § [62.1-269](#), and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a withdrawal, the Board shall provide an opportunity for a hearing within forty-eight hours of the issuance of the injunction.

C. The provisions of this section notwithstanding, the Board may proceed directly under § [62.1-270](#) for any past violation or violations of any provision of this chapter or any regulation duly promulgated hereunder.

D. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in § [62.1-270](#). Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection A of § [62.1-270](#) and shall not be subject to the provisions of § [2.2-514](#).

1992, c. 812 .

§62.1-269. Enforcement by injunction, etc.

Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, standard or requirement of the Board pertaining to ground water, any provision of any ground water withdrawal permit issued by the Board, or any provision of this chapter may be compelled to obey same and to comply therewith in a proceeding instituted by the Board in any appropriate court for injunction, mandamus or other appropriate remedy. The Board shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the Board under this section in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.

1992, c. 812 .

§62.1-270. Penalties.

A. Any person who violates any provision of this chapter, or who fails, neglects or refuses to comply with any order of the Board pertaining to ground water, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$25,000 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the person in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid to the State Treasurer for deposit into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1.

With the consent of any person in violation of this chapter, the Board may provide, in an order issued by the Board against the person, for the payment of civil charges. These charges shall be in lieu of the civil penalties referred to above. Such civil charges shall be deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund.

B. Any person willfully or negligently violating any provision of this chapter, any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not less than \$2,500 nor more than \$25,000, either or both. Any person who knowingly violates any provision of this chapter, any regulation or order of the Board pertaining to ground water, any condition of a ground water withdrawal permit or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of one million dollars or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

D. Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.

1992, c. 812 .

Hazardous Liquid Pipeline Safety Act

§56-553. Title.

This chapter may be cited as the "Hazardous Liquid Pipeline Safety Act of 1994."

1994, c. [512](#).

§56-554. Definitions.

For the purposes of this chapter:

"Hazardous liquid" means "hazardous liquid" and "highly volatile liquid" as defined in 49 C.F.R. § 195.2 .

"Person" means an individual, corporation, partnership, association or other business entity or a trustee, receiver, assignee, or personal representative of any of these.

"Pipeline operator" means a person who owns and operates pipeline facilities as defined in 49 C.F.R. § 195.2 .

"Interstate pipeline" and "intrastate pipeline" shall have the same meanings as defined in 49 C.F.R. § 195.2 .

1994, c. [512](#).

§56-555. Commission to implement the federal Hazardous Liquid Pipeline Safety Act.

A. The Commission is authorized to act for the United States Secretary of Transportation to implement the federal Hazardous Liquid Pipeline Safety Act, 49 U.S.C. § 60101 et seq., with respect to intrastate and interstate pipelines located within the Commonwealth to the extent authorized by certification or agreement with the Secretary under Section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 60106). To carry out its responsibilities under this section, the Commission shall have the same powers as given the Secretary in Sections 210 and 211 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. §§ 60108, 60117 and 60120).

B. For the purposes of intrastate pipelines, any person failing or refusing to obey Commission orders relating to the adoption or enforcement of regulations for the design, construction, operation and maintenance of pipeline facilities and temporary or permanent injunctions issued by the Commission shall be fined such sums not exceeding the fines and penalties specified by § 208 (a) (1) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 60122 et seq.), as amended.

C. The Commission shall assess and collect from every hazardous liquid pipeline operator an inspection fee to be used by the Commission for administering the regulatory program authorized by this section. For purposes of interstate pipelines, such fees shall be computed based on the number of inspection man-days devoted to each pipeline operator to determine the operator's compliance with any provision of, or order or agreement issued under, the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 60101 et seq.), and shall not exceed the costs of inspection and investigation under this section. The costs shall not include expenses reimbursed by the federal government. The number of planned inspections conducted on each interstate pipeline operator shall be reasonable under the circumstances and prioritized by risk to the public or to the environment.

D. The authority granted to the Commission under this section to conduct inspections of interstate pipeline operators and facilities in the Commonwealth shall not extend to any official, employee, or agent of any political subdivision in the Commonwealth. No political subdivision shall have the authority to seek reimbursement for the cost of monitoring the inspections conducted by the Commission under this section. Nothing in this subsection, however, shall be deemed to impair or limit the police powers of such political subdivisions otherwise provided by law.

E. The authority of the Commission to act as an agent for the United States Secretary of Transportation with respect to interstate hazardous liquid pipelines shall become effective the first day of July next after the date the Commission receives a formal delegation of authority from the Secretary.

1994, c. [512](#).

Heavy Equipment Dealer Act

§59.1-353. Chapter title; definitions.

This chapter may be cited as the "Heavy Equipment Dealer Act." As used in this chapter unless the context requires otherwise:

"Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a supplier and a dealer pursuant to which the dealer has been authorized to distribute one or more of the supplier's heavy equipment products, and attachments and repair parts therefor, and in connection therewith to use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol.

"Dealer" means a person in Virginia (i) engaged in the business of selling or leasing heavy equipment at retail, (ii) who customarily maintains a total inventory, valued at over \$250,000, of new heavy equipment and attachments and repair parts therefor, and (iii) who provides repair services for the heavy equipment sold.

"Heavy equipment" means self-propelled, self-powered or pull-type equipment and machinery, including engines, weighing 5000 pounds or more, primarily employed for construction, industrial, maritime, mining and forestry uses, as such terms are commonly used and understood as a usage of trade in accordance with § [8.1A-303](#)(c) . The term "heavy equipment" shall not include (i) motor vehicles requiring registration and certificates of title in accordance with § [46.2-600](#), (ii) farm machinery, equipment and implements sold or leased pursuant to dealer agreements with suppliers subject to the provisions of Chapter 27.1 (§ [59.1-352.1](#) et seq.) of this title, or (iii) equipment that is "consumer goods" within the meaning of § [8.9A-102](#).

"Person" means a natural person, corporation, partnership, trust, agency or other entity as well as the individual officers, directors or other persons in active control of

the activities of each such entity. "Person" also includes heirs, assigns, personal representatives, guardians and conservators.

"Supplier" means every person, including any agent of such person, or any authorized broker acting on behalf of that person, that enters into an "agreement" with a dealer.

1988, c. 73; 1997, c. [801](#); 2002, c. [898](#); 2003, c. [353](#).

§59.1-354. Cancellation.

A. Notwithstanding the terms, provisions or conditions of any agreement, no supplier shall unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a dealer to resign from an agreement, unless the supplier has first complied with the provisions of § [59.1-355](#), and good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuance or causing a resignation. "Good cause" shall not include the sale or purchase of a supplier. "Good cause" shall be limited to withdrawal by the supplier, its successors and assigns, of the sale of its products in Virginia, or dealer performance deficiencies including, but not limited to, the following:

1. Bankruptcy or receivership of the dealer;
2. Assignment for the benefit of creditors or similar disposition of the assets of the dealer, other than the creation of a security interest in the assets of a dealer for the purpose of securing financing in the ordinary course of business; or
3. Failure by the dealer to substantially comply, without reasonable cause or justification, with any reasonable and material requirement imposed upon him in writing by the supplier including, but not limited to, a substantial failure by a dealer to (i) maintain a sales volume or trend of his supplier's product line or lines comparable to that of other similarly situated dealers of that product line, or (ii) render services comparable in quality, quantity or volume to the services rendered by other dealers of the same product or product line similarly situated.

In any determination as to whether a dealer has failed to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the supplier, consideration shall be given to the relative size, population, geographical location, number of retail outlets and demand for the products applicable to the market area of the dealer in question and to comparable market area.

B. No supplier shall be required to give notice or show good cause pursuant to subsection A of this section to unilaterally amend agreements with dealers to comply with federal or state law or, where not inconsistent with this chapter, to uniformly amend agreements as to all dealers of the supplier in question in all states in which the supplier is marketing its products.

C. In any dispute as to whether a supplier has acted with good cause as required by this section the supplier shall have the burden of proof to establish that good cause existed.

1988, c. 73.

§59.1-355. Notice of intent to terminate.

A. Except as provided in subsection D of this section, a supplier shall provide a dealer at least 120 days' prior written notice of any intention to amend, terminate, cancel or not renew any agreement. The notice shall state all the reasons for the intended amendment, termination, cancellation or nonrenewal.

B. Where such reason or reasons relate to a condition or conditions which may be rectified by action of the dealer, he shall have seventy-five days in which to take such action and, within such seventy-five-day period, shall give written notice to the supplier if and when such action is taken. If such condition or conditions have been rectified by action of the dealer, then the proposed amendment, termination, cancellation or nonrenewal shall be void and without legal effect. However, where the supplier contends that action on the part of the dealer has not rectified one or more of such conditions, such supplier must give written notice thereof to the dealer within fifteen days after the dealer gave notice to the supplier of the action taken.

C. During the 120-day notice period provided for in subsection A the dealer shall have the right to contract for a transfer of his business to another person who meets the material and reasonable qualifications and standards required by the supplier of its dealers. The dealer shall give notice of any such transfer to the supplier at least forty-five days prior to the expiration of the 120-day notice period.

D. No notice shall be required and an agreement may be immediately terminated, amended, canceled or allowed to expire if the reason for the amendment, termination, cancellation or nonrenewal is:

1. The bankruptcy or receivership of the dealer;

2. An assignment for the benefit of the creditors or similar disposition of the assets of the business, other than the creation of a security interest in the assets of a dealer for the purpose of securing financing in the ordinary course of business;
3. Willful or intentional misrepresentation made by the dealer with the express intent to defraud the supplier;
4. Failure of the dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, unless such failure has resulted from acts of God, casualties, strikes, or other similar circumstances beyond the dealer's reasonable control;
5. Failure to pay any undisputed amount due the supplier continuing for thirty days after written notice thereof; or
6. A final conviction of the dealer of a felony.

1988, c. 73.

§59.1-356. Transfer of business.

A. No supplier shall unreasonably withhold or delay consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership, whenever the dealer to be substituted meets the material and reasonable qualifications and standards required of its dealers. Should a supplier determine that a proposed transferee does not meet its qualifications and standards, it shall give the dealer written notice thereof, stating the specific reasons for withholding consent. No prospective transferee shall be disqualified to be a dealer because it is a publicly held corporation. A supplier shall have forty-five days to consider a dealer's request to make a transfer under this subsection.

B. Notwithstanding any provision in subsection A of this section, no supplier shall withhold consent to, or in any manner retain a right of prior approval of, the transfer of the dealer's business to a member or members of the family of the dealer or the principal owner of the dealer. As used in this subsection, "family" means and includes the spouse, parent, siblings, children, stepchildren and lineal descendants, including those by adoption of the dealer or principal owner of the dealer.

C. Whenever a transfer of a dealer's business occurs, the transferee shall assume all the obligations imposed on and succeed to all the rights held by the selling dealer by virtue of any agreement, consistent with this chapter, between the selling dealer and one or more suppliers entered into prior to the transfer.

D. In any dispute as to whether a supplier has denied consent in violation of this section, the supplier shall have the burden of proving a substantial and reasonable justification for the denial of consent.

1988, c. 73.

§59.1-357. Notices.

Notices required by this chapter shall be sent by certified or registered mail, postage prepaid.

1988, c. 73.

§59.1-358. Remedies.

A. Jurisdiction to hear and determine cases and controversies arising under provisions of this chapter shall be in the circuit court of the city or county wherein the dealer has its principal place of business in Virginia. The court may grant equitable relief as is necessary to remedy the effects of conduct which it finds to exist and which is prohibited under this chapter, including, but not limited to, declaratory judgment and injunctive relief.

B. In addition to any other remedies available at law or in equity, if a supplier has attempted or accomplished an annulment, cancellation, termination or refused to continue or renew an agreement without good cause or withheld or delayed consent in violation of § [59.1-354](#) or § [59.1-356](#), then the dealer shall be entitled to recover losses and damages, both general and special, proximately resulting therefrom, together with the cost of the action and reasonable legal fees. Such damages shall include compensation for the value of the agreement and the good will of the dealer's business, if any, arising therefrom.

C. Nothing contained herein shall bar the right of an agreement to provide for binding arbitration of disputes. Any such arbitration shall be consistent with the provisions of this chapter and Chapter 21 (§ [8.01-577](#) et seq.) of Title 8.01, and the place of any such arbitration shall be in the city or county in which the dealer maintains his principal place of business in Virginia.

D. No supplier may cancel, terminate or refuse to continue to renew an agreement during the 120-day period set forth in § [59.1-355](#) or during the pendency of litigation or arbitration with respect thereto except under the conditions set forth in subsection D of § [59.1-355](#).

1988, c. 73.

§59.1-359. Management.

No supplier shall require or prohibit any change in management or personnel of any dealer unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the supplier for its dealers.

1988, c. 73.

§59.1-360. Waiver of chapter void.

The provisions of this chapter shall be deemed to be incorporated in every agreement subject hereto and shall supersede and control all other provisions of the agreement inconsistent herewith. No supplier shall require any dealer to waive compliance with any provision of this chapter. Any contract or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance. Nothing in this chapter shall be construed to limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

1988, c. 73.

§59.1-361. Applicability.

This chapter shall apply to agreements in effect as of January 1, 1988. In addition, the chapter shall apply to any agreements entered into after January 1, 1988. The provisions of this chapter are also applicable to any renewal or amendment of such agreements.

1988, cc. 73, 865.

§59.1-362. Reasonableness and good faith.

A. Every agreement entered into under this chapter shall impose on the parties the obligation to act in good faith.

B. This chapter shall impose on every term and provision of any agreement a requirement of reasonableness. Every term or provision of any agreement shall be interpreted so that the requirements or obligations imposed therein are reasonable.

1988, c. 73.

§59.1-363. Exclusions.

Agreements subject to the provisions of this chapter shall not be subject to any requirement contained in Chapter 8 (§ [13.1-557](#) et seq.) of Title 13.1 or Chapter 27.1 (§ [59.1-352.1](#) et seq.) of this title.

1988, c. 73; 2002, c. [898](#).

Housing Revitalization Zone Act

§36-157. Short title.

This chapter shall be known and may be cited as the "Housing Revitalization Zone Act."

2000, cc. [789](#), [795](#).

§36-158. Definitions.

As used in this chapter:

"Based assessed value" means the assessed value of real estate within a housing revitalization zone as shown upon the records of the local assessing officer on January 1 of the year preceding the date of the designation of such zone.

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in the Commonwealth and subject to tax imposed under Articles 2 (§ [58.1-320](#) et seq.) and 10 (§ [58.1-400](#) et seq.) of Chapter 3, Chapter 12 (§ [58.1-1200](#) et seq.), Article 1 (§ [58.1-2500](#) et seq.) of Chapter 25, or Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26 of Title 58.1.

"Department" means the Department of Housing and Community Development.

"Fund" means the Housing Revitalization Zone Fund.

"Housing revitalization zone" means an area declared by the Governor to be eligible for the benefits of this chapter.

"Housing unit" means any building, structure, or portion thereof, which is occupied as, or intended for occupancy as, a residence by one or more families.

"Local zone administrator" means the chief executive of the county, city, or town in which a housing revitalization zone is located, or his designee.

"Planning district" means a contiguous area within the boundaries established by the Department of Housing and Community Development.

"Qualified business firm" means a business firm designated as a qualified business firm by the Department pursuant to § [36-165](#).

"Qualified owner occupant" means the owner of a housing unit who also uses the housing unit as the owner's residence, and who is designated as a qualified owner occupant pursuant to § [36-165](#).

2000, cc. [789](#), [795](#).

§36-159. Administration.

The Department shall administer this chapter and shall have the following powers and duties:

1. To establish the process for determining what areas qualify as housing revitalization zones. Such criteria shall be the minimum required for implementation of the purpose of this chapter;
2. To monitor the implementation and operation of this chapter;
3. To conduct a continuing evaluation program of housing revitalization zones;
4. To assist counties, cities and towns in obtaining the reduction of regulations within housing revitalization zones; and
5. To administer and enforce the regulations promulgated by the Board of Housing and Community Development.

2000, cc. [789](#), [795](#).

§36-160. Housing revitalization zone designation.

A. The governing body of any county, city or town may make written application to the Department to have an area or areas declared to be a housing revitalization zone. Such application shall include a description of the location of the area or areas in question, and a general statement identifying proposed local incentives to complement the state incentives. Two or more adjacent jurisdictions may file a joint application for a housing revitalization zone lying in the jurisdictions submitting the application.

B. The Governor may approve, upon the recommendation of the Director of the Department, the designation of up to twenty areas as housing revitalization zones for a period of fifteen years. Any county, city, or town shall be eligible to apply for more than one housing revitalization zone designation; however, each county, city, and town shall be limited to a total of two housing revitalization zones. Any such area shall consist of contiguous United States census tracts or any portion thereof in accordance with the most current United States Census or with the most current data

from the local planning district commission. Any such area seeking designation as a housing revitalization zone shall also meet at least one of the following criteria: (i) have per capita income below eighty percent of the median per capita income for the planning district or (ii) have a residential vacancy rate that is at least 120 percent of the average vacancy rate for the planning district. No more than ten percent of a locality's land area may be in a single housing revitalization zone.

2000, cc. [789](#), [795](#).

§36-161. Expansion of housing revitalization zones.

Upon designation of an area as a housing revitalization zone, the local governing body may make written application to the Department to expand the area of the housing revitalization zone. Such application for expansion shall be considered by the Department in accordance with the requirements of §§ [36-160](#) and [36-162](#) and such regulations of the Department as may be applicable.

2000, cc. [789](#), [795](#).

§36-162. Application review.

A. The Department shall review each application upon receipt and shall secure any additional information that the Department deems necessary for the purpose of determining whether the area described in the application qualifies to be declared a housing revitalization zone.

B. The Department shall complete review of the application within sixty days of the last date designated for receipt of an application. After review of the applications, the Director shall recommend to the Governor within thirty days those applications with the greatest potential for accomplishing the purpose of this chapter. If an application is denied, the governing body shall be informed of that fact together with the reasons for the denial.

2000, cc. [789](#), [795](#).

§36-163. Sale of public land.

Upon designation of an area as a housing revitalization zone, the Commonwealth and any units of local government that own any land within the housing revitalization zone may make available for sale all land within the housing revitalization zone not designated or targeted for some public use with the condition that it be developed.

2000, cc. [789](#), [795](#).

§36-164. Rules and regulations.

Rules and regulations prescribing procedures effectuating the purpose of this chapter shall be promulgated by the Board of Housing and Community Development in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.).

2000, cc. [789](#), [795](#).

§36-165. Eligibility.

A. Any business firm may be designated a "qualified business firm" for purposes of this chapter if it undertakes, within a housing revitalization zone, the eligible construction or rehabilitation of a housing unit as described under § [36-166](#).

B. Any individual may be designated as a "qualified owner occupant" for purposes of this chapter if the individual undertakes within a housing revitalization zone the eligible construction or rehabilitation, as described under § [36-166](#), of a housing unit and uses such unit as his residence.

C. After designation as a qualified business firm or as a qualified owner occupant pursuant to this section, each business firm or owner occupant in a housing revitalization zone shall submit a statement or other form as required by the Department requesting the grants provided under this chapter for qualified zone improvements. Such a statement shall be accompanied by an approved form supplied by the Department and completed by an independent certified public accountant licensed by the Commonwealth which states that the business firm or owner occupant met the definition of a "qualified business firm" or of a "qualified owner occupant" and continues to meet the requirements for eligibility as a qualified business firm or qualified owner occupant in effect at the time of its designation. A copy of the statement submitted by each business firm or owner occupant to the Department shall be forwarded to the local zone administrator.

D. The form referred to in subsection C of this section, prepared by an independent certified public accountant licensed by the Commonwealth, shall be prima facie evidence of the eligibility of a business firm or owner occupant for the purposes of this section, but the evidence of eligibility shall be subject to rebuttal. The Department may at its discretion require any business firm or owner occupant to provide supplemental information regarding the firm's or individual's eligibility (i) as a qualified business firm or qualified owner occupant or (ii) for the grants claimed pursuant to this chapter.

2000, cc. [789](#), [795](#).

§36-166. Housing revitalization zone grants.

A. As used in this section:

"Qualified zone improvements" means the amount properly chargeable to a capital account for improvements to rehabilitate or undertake construction on real property during the applicable year within a housing revitalization zone, provided that the total amount of such improvements equals or exceeds (i) for a qualified business firm, an investment of \$25,000 in rehabilitation expenses on each housing unit, \$50,000 in new construction expenses for each single family housing unit, or \$40,000 for each multifamily housing unit or (ii) for a qualified owner occupant, an investment of \$12,500 in rehabilitation expenses or \$50,000 in new construction expenses for each housing unit. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, plumbing, utility, or electrical improvements necessary to rehabilitate or construct a building for residential use and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other land improvements. Qualified zone improvements shall also include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning, and cleanup.

Qualified zone improvements shall not include:

1. The cost of acquiring any real property or building.
2. (i) The cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; or (vii) outbuildings.

B. Beginning on and after July 1, 2000, a qualified business firm or qualified owner occupant may be allowed a grant from the Housing Revitalization Zone Fund for making qualified zone improvements. The grant amount shall not exceed thirty percent of the qualified zone improvements; however, in no event shall the total grants paid to a qualified business firm or qualified owner occupant exceed \$50,000 per housing unit for qualified zone improvements made during the period in which such area of a county, city, or town is designated as a housing revitalization zone. Additionally, the

total grants paid to a qualified business firm for a housing complex with five or more attached housing units may not exceed \$150,000 over such period.

C. Local governments shall certify that the zone improvements made within housing revitalization zones within their jurisdictions comply with all locally adopted plans and ordinances.

2000, cc. [789](#), [795](#).

§36-167. Housing Revitalization Zone Fund established.

There shall be set apart as a permanent and perpetual fund, known as the "Housing Revitalization Zone Fund," sums appropriated to the Fund by the General Assembly, all income from investments of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public or private. The Fund is created for the purpose of making grant payments to qualified business firms and qualified owner occupants. The Fund shall be administered and managed by the Virginia Housing Development Authority, subject to the right of the Department to direct the distribution of grants from the Fund for the payment of grants awarded by the Department to qualified business firms and qualified owner occupants.

2000, cc. [789](#), [795](#).

§36-168. Local incentives.

A. In making an application for designation as a housing revitalization zone, the applying locality or localities may propose local tax incentives, including, but not limited to: (i) reduction of permit fees; (ii) reduction of user fees; (iii) partial exemption from taxation of substantially rehabilitated real estate pursuant to § [58.1-3221](#); and (iv) use of public funds to improve living conditions in housing revitalization zones such as code enforcement, public safety, and infrastructure improvements. The extent and duration of such incentive proposals shall conform to the requirements of the Constitution of Virginia and the Constitution of the United States. In making application for designation as a housing revitalization zone, such application may also contain proposals for regulatory flexibility, including, but not limited to: (i) special zoning districts; (ii) permit process reform; (iii) exemptions from local ordinances as permitted under the Constitution of Virginia and the Code of Virginia; and (iv) other public incentives proposed in the locality's application, which shall be binding upon the locality upon designation of the housing revitalization zone.

B. A locality may establish eligibility criteria for local incentives for qualified business firms and qualified owner occupants that are the same as, or more stringent than, the criteria for eligibility for grants or other benefits provided by this chapter.

2000, cc. [789](#), [795](#).

§36-169. Review and termination of housing revitalization zone.

A. Upon designation of an area as a housing revitalization zone, the proposals for regulatory flexibility, tax incentives and other public incentives specified in this chapter shall be binding upon the local governing body to the extent and for the period of time specified in the application for zone designation. If the local governing body is unable or unwilling to provide the regulatory flexibility, tax incentives or other public incentives as proposed in the application for zone designation, the housing revitalization zone shall terminate. Notwithstanding the provisions of § [36-166](#), qualified business firms and qualified owner occupants located in such housing revitalization zone shall be eligible to receive the grants provided by this chapter for a period of two years after the zone designation has terminated. No business firm or owner occupant may become a qualified business firm or qualified owner occupant after the date of zone termination. The governing body may amend its application with the approval of the Department, provided the governing body proposes an incentive equal to or superior to the unamended application.

B. The Department shall periodically review the effectiveness of the grant program and local incentives in increasing investment in each housing revitalization zone. If no business firms or owner occupants in a housing revitalization zone have qualified for grants provided pursuant to this chapter within a five-year period, the Department shall terminate that housing revitalization zone designation.

2000, cc. [789](#), [795](#); 2004, c. [577](#).

§36-170. Incremental revenues appropriated to housing revitalization zone.

Any county, city, or town in which a housing revitalization zone is located shall, within ninety days of the designation of a housing revitalization zone within such county, city, or town, adopt an ordinance providing that all or a specified percentage of the real estate taxes in such zone shall be assessed, collected, and allocated in the following manner:

1. The local assessing officer shall record in the appropriate books both the base assessed value and the current assessed value of the real estate in the zone.

2. Real estate taxes attributable to the lower of the current assessed value or base assessed value of real estate located in a housing revitalization zone shall be allocated by the treasurer or director of finance as they would be in the absence of such ordinance.

3. At least twenty-five percent of the increase in real estate taxes attributable to the difference between (i) the current assessed value of such property and (ii) the base assessed value of such property shall be appropriated by the county, city, or town within such housing revitalization zone to provide enhanced tax incentives, law-enforcement and other governmental services, including financing transportation projects, as may be appropriate to secure and to promote private investment in such zone. For purposes of determining such increase, additional revenues resulting from an increase in the tax rate on real estate after the designation of such housing revitalization zone shall not be included. Such ordinance shall provide that the appropriations mandated by this section shall be made for such increase in taxes in the county, city, or town's taxable year immediately following the payment of any grants under this chapter. If the grants authorized by this section are not paid to qualified business firms or qualified owner occupants for a particular calendar year, such county, city, or town shall not be required to appropriate such increase in taxes in its immediately following taxable year.

2000, cc. [789](#), [795](#).

Industrial Development and Revenue Bond Act

§15.2-4900. Short title.

This chapter shall be known and may be cited as the "Industrial Development and Revenue Bond Act."

1966, c. 651, § 15.1-1373; 1997, c. 587.

§15.2-4901. Purpose of chapter.

It is the intent of the legislature by the passage of this chapter to authorize the creation of industrial development authorities by the localities in the Commonwealth so that such authorities may acquire, own, lease, and dispose of properties and make

loans to the end that such authorities may be able to promote industry and develop trade by inducing manufacturing, industrial, governmental, nonprofit and commercial enterprises and institutions of higher education to locate in or remain in the Commonwealth and further the use of its agricultural products and natural resources, and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce, or through the promotion of their safety, health, welfare, convenience or prosperity. Such authority shall not itself be authorized to operate any such manufacturing, industrial, nonprofit or commercial enterprise or any facility of an institution of higher education.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to pollution control facilities to the end that such authorities may protect and promote the health of the inhabitants of the Commonwealth and the conservation, protection and improvement of its natural resources by exercising such powers for the control or abatement of land, sewer, water, air, noise and general environmental pollution derived from the operation of any industrial or medical facility and to vest such authorities with all powers that may be necessary to enable them to accomplish such purpose, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce, or through the promotion of their safety, health, welfare, convenience or prosperity.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to medical facilities and facilities for the residence or care of the aged to the end that such authorities may protect and promote the health and welfare of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement and improvement of medical facilities and facilities for the residence or care of the aged in order to provide modern and efficient medical services to the inhabitants of the Commonwealth and care of the aged of the Commonwealth in accordance with their special needs and also by assisting in the refinancing of medical facilities and facilities for the residence or care of the aged owned and operated by organizations which are exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code of 1954, as amended, in order to reduce the costs to residents of the Commonwealth of utilizing such facilities and to vest such

authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health and welfare. It is not intended hereby that any such authority shall itself be authorized to operate any such medical facility or facility for the residence or care of the aged.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities for use by organizations (other than institutions organized and operated exclusively for religious purposes) which are described in § 501(c)(3) of the Internal Revenue Code of 1954, as amended, and which are exempt from federal income taxation pursuant to § 501(a) of the Internal Revenue Code of 1954, as amended, to the end that such authorities may protect or promote the safety, health, welfare, convenience, and prosperity of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement, improvement, financing, and refinancing of such facilities of the aforesaid entities and organizations in order to provide operations, recreational, activity centers, and other facilities for the use of the inhabitants of the Commonwealth and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their safety, health, welfare, convenience or prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such facility.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities for accredited nonprofit private institutions of higher education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education to the end that such authorities may protect and promote the health and welfare of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement, and improvement of facilities of aforesaid institutions in order to provide improved educational facilities for the use of the inhabitants of the Commonwealth and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their

health, welfare, convenience or prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such educational facility.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant industrial development authorities the powers contained herein with respect to facilities for a locality, the Commonwealth and its agencies, and governmental and nonprofit organizations and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health, welfare, convenience or prosperity.

It is further the intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities for museums and historical education, demonstration and interpretation, together with any and all buildings, structures or other facilities necessary or desirable in connection with the foregoing, for use by nonprofit organizations in order to promote tourism and economic development in the Commonwealth, to promote the knowledge of and appreciation by the citizens of the Commonwealth of the historical and cultural development and heritage of the Commonwealth and the United States and to promote thereby their health, welfare, convenience and prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such facility.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities devoted to the staging of equine events and activities (other than racing) for use by governmental or nonprofit, nonreligious organizations and operated by such governmental or nonprofit, nonreligious organizations in order to promote the equine industry and equine-related activities (other than racing) which are integral to the Commonwealth's economy and heritage and to promote thereby the safety, health, welfare, convenience, and prosperity of the inhabitants of the Commonwealth.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to acquiring, developing, owning and operating an industrial park and any utilities that are intended primarily to serve the park and to issue bonds for such pur-

poses. The bonds may be secured by revenues generated by the industrial park or the utilities being financed or by any other funds of the authority.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities created by one or more municipalities whose housing authorities have not been activated as provided by §§ [36-4](#) and [36-4.1](#), in addition to the powers previously or hereafter granted in this chapter, the powers contained herein with respect to facilities used primarily for single or multi-family residences in order to promote safe and affordable housing in the Commonwealth and to benefit thereby the safety, health, welfare and prosperity of the inhabitants of the Commonwealth. It is not intended hereby that any such authority shall itself be authorized to operate any such facility or exercise any powers of eminent domain set forth in § [36-27](#).

In any instance in this chapter where an industrial development authority may issue bonds through its authority to finance, the authority may also refinance such bonds.

This chapter shall be liberally construed in conformity with these intentions.

1966, c. 651, § 15.1-1375; 1972, c. 783; 1975, c. 489; 1977, c. 619; 1978, cc. 276, 526; 1984, c. 700; 1985, c. 317, § 15.1-1392; 1986, c. 473; 1988, c. 211; 1990, c. 312; 1991, c. 6; 1997, cc. [587](#), [758](#), [763](#); 2002, cc. [680](#), [725](#); 2005, c. [928](#); 2012, c. [498](#).

§15.2-4902. Definitions.

Wherever used in this chapter, unless a different meaning clearly appears in the context:

"Authority" means any political subdivision, a body politic and corporate, created, organized and operated pursuant to the provisions of this chapter, or if the authority is abolished, the board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers given by this chapter are given by law.

"Authority facilities" or "facilities" means any or all (i) medical (including, but not limited to, office and treatment facilities), pollution control or industrial facilities; (ii) facilities for the residence or care of the aged; (iii) multi-state regional or national headquarters offices or operations centers; (iv) facilities for private, accredited and nonprofit institutions of collegiate, elementary, or secondary education in the Commonwealth whose primary purpose is to provide collegiate, elementary, secondary, or graduate education and not to provide religious training or theological education,

such facilities being for use as academic or administration buildings or any other structure or application usual and customary to a college, elementary or secondary school campus other than chapels and their like; (v) parking facilities, including parking structures; (vi) facilities for use as office space by nonprofit, nonreligious organizations; (vii) facilities for museums and historical education, demonstration and interpretation, together with buildings, structures or other facilities necessary or desirable in connection with the foregoing, for use by nonprofit organizations; (viii) facilities for use by an organization (other than an organization organized and operated exclusively for religious purposes) which is described in § 501(c) (3) of the Internal Revenue Code of 1986, as amended, and which is exempt from federal income taxation pursuant to § 501 (a) of such Internal Revenue Code; (ix) facilities for use by a locality, the Commonwealth and its agencies, or other governmental organizations, provided that any such facilities owned by a locality, the Commonwealth or its agencies or other public bodies subject to the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) shall not be exempt from competitive procurement requirements, under the exception granted in subsection B of § [2.2-4344](#); (x) facilities devoted to the staging of equine events and activities (other than racing events); however, such facilities must be owned by a governmental or nonprofit, nonreligious organization and operated by any such governmental or nonprofit, nonreligious organization; (xi) facilities for commercial enterprises that are not enterprise zone facilities (as defined in § 1394 (b) of the Internal Revenue Code of 1986, as amended) now existing or hereafter acquired, constructed or installed by or for the authority pursuant to the terms of this chapter; however, facilities for commercial enterprise that are not enterprise zone facilities but which are taxable authority facilities shall constitute authority facilities only if the interest on any bonds issued to finance such facilities is not exempt from federal income taxation; (xii) enterprise zone facilities; and (xiii) facilities used primarily for single or multi-family residences. Clause (xiii) applies only to industrial development authorities created by one or more localities whose housing authorities have not been activated as provided by §§ [36-4](#) and [36-4.1](#). Any facility may be located within or outside or partly within or outside the locality creating the authority. Any facility may consist of or include any or all buildings, improvements, additions, extensions, replacements, machinery or equipment, and may also include appurtenances, lands, rights in land, water rights, franchises, furnishings, landscaping, utilities, approaches, roadways and other facilities necessary or desirable in connection therewith or incidental thereto, acquired, constructed,

or installed by or on behalf of the authority. A pollution control facility shall include any facility acquired, constructed or installed or any expenditure made, including the reconstruction, modernization or modification of any existing building, improvement, addition, extension, replacement, machinery or equipment, and which is designed to further the control or abatement of land, sewer, water, air, noise or general environmental pollution derived from the operation of any industrial or medical facility. Any facility may be constructed on or installed in or upon lands, structures, rights-of-way, easements, air rights, franchises or other property rights or interests whether owned by the authority or others.

"Bonds" or "revenue bonds" embraces notes, bonds and other obligations authorized to be issued by the authority pursuant to the provisions of this chapter.

"Cost" means, as applied to authority facilities, the cost of construction; the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests; the cost of demolishing, removing or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated; the cost of all labor, materials, machinery and equipment; financing charges and interest on all bonds prior to and during construction and, if deemed advisable by the authority, for a period not exceeding one year after completion of such construction; cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, and other expenses necessary or incident to determining the feasibility or practicability of constructing the authority facilities; administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements; and such other expenses as may be necessary or incident to the construction of the authority facilities, the financing of such construction and the placing of the authority facilities in operation. Any obligation or expense incurred by the Commonwealth or any agency thereof, with the approval of the authority, for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction of the authority facilities may be regarded as a part of the cost of the authority facilities and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued for such authority facilities as hereinafter authorized.

"Enterprise" means any industry for manufacturing, processing, assembling, storing, warehousing, distributing, or selling any products of agriculture, mining, or industry

and for research and development or scientific laboratories, including, but not limited to, the practice of medicine and all other activities related thereto or for such other businesses or activities as will be in the furtherance of the public purposes of this chapter.

"Loans" means any loans made by the authority in furtherance of the purposes of this chapter from the proceeds of the issuance and sale of the authority's bonds and from any of its revenues or other moneys available to it as provided herein.

"Revenues" means any or all fees, rates, rentals and receipts collected by, payable to or otherwise derived by the authority from, and all other moneys and income of whatsoever kind or character collected by, payable to or otherwise derived by the authority in connection with the ownership, leasing or sale of the authority facilities or in connection with any loans made by the authority under this chapter.

"Taxable authority facilities" means any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice skating), racquet sports facility, suntan facility, race track, or facility the primary purpose of which is one of the following: (i) retail food and beverage services (excluding grocery stores), (ii) automobile sales and service, (iii) recreation or entertainment, or (iv) banks, savings and loan institutions or mortgage loan companies. The foregoing sentence notwithstanding, no facility financed as an enterprise zone facility using tax-exempt "enterprise zone facility bonds" (as such term is used in § 1394 of the Internal Revenue Code) shall constitute a taxable authority facility.

"Trust indenture" means any trust agreement or mortgage under which bonds authorized pursuant to this chapter may be secured.

1966, c. 651, § 15.1-1374; 1968, c. 687; 1970, c. 725; 1972, c. 783; 1973, c. 528; 1977, cc. 238, 619, 673; 1978, c. 526; 1980, c. 372; 1983, c. 514; 1984, c. 700; 1986, c. 473; 1988, c. 211; 1990, cc. 312, 469; 1991, c. 6; 1994, c. [737](#); 1997, cc. 587, [758](#), [763](#); 1999, c. [379](#); 2005, c. [928](#); 2006, c. [324](#).

§15.2-4903. Creation of industrial development authorities.

A. The governing body of any locality in the Commonwealth is hereby authorized to create by ordinance a political subdivision of the Commonwealth, with such public and corporate powers as are set forth in this chapter. Any such ordinance may limit the type and number of facilities that the authority may otherwise finance under this chapter, which ordinance of limitation may, from time to time, be amended. Louisa

County may, by ordinance, authorize an authority created or established under this chapter to acquire, own, operate, and regulate the use of airports, landing fields, and facilities, and other property incident thereto, including such facilities and property necessary for the servicing of aircraft. In the absence of any such limitation, an authority shall have all powers granted under this chapter.

B. The name of the authority shall be the Industrial Development Authority of (the blank spaces to be filled in with the name of the locality which created the authority, including the proper designation thereof as a county, city or town).

C. Notwithstanding subsection B, for any authority authorized by this section, the name of the authority may be the Economic Development Authority of (the blank space to be filled in with the name of the locality that created the authority), if the governing body of such locality so chooses.

D. The authority jointly created by the Town of South Boston and Halifax County pursuant to § [15.2-4916](#) may be named the Economic Development Authority of Halifax, Virginia, or such other name as the governing bodies of the Town of South Boston and Halifax County shall choose in the concurrent resolutions creating such authority.

1966, c. 651, § 15.1-1376; 1975, c. 254; 1997, c. [587](#); 1999, c. [157](#); 2000, c. [398](#); 2001, cc. [5](#), [6](#), [730](#); 2002, cc. [169](#), [680](#), [725](#); 2003, cc. [159](#), [343](#), [345](#), [350](#), [357](#); 2004, cc. [292](#), [782](#), [933](#); 2016, cc. [164](#), [312](#); 2017, c. [560](#).

§15.2-4904. Directors; qualifications; terms; vacancies; compensation and expenses; quorum; records; certification and distribution of report concerning bond issuance.

A. The authority shall be governed by a board of directors in which all powers of the authority shall be vested and which board shall be composed of seven directors, appointed by the governing body of the locality. The seven directors shall be appointed initially for terms of one, two, three and four years; two being appointed for one-year terms; two being appointed for two-year terms; two being appointed for three-year terms and one being appointed for a four-year term. Subsequent appointments shall be for terms of four years, except appointments to fill vacancies which shall be for the unexpired terms. All terms of office shall be deemed to commence upon the date of the initial appointment to the authority, and thereafter, in accordance with the provisions of the immediately preceding sentence. If at the end of any term of office of any director a successor thereto has not been appointed, then the director

whose term of office has expired shall continue to hold office until his successor is appointed and qualified.

Notwithstanding the provisions of this subsection, the board of supervisors of Wise County may appoint eight members to serve on the board of the authority, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Henrico County may appoint 10 members to serve on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Roanoke County may appoint 10 members to serve on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Mathews County may appoint from five to seven members to serve on the board of the authority, the town council of the Town of Saint Paul may appoint 10 members to serve on the board of the authority, with terms staggered as agreed upon by the town council, however, the town council may at its option return to a seven member board by removing the last three members appointed, the board of supervisors of Russell County may appoint nine members, two of whom shall come from a town that has used its borrowing capacity to borrow \$2 million or more for industrial development, with terms staggered as agreed upon by the board of supervisors and the town council of the Town of South Boston shall appoint two at-large members, Page County may appoint nine members, with one member from each incorporated town, one member from each magisterial district, and one at-large, with terms staggered as agreed upon by the board of supervisors, Halifax County shall appoint five at-large members to serve on the board of the authority jointly created by the Town of South Boston and Halifax County pursuant to § [15.2-4916](#), with terms staggered as agreed upon by the governing bodies of the Town of South Boston and Halifax County in the concurrent resolutions creating such authority, the town council of the Town of Coeburn may appoint five members to serve on the board of the authority, with terms staggered as agreed upon by the town council, the city council of Suffolk may appoint eight members to serve on the board of the authority, with one member from each of the boroughs, and one at-large member, with terms staggered as agreed upon by the city council, the City of Chesapeake may appoint nine members, with terms staggered as agreed upon by the city council; however, in the City of Chesapeake, after July 1, 2017, no member shall serve more than two consecutive terms. Any person who has served more than one and one-half terms as a member of the Chesapeake Economic Development Authority as of July 1, 2017, shall not be eligible for reappointment for

another consecutive term. A member of the Chesapeake Economic Development Authority shall serve at the pleasure of the city council of the City of Chesapeake. No Chesapeake Economic Development Authority member shall work for the Authority within one year after serving as a member. The city council of the City of Norfolk may appoint 11 members, with terms staggered as agreed upon by the city council, and the board of supervisors of Louisa County may appoint directors to serve on the board of the authority for terms coincident with members of the board of supervisors.

A member of the board of directors of the authority may be removed from office by the local governing body without limitation in the event that the board member is absent from any three consecutive meetings of the authority or is absent from any four meetings of the authority within any 12-month period or upon unanimous vote of the board of supervisors. In any such event, a successor shall be appointed by the governing body for the unexpired portion of the term of the member who has been removed.

B. Each director shall, upon appointment or reappointment, before entering upon his duties take and subscribe the oath prescribed by § [49-1](#).

C. No director shall be an officer or employee of the locality except (i) in a town with a population of less than 3,500 where members of the town governing body may serve as directors provided they do not constitute a majority of the board, (ii) in Buchanan County where a constitutional officer who has previously served on the board of directors may serve as a director provided the governing body of such county approves, and (iii) in Frederick County where the board of supervisors may appoint one of its members to the Economic Development Authority of the County of Frederick, Virginia. Every director shall, at the time of his appointment and thereafter, reside in a locality within which the authority operates or in an adjoining locality. When a director ceases to be a resident of such locality, the director's office shall be vacant and a new director may be appointed for the remainder of the term.

D. The directors shall elect from their membership a chairman, a vice-chairman, and from their membership or not, as they desire, a secretary and a treasurer, or a secretary-treasurer, who shall continue to hold such office until their respective successors are elected. The directors shall receive no salary but may be compensated such amount per regular, special, or committee meeting or per each official representation as may be approved by the appointing authority, not to exceed \$200 per

meeting or official representation, and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties.

E. Four members of the board of directors shall constitute a quorum of the board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the authority shall be leased or disposed of in any manner without a majority vote of the members of the board of directors. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and perform all the duties of the board.

F. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection at all times. It shall keep suitable records of its financial transactions and, unless exempted by § [30-140](#), it shall arrange to have the records audited annually. Copies of each such audit shall be furnished to the governing body of the locality and shall be open to public inspection.

Two copies of the report concerning issuance of bonds required to be filed with the United States Internal Revenue Service shall be certified as true and correct copies by the secretary or assistant secretary of the authority. One copy shall be furnished to the governing body of the locality and the other copy mailed to the Department of Small Business and Supplier Diversity.

1966, c. 651, § 15.1-1377; 1979, c. 35; 1980, c. 304; 1982, c. 463; 1983, c. 514; 1984, c. 750; 1987, c. 368; 1990, c. 87; 1993, c. 896; 1996, cc. [589](#), [599](#); 1997, c. [587](#); 1999, cc. [337](#), [408](#), [414](#); 2000, c. [963](#); 2001, c. [121](#); 2003, cc. [347](#), [357](#); 2006, c. [687](#); 2007, cc. [283](#), [338](#); 2008, c. [619](#); 2009, cc. [199](#), [200](#), [460](#), [597](#); 2012, cc. [337](#), [352](#); 2013, c. [482](#); 2014, cc. [381](#), [382](#); 2016, c. [414](#); 2017, cc. [541](#), [557](#), [560](#).

§15.2-4905. Powers of authority.

The authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;
2. To adopt and use a corporate seal and to alter the same at pleasure;
3. To enter into contracts; however, any written contract of the authority shall contain provisions addressing the issue of whether attorney's fees shall be recoverable by the prevailing party in the event the contract is subject to litigation;

4. To acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish one or more authority facilities including all real and personal properties which the board of directors of the authority may deem necessary in connection therewith and regardless of whether any such facilities shall then be in existence;
5. To lease to others any or all of its facilities and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, a provision that the lessee thereof shall have options to renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the indebtedness of the authority it may lease or convey any or all of its facilities to the lessee thereof with or without consideration;
6. To sell, exchange, donate, and convey any or all of its facilities or properties whenever its board of directors shall find any such action to be in furtherance of the purposes for which the authority was organized;
7. To issue its bonds for the purpose of carrying out any of its powers including specifically, but without intending to limit any power conferred by this section or this chapter, the issuance of bonds to provide long-term financing of any pollution control facility, whether any such facility was constructed prior to or after the enactment hereof or the receipt of a commitment from an authority to undertake financing pursuant hereto, unless the major part of the proceeds of such bonds will be used to redeem any prior long-term financing of such facility other than financings pursuant to this chapter or any similar law;
8. As security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues therefrom or from any part thereof or from any loans made by the authority;
9. To employ and pay compensation to such employees and agents, including attorneys, and real estate brokers whether engaged by the authority or otherwise, as the board of directors shall deem necessary in carrying on the business of the authority;
10. To exercise all powers expressly given the authority by the governing body of the locality which established the authority and to establish bylaws and make all rules

and regulations, not inconsistent with the provisions of this chapter, deemed expedient for the management of the authority's affairs;

11. To appoint an industrial advisory committee or similar committee or committees to advise the authority, consisting of such number of persons as it may deem advisable. Such persons may be compensated such amount per regular, special, or committee meeting as may be approved by the appointing authority, not to exceed \$50 per meeting day, and may be reimbursed for necessary traveling and other expenses incurred while on the business of the authority;

12. To borrow money and to accept contributions, grants and other financial assistance from the United States of America and agencies or instrumentalities thereof, the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, for the payment of principal of any bond of the authority, interest thereon, or other cost incident thereto, or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements, trust indentures, and other legal instruments as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed; and

13. To make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of this chapter including for the purposes of promoting economic development, provided that such loans or grants shall be made only from revenues of the authority which have not been pledged or assigned for the payment of any of the authority's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans and any security therefor. An authority may also be permitted to forgive loans or other obligations if it is deemed to further economic development. The word "revenues" as used in this subdivision includes contributions, grants and other financial assistance, as set out in subdivision 12.

The authority shall not have power to operate any facility as a business other than as lessor and shall not have the power to operate any single or multi-family housing facilities. However, the authority shall have the power to apply for, establish, operate and maintain a foreign-trade zone in accordance with the provisions of Chapter 14 (§

[62.1-159](#) et seq.) of Title 62.1. Any meeting held by the board of directors at which formal action is taken shall be open to the public.

If a locality has created an industrial development authority pursuant to this chapter or any other provision of law, no other such authority, not created by such locality, shall finance facilities, except pollution control facilities, within the boundaries of such locality, unless the governing body of such locality in which the facilities are located or are proposed to be located, concurs with the inducement resolution adopted by the authority, and shows such concurrence in a duly adopted resolution. Notwithstanding the foregoing, nothing contained herein shall be deemed to invalidate or otherwise impair any existing financing by an authority or the financing of any facilities for which application has been made to an authority prior to July 1, 1981.

1966, c. 651, § 15.1-1378; 1970, c. 598; 1972, c. 783; 1973, c. 528; 1981, c. 3; 1991, c. 6; 1993, c. 896; 1994, c. [317](#); 1997, cc. 587, [758](#), [763](#); 1998, c. [728](#); 2005, c. [575](#).

§15.2-4906. Public hearing and approval.

A. Whenever federal law requires public hearings and public approval as a prerequisite to obtaining federal tax exemption for the interest paid on industrial development bonds, unless otherwise specified by federal law or regulation, the public hearing shall be conducted by the authority and the procedure for the public hearing and public approval shall be in accordance with this section.

B. For a public hearing by the authority, notice of the hearing shall be published once a week for two successive weeks in a newspaper having general circulation in the locality in which the facility to be financed is to be located of intention to provide financing for a named individual or business entity. The applicant shall pay the cost of publication. The notice shall specify the time and place of hearing at which persons may appear and present their views. The hearing shall be held not less than six days nor more than twenty-one days after the second notice shall appear in such newspaper.

The notice shall contain: (i) the name and address of the authority; (ii) the name and address (principal place of business, if any) of the party seeking financing; (iii) the maximum dollar amount of financing sought; and (iv) the type of business and purpose and specific location, if known, of the facility to be financed.

If after the hearing has been held the authority approves the financing, a reasonably detailed summary of the comments expressed at the hearing shall be conveyed

promptly to the locality's governing body together with the recommendation of the authority.

C. For public approval, the governing body of the locality on behalf of which the bonds of the authority are issued shall within sixty calendar days from the public hearing held by the authority either approve or disapprove financing of any facility recommended by the authority.

Action of the governing body shall be by a majority of a quorum set out in a resolution. Such vote shall be recorded and disclose how each member voted.

In case of a joint authority the approval required by the governing body of the locality shall be that governing body of the area where the facility will be located, if permitted by federal law or regulation.

The provisions of this section shall not apply to bonds, notes or other obligations issued pursuant to hearings held and governmental approvals obtained prior to the effective date of this act in compliance with federal law or regulation.

1983, c. 514, § 15.1-1378.1; 1997, c. 587.

§15.2-4907. Fiscal impact statement.

Every request for industrial development (facility) financing when submitted to the governing body of the locality for approval shall be accompanied by a statement in the following form:

Date

(Name of Applicant)

(Facility)

- | | |
|--|------|
| 1. Maximum amount of financing sought | \$__ |
| 2. Estimated taxable value of the facility's real property to be constructed in the locality | \$__ |
| 3. Estimated real property tax per year using present tax rates | \$__ |
| 4. Estimated personal property tax per year using present tax rates | \$__ |

- | | |
|---|------|
| 5. Estimated merchants' capital tax per year using present tax rates | \$__ |
| 6. a. Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality | \$__ |
| b. Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality | \$__ |
| c. Estimated dollar value per year of services that will be purchased from Virginia companies within the locality | \$__ |
| d. Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality | \$__ |
| 7. Estimated number of regular employees on year round basis | \$__ |
| 8. Average annual salary per employee | \$__ |

Signature

 Authority Chairman

 Name of Authority

If one or more of the above questions do not apply to the facility indicate by writing N/A (not applicable) on the appropriate line.

The provisions of this section shall not apply to bonds, notes or other obligations issued pursuant to hearings held and governmental approvals obtained prior to the effective date of this act in compliance with federal law or regulation.

1983, c. 514, § 15.1-1378.2; 1997, c. 587; 1998, c. [728](#).

§15.2-4908. Issuance of bonds, notes and other obligations of authority.

A. Subject to the limitations of Chapter 50 (§ [15.2-5000](#) et seq.) of this title, the authority may issue bonds from time to time in its discretion, for any of its purposes, including the payment of all or any part of the cost of authority facilities and including the payment or retirement of bonds previously issued by it. All bonds issued by the authority shall be payable solely from the revenues and receipts derived from the

leasing or sale by the authority of its facilities or any part thereof or from payments received by the authority in connection with its loans, and the authority may issue such types of bonds as it may determine, including, without limiting the generality of the foregoing, bonds payable, both as to principal and interest: (i) from its revenues and receipts generally; (ii) exclusively from the revenues and receipts of a particular facility or loan; or (iii) exclusively from the revenues and receipts of certain designated facilities or loans whether or not they are financed in whole or in part from the proceeds of such bonds. Unless otherwise provided in the proceeding authorizing the issuance of the bonds, or in the trust indenture securing the bonds, all bonds shall be payable solely and exclusively from the revenues and receipts of a particular facility or loan. Bonds may be executed and delivered by the authority at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding 40 years from the date thereof, may be payable at such place or places whether within or outside the Commonwealth, may bear interest at such rate or rates, may be payable at such time or times, may be evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be determined by the board of directors. If deemed advisable by the board of directors, there may be retained in the proceedings under which any bonds of the authority are authorized to be issued an option to redeem all or any part thereof, at such price or prices and after such notice or notices and on such terms and conditions as may be determined by the board of directors and as may be briefly recited on the face of the bonds, but nothing herein contained shall be construed to confer on the authority any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued. Any bonds of the authority may be sold at public or private sale in such manner and from time to time as may be determined by the board of directors of the authority to be most advantageous, and the authority may pay all costs, premiums and commissions which its board of directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same facility or any other facility, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the authority at any time outstanding may from time to time be refunded by the authority by

the issuance of its refunding bonds in such amount as the board of directors may deem necessary, but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any costs, premiums or commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby, with the consent of the holders of the bonds so to be refunded, and regardless of whether the bonds to be refunded were issued in connection with the same facilities or separate facilities, and regardless of whether the bonds proposed to be refunded are payable on the same date or on different dates or are due serially or otherwise. The determination of the form, denominations, maturities, redemption provisions, places of payment, interest rate or rates, payment installations, dates and all other terms and provisions of bonds as authorized in this section may be made by the board of directors in such manner as the board may provide, including the determination by reference to indices and formulas or by agents designated by the board of directors under guidelines established by it.

B. All bonds shall be signed by the chairman or vice-chairman of the authority or shall bear his facsimile signature, and the corporate seal of the authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the signature of the secretary (or the secretary-treasurer) or the assistant secretary (or assistant secretary-treasurer) of the authority or shall bear his facsimile signature, and any coupons attached thereto shall bear the facsimile signature of the chairman. In case any officer whose signature or a facsimile signature appears on any bonds or coupons ceases to be an officer before delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. When the signatures of both the chairman or the vice-chairman and the secretary (or the secretary-treasurer) or the assistant secretary (or the assistant secretary-treasurer) are facsimiles, the bonds shall be authenticated by a corporate trustee or other authenticating agent approved by the authority.

C. If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, are less than the cost of the authority facilities for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such

deficit and, unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements or enlargements of the authority facilities for which such bonds shall have been issued.

D. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which are mutilated, destroyed or lost. Bonds may be issued under the provisions of this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter; however, nothing contained in this chapter shall be construed as affecting the powers and duties now conferred by law upon the State Corporation Commission.

E. All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of and shall be and are hereby made negotiable instruments under the Uniform Commercial Code of Virginia (§ [8.1A-101](#) et seq.), subject only to provisions respecting registration of the bonds.

F. In addition to all other powers granted to the authority by this chapter, the authority may issue, from time to time, notes or other obligations of the authority for any of its authorized purposes. The provisions of this chapter which relate to bonds or revenue bonds shall apply to such notes or other obligations insofar as such provisions may be appropriate.

1966, c. 651, § 15.1-1379; 1968, c. 687; 1983, c. 514; 1991, c. 6; 1997, c. 587; 2003, cc. [353](#), [683](#).

§15.2-4909. Liability of Commonwealth, political subdivisions, directors and officers.

A. Bonds issued pursuant to this chapter shall not be deemed to constitute a debt or a pledge of the faith and credit of the Commonwealth, or any political subdivision

thereof, including the locality which created the authority issuing such bonds, but such bonds shall be payable solely from the funds provided therefor as herein authorized. All such bonds shall contain on the face thereof a statement to the effect that neither the Commonwealth, nor any political subdivision thereof, nor the authority shall be obligated to pay the same or the interest thereon or other costs incident thereto except from the revenues and moneys pledged therefor and that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of such bonds or the interest thereon or other costs incident thereto.

B. Neither the directors of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

C. All expenses incurred in carrying out the provisions of this chapter shall be payable solely from the funds of the authority and no liability or obligation shall be incurred by the authority hereunder beyond the extent to which moneys shall be available to the authority.

D. Bonds issued pursuant to the provisions of this chapter shall not constitute an indebtedness within the meaning of any debt limitation or restriction.

1966, c. 651, § 15.1-1380; 1997, c. 587.

§15.2-4910. Security for payment of bonds; default.

The principal of and interest on any bonds issued by the authority shall be secured by a pledge of the revenues and receipts out of which the same shall be made payable, and may be secured by a trust indenture covering all or any part of the authority facilities from which revenues or receipts so pledged may be derived, including any enlargements of and additions to any such projects thereafter made. The resolution under which the bonds are authorized to be issued and any such trust indenture may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents for any portions thereof leased by the authority to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the board of directors shall deem advisable not in conflict with the provisions hereof.

Each pledge, agreement and trust indenture made for the benefit or security of any of the bonds of the authority shall continue effective until the principal of and interest on such bonds have been fully paid. In the event of default in such payment or in any agreements of the authority made as a part of the contract under which the bonds

were issued, whether contained in the proceedings authorizing the bonds or in any trust indenture executed as security therefor, such payment or agreements may be enforced by writ of mandamus, or by a suit, action or proceeding at law or in equity to compel the authority and the directors, officers, agents or employees thereof to perform the terms, provisions, and covenants contained in any trust indenture of the authority, by the appointment of a receiver in equity or by foreclosure of any such trust indenture or any one or more of said remedies.

1966, c. 651, § 15.1-1381; 1997, c. 587.

§15.2-4911. Rents, fees and other charges.

The authority shall fix and revise from time to time the rents, fees and other charges to be paid to it in connection with the lease or sale of various authority facilities and for any other services furnished or provided by the authority. Such rents, fees and charges shall provide at least sufficient funds to pay the cost of maintaining, repairing and operating such projects and the principal and interest of any bonds issued by the authority or other debts contracted as the bonds become due and payable. The authority and the political subdivision in which all or any part of a particular authority facility is located may agree on payment by the authority on account of governmental services to be rendered by the political subdivision in such amounts as the authority may find to be consistent with the purposes of this chapter. A reserve may be accumulated and maintained out of the revenues and receipts of the authority for extraordinary repairs and expenses and for such other purposes as may be provided in any resolution authorizing a bond issue or in any trust indenture securing the authority's bonds. Subject to such provisions and restrictions as may be set forth in the resolution or in the trust indenture authorizing or securing any of the bonds or other obligations hereunder, the authority shall have exclusive control of the revenues and receipts derived from the lease or sale of any authority facility and the right to use the revenues and receipts in the exercise of its powers and duties set forth in this chapter.

1966, c. 651, § 15.1-1382; 1968, c. 687; 1973, c. 528; 1997, c. 587.

§15.2-4912. Exemption from taxation.

The authority is hereby declared to be performing a public function in behalf of the locality with respect to which the authority is created and to be a public instrumentality of such locality. Accordingly, the income, including any profit made on the

sale thereof from all bonds issued by the authority, shall at all times be exempt from all taxation by the Commonwealth or any political subdivision thereof.

1966, c. 651, § 15.1-1383; 1997, c. 587.

§15.2-4913. Authority to be nonprofit; excess earnings.

The authority shall be nonprofit and no part of its net earnings remaining after payment of its expenses shall enure to the benefit of any individual, firm or corporation, except that if the board of directors of the authority determines that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the authority then any net earnings of the authority thereafter accruing shall be paid to the locality with respect to which the authority was created. However, nothing herein contained shall prevent the board of directors from transferring all or any part of its facilities or properties in accordance with the terms of any contract entered into by the authority.

1966, c. 651, § 15.1-1384; 1973, c. 528; 1997, c. 587.

§15.2-4914. Dissolution of authority; disposition of property.

Whenever the board of directors of the authority by resolution determines that the purposes for which the authority was formed have been substantially complied with and all bonds theretofore issued and all obligations theretofore incurred by the authority have been fully paid, the then members of the board of directors of the authority shall thereupon execute and file for record with the governing body of the locality which created the authority, a resolution declaring such facts. If the governing body of the locality which created the authority is of the opinion that the facts stated in the authority's resolution are true and that the authority should be dissolved, it shall so resolve and the authority shall stand dissolved. Upon such dissolution, the title to all funds and properties owned by the authority at the time of such dissolution shall vest in the locality creating the authority and possession of such funds and properties shall forthwith be delivered to such locality.

1966, c. 651, § 15.1-1385; 1997, c. 587.

§15.2-4915. Bonds as legal investments and lawful security.

The bonds issued pursuant to this chapter shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians and for all public funds of the Commonwealth or other political corporations or subdivisions of

the Commonwealth. Such bonds shall be eligible to secure the deposit of public funds of the Commonwealth, localities, school districts or other political corporations or subdivisions of the Commonwealth, and shall be security for such deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto.

1966, c. 651, § 15.1-1386; 1997, c. 587.

§15.2-4916. Authorities acting jointly.

The powers herein conferred upon authorities created under this chapter may be exercised by two or more authorities acting jointly. Two or more localities may jointly create an authority, in which case each of the directors of such authority shall be appointed by the governing body of the respective locality which the director represents.

1966, c. 651, § 15.1-1387; 1982, c. 463; 1997, c. 587.

§15.2-4917. Facility sites.

Any locality may acquire, pursuant to § [15.2-1800](#), but not by condemnation, a facility site and may likewise transfer any facility site to an authority. Such transfer may be authorized by a resolution of the governing body of the locality without submission of the question to the voters and without regard to the requirements, restrictions, limitations or other provisions contained in any other general, special or local law. Such facility sites may be located within or outside or partially within or outside the locality creating the authority. If a real estate broker licensed under § [54.1-2100](#) represents a party in a transaction through which a facility site is acquired, the locality may pay a reasonable brokerage fee to such real estate broker.

1966, c. 651, § 15.1-1388; 1997, c. 587; 1998, c. [728](#).

§15.2-4918. Provisions of chapter cumulative; construction.

This chapter neither limits nor restricts any powers which the authority might otherwise have under any laws of this Commonwealth. No proceedings, notice or approval shall be required for the organization of the authority or the issuance of any bonds or any instrument as security therefor, except as herein provided. However, nothing herein shall be construed to deprive the Commonwealth and its political subdivisions of their respective police powers over properties of the authority or to impair any power thereover of any official or agency of the Commonwealth and its political subdivisions which may be otherwise provided by law. Nothing contained in

this chapter shall be deemed to authorize the authority to occupy or use any land, streets, buildings, structures or other property of any kind, owned or used by any political subdivision within its jurisdiction, or any public improvement or facility maintained by such political subdivision for the use of its inhabitants, without first obtaining the consent of the governing body thereof.

1966, c. 651, § 15.1-1389; 1997, c. 587.

§15.2-4919. Provisions of chapter controlling over other statutes and charters.

Any provision of this chapter which is found to be in conflict with any other statute or charter shall be controlling and shall supersede such other statute or charter to the extent of such conflict.

1966, c. 651, § 15.1-1390; 1997, c. 587; 2015, c. [709](#).

§15.2-4920. Validation of creation of authorities, appointment of directors and proceedings; curative resolutions.

All proceedings heretofore taken with respect to the creation of authorities by any locality pursuant to this chapter are hereby validated and confirmed and all such authorities are declared to be legally created. All incumbent directors of authorities are declared to be and are lawfully appointed directors of authorities, notwithstanding any failure to conform to the requirements of this chapter, and all such appointments are hereby ratified, validated and confirmed. However, all terms of incumbent directors shall conform to § [15.2-4904](#). The governing body of any locality is hereby authorized to adopt such corrective resolutions as may be necessary to carry out the requirements of the immediately preceding sentence. All proceedings heretofore taken to provide for or with respect to the authorization, issuance, sale, execution or delivery of bonds by or on behalf of any authority are hereby validated, ratified, approved and confirmed, and any such bonds so issued shall be valid, legal, binding and enforceable obligations of such authority.

1980, c. 304, § 15.1-1391; 1997, c. 587.

Industrial Development Corporations

§13.1-981. How chapter cited.

This chapter shall be known and may be cited as the "Virginia Industrial Development Corporation Act."

Code 1950, § 13.1-140; 1960, c. 80; 1985, c. 522.

§13.1-982. Definitions.

As used in this chapter, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:

"Board of directors." -- The board of directors of a corporation created under this chapter.

"Commission." -- The State Corporation Commission of Virginia.

"Corporation." -- A Virginia industrial development corporation created under the provisions of this chapter.

"Financial institution." -- Any bank, trust company, savings institution, industrial loan association or insurance company.

"Loan limit." -- For any member, the maximum amount permitted to be outstanding at one time on loans made by such member to a corporation as determined under the provisions of this chapter.

"Member." -- Any financial institution which shall undertake to lend money to a corporation created under this chapter, upon its call and in accordance with the provisions of this chapter.

Code 1950, § 13.1-141; 1960, c. 80; 1985, c. 522; 1996, c. [77](#).

§13.1-983. Incorporation.

An industrial development corporation may be incorporated in the Commonwealth pursuant to the provisions of Article 3 (§ [13.1-618](#) et seq.) of Chapter 9 of this title, and all the provisions of Chapter 9 (§ [13.1-601](#) et seq.) of this title not in conflict with or inconsistent with the provisions of this chapter shall apply to such corporation except as hereinafter otherwise provided. The purpose clause of the articles of incorporation shall recite that the purposes for which the corporation is formed are to stimulate and promote the business prosperity and economic welfare of the Commonwealth and its citizens; to encourage and assist through financial aid, advice, technical assistance and other appropriate means the location of new businesses and industries and the rehabilitation, improvement and expansion of existing businesses and industries throughout the Commonwealth; and in furtherance of such purposes, to cooperate with the Virginia Economic Development Partnership and with other organizations, public and private.

Code 1950, § 13.1-142; 1960, c. 80; 1984, c. 750; 1985, c. 522; 1996, cc. [590](#), [598](#).

§13.1-984. Corporate name.

Every corporation created under this chapter shall have as part of its corporate name or title the words "Industrial Development."

Code 1950, § 13.1-143; 1960, c. 80; 1985, c. 522.

§13.1-985. Governor to approve articles of incorporation.

The articles of incorporation shall not be issued by the Commission unless approved by the Governor in writing. Such approval shall not be given by the Governor until he first shall have sought the advice of the Chief Executive Officer of the Virginia Economic Development Partnership.

Code 1950, § 13.1-144; 1960, c. 80; 1985, c. 522; 1996, cc. [590](#), [598](#); 2010, c. [869](#).

§13.1-986. How funds may be derived.

A corporation created under this chapter may derive funds from the sale of its shares and debentures, from loans from its members on the terms and conditions set forth in this chapter, from any other financial institution or person and from any agency established by the federal government or the Commonwealth of Virginia.

Code 1950, § 13.1-144.1; 1972, c. 693; 1985, c. 522.

§13.1-987. Restrictions on powers of corporation.

The powers of a corporation shall be subject to the following restrictions:

1. It shall not approve any application for a loan until the applicant shall have shown that he has applied to a financial institution that could lawfully lend the amount of money sought and that the financial institution has refused in writing to make the requested loan.
2. It shall not incur any secondary liability for the debts of others, but may assume primary liability therefor.
3. It shall not give security for any loan made to it unless all loans to it are secured ratably in proportion to unpaid balances due, except that it may give security or priority on loans made to it by any federal agency or instrumentality or by any agency or instrumentality of the Commonwealth of Virginia without securing all loans made to it.

Code 1950, § 13.1-145; 1960, c. 80; 1972, c. 693; 1985, c. 522.

§13.1-988. Acquisition, transfer, etc., of securities and shares of corporation.

Notwithstanding any other provision of law, any person, corporation, including a public service corporation, financial institution or railroad may acquire, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, notes, debentures, securities or other evidences of indebtedness, or the shares of capital stock of a corporation created hereunder, provided that the amount of capital stock which may be acquired by any member of such corporation shall not exceed ten percent of the loan limit of such member.

Code 1950, § 13.1-146; 1960, c. 80; 1985, c. 522.

§13.1-989. Membership in corporation; loans from members.

A. Any financial institution is authorized to become a member of a corporation by making application to the board of directors on such form and in such manner as the board of directors may require and membership shall become effective upon acceptance of such application by the board. Membership shall be for the duration of the corporation, provided, however, that upon written notice given to the corporation two years in advance, a member may withdraw from membership at the expiration date of such notice and shall not thereafter be obligated to make any loans to the corporation.

B. Each member shall make loans to the corporation as and when called upon by it to do so. Such loans shall be made upon terms and conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

1. All loans shall be evidenced by transferable instruments of the corporation and shall bear interest at a rate of not less than one-half of one percent in excess of the rate of interest determined by the board of directors to be prevalent commercial banking prime or base rate on unsecured commercial loans as of the date of the loan.

2. If expressly provided in such call, the loan may provide for a rate of interest which fluctuates with the prime or base rate from time to time and which would be subject during the life of the loan to adjustment as of each interest period commencing after the next interest payment date.

3. All loan limits shall be established at the \$1000 amount nearest to the amount computed in accordance with the provisions of this section.

4. No loan pursuant to call under this section to a development corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed ten times the amount of its outstanding and unimpaired capital stock,

its earned and unimpaired surplus established pursuant to § [13.1-994](#) and any indebtedness expressly subordinated to loans made pursuant to call under this section.

5. The total amount outstanding at any one time on loans to a development corporation made by any member shall not exceed the following limit, to be determined as of the time such member becomes a member, on the basis of figures contained in the most recent year-end statement furnished by such member to state or federal supervisory authorities, as the case may be: two percent of the capital and permanent surplus of banks and trust companies; one-half of one percent of the total outstanding loans made by a savings institution, or \$250,000, whichever is less; one percent of the total outstanding loans made by an industrial loan company; one percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; one percent of the unassigned surplus of mutual insurance companies, except fire insurance companies; one-tenth of one percent of the assets of fire insurance companies.

6. All loan limits shall be recomputed as of January 1 of each even-numbered year, but no member's loan limit shall be increased as the result of such recomputation without the consent of such member.

7. Each call for loans made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The "adjusted loan limit" of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment of such member in capital stock of the corporation at the time of such call.

8. A member of a corporation created under this chapter shall not be a member of more than one such corporation.

Code 1950, § 13.1-147; 1960, c. 80; 1962, c. 159; 1972, c. 693; 1985, c. 522; 1996, c. [77](#).

§13.1-990. Shares and shareholders.

Each share of common stock of a corporation shall have a par value of \$100, and shall be issued for cash.

Each shareholder shall be entitled to one vote, in person or by proxy, for each share of capital stock held, and each member shall be entitled to one vote, in person or by proxy, for each \$1000 of the authorized loan limit of such member as determined under § [13.1-989](#).

The rights given by Chapter 9 (§ [13.1-601](#) et seq.) of this title to shareholders to attend meetings and to receive notice thereof and to exercise voting rights shall apply to members as well as to shareholders of a corporation created hereunder. The voting rights of the members shall be the same as if they were a separate class of shareholders, and shareholders and members shall in all cases vote separately by classes. A quorum at a meeting shall require the presence in person or by proxy of a majority of the holders of the voting rights of each class.

Code 1950, § 13.1-148; 1960, c. 80; 1972, c. 693; 1985, c. 522.

§13.1-991. Directors.

The business and affairs of a corporation shall be conducted by a board of directors. The number of directors shall be a multiple of three. Two-thirds of the directors shall be elected by the members and one-third shall be elected by the shareholders. Any vacancy in the office of a director elected by the members may be filled by the directors elected by the members and any vacancy in the office of director elected by the shareholders may be filled by the directors elected by the shareholders. The shareholders and members or the directors may by bylaw provide that a quorum of the board of directors for the purpose of transaction of business shall consist of a stated number or percentage of the directors less than a majority of the number of directors fixed by the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed.

Code 1950, § 13.1-149; 1960, c. 80; 1968, c. 254; 1985, c. 522.

§13.1-992. Executive committee.

The board of directors, by a resolution adopted by a majority of the directors present and constituting a quorum at any meeting, may designate five or more directors to constitute an executive committee which, to the extent provided in such resolution or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors except the authority to approve an amendment to the articles of incorporation or a plan of merger. The executive committee specifically shall have the right to make calls upon the membership under § [13.1-989](#), unless expressly provided to the contrary by such resolution or bylaw. Such committee shall have the power to

fill any vacancy occurring in the board of directors or in the executive committee. Such vacancy shall be filled by the affirmative vote of a majority of the remaining members of the executive committee, though less than a quorum of the committee, unless expressly provided to the contrary by such resolution or bylaw.

Code 1950, § 13.1-149.1; 1972, c. 693; 1985, c. 522.

§13.1-993. Restrictions on amendments to articles of incorporation.

No amendment to the articles of incorporation shall be made which increases the obligation of a member to make loans to the corporation or which makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan made by a member to the corporation or which affects the right of a member to withdraw from membership or the voting rights of such member, without the consent of each member who would be affected by such amendment.

Code 1950, § 13.1-150; 1960, c. 80; 1985, c. 522.

§13.1-994. Earned surplus.

Each year the corporation shall set apart as earned surplus not less than ten percent of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus so established shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation.

Code 1950, § 13.1-151; 1960, c. 80; 1985, c. 522.

§13.1-995. Members to have rights of shareholders.

The rights given to shareholders under the provisions of §§ [13.1-614](#), [13.1-624](#), [13.1-629](#), [13.1-742](#) and [13.1-744](#) shall apply to members as well as to shareholders of a corporation created hereunder.

Code 1950, § 13.1-152; 1960, c. 80; 1985, c. 522.

§13.1-996. Corporation not authorized to receive money on deposit; deposit of funds of corporation.

No corporation organized under the provisions of this chapter shall at any time be authorized to receive money on deposit. The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by appropriate vote of the board of directors or executive committee.

Code 1950, § 13.1-153; 1960, c. 80; 1972, c. 693; 1985, c. 522.

§13.1-997. Books and records.

A corporation shall keep, in addition to the books and records required by § [13.1-770](#), a record showing the names and addresses of all members of the corporation and the current status of loans made by each to the corporation. Members shall have the same rights with respect to such books and records as are given to shareholders by § [13.1-770](#).

Code 1950, § 13.1-154; 1960, c. 80; 1985, c. 522.

§13.1-998. Credit of Commonwealth not pledged.

Under no circumstances is the credit of the Commonwealth pledged herein.

Code 1950, § 13.1-155; 1960, c. 80; 1985, c. 522.

Industrial Hygiene and Safety Profession Title Protection Act

§40.1-139. Definitions.

As used in this chapter:

"American Board of Industrial Hygiene" or "ABIH" means a nonprofit corporation established to improve the practice and educational standards of the profession of industrial hygiene by certifying individuals who meet its education, experience, examination and maintenance requirements.

"Associate Safety Professional" or "ASP" means an individual who has been certified by the Board of Certified Safety Professionals as an Associate Safety Professional and whose certification has not lapsed or been revoked.

"Board of Certified Safety Professionals" or "BCSP" means a nonprofit corporation established to improve the practice and educational standards of the safety profession by certifying individuals who meet its education, experience, examination, and maintenance requirements.

"Certified Associate Industrial Hygienist" or "CAIH" means an individual who has been certified by the American Board of Industrial Hygiene as a Certified Associate Industrial Hygienist and whose certification has not lapsed or been revoked.

"Certified Industrial Hygienist" or "CIH" means an individual who has been certified by the American Board of Industrial Hygiene as a Certified Industrial Hygienist and whose certification has not lapsed or been revoked.

"Certified Safety Professional" or "CSP" means an individual who has been certified by the Board of Certified Safety Professionals as a Certified Safety Professional and whose certification has not lapsed or been revoked.

"Construction Health and Safety Technologist" or "CHST" means an individual who, by virtue of education, experience and examination, has been certified by the American Board of Industrial Hygiene and the Board of Certified Safety Professionals as a Construction Health and Safety Technologist and whose certification has not lapsed or been revoked.

"Industrial Hygiene" means the science and art devoted to the anticipation, recognition, evaluation, and control of environmental factors and stresses arising in or from the workplace that may cause sickness, impaired health and well-being, or significant discomfort among workers, and that may also affect the workplace's community.

"Industrial Hygienist in Training" or "IHIT" means an individual certified by the American Board of Industrial Hygiene as an Industrial Hygienist in Training and whose certification has not lapsed or been revoked.

"Occupational Health and Safety Technologist" or "OHST" means an individual certified by the American Board of Industrial Hygiene and the Board of Certified Safety Professionals as an Occupational Health and Safety Technologist and whose certification has not lapsed or been revoked.

"Safety Profession" means the science and discipline concerned with the preservation of human and material resources through the systematic application of principles drawn from technological advancements in the fields of education, design, chemistry, the physical and biological sciences, ergonomics, psychology, physiology, and management for anticipating, identifying and evaluating potentially hazardous systems, conditions and practices, and for developing, implementing, administering, and advising others on hazard control design, methods, procedures, and programs.

2001, c. [742](#).

§40.1-140. Prohibited actions.

A. No person shall use in conjunction with his name the letters or words "Industrial Hygienist in Training," "IHIT," "Certified Associate Industrial Hygienist," "CAIH," "Certified Industrial Hygienist," "CIH," or a variation of those words, or represent to the public that he is certified as such, unless he possesses the applicable certification issued by the American Board of Industrial Hygiene.

B. No person shall use in conjunction with his name the letters or words "Associate Safety Professional," "ASP," "Certified Safety Professional," "CSP," or a variation of those words, or represent to the public that he is certified as such, unless he possesses the applicable certification issued by the Board of Certified Safety Professionals.

C. No person shall use in conjunction with his name the letters or words "Occupational Health and Safety Technologist," "OHST," "Construction Health and Safety Technologist," "CHST," or variation of those words, or represent to the public that he is certified as such, unless he possesses the applicable certification issued by the American Board of Industrial Hygiene and the Board of Certified Safety Professionals.

D. No person shall represent to the public that he is an Industrial Hygienist in Training, Certified Associate Industrial Hygienist, Certified Industrial Hygienist, Associate Safety Professional, Certified Safety Professional, Construction Health and Safety Technologist, or Occupational Health and Safety Technologist unless he has been certified as such by the ABIH, BCSP, or both, as applicable, and such certification has not lapsed or been revoked.

2001, c. [742](#).

§40.1-141. Enforcement.

The Attorney General or any aggrieved person may cause an action to be brought in the circuit court of the city or county in which a violation of this chapter has occurred for the issuance of an injunction to enjoin and restrain the continuance of such violation. If it appears to the satisfaction of the court that the defendant has, in fact, violated this chapter, an injunction may be issued by such court enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. The circuit court having jurisdiction may enjoin such violations, notwithstanding the existence of an adequate remedy at law.

2001, c. [742](#).

§40.1-142. Exemptions.

A. The provisions of this chapter shall not prohibit any person who is not certified as a Certified Associate Industrial Hygienist, Certified Industrial Hygienist, Industrial Hygienist in Training, Certified Safety Professional, Associate Safety Professional, Occupational Health and Safety Technologist, or Construction Health and Safety Technologist from performing industrial hygiene and safety functions so long as such person does not represent himself to the public as being a Certified Associate Industrial Hygienist, Certified Industrial Hygienist, Industrial Hygienist in Training, Certified Safety Professional, Associate Safety Professional, Occupational Health and Safety Technologist, or Construction Health and Safety Technologist.

B. Nothing in this chapter shall be construed as authorizing a person certified as a Certified Associate Industrial Hygienist, Certified Industrial Hygienist, Industrial Hygienist in Training, Certified Safety Professional, Associate Safety Professional, Occupational Health and Safety Technologist, or Construction Health and Safety Technologist to engage in the practice of architecture or engineering, nor to restrict or otherwise affect the rights of any person licensed as an architect or professional engineer under Chapter 4 (§ [54.1-400](#) et seq.) of Title 54.1.

C. Nothing in this chapter shall apply to employees of the Department while they are engaged in the business of the Commonwealth; however, this subsection shall not be construed to authorize an employee of the Department to use any of the certifications defined in § [40.1-139](#) unless such employee has been certified as such by the ABIH, BCSP, or both, as applicable, and such certification has not lapsed or been revoked.

D. Nothing in this chapter shall bar an otherwise qualified expert witness from testifying in a court of this Commonwealth.

2001, c. [742](#).

Industrialized Building Safety Law

§36-70. Short title.

The short title of the law embraced in this chapter is the Virginia Industrialized Building Safety Law.

Code 1950, § 12-68; 1970, c. 305; 1971, Ex. Sess., c. 103; 1986, c. 37.

§36-71. Repealed.

Repealed by Acts 1986, c. 37.

§36-71.1. Definitions.

As used in this chapter, unless a different meaning or construction is clearly required by the context:

"Administrator" means the Director of the Department of Housing and Community Development or his designee.

"Board" means the Board of Housing and Community Development.

"Compliance assurance agency" means an architect or professional engineer registered in Virginia, or an organization, determined by the Department to be specially qualified by reason of facilities, personnel, experience and demonstrated reliability, to investigate, test and evaluate industrialized buildings; to list such buildings complying with standards at least equal to those promulgated by the Board; to provide adequate follow-up services at the point of manufacture to ensure that production units are in full compliance; and to provide a label as evidence of compliance on each manufactured section or module.

"Department" means the Department of Housing and Community Development.

"Industrialized building" means a combination of one or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Manufactured homes defined in § [36-85.3](#) and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act shall not be considered industrialized buildings for the purpose of this law.

"Registered" means that an industrialized building displays a registration seal issued by the Department of Housing and Community Development.

"The law" or "this law" means the Virginia Industrialized Building Safety Law as provided in this chapter.

1986, c. 37.

§36-72. Declaration of policy [Not set out].

Not set out. (1970, c. 305; 1971, Ex. Sess., c. 103; 1986, c. 37.)

§36-73. Authority of Board to promulgate rules and regulations.

The Board shall from time to time promulgate rules and regulations prescribing standards to be complied with in industrialized buildings for protection against the hazards thereof to safety of life, health and property and prescribing procedures for the administration, enforcement and maintenance of such rules and regulations. The standards shall be reasonable and appropriate to the objectives of this law and within the guiding principles prescribed by the General Assembly in this law and in any other law in pari materia. The standards shall not be applied to manufactured homes defined in § [36-85.3](#).

In making rules and regulations, the Board shall have due regard for generally accepted safety standards as recommended by nationally recognized organizations, including but not limited to the International Code Council and the National Fire Protection Association.

Where practical, the rules and regulations shall be stated in terms of required levels of performance, so as to facilitate the prompt acceptance of new building materials and methods. Where generally recognized standards of performance are not available, the rules and regulations of the Board shall provide for acceptance of materials and methods whose performance has been found by the Department, on the basis of reliable test and evaluation data presented by the proponent, to be substantially equal in safety to those specified.

Code 1950, § 12-71; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37; 2010, c. [77](#).

§36-74. Notice and hearing on rules and regulations.

The Board shall comply with all applicable requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) when adopting, amending or repealing any rules or regulations under this law.

Code 1950, § 12-72; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§36-75. Amendment, etc., and annual review of rules and regulations.

The Board may modify, amend or repeal any rules or regulations as the public interest requires.

The Administrator shall make an annual review of the rules and regulations, considering the housing needs and supply in the Commonwealth and factors that tend to impede or might improve the availability of housing for all citizens of the Com-

monwealth and shall recommend to the Board such modifications, amendments or repeal as deemed necessary.

Code 1950, § 12-73; 1970, c. 305; 1971, Ex. Sess., c. 103; 1975, c. 250; 1977, c. 613; 1979, c. 489; 1986, c. 37.

§36-76. Printing and distribution of rules and regulations.

The Administrator shall have printed from time to time, and keep in pamphlet form, all rules and regulations prescribing standards for industrialized buildings. Such pamphlets shall be furnished upon request to members of the public.

Code 1950, § 12-74; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§36-77. Rules and regulations to be kept in office of Administrator.

A true copy of all rules and regulations adopted and in force shall be kept in the office of the Administrator, accessible to the public.

Code 1950, § 12-75; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§36-78. Effective date and application of rules and regulations.

No rules or regulations shall be made effective earlier than twelve months after June 26, 1970. No person, firm or corporation shall offer for sale or rental or sell or rent any industrialized buildings which have been constructed after the effective date of such rule or regulation unless it conforms with said rules and regulations. Any industrialized building constructed before the effective date of these regulations shall remain subject to the ordinances, laws or regulations in effect at the time such industrialized building was constructed, but nothing in this chapter shall prevent the enactment or adoption of additional requirements where necessary to provide for adequate safety of life, health and property.

Code 1950, § 12-76; 1970, c. 305; 1971, Ex. Sess., c. 103; 1986, c. 37.

§36-79. Effect of label of compliance assurance agency.

Any industrialized building shall be deemed to comply with the standards of the Board when bearing the label of a compliance assurance agency.

Code 1950, § 12-77; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§36-80. Modifications to rules and regulations.

The Administrator shall have the power upon appeal in specific cases to authorize modifications to the rules and regulations to permit certain specified alternatives where the objectives of this law can be fulfilled by such other means.

Code 1950, § 12-78; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§36-81. Application of local ordinances; enforcement of chapter by local authorities.

Registered industrialized buildings shall be acceptable in all localities as meeting the requirements of this law, which shall supersede the building codes and regulations of the counties, municipalities and state agencies. The local building official is authorized to and shall determine that any unregistered industrialized building shall comply with the provisions of this law. Local requirements affecting industrialized buildings, including zoning, utility connections, preparation of the site, and maintenance of the unit, shall remain in full force and effect. All local building officials are authorized to and shall enforce the provisions of this law, and the rules and regulations made in pursuance thereof.

Code 1950, § 12-79; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§36-82. Right of entry and examination by Administrator; notice of violation.

The Administrator shall have the right, at all reasonable hours, to enter into any industrialized building upon permission of any person who has authority or shares the use, access and control over the building, or upon request of local officials having jurisdiction, for examination as to compliance with the rules and regulations of the Board. Whenever the Administrator shall find any violation of the rules and regulations of the Board, he shall order the person responsible therefor to bring the building into compliance, within a reasonable time, to be fixed in the order.

Code 1950, § 12-80; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§36-82.1. Appeals.

Any person aggrieved by the Department's application of the rules and regulations of the Industrialized Building Safety Law shall be heard by the State Building Code Technical Review Board established by § [36-108](#). The Technical Review Board shall have the power and duty to render its decision in any such appeal, which decision shall be final if no further appeal is made.

1986, c. 37; 2010, c. [77](#).

§36-83. Violation a Class 1 misdemeanor; penalty.

It shall be unlawful for any person, firm or corporation, on or after June 26, 1970, to violate any provisions of this law or the rules and regulations made pursuant hereto. Any person, firm or corporation violating any of the provisions of this law, or the

rules and regulations made hereunder, shall be deemed guilty of a Class 1 misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000.

Code 1950, § 12-81; 1970, c. 305; 1971, Ex. Sess., c. 103; 1986, c. 37.

§36-84. Clerical assistants to Administrator; equipment, supplies and quarters.

The Administrator may employ such permanent or temporary, clerical, technical and other assistants as is found necessary or advisable for the proper administration of this law, and may fix their compensation and may likewise purchase equipment and supplies deemed necessary.

Code 1950, § 12-82; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§36-85. Fee for registration seal; use of proceeds.

The Board, by rule and regulation, shall establish a fee for each approved registration seal. The proceeds from the sale of such seals shall be used to pay the costs incurred by the Department in the administration of this law.

Code 1950, § 12-83; 1970, c. 305; 1971, Ex. Sess., c. 103; 1977, c. 613; 1986, c. 37.

§36-85.1. Refund of fee paid for registration seal.

Any person or corporation having paid the fee for an approved registration seal which it will not use may, unless and except as otherwise specifically provided, within one year from the date of the payment of any such fee, apply to the Administrator for a refund, in whole or in part, of the fee paid; provided that no payment shall be recovered unless the approved registration seal is returned, unused and in good condition, to the Administrator. Such application shall be by notarized letter.

1980, c. 97; 1986, c. 37.

Information Technology Access Act

§2.2-3500. Findings; policy.

A. The General Assembly finds that (i) the advent of the information age throughout the United States and around the world has resulted in lasting changes in information technology; (ii) use of interactive visual display terminals by state and state-assisted organizations is becoming a widespread means of access for employees and the public to obtain information available electronically, but nonvisual access,

whether by speech, Braille, or other appropriate means has been overlooked in purchasing and deploying the latest information technology; (iii) presentation of electronic data solely in a visual format is a barrier to access by individuals who are blind or visually impaired, preventing them from participating on equal terms in crucial areas of life, such as education and employment; (iv) alternatives, including both software and hardware adaptations, have been created so that interactive control of computers and use of the information presented is possible by both visual and nonvisual means; and (v) the goals of the state in obtaining and deploying the most advanced forms of information technology properly include universal access so that the segments of society with particular needs (including individuals unable to use visual displays) will not be left out of the information age.

B. It is the policy of the Commonwealth that all covered entities shall conduct themselves in accordance with the following principles: (i) individuals who are blind or visually impaired have the right to full participation in the life of the Commonwealth, including the use of advanced technology that is provided by such covered entities for use by employees, program participants, and members of the general public, and (ii) technology purchased in whole or in part with funds provided by the Commonwealth to be used for the creation, storage, retrieval, or dissemination of information and intended for use by employees, program participants, and members of the general public shall be adaptable for access by individuals who are blind or visually impaired. The implementation of nonvisual access technology under this chapter shall be determined on a case-by-case basis as the need arises.

1999, cc. [769](#), [773](#), § 2.1-807; 2001, c. [844](#).

§2.2-3501. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Access" means the ability to receive, use, and manipulate data and operate controls included in information technology.

"Blind" or "visually impaired" individual means an individual who has: (i) a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees; (ii) a medically indicated expectation of visual deterioration; or (iii) a medically diagnosed limitation in visual functioning that restricts the individual's ability to read and write standard print at levels expected of individuals of comparable ability.

"Covered entity" means all state agencies, public institutions of higher education, and political subdivisions of the Commonwealth.

"Information technology" means all electronic information processing hardware and software, including telecommunications.

"Nonvisual" means synthesized speech, Braille, and other output methods not requiring sight.

"Public broadcasting services" means the acquisition, production, and distribution by public broadcasting stations of noncommercial educational, instructional, informational, or cultural television and radio programs and information that may be transmitted by means of electronic communications, and related materials and services provided by such stations.

"Telecommunications" means the transmission of information, images, pictures, voice, or data by radio, video, or other electronic or impulse means, but does not include public broadcasting.

1999, cc. [769](#), [773](#), § 2.1-808; 2001, c. [844](#); 2012, cc. [803](#), [835](#); 2016, c. [296](#).

§2.2-3502. Assurance of nonvisual access.

In general, the head of each covered entity shall ensure that information technology equipment and software used by blind or visually impaired employees, program participants, or members of the general public (i) provide access (including interactive use of the equipment and services) that is equivalent to that provided to individuals who are not blind or visually impaired; (ii) are designed to present information (including prompts used for interactive communications) in formats adaptable to both visual and nonvisual use; and (iii) have been purchased under a contract that includes the technology access clause required pursuant to § [2.2-3503](#).

1999, cc. [769](#), [773](#), § 2.1-809; 2001, c. [844](#).

§2.2-3503. Procurement requirements.

A. The technology access clause specified in clause (iii) of § [2.2-3502](#) shall be developed by the Secretary of Technology and shall require compliance with the nonvisual access standards established in subsection B of this section. The clause shall be included in all future contracts for the procurement of information technology by, or for the use of, entities covered by this chapter on or after the effective date of this chapter.

B. At a minimum, the nonvisual access standards shall include the following: (i) the effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means; (ii) the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts; (iii) nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and (iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.

Compliance with the nonvisual access standards shall not be required if the head of a covered entity determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

1999, cc. [769](#), [773](#), § 2.1-810; 2001, c. [844](#).

§2.2-3504. Implementation.

A. The head of any covered entity may, with respect to nonvisual access software or peripheral devices, approve the exclusion of the technology access clause only to the extent that the cost of the software or devices for the covered entity would increase the total cost of the procurement by more than five percent. All exclusions of the technology access clause from any contract shall be reported annually to the Secretary of Technology.

B. The acquisition and installation of hardware, software, or peripheral devices used for nonvisual access when the information technology is being used exclusively by individuals who are not blind or visually impaired shall not be required.

C. Notwithstanding the provisions of subsection B, the applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

1999, cc. [769](#), [773](#), § 2.1-811; 2001, c. [844](#).

Investment of Public Funds Act

§2.2-4500. Legal investments for public sinking funds.

The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any sinking funds belonging to them or within their control in the following securities:

1. Bonds, notes and other evidences of indebtedness of the Commonwealth, and securities unconditionally guaranteed as to the payment of principal and interest by the Commonwealth.
2. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof. The evidences of indebtedness enumerated by this subdivision may be held directly, or in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness, or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.
3. Bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body of the Commonwealth upon which there is no default; provided, that such bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body are either direct legal obligations of, or those unconditionally guaranteed as to the payment of principal and interest by the county, city, town, district, authority or other public body in question; and revenue bonds issued by agencies or authorities of the Commonwealth or its political subdivisions upon which there is no default.
4. Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, bonds and other obligations issued, guaranteed or assumed by the Asian Development Bank and bonds and other obligations issued, guaranteed or assumed by the African Development Bank.

5. Savings accounts or time deposits in any bank or savings institution within the Commonwealth provided the bank or savings institution is approved for the deposit of other funds of the Commonwealth or other political subdivision of the Commonwealth.

1956, c. 184, § 2-297; 1958, c. 102; 1966, c. 677, § 2.1-327; 1970, c. 75; 1974, c. 288; 1986, c. 270; 1988, cc. 526, 834; 1996, cc. [77](#), [508](#); 2001, c. [844](#).

§2.2-4501. Legal investments for other public funds.

A. The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds, in the following:

1. Stocks, bonds, notes, and other evidences of indebtedness of the Commonwealth and those unconditionally guaranteed as to the payment of principal and interest by the Commonwealth.
2. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof. The evidences of indebtedness enumerated by this subdivision may be held directly, or in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness, or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.
3. Stocks, bonds, notes and other evidences of indebtedness of any state of the United States upon which there is no default and upon which there has been no default for more than 90 days, provided that within the 20 fiscal years next preceding the making of such investment, such state has not been in default for more than 90 days in the payment of any part of principal or interest of any debt authorized by the legislature of such state to be contracted.
4. Stocks, bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body in the Commonwealth upon which there is no default, provided that if the principal and interest be payable from revenues or

tolls and the project has not been completed, or if completed, has not established an operating record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, the standards of judgment and care required in Article 9 (§ [64.2-780](#) et seq.) of Chapter 7 of Title 64.2, without reference to this section, shall apply.

In any case in which an authority, having an established record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, issues additional evidences of indebtedness for the purposes of acquiring or constructing additional facilities of the same general character that it is then operating, such additional evidences of indebtedness shall be governed by the provisions of this section without limitation.

5. Legally authorized stocks, bonds, notes and other evidences of indebtedness of any city, county, town, or district situated in any one of the states of the United States upon which there is no default and upon which there has been no default for more than 90 days, provided that (i) within the 20 fiscal years next preceding the making of such investment, such city, county, town, or district has not been in default for more than 90 days in the payment of any part of principal or interest of any stock, bond, note or other evidence of indebtedness issued by it; (ii) such city, county, town, or district shall have been in continuous existence for at least 20 years; (iii) such city, county, town, or district has a population, as shown by the federal census next preceding the making of such investment, of not less than 25,000 inhabitants; (iv) the stocks, bonds, notes or other evidences of indebtedness in which such investment is made are the direct legal obligations of the city, county, town, or district issuing the same; (v) the city, county, town, or district has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount; and (vi) the net indebtedness of such city, county, town, or district (including the issue in which such investment is made), after deducting the amount of its bonds issued for self-sustaining public utilities, does not exceed 10 percent of the value of the taxable property in such city, county, town, or district, to be ascertained by the valuation of such property therein for the assessment of taxes next preceding the making of such investment.

6. Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, by the Asian Development Bank or by the African Development Bank.

B. This section shall not apply to funds authorized by law to be invested by the Virginia Retirement System or to deferred compensation plan funds to be invested pursuant to § [51.1-601](#) or to funds contributed by a locality to a pension program for the benefit of any volunteer fire department or volunteer emergency medical services agency established pursuant to § [15.2-955](#).

C. Investments made prior to July 1, 1991, pursuant to § [51.1-601](#) are ratified and deemed valid to the extent that such investments were made in conformity with the standards set forth in Chapter 6 (§ [51.1-600](#) et seq.) of Title 51.1.

1956, c. 184, § 2-298; 1966, c. 677, § 2.1-328; 1980, c. 596; 1988, c. 834; 1991, c. 379; 1992, c. 810; 1996, c. [508](#); 1999, c. [772](#); 2001, c. [844](#); 2007, c. [67](#); 2008, c. [295](#); 2015, cc. [502](#), [503](#).

§2.2-4502. Investment of funds of Commonwealth, political subdivisions, and public bodies in "prime quality" commercial paper.

A. The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control other than sinking funds in "prime quality" commercial paper, with a maturity of 270 days or less, of issuing corporations organized under the laws of the United States, or of any state thereof including paper issued by banks and bank holding companies. "Prime quality" shall be as rated by at least two of the following: Moody's Investors Service, Inc., within its NCO/Moody's rating of prime 1, by Standard & Poor's, Inc., within its rating of A-1, by Fitch Investor's Services, Inc., within its rating of F-1, by Duff and Phelps, Inc., within its rating of D-1, or by their corporate successors, provided that at the time of any such investment:

1. The issuing corporation, or its guarantor, has a net worth of at least fifty million dollars; and
2. The net income of the issuing corporation, or its guarantor, has averaged three million dollars per year for the previous five years; and
3. All existing senior bonded indebtedness of the issuer, or its guarantor, is rated "A" or better or the equivalent rating by at least two of the following: Moody's Investors Service, Inc., Standard & Poor's, Inc., Fitch Investor's Services, Inc., or Duff and Phelps, Inc.

Not more than thirty-five percent of the total funds available for investment may be invested in commercial paper, and not more than five percent of the total funds available for investment may be invested in commercial paper of any one issuing corporation.

B. Notwithstanding subsection A, the Commonwealth, municipal corporations, other political subdivisions and public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, except for sinking funds, in commercial paper other than "prime quality" commercial paper as defined in this section provided that:

1. Prior written approval is obtained from the governing board, committee or other entity that determines investment policy. The Treasury Board shall be the governing body for the Commonwealth; and
2. A written internal credit review justifying the creditworthiness of the issuing corporation is prepared in advance and made part of the purchase file.

1973, c. 232, § 2.1-328.1; 1974, c. 295; 1976, c. 665; 1986, c. 170; 1987, c. 73; 1988, c. 834; 1992, c. 769; 2001, c. [844](#).

§2.2-4503. Investments by Fairfax County finance director [Not set out].

Not set out. (2001, c. [844](#).)

§2.2-4504. Investment of funds by the Commonwealth and political subdivisions in bankers' acceptances.

Notwithstanding any provisions of law to the contrary, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control other than sinking funds in bankers' acceptances.

1981, c. 18, § 2.1-328.3; 1988, c. 834; 2001, c. [844](#).

§2.2-4505. Investment in certificates representing ownership of treasury bond principal at maturity or its coupons for accrued periods.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, in certificates representing ownership of either treasury bond principal at maturity or its coupons for accrued periods. The underlying United States

Treasury bonds or coupons shall be held by a third-party independent of the seller of such certificates.

1983, c. 117, § 2.1-328.5; 1985, c. 352; 1988, c. 834; 2001, c. [844](#).

§2.2-4506. Securities lending.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, political subdivisions and all public bodies of the Commonwealth may engage in securities lending from the portfolio of investments of which they have custody and control, other than sinking funds. The Treasury Board shall develop guidelines with which such securities lending shall fully comply. Such guidelines shall ensure that the state treasury is at all times fully collateralized by the borrowing institution.

1983, c. 268, § 2.1-328.6; 2001, c. [844](#).

§2.2-4507. Investment of funds in overnight, term and open repurchase agreements.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth, may invest any and all moneys belonging to them or within their control in overnight, term and open repurchase agreements that are collateralized with securities that are approved for direct investment.

1985, c. 352, § 2.1-328.8; 1988, c. 834; 2001, c. [844](#).

§2.2-4508. Investment of certain public moneys in certain mutual funds.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds that are governed by the provisions of § [2.2-4500](#), in one or more open-end investment funds, provided that the funds are registered under the Securities Act (§ [13.1-501](#) et seq.) of the Commonwealth or the Federal Investment Co. Act of 1940, and that the investments by such funds are restricted to investments otherwise permitted by law for political subdivisions as set forth in this chapter, or investments in other such funds whose portfolios are so restricted.

1986, c. 170, § 2.1-328.9; 1988, c. 834; 1996, c. [508](#); 2001, c. [844](#).

§2.2-4509. Investment of funds in negotiable certificates of deposit and negotiable bank deposit notes.

Notwithstanding any provision of law to the contrary, the Commonwealth and all public officers, municipal corporations, and other political subdivisions and all other public bodies of the Commonwealth may invest any or all of the moneys belonging to them or within their control, other than sinking funds, in negotiable certificates of deposit and negotiable bank deposit notes of domestic banks and domestic offices of foreign banks with a rating of at least A-1 by Standard & Poor's and P-1 by Moody's Investor Service, Inc., for maturities of one year or less, and a rating of at least AA by Standard & Poor's and Aa by Moody's Investor Service, Inc., for maturities over one year and not exceeding five years.

1998, cc. [20](#), [21](#), § 2.1-328.15; 2001, c. [844](#).

§2.2-4510. Investment of funds in corporate notes.

A. Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds, in high quality corporate notes with a rating of at least Aa by Moody's Investors Service, Inc., and a rating of at least AA by Standard and Poors, Inc., and a maturity of no more than five years.

B. Notwithstanding any provision of law to the contrary, any qualified public entity of the Commonwealth may invest any and all moneys belonging to it or within its control, other than sinking funds, in high quality corporate notes with a rating of at least A by two rating agencies, one of which shall be either Moody's Investors Service, Inc., or Standard and Poors, Inc.

As used in this section, "qualified public entity" means any state agency or institution of the Commonwealth, having an internal or external public funds manager with professional investment management capabilities.

C. Notwithstanding any provision of law to the contrary, the Department of the Treasury may invest any and all moneys belonging to it or within its control, other than sinking funds, in high quality corporate notes with a rating of at least BBB or Baa2 by two rating agencies, one of which shall be Moody's Investors Service, Inc., or Standard and Poors, Inc. With regard to investment securities rated below A, the Commonwealth Treasury Board shall establish strict investment guidelines concerning the

investment in such securities and monitor the performance of the securities for compliance with the investment guidelines.

1987, c. 187, § 2.1-328.10; 1988, c. 834; 1994, c. [145](#); 2001, c. [844](#); 2002, cc. [18](#), [438](#); 2005, c. [30](#).

§2.2-4511. Investment of funds in asset-backed securities.

Notwithstanding any provision of law to the contrary, any qualified public entity of the Commonwealth may invest any and all moneys belonging to it or within its control, other than sinking funds, in asset-backed securities with a duration of no more than five years and a rating of no less than AAA by two rating agencies, one of which must be either Moody's Investors Service, Inc., or Standard and Poors, Inc.

As used in this section, "qualified public entity" means any state agency, institution of the Commonwealth or statewide authority created under the laws of the Commonwealth having an internal or external public funds manager with professional investment management capabilities.

1994, c. [145](#), § 2.1-328.13; 1997, c. [29](#); 2001, c. [844](#).

§2.2-4512. Investment of funds by State Treasurer in obligations of foreign sovereign governments.

Notwithstanding any provision of law to the contrary, the State Treasurer may invest unexpended or excess moneys in any fund or account over which he has custody and control, other than sinking funds, in fully hedged debt obligations of sovereign governments and companies that are fully guaranteed by such sovereign governments, with a rating of at least AAA by Moody's Investors Service, Inc., and a rating of at least AAA by Standard and Poors, Inc., and a maturity of no more than five years.

Not more than ten percent of the total funds of the Commonwealth available for investment may be invested in the manner described in this section.

1988, c. 461, § 2.1-328.11; 2001, c. [844](#).

§2.2-4513. Investments by transportation commissions.

Transportation commissions that provide rail service may invest in, if required as a condition to obtaining insurance, participate in, or purchase insurance provided by, foreign insurance companies that insure railroad operations.

1988, c. 834, § 2.1-328.12; 2001, c. [844](#).

§2.2-4513.1. Investment of funds in qualified investment pools.

A. Notwithstanding the provisions of Article 1 (§ [15.2-1300](#) et seq.) of Chapter 13 of Title 15.2, in any locality in which the authority to invest moneys belonging to or within the control of the locality has been granted to its elected treasurer, the treasurer may act on behalf of his locality to become a participating political subdivision in qualified investment pools without an ordinance adopted by the locality approving a joint exercise of power agreement. For purposes of this section, "qualified investment pool" means a jointly administered investment pool organized as a trust fund pursuant to Article 1 of Chapter 13 of Title 15.2 that has a professional investment manager.

B. Investments in qualified investment pools described in this section shall comply with the requirements of this chapter applicable to municipal corporations and other political subdivisions.

C. The provisions of this section shall not apply to local trusts established pursuant to Article 8 (§ [15.2-1544](#) et seq.) of Chapter 15 of Title 15.2 to fund postemployment benefits other than pensions.

2017, cc. [792](#), [819](#).

§2.2-4514. Commonwealth and its political subdivisions as trustee of public funds; standard of care in investing such funds.

Public funds held by the Commonwealth, public officers, municipal corporations, political subdivisions, and any other public body of the Commonwealth shall be held in trust for the citizens of the Commonwealth. Any investment of such funds pursuant to the provisions of this chapter shall be made solely in the interest of the citizens of the Commonwealth and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

1996, c. [437](#), § 2.1-328.14; 2001, c. [844](#).

§2.2-4515. Collateral and safekeeping arrangements.

Securities purchased pursuant to the provisions of this chapter shall be held by the public official, municipal corporation or other political subdivision or public body or its custodial agent who may not otherwise be a counterparty to the investment transaction. Securities held on the books of the custodial agent by a custodial agent shall be held in the name of the municipal corporation, political subdivision or other

public body subject to the public body's order of withdrawal. The responsibilities of the public official, municipal corporation, political subdivision or other public body shall be evidenced by a written agreement that shall provide for delivery of the securities by the custodial agent in the event of default by a counterparty to the investment transaction.

As used in this section, "counterparty" means the issuer or seller of a security, an agent purchasing a security on behalf of a public official, municipal corporation, political subdivision or other public body or the party responsible for repurchasing securities underlying a repurchase agreement.

The provisions of this section shall not apply to (i) investments with a maturity of less than 31 calendar days or (ii) the State Treasurer, who shall comply with safe-keeping guidelines issued by the Treasury Board or to endowment funds invested in accordance with the provisions of the Uniform Prudent Management of Institutional Funds Act, Chapter 11 (§ [64.2-1100](#) et seq.) of Title 64.2.

1988, c. 834, § 2.1-329.01; 2001, c. [844](#); 2008, c. [184](#).

§2.2-4516. Liability of treasurers or public depositors.

When investments are made in accordance with this chapter, no treasurer or public depositor shall be liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his assistants or employees.

1979, c. 135, § 2.1-329.1; 2001, c. [844](#).

§2.2-4517. Contracts on interest rates, currency, cash flow or on other basis.

A. Any state entity may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the state entity, as represented by bonds or investments, in whole or in part, on the interest rate cash flow or other basis desired by the state entity. Such contract or other arrangement may include contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the state entity in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the state entity, after giving due consideration to the creditworthiness

of the counterparty or other obligated party, including any rating by a nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board, the governing body of the state entity or any public funds manager with professional investment capabilities duly authorized by the Treasury Board or the governing body of any state entity authorized to issue such obligations to make such determinations.

As used in this section, "state entity" means the Commonwealth and all agencies, authorities, boards and institutions of the Commonwealth.

B. Any money set aside and pledged to secure payments of bonds or any of the contracts entered into pursuant to this section may be invested in accordance with this chapter and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to this section.

2002, c. [407](#).

§2.2-4518. Investment of funds in deposits.

A. Notwithstanding any provision of law to the contrary, the Commonwealth and all public officers, municipal corporations, other political subdivisions, and all other public bodies of the Commonwealth, each referred to in this section as a "public entity," may invest any or all of the moneys belonging to them or within their control in accordance with the following conditions:

1. The moneys are initially invested through any federally insured bank or savings institution selected by the public entity that is qualified by the Virginia Treasury Board to accept public deposits;
2. The selected bank or savings institution arranges for the deposit of the moneys in one or more federally insured banks or savings institutions wherever located, for the account of the public entity;
3. The full amount of principal and any accrued interest of each such deposit is covered by federal deposit insurance;
4. The selected bank or savings institution acts as custodian for the public entity with respect to each deposit issued for the public entity's account; and
5. At the same time that the public entity's moneys are deposited, the selected bank or savings institution receives an amount of deposits from customers of other fin-

ancial institutions wherever located equal to or greater than the amount of moneys invested by the public entity through the selected bank or savings institution.

B. After deposits are made in accordance with the conditions prescribed in subsection A, such deposits shall not be subject to the provisions of Chapter 44 (§ [2.2-4400](#) et seq.), § [2.2-4515](#), or any security or collateral requirements that may otherwise be applicable to the investment or deposit of public moneys by government investors.

2008, c. [103](#); 2010, c. [33](#).

§2.2-4519. Investment of funds by the Virginia Housing Development Authority and the Virginia Resources Authority.

A. For purposes of §§ [36-55.44](#) and [62.1-221](#) only, the following investments shall be considered lawful investments and shall be conclusively presumed to have been prudent:

1. Obligations of the Commonwealth. Stocks, bonds, notes, and other evidences of indebtedness of the Commonwealth, and those unconditionally guaranteed as to the payment of principal and interest by the Commonwealth.

2. Obligations of the United States. Stocks, bonds, treasury notes, and other evidences of indebtedness of the United States, including the guaranteed portion of any loan guaranteed by the Small Business Administration, an agency of the United States government, and those unconditionally guaranteed as to the payment of principal and interest by the United States; bonds of the District of Columbia; bonds and notes of the Federal National Mortgage Association and the Federal Home Loan Banks; bonds, debentures, or other similar obligations of federal land banks, federal intermediate credit banks, or banks of cooperatives, issued pursuant to acts of Congress; and obligations issued by the United States Postal Service when the principal and interest thereon is guaranteed by the government of the United States. The evidences of indebtedness enumerated by this subdivision may be held directly, in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the federal Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.

3. Obligations of other states. Stocks, bonds, notes, and other evidences of indebtedness of any state of the United States upon which there is no default and upon which there has been no default for more than 90 days, provided that within the 20 fiscal years next preceding the making of such investment, such state has not been in default for more than 90 days in the payment of any part of principal or interest of any debt authorized by the legislature of such state to be contracted.

4. Obligations of Virginia counties, cities, or other public bodies. Stocks, bonds, notes, and other evidences of indebtedness of any county, city, town, district, authority, or other public body in the Commonwealth upon which there is no default, provided that if the principal and interest is payable from revenues or tolls and the project has not been completed, or if completed, has not established an operating record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, the standards of judgment and care required in the Uniform Prudent Investor Act (§ [64.2-780](#) et seq.), without reference to this section, shall apply.

In any case in which an authority, having an established record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, issues additional evidences of indebtedness for the purposes of acquiring or constructing additional facilities of the same general character that it is then operating, such additional evidences of indebtedness shall be governed fully by the provisions of this section without limitation.

5. Obligations of cities, counties, towns, or districts of other states. Legally authorized stocks, bonds, notes, and other evidences of indebtedness of any city, county, town, or district situated in any one of the states of the United States upon which there is no default and upon which there has been no default for more than 90 days, provided that (i) within the 20 fiscal years next preceding the making of such investment, the city, county, town, or district has not been in default for more than 90 days in the payment of any part of principal or interest of any stock, bond, note, or other evidence of indebtedness issued by it; (ii) the city, county, town, or district shall have been in continuous existence for at least 20 years; (iii) the city, county, town, or district has a population, as shown by the federal census next preceding the making of such investment, of not less than 25,000 inhabitants; (iv) the stocks, bonds, notes, or other evidences of indebtedness in which such investment is made are the direct legal obligations of the city, county, town, or district issuing the same;

(v) the city, county, town, or district has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount; and (vi) the net indebtedness of the city, county, town, or district, including the issue in which such investment is made, after deducting the amount of its bonds issued for self-sustaining public utilities, does not exceed 10 percent of the value of the taxable property in the city, county, town, or district, to be ascertained by the valuation of such property therein for the assessment of taxes next preceding the making of such investment.

6. Obligations subject to repurchase. Investments set forth in subdivisions 1 through 5 may also be made subject to the obligation or right of the seller to repurchase these on a specific date.

7. Bonds secured on real estate. Bonds and negotiable notes directly secured by a first lien on improved real estate or farm property in the Commonwealth, or in any state contiguous to the Commonwealth within a 50-mile area from the borders of the Commonwealth, not to exceed 80 percent of the fair market value of such real estate, including any improvements thereon at the time of making such investment, as ascertained by an appraisal thereof made by two reputable persons who are not interested in whether or not such investment is made.

8. Bonds secured on city property in Fifth Federal Reserve District. Bonds and negotiable notes directly secured by a first lien on improved real estate situated in any incorporated city in any of the states of the United States which lie wholly or in part within the Fifth Federal Reserve District of the United States as constituted on June 18, 1928, pursuant to the act of Congress of December 23, 1913, known as the Federal Reserve Act, as amended, not to exceed 60 percent of the fair market value of such real estate, with the improvements thereon, at the time of making such investment, as ascertained by an appraisal thereof made by two reputable persons who are not interested in whether or not such investment is made, provided that such city has a population, as shown by the federal census next preceding the making of such investments, of not less than 5,000 inhabitants.

9. Bonds of Virginia educational institutions. Bonds of any of the educational institutions of the Commonwealth that have been or may be authorized to be issued by the General Assembly.

10. Securities of the Richmond, Fredericksburg and Potomac Railroad Company. Stocks, bonds, and other securities of the Richmond, Fredericksburg and Potomac

Railroad Company, including bonds or other securities guaranteed by the Richmond, Fredericksburg and Potomac Railroad Company.

11. Obligations of railroads. Bonds, notes, and other evidences of indebtedness, including equipment trust obligations, which are direct legal obligations of or which have been unconditionally assumed or guaranteed as to the payment of principal and interest by, any railroad corporation operating within the United States that meets the following conditions and requirements:

- a. The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have not been less than \$10 million;
- b. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned an average of at least two times annually during the seven fiscal years preceding the making of the investment and at least one and one-half times during the fiscal year immediately preceding the making of the investment. The term "total fixed charges" as used in this subdivision and subdivision c shall be deemed to refer to the term used in the accounting reports of common carriers as prescribed by the regulations of the Interstate Commerce Commission; and
- c. The aggregate of the average market prices of the total amounts of each of the individual securities of such corporation junior to its bonded debt and outstanding at the time of the making of such investment shall be equal to at least two-thirds of the total fixed charges for such railroad corporation for the fiscal year next preceding the making of such investment capitalized at an annual interest rate of five percent. Such average market price of any one of such individual securities shall be determined by the average of the highest quotation and the lowest quotation of the individual security for a period immediately preceding the making of such investment, which period shall be the full preceding calendar year plus the then-expired portion of the calendar year in which such investment is made, provided that if more than six months of the calendar year in which such investment is made shall have expired, then such period shall be only the then-expired portion of the calendar year in which such investment is made, and provided further that if such individual security shall not have been outstanding during the full extent of such period, such period shall be deemed to be the length of time such individual security shall have been outstanding.

12. Obligations of leased railroads. Stocks, bonds, notes, other evidences of indebtedness, and any other securities of any railroad corporation operating within the United States, the railroad lines of which have been leased by a railroad corporation, either alone or jointly with other railroad corporations, whose bonds, notes, and other evidences of indebtedness shall, at the time of the making of such investment, qualify as lawful investments for fiduciaries under the terms of subdivision 11, provided that the terms of such lease shall provide for the payment by such lessee railroad corporation individually, irrespective of the liability of other joint lessee railroad corporations, if any, in this respect, of an annual rental of an amount sufficient to defray the total operating expenses and maintenance charges of the lessor railroad corporation plus its total fixed charges, plus, in the event of the purchase of such a stock, a fixed dividend upon any issue of such stock in which such investment is made, and provided that if such investment so purchased shall consist of an obligation of definite maturity, such lease shall be one which shall, according to its terms, provide for the payment of the obligation at maturity or extend for a period of not less than 20 years beyond the maturity of such obligations so purchased, or if such investment so purchased shall be a stock or other form of investment having no definite date of maturity, such lease shall be one which shall, according to its terms, extend for a period of at least 50 years beyond the date of the making of such investment.

13. Equipment trust obligations. Equipment trust obligations issued under the "Philadelphia Plan" in connection with the purchase for use on railroads of new standard gauge rolling stock, provided that the owner, purchaser, or lessee of such equipment, or one or more of such owners, purchasers, or lessees, shall be a railroad corporation whose bonds, notes, and other evidences of indebtedness shall, at the time of the making of such investment, qualify as lawful investments for fiduciaries under the terms of subdivision 11, and provided that all of such owners, purchasers, or lessees shall be both jointly and severally liable under the terms of such contract of purchase or lease, or both, for the fulfillment thereof.

14. Preferred stock of railroads. Any preference stock of any railroad corporation operating within the United States, provided such stock and such railroad corporation meet the following conditions and requirements:

- a. Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;
- b. The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than \$10 million;
- c. The total fixed charges, as defined in subdivision 11 b, of such corporation, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned an average of at least two and one-half times annually for the seven fiscal years preceding the making of such investment and at least two times for the fiscal year immediately preceding the making of such investment; and
- d. The aggregate of the average market prices of the total amount of each of the individual securities of such corporation, junior to such preference stock and outstanding at the time of the making of such investment, shall be at least equal to the par value of the total issue of the preference stock in question plus the total par value of all other issues of its preference stock having either the same rank as, or a senior rank to, the issue of such preference stock plus total fixed charges, as defined in subdivision 11 b, for such railroad corporation for the fiscal year next preceding the making of such investment capitalized at an annual interest rate of five percent. Such average market price of any one of such individual securities shall be determined in the same manner as prescribed in subdivision 11 c.

15. Obligations of public utilities. Bonds, notes, and other evidences of indebtedness of any public utility operating company operating within the United States, provided such company meets the following conditions and requirements:

- a. The gross operating revenue of such public utility operating company for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than \$5 million;

b. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned, after deducting operating expenses, depreciation, and taxes, other than income taxes, an average of at least one and three-quarters times annually during the seven fiscal years preceding the making of the investment and at least one and one-half times during the fiscal year immediately preceding the making of the investment;

c. In the fiscal year next preceding the making of such investment, the ratio of the total par value of the bonded debt of such public utility operating company, including the total bonded indebtedness of all its subsidiary companies, whether assumed by the public utility operating company in question or not, to its gross operating revenue shall not be greater than four to one; and

d. Such public utility operating company shall be subject to permanent regulation by a state commission or other duly authorized and recognized regulatory body.

The term "public utility operating company" as used in this subdivision and subdivision 16 means a public utility or public service corporation (i) of whose total income available for fixed charges for the fiscal year next preceding the making of such investment at least 55 percent thereof shall have been derived from direct payments by customers for service rendered them; (ii) of whose total operating revenue for the fiscal year next preceding the making of such investment at least 60 percent thereof shall have been derived from the sale of electric power, gas, water, or telephone service and not more than 10 percent thereof shall have been derived from traction operations; and (iii) whose gas properties are all within the limits of one state, if more than 20 percent of its total operating revenues are derived from gas.

16. Preferred stock of public utilities. Any preference stock of any public utility operating company operating within the United States, provided such stock and such company meet the following conditions and requirements:

a. Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;

b. The gross operating revenue of such public utility operating company for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than \$5 million;

c. The total fixed charges of such public utility operating company, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned, after deducting operating expenses, depreciation, and taxes, including income taxes, an average of at least two times annually for the seven fiscal years preceding the making of such investment and at least two times for the fiscal year immediately preceding the making of such investment;

d. In the fiscal year next preceding the making of such investment, the ratio of the sum of the total par value of the bonded debt of such public utility operating company, the total par value of the issue of such preference stock, and the total par value of all other issues of its preference stock having the same or senior rank to its gross operating revenue shall not be greater than four to one; and

e. Such public utility operating company shall be subject to permanent regulation by a state commission or other duly authorized and recognized regulatory body.

17. Obligations of the following telephone companies. Bonds, notes, and other evidences of indebtedness of American Telephone and Telegraph, Bell Atlantic, Bell South, Southwestern Bell, Pacific Telesis, Nynex, American Information Technologies, or U.S. West, and bonds, notes, and other evidences of indebtedness unconditionally assumed or guaranteed as to the payment of principal and interest by any such company, provided that the total fixed charges, as reported for the fiscal year next preceding the making of the investment, of such company and all of its subsidiary corporations on a consolidated basis shall have been earned, after deducting operating expenses, depreciation, and taxes, other than income taxes, an average of at least one and three-fourths times annually during the seven fiscal years preceding the making of the investment and at least one and one-half times during the fiscal year immediately preceding the making of the investment.

18. Obligations of municipally owned utilities. The stocks, bonds, notes, and other evidences of indebtedness of any electric, gas, or water department of any state, county, city, town, or district whose obligations would qualify as legal for purchase under subdivision 3, 4, or 5, the interest and principal of which are payable solely out of the revenues from the operations of the facility for which the obligations were issued, provided that the department issuing such obligations meets the

requirements applying to public utility operating companies as set out in subdivisions 15 a through c.

19. Obligations of industrial corporations. Bonds, notes, and other evidences of indebtedness of any industrial corporation incorporated under the laws of the United States or of any state thereof, provided such corporation meets the following conditions and requirements:

- a. The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than \$10 million;
- b. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned, after deducting operating expenses, depreciation, and taxes, other than income taxes, and depletion in the case of companies commonly considered as depleting their natural resources in the course of business, an average of at least three times annually during the seven fiscal years preceding the making of the investment and at least two and one-half times during the fiscal year immediately preceding the making of the investment;
- c. The net working capital of such industrial corporation, as shown by its last published fiscal year-end statement prior to the making of such investment, or in the case of a new issue, as shown by the financial statement of such corporation giving effect to the issuance of any new security, shall be at least equal to the total par value of its bonded debt as shown by such statement; and
- d. The aggregate of the average market prices of the total amounts of each of the individual securities of such industrial corporation, junior to its bonded debt and outstanding at the time of the making of such investment, shall be at least equal to the total par value of the bonded debt of such industrial corporation at the time of the making of such investment, such average market price of any one of such individual securities being determined in the same manner as prescribed in subdivision 11 c.

20. Preferred stock of industrial corporations. Any preference stock of any industrial corporation incorporated under the laws of the United States or of any state thereof, provided such stock and such industrial corporation meet the following conditions and requirements:

- a. Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;
- b. The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than \$10 million;
- c. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned, after deducting operating expenses, depreciation, and taxes, including income taxes, and depletion in the case of companies commonly considered as depleting their natural resources in the course of business, an average of at least four times annually for the seven fiscal years preceding the making of such investment and at least three times for the fiscal year immediately preceding the making of such investment;
- d. The net working capital of such industrial corporation, as shown by its last published fiscal year-end statement prior to the making of such investment, or, in the case of a new issue, as shown by the financial statement of such corporation giving effect to the issuance of any new security, shall be at least equal to the total par value of its bonded debt plus the total par value of the issue of such preference stock plus the total par value of all other issues of its preference stock having the same or senior rank; and
- e. The aggregate of the lowest market prices of the total amounts of each of the individual securities of such industrial corporation junior to such preference stock and outstanding at the time of the making of such investment shall be at least two and one-half times the par value of the total issue of such preference stock plus the total par value of all other issues of its preference stock having the same or senior rank plus the par value of the total bonded debt of such industrial corporation. Such lowest market price of any one of such individual securities shall be determined by the lowest single quotation of the individual security for a period immediately preceding the making of such investment, which period shall be the full preceding calendar year plus the then-expired portion of the calendar year in which such investment is made,

and if such individual security shall not have been outstanding during the full extent of such period, such period shall be deemed to be the length of time such individual security shall have been outstanding.

21. Obligations of finance corporations. Bonds, notes, and other evidences of indebtedness of any finance corporation incorporated under the laws of the United States or of any state thereof, provided such corporation meets the following conditions and requirements:

a. The gross operating income of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating income for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than \$5 million;

b. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned, after deducting operating expenses, depreciation, and taxes, other than income taxes, an average of at least two and one-half times annually during the seven fiscal years preceding the making of the investment and at least two times during the fiscal year immediately preceding the making of the investment;

c. The aggregate indebtedness of such finance corporation as shown by its last fiscal year-end statement, or, in the case of a new issue, as shown by the financial statement giving effect to the issuance of any new securities, shall be no greater than three times the aggregate net worth, as represented by preferred and common stocks and surplus of such corporation; and

d. The aggregate of the average market prices of the total amounts of each of the individual securities of such finance corporation, junior to its bonded debt and outstanding at the time of the making of such investment, shall be at least equal to one-third of the sum of the par value of the bonded debt plus all other indebtedness of such finance corporation as shown by the last published fiscal year-end statement, such average market price of any one of such individual securities being determined in the same manner as prescribed in subdivision 11 c.

22. Preferred stock of finance corporations. Any preference stock of any finance corporation incorporated under the laws of the United States or of any state thereof, provided such stock and such corporation meet the following conditions and requirements:

- a. Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;
- b. The gross operating income of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating income for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than \$5 million;
- c. The total fixed charges of such finance corporation, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned, after deducting operating expenses, depreciation, and taxes, including income taxes, an average of at least three and one-half times annually for the seven fiscal years preceding the making of such investment and at least three times for the fiscal year immediately preceding the making of such investment;
- d. The aggregate indebtedness and par value of the purchased stock, both the issue in question and any issues equal or senior thereto, of such finance corporation as shown by its last published fiscal year-end statement, or, in the case of a new issue, as shown by the financial statement giving effect to the issuance of any new securities, shall be no greater than three times the aggregate par value of the junior securities and surplus of such corporation; and
- e. The aggregate of the lowest market prices of the total amounts of each of the individual securities of such finance corporation junior to such preference stock and outstanding at the time of the making of such investment shall be at least equal to one-third of the sum of the par value of such preference stock plus the total par value of all other issues of preference stock having the same or senior rank plus the par value of the total bonded debt plus all other indebtedness of such finance corporation as shown by the last published fiscal year-end statement, such lowest market price of any one of such individual securities being determined in the same manner as prescribed in subdivision 20 e.

23. Federal housing loans. First mortgage real estate loans insured by the Federal Housing Administrator under Title II of the National Housing Act.

24. Certificates of deposit and savings accounts. Certificates of deposit of, and savings accounts in, any bank, banking institution, or trust company, whose deposits are insured by the Federal Deposit Insurance Corporation at the prevailing rate of interest on such certificates or savings accounts; however, no such fiduciary shall invest in such certificates of, or deposits in, any one bank, banking institution, or trust company an amount from any one fund in his or its care which shall be in excess of such amount as shall be fully insured as a deposit in such bank, banking institution, or trust company by the Federal Deposit Insurance Corporation. A corporate fiduciary shall not, however, be prohibited by the terms of this subdivision from depositing in its own banking department, in the form of demand deposits, savings accounts, time deposits, or certificates of deposit, funds in any amount awaiting investments or distribution, provided that it shall have complied with the provisions of §§ [6.2-1005](#) and [6.2-1007](#), with reference to the securing of such deposits.

25. Obligations of International Bank, Asian Development Bank, and African Development Bank. Bonds and other obligations issued, guaranteed, or assumed by the International Bank for Reconstruction and Development, the Asian Development Bank, or the African Development Bank.

26. Deposits in savings institutions. Certificates of deposit of, and savings accounts in, any state or federal savings institution or savings bank lawfully authorized to do business in the Commonwealth whose accounts are insured by the Federal Deposit Insurance Corporation or other federal insurance agency; however, no such fiduciary shall invest in such shares of any one such association an amount from any one fund in his or its care which shall be in excess of such amount as shall be fully insured as an account in such association by the Federal Deposit Insurance Corporation or other federal insurance agency.

27. Certificates evidencing ownership of undivided interests in pools of mortgages. Certificates evidencing ownership of undivided interests in pools of bonds or negotiable notes directly secured by first lien deeds of trust or mortgages on real property located in the Commonwealth improved by single-family residential housing units or multi-family dwelling units, provided that (i) such certificates are rated AA or better by a nationally recognized independent rating agency; (ii) the loans evidenced by such bonds or negotiable notes do not exceed 80 percent of the fair market value, as determined by an independent appraisal thereof, of the real property and the

improvements thereon securing such loans; and (iii) such bonds or negotiable notes are assigned to a corporate trustee for the benefit of the holders of such certificates.

28. Shares in credit unions. Shares and share certificates in any credit union lawfully authorized to do business in the Commonwealth whose accounts are insured by the National Credit Union Share Insurance Fund or the Virginia Credit Union Share Insurance Corporation, provided no such fiduciary shall invest in such shares an amount from any one fund in his or its care which shall be in excess of such amount as shall be fully insured as an account in such credit union by the National Credit Union Share Insurance Fund or the Virginia Credit Union Share Insurance Corporation.

B. Whenever under the terms of this section the par value of a preference stock is required to be used in a computation, there shall be used instead of such par value the liquidating value of such preference stock in the case of involuntary liquidation, as prescribed by the terms of its issue, in the event that such liquidating value shall be greater than the par value of such preference stock; or in the event that the preference stock in question has no par value, then such liquidating value shall be used instead; or when such preference stock shall be one of no par value and one for which no such liquidating value shall have been so prescribed, then for the purposes of such computation the preference stock in question shall be deemed to have a value of \$100 per share.

C. When any security provided for in this section is purchased by a fiduciary and at the time of such purchase the statement for the preceding fiscal year of the corporation issuing the security so being purchased has not been published and is therefore not available, the statement of such corporation for the fiscal year immediately prior to such preceding fiscal year shall be considered the statement for such preceding fiscal year and shall have the same force and effect as the statement for the fiscal year preceding such purchase, provided the date of such purchase is not more than four months after the end of the last fiscal year of the corporation.

D. In testing a new issue of securities under the provisions of this section, it shall be permissible, in determining the number of times that fixed charges or preferred dividend requirements have been earned, to use pro forma fixed charges or dividend requirements, provided the corporation or its corporate predecessor has been in existence for a period of not less than seven years.

E. Investments made under the provisions of this section, if in conformity with the requirements of this section at the time such investments were made, may be

retained even though they cease to be eligible for purchase under the provisions of this section, but shall be subject to the provisions of the Uniform Prudent Investor Act (§ [64.2-780](#) et seq.).

2012, c. [614](#).

Juvenile and Domestic Relations District Courts

§16.1-226. Short title.

The short title of the statutes embraced in this chapter is "Juvenile and Domestic Relations District Court Law."

Code 1950, § 16.1-139; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1977, c. 559.

§16.1-227. Purpose and intent.

This law shall be construed liberally and as remedial in character, and the powers hereby conferred are intended to be general to effect the beneficial purposes herein set forth. It is the intention of this law that in all proceedings the welfare of the child and the family, the safety of the community and the protection of the rights of victims are the paramount concerns of the Commonwealth and to the end that these purposes may be attained, the judge shall possess all necessary and incidental powers and authority, whether legal or equitable in their nature.

This law shall be interpreted and construed so as to effectuate the following purposes:

1. To divert from or within the juvenile justice system, to the extent possible, consistent with the protection of the public safety, those children who can be cared for or treated through alternative programs;
2. To provide judicial procedures through which the provisions of this law are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other rights are recognized and enforced;
3. To separate a child from such child's parents, guardian, legal custodian or other person standing in loco parentis only when the child's welfare is endangered or it is in the interest of public safety and then only after consideration of alternatives to out-

of-home placement which afford effective protection to the child, his family, and the community; and

4. To protect the community against those acts of its citizens, both juveniles and adults, which are harmful to others and to reduce the incidence of delinquent behavior and to hold offenders accountable for their behavior.

Code 1950, § 16.1-140; 1956, c. 555; 1977, c. 559; 1990, c. 554; 1991, c. 392; 1996, cc. [755](#), [914](#).

§16.1-228. Definitions.

When used in this chapter, unless the context otherwise requires:

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § [18.2-248](#);
2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;
3. Whose parents or other person responsible for his care abandons such child;
4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law;
5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco parentis;
6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling,

including an apartment as defined in § [55-79.2](#), with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § [9.1-902](#); or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency medical services agency that employs emergency medical services personnel, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § [16.1-283](#) and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means the place of residence of any natural person in which a child resides as a member of the household and in which he has been placed for the purposes of adoption or in which he has been legally adopted by another member of the household.

"Adult" means a person 18 years of age or older.

"Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a delinquent act which would be a felony if committed by an adult.

"Boot camp" means a short term secure or nonsecure juvenile residential facility with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline, and no less than six months of intensive aftercare.

"Child," "juvenile," or "minor" means a person less than 18 years of age.

"Child in need of services" means (i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14 whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person;

however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

However, to find that a child falls within these provisions, (i) the conduct complained of must present a clear and substantial danger to the child's life or health or to the life or health of another person, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school system has provided documentation that it has complied with the provisions of § [22.1-258](#); or

2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or placement authority, remains away from or deserts or abandons his family or lawful custodian on more than one occasion or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § [63.2-100](#).

"The court" or the "juvenile court" or the "juvenile and domestic relations court" means the juvenile and domestic relations district court of each county or city.

"Delinquent act" means (i) an act designated a crime under the law of the Commonwealth, or an ordinance of any city, county, town, or service district, or under federal law, (ii) a violation of § [18.2-308.7](#), or (iii) a violation of a court order as provided for in § [16.1-292](#), but shall not include an act other than a violation of § [18.2-308.7](#), which is otherwise lawful, but is designated a crime only if committed by a child. For purposes of §§ [16.1-241](#) and [16.1-278.9](#), the term shall include a refusal to take a breath test in violation of § [18.2-268.2](#) or a similar ordinance of any county, city, or town.

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been terminated under the provisions of § [16.1-269.6](#).

"Department" means the Department of Juvenile Justice and "Director" means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties imposed upon him under this law.

"Family abuse" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous

12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § [63.2-100](#) or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § [16.1-293](#).

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older and who has been committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency.

"Independent living services" may also mean services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, and money management skills development and access to essential documents and other appropriate services to help children or persons prepare for self-sufficiency.

"Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this chapter.

"Jail" or "other facility designed for the detention of adults" means a local or regional correctional facility as defined in § [53.1-1](#), except those facilities utilized on a temporary basis as a court holding cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the transfer of a child to a juvenile facility.

"The judge" means the judge or the substitute judge of the juvenile and domestic relations district court of each county or city.

"This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in this chapter.

"Legal custody" means (i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § [20-107.2](#).

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ [63.2-900](#) and [63.2-908](#) with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § [16.1-251](#) or [63.2-1517](#). A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

"Residual parental rights and responsibilities" means all rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support.

"Secure facility" or "detention home" means a local, regional or state public or private locked residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.

"Shelter care" means the temporary care of children in physically unrestricting facilities.

"State Board" means the State Board of Juvenile Justice.

"Status offender" means a child who commits an act prohibited by law which would not be criminal if committed by an adult.

"Status offense" means an act prohibited by law which would not be an offense if committed by an adult.

"Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of § [16.1-269.1](#) when committed by a juvenile 14 years of age or older.

Code 1950, § 16.1-141; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, cc. 44, 45; 1977, c. 559; 1978, c. 605; 1979, c. 15; 1981, c. 491; 1984, c. 631; 1985, c. 260; 1986, cc. 281, 308; 1987, c. 632; 1988, c. 794; 1990, cc. 704, 769, 842; 1991, c. 534; 1992, cc. 742, 830, 886; 1993, cc. 435, 467, 494; 1994, cc. [859](#), [865](#), [949](#); 1996, cc. [755](#), [914](#); 1999, cc. [453](#), [665](#), [697](#), [721](#); 2002, cc. [810](#), [818](#); 2003, cc. [538](#), [547](#), [835](#); 2004, cc. [245](#), [753](#); 2006, c. [868](#); 2008, cc. [475](#), [483](#); 2011, cc. [445](#), [480](#); 2015, cc. [502](#), [503](#); 2016, c. [631](#); 2017, c. [623](#).

§16.1-229. This chapter controlling in event of conflict.

Whenever any specific provision of this chapter differs from or is in conflict with any provision or requirement of any other chapters of this title relating to the same or a similar subject, then such specific provision shall be controlling with respect to such subject or requirement.

Code 1950, § 16.1-142; 1956, c. 555; 1977, c. 559.

§16.1-230. Organization and operation of juvenile and domestic relations district courts.

The provisions of Chapter 4.1 (§ [16.1-69.1](#) et seq.) of this title establishing the district court system shall be controlling over the provisions of this chapter with respect to the organization, judges, administration and supervision, personnel, and financing of the juvenile and domestic relations district courts in the event of any conflict between the provisions of Chapter 4.1 and this chapter.

Code 1950, § 16.1-153.1; 1972, c. 708; 1973, c. 546; 1977, c. 559.

§16.1-231. Rules of procedure.

The chief judge may adopt and publish rules not in violation of law or in conflict with rules adopted pursuant to Chapter 4.1 (§ [16.1-69.1](#) et seq.) of this title to regulate the conduct of the clerks and employees of the court, which rules shall be construed and enforced liberally in furtherance of the remedial purposes of this chapter. Insofar as is practicable all such records and rules shall be uniform throughout the Commonwealth.

Code 1950, § 16.1-154; 1956, c. 555; 1968, c. 451; 1972, c. 708; 1973, c. 546; 1975, c. 334; 1977, c. 559.

§16.1-232. Attorney for the Commonwealth to prosecute certain cases and represent Commonwealth on appeal.

The attorney for the Commonwealth shall prosecute felony charges before the juvenile court, unless relieved of such responsibility by order of the court. In his discretion, the attorney for the Commonwealth may prosecute misdemeanor charges before such court.

The attorney for the Commonwealth shall represent the Commonwealth in all cases appealed from the juvenile and domestic relations district court to the circuit court.

Code 1950, § 16.1-155; 1956, c. 555; 1977, c. 559; 1980, c. 530; 1991, c. 262.

§16.1-233. Department to develop court services; court services units; appointment and removal of employees; salaries.

A. Within funds appropriated for the purpose, it shall be a function of the Department to develop and operate, except as hereinafter provided, probation, parole and other court services for juvenile and domestic relations district courts in order that all children coming within the jurisdiction of such courts throughout the Commonwealth shall receive the fullest protection of the court. To this end the Director may establish court services units in the Department. The Director shall appoint such employees as he may find to be necessary to carry out properly the responsibilities of the Department relative to the development, supervision and operation of probation, parole and other court services throughout the Commonwealth as set forth in this chapter.

B. The salaries of the persons employed pursuant to this section shall be paid out of funds appropriated for such purpose to the Department of Juvenile Justice. The Director and such employees as he may find necessary to carry out properly the responsibilities of the Department pursuant to subsection A of this section shall have access to all probation offices, other social services and to their records.

C. The State Board shall establish minimum standards for court service staffs and related supportive personnel and promulgate regulations pertaining to their appointment and function to the end that uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth. In counties or cities now served by regional juvenile and domestic relations courts or where specialized court service units are not provided, and in any county or city which provided specialized services on June 30, 1973, that requests the development of a court service unit, appointment to positions in such units shall be based on merit as provided in the Virginia Personnel Act (§ [2.2-2900](#) et seq.).

D. No person shall be assigned to or discharged from the state-operated court service staff of a juvenile and domestic relations district court except as provided in the Virginia Personnel Act (§ [2.2-2900](#) et seq.). The Director shall have the authority, for good cause, after consulting with the judge or judges of that juvenile and domestic relations district court and after due notice and opportunity to be heard, to order the transfer, demotion or separation of any person from the court service staff subject only to the limitations of the Virginia Personnel Act.

Code 1950, § 16.1-203; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, cc. 44, 45; 1977, c. 559; 1979, c. 700; 1989, c. 733; 1995, cc. [696](#), [699](#); 2001, c. [853](#); 2003, c. [648](#).

§16.1-234. Duties of Department; provision of quarters, utilities, and office equipment to court service unit.

The Director shall cause the Department to study the conditions existing in the several cities and counties, to confer with the judges of the juvenile and domestic relations district courts, the directors and boards of social services, and other appropriate officials, as the case may be, and to plan, establish and operate unless otherwise provided an adequate and coordinated program of probation, parole and related services to all juvenile and domestic relations district courts in counties or cities heretofore served by regional juvenile and domestic relations courts, and where specialized probation, parole and related court services were not provided as of July 1, 1973, and to counties and cities that request a development of a court service unit with the approval of the governing bodies after consultation with the chief juvenile and domestic relations district court judge.

In each county and city in which there is located an office for a state juvenile and domestic relations district court service unit such jurisdiction shall provide suitable quarters and utilities, including telephone service, for such court service unit staff. Such county or city shall also provide all necessary furniture and furnishings for the efficient operation of the unit. When such court service unit serves counties or cities in addition to the county or city where the office is located, the jurisdiction or jurisdictions so served shall share proportionately, based on the population of the jurisdictions, in the cost of the quarters and utilities, including telephone service and necessary furniture and furnishings. All other office equipment and supplies, including postage, shall be furnished by the Commonwealth and shall be paid out of the appropriation for criminal charges.

In counties and cities that provided specialized court service programs prior to July 1, 1973, which do not request the development of a state-operated court service unit, it shall be the duty of the Department to insure that minimum standards established by the State Board are adhered to, to confer with the judges of the juvenile and domestic relations district court and other appropriate officials as the case may be, and to assist in the continued development and extension of an adequate and coordinated program of court services, probation, parole and detention facilities and other specialized services and facilities to such juvenile and domestic relations district courts.

Code 1950, § 16.1-204; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, c. 641; 1977, c. 559; 1979, c. 700; 2001, c. [853](#).

§16.1-235. How probation, parole and related court services provided.

Probation, parole and related court services shall be provided through the following means:

A. State court service units. -- The Department shall develop and operate probation, parole and related court services in counties or cities heretofore served by regional juvenile and domestic relations district courts and where specialized probation, parole and related court services were not provided as of July 1, 1973, and make such services available to juvenile and domestic relations district courts, as required by this chapter and by regulations established by the Board. All other counties or cities may request the development of a state-operated court service unit with the approval of their governing bodies after consultation with the chief judge of the juvenile and domestic relations district court of such jurisdiction.

B. Local units. -- In counties and cities providing specialized court services as of July 1, 1973, who do not request the development of a state-operated court service unit, the governing body or bodies of the district shall appoint one or more suitable persons as probation and parole officers and related court service personnel in accordance with established qualifications and regulations and shall develop and operate probation, parole, detention and related court services.

The transfer, demotion, or separation of probation officers and related court service personnel appointed pursuant to this subsection shall be under the authority of the governing body or bodies of the district and shall be only for good cause shown, after consulting with the judge or judges of that juvenile and domestic relations district court, in accordance with the Virginia Personnel Act (§ [2.2-2900](#) et seq.) and after due notice and opportunity to be heard.

C. A county or city that is providing court services through a state-operated court services unit, with the approval of its governing body after consultation with the chief judge of the juvenile and domestic relations district court of the jurisdiction, may cease providing services through a state-operated court services unit and commence operation as a local unit, subject to all laws, regulations, policies and procedures applicable to a local unit.

Code 1950, § 16.1-205; 1956, c. 555; 1972, cc. 73, 708; 1973, c. 546; 1974, cc. 44, 45, 673; 1977, c. 559; 2001, c. [853](#); 2002, c. [510](#); 2003, c. [648](#).

§16.1-235.1. Provision of court services; replacement intake officers.

The chief judge may make arrangements for a replacement intake officer from another court service unit to ensure the capability of a prompt response in matters under § [16.1-255](#) or [16.1-260](#) during hours the court is closed. The replacement intake officer shall have all the authority and power of an intake officer of that district when authorized in writing by the appointing authority and by the chief judge of that district.

2002, c. [700](#); 2012, cc. [164](#), [456](#).

§16.1-236. Supervisory officers.

In any court where more than one probation or parole officer or other court services staff has been appointed under the provisions of this law, one or more probation or parole officers may be designated to serve in a supervisory position, other than court services unit director, by the Director, if it is a state-operated court services unit, or by the local governing body, if it is a locally operated court services unit.

The transfer, demotion, or separation of supervisory officers, other than court services unit directors, of state court service units shall be under the authority of the Director and shall be only for good cause shown, after consulting with the judge or judges of that juvenile and domestic relations district court, and in accordance with the Virginia Personnel Act (§ [2.2-2900](#) et seq.). The transfer, demotion or separation of supervisory officers of local court service units shall be under the authority of the local governing body and shall be only for good cause shown, after consulting with the judge or judges of that juvenile and domestic relations district court and after due notice and opportunity to be heard.

Code 1950, § 16.1-207; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, c. 673; 1977, c. 559; 2001, c. [853](#); 2003, c. [648](#).

§16.1-236.1. Court services unit directors.

A. State-operated court services units. A court services unit director shall be designated for each state-operated court services unit. The judge or judges of the juvenile and domestic relations district court shall, from a list of eligible persons submitted by the Director appoint one court services unit director for the state-operated court services unit serving that district court. The list of eligible persons shall be developed in accordance with state personnel laws and regulations, and Department policies and procedures.

If any list of eligible persons submitted by the Director is unsatisfactory to the judge or judges, the judge or judges may request the Director to submit a new list containing the names of additional eligible persons. Upon such request by the judge or judges, the Director shall develop and submit a new list of eligible persons in accordance with state personnel laws and regulations, and Department policies and procedures.

The transfer, demotion, or separation of a court services unit director, appointed pursuant to this subsection shall be under the authority of the Director and shall be only for good cause shown, after consulting with the judge or judges of that juvenile and domestic relations district court, and in accordance with the Virginia Personnel Act (§ [2.2-2900](#) et seq.).

B. Locally operated court services units. A court services unit director shall be designated for each locally operated court services unit. The judge or judges of the juvenile and domestic relations district court shall, from a list of eligible persons submitted by the governing body or bodies of the district, appoint one court services unit director for the locally operated court services unit serving that district court. The list of eligible persons shall be in accordance with locally established qualifications that are consistent with state personnel laws and regulations, and Department policies and procedures.

If any list of eligible persons submitted by the governing body or bodies of the district is unsatisfactory to the judge or judges, the judge or judges may request the governing body or bodies to submit a new list containing the names of additional eligible persons. Upon such request by the judge or judges, the governing body or bodies shall develop and submit a new list of eligible persons in accordance with locally established qualifications that are consistent with state personnel laws and regulations, and Department policies and procedures.

The transfer, demotion, or separation of a court services unit director appointed pursuant to this subsection shall be under the authority of the local governing body or bodies and shall be only for good cause shown after consulting with the judge or judges of that juvenile and domestic relations district court and in accordance with the Virginia Personnel Act (§ [2.2-2900](#) et seq.).

2003, c. [648](#).

§16.1-237. Powers, duties and functions of probation and parole officers.

In addition to any other powers and duties imposed by this law, a probation or parole officer appointed hereunder shall:

- A. Investigate all cases referred to him by the judge or any person designated so to do, and shall render reports of such investigation as required;
- B. Supervise persons placed under his supervision and shall keep informed concerning the conduct and condition of every person under his supervision by visiting, requiring reports and in other ways, and shall report thereon as required;
- C. Under the general supervision of the director of the court service unit, investigate complaints and accept for informal supervision cases wherein such handling would best serve the interests of all concerned;
- D. Use all suitable methods not inconsistent with conditions imposed by the court to aid and encourage persons on probation or parole and to bring about improvement in their conduct and condition;
- E. Furnish to each person placed on probation or parole a written statement of the conditions of his probation or parole and instruct him regarding the same;
- F. Keep records of his work including photographs and perform such other duties as the judge or other person designated by the judge or the Director shall require;
- G. Have the authority to administer oaths and take acknowledgements for the purposes of §§ [16.1-259](#) and [16.1-260](#) to facilitate the processes of intake and petition;
- H. Have the powers of arrest of a police officer and the power to carry a concealed weapon when specifically so authorized by the judge; and
- I. Determine by reviewing the Local Inmate Data System or the Juvenile Tracking System (JTS) upon intake and again prior to discharge whether a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a

sample pursuant to § [16.1-299.1](#) and, if no sample has been taken, require an offender to submit a sample for DNA analysis.

Code 1950, § 16.1-208; 1956, c. 555; 1964, c. 516; 1972, c. 708; 1973, c. 546; 1974, c. 464; 1977, c. 559; 2001, c. [853](#); 2007, c. [528](#); 2009, c. [726](#).

§16.1-238. Compensation of probation officers, court service staff members and related court service personnel; reimbursement; traveling and other expenses.

The compensation of probation officers and other court service staff members appointed in accordance with subsection B of § [16.1-235](#) shall be fixed by the governing body of the city or county in which they serve. They shall be paid out of the county or city treasury. One-half of such compensation shall be reimbursed to any city or county from funds appropriated to the Department. Any funds from the Department of Criminal Justice Services or from other public fund sources outside of the provisions of this law which are used in compensating such personnel shall not be considered state funds.

Compensation of all other probation officers and related court service personnel appointed in accordance with subsection A of § [16.1-235](#) shall be fixed in accordance with Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2. Personnel transferred from local and regional court staffs shall suffer no reduction in pay and shall transfer into the state program all accrued leave and other benefits allowable under Chapter 29 of Title 2.2. Probation officers and related court service personnel appointed in accordance with subsection A of § [16.1-235](#) shall be paid necessary traveling and other expenses incurred in the discharge of their duties.

The salary and expenses provided for personnel appointed in accordance with subsection A of § [16.1-235](#) shall be paid by the Commonwealth, and no part shall be paid by or chargeable to any county or city. The governing body of any county or city, however, may add to the compensation of such personnel such an amount as the governing body may appropriate not to exceed 50 percent of the amount paid by the Commonwealth. No such additional amount paid by a local governing body shall be chargeable to the Department of Juvenile Justice nor shall it remove or supersede any authority, control or supervision of the Department.

Code 1950, § 16.1-206; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, cc. 44, 45; 1977, c. 559; 1982, c. 636; 1983, c. 358; 1989, c. 733; 2012, cc. [164](#), [456](#).

§16.1-239. Payment of traveling expenses of court officers; reimbursement.

In counties and cities providing specialized court service programs prior to July 1, 1973, as provided in §§ [16.1-234](#) and [16.1-235](#), and under the rules of the Department the traveling expenses incurred by a probation officer, court service officer or other officer of the court when traveling under the order of the judge, shall be paid out of the county or city treasury. One-half of such expenses shall be reimbursed to the city or county by the Department out of funds appropriated for such purposes.

Code 1950, § 16.1-213; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1977, c. 559; 1982, c. 636; 1983, c. 358.

§16.1-240. Citizens advisory council.

A. The governing bodies of each county and city served by a court service unit may appoint one or more members to a citizens advisory council, in total not to exceed 15 members; and the chief judge of the juvenile and domestic relations district court may appoint one or more members to the advisory council, in total not to exceed five members. The duties of the council shall be as follows:

1. To advise and cooperate with the court upon all matters affecting the working of this law and other laws relating to children, their care and protection and to domestic relations;
2. To consult and confer with the court and director of the court service unit from time to time relative to the development and extension of the court service program;
3. To encourage the member selected by the council to serve on the central advisory council to visit, as often as the member conveniently can, institutions and associations receiving children under this law, and to report to the court from time to time and at least annually in its report made pursuant to subdivision 5 the conditions and surroundings of the children received by or in charge of any such persons, institutions or associations;
4. To make themselves familiar with the work of the court under this law; and
5. To make an annual report to the court and the participating governing bodies on the work of the council.

B. If the governing body does not exercise its option to appoint a citizens advisory council pursuant to subsection A, the judge of the juvenile and domestic relations district court may appoint an advisory board of citizens, not to exceed 15 members, who shall perform the same duties as provided in this section.

Code 1950, § 16.1-157; 1956, c. 555; 1968, c. 435; 1977, c. 559; 1989, c. 733; 2012, cc. [164](#), [456](#).

§16.1-241. Jurisdiction; consent for abortion.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § [16.1-244](#);

4. Who is the subject of an entrustment agreement entered into pursuant to § [63.2-903](#) or [63.2-1817](#) or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § [16.1-244](#);

6. Who is charged with a traffic infraction as defined in § [46.2-100](#); or

7. Who is alleged to have refused to take a blood test in violation of § [18.2-268.2](#).

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § [16.1-269.1](#), and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § [16.1-269.1](#), and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § [16.1-269.1](#), the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § [16.1-269.1](#) to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § [16.1-269.1](#), if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § [16.1-269.6](#).

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § [16.1-269.1](#).

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a

person whose parental rights have been terminated by court order, either voluntarily or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § [63.2-1241](#), or (iii) who has been convicted of a violation of subsection A of § [18.2-61](#), § [18.2-63](#), subsection B of § [18.2-366](#), or an equivalent offense of another state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ [16.1-335](#) et seq.) and the involuntary admission of a person with mental illness or judicial certification of eligibility for admission to a training center for persons with intellectual disability in accordance with the provisions of Chapter 8 (§ [37.2-800](#) et seq.) of Title 37.2. Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § [63.2-903](#) or [63.2-1817](#) or is otherwise before the court pursuant to subdivision A 4; or

3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services that are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § [16.1-244](#).

H. Judicial consent to apply for a work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law that causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § [18.2-49.1](#).

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court

order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § [16.1-253.1](#), [16.1-253.4](#), or [16.1-279.1](#), and all petitions filed for the purpose of obtaining an order of protection pursuant to § [19.2-152.8](#), [19.2-152.9](#), or [19.2-152.10](#) if either the alleged victim or the respondent is a juvenile.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ [16.1-331](#) et seq.).

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ [63.2-1900](#) et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ [20-49.1](#) et seq.) of Title 20. A circuit court shall have concurrent original jurisdiction to the extent provided for in § [20-49.2](#).

R. [Repealed.]

S. Petitions filed by school boards against parents pursuant to §§ [16.1-241.2](#) and [22.1-279.3](#).

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § [63.2-1526](#).

U. Petitions filed in connection with parental placement adoption consent hearings pursuant to § [63.2-1233](#). Such proceedings shall be advanced on the docket so as to be heard by the court within 10 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed for the purpose of obtaining the court's assistance with the execution of consent to an adoption when the consent to an adoption is executed pursuant to the laws of another state and the laws of that state provide for the execution of consent to an adoption in the court of the Commonwealth.

W. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to seek consent of an authorized person.

After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.

If the judge authorizes an abortion based on the best interests of the minor, such order shall expressly state that such authorization is subject to the physician or his agent giving notice of intent to perform the abortion; however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor. In determining whether notice is in the best interest of the minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the best interest of the minor if he finds that (i) one or more authorized persons with whom the minor regularly and customarily resides is abusive or neglectful, and (ii) every other authorized person, if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person standing in loco parentis.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

An expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without consent or without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. The time periods required by this subsection shall be subject to subsection B of § [1-210](#). An order authorizing an abortion without consent or without notice shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without consent of or notice to an authorized person.

Nothing contained in this subsection shall be construed to authorize a physician to perform an abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult woman.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent has been obtained or the minor delivers to the physician a court order entered pursuant to this section and the physician or his agent provides such notice as such order may require. However, neither consent nor judicial authorization nor notice shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § [63.2-100](#) and reports the suspected abuse or neglect in accordance with § [63.2-1509](#); or if there is a medical emergency, in which case the attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorization" means the minor has delivered to the physician a notarized, written statement signed by an authorized person that the authorized person knows of the minor's intent to have an abortion and consents to such abortion being performed on the minor.

"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor. Any person who knows he is not an

authorized person and who knowingly and willfully signs an authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

"Consent" means that (i) the physician has given notice of intent to perform the abortion and has received authorization from an authorized person, or (ii) at least one authorized person is present with the minor seeking the abortion and provides written authorization to the physician, which shall be witnessed by the physician or an agent thereof. In either case, the written authorization shall be incorporated into the minor's medical record and maintained as a part thereof.

"Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours prior to the performance of the abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in § [18.2-72](#), [18.2-73](#), or [18.2-74](#).

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ [16.1-331](#) et seq.).

X. Petitions filed pursuant to Article 17 (§ [16.1-349](#) et seq.) relating to standby guardians for minor children.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision A 3, except as provided in subdivision A 6 of § [17.1-272](#), or subsection B, D, M, or R.

Notwithstanding the provisions of § [18.2-71](#), any physician who performs an abortion in violation of subsection W shall be guilty of a Class 3 misdemeanor.

Code 1950, § 16.1-158; 1956, c. 555; 1960, c. 388; 1968, c. 225; 1970, cc. 232, 600; 1973, c. 440; 1976, cc. 42, 324; 1977, cc. 525, 559; 1978, c. 648; 1979, cc. 597, 605, 628; 1980, cc. 527, 529; 1981, cc. 454, 475, 488, 491, 501, 502, 510; 1982, c. 46; 1983, c. 280; 1984, cc. 631, 645, 651, 665, 669; 1985, c. 270; 1986, cc. 59, 506; 1987, c. 632; 1988, cc. 797, 906; 1989, cc. 368, 733; 1990, cc. 704, 975; 1991, cc. 511, 715; 1992, cc. 585, 742; 1994, cc. [575](#), [719](#), [813](#), [859](#), [949](#); 1995, cc. [7](#), [665](#), [772](#), [826](#), [852](#); 1996, cc. [755](#), [914](#); 1997, cc. [690](#), [708](#); 1998, c. [829](#); 1999, cc. [697](#), [721](#), [1028](#); 2000, c. [830](#); 2003, cc. [229](#), [960](#), [962](#); 2004, c. [588](#); 2005, cc. [716](#), [839](#), [890](#); 2007, cc. [284](#), [370](#); 2008, cc. [164](#), [201](#); 2010, c. [402](#); 2012, cc. [424](#), [476](#), [507](#), [637](#); 2014, c. [653](#); 2017, c. [623](#).

§16.1-241.1. Repealed.

Repealed by Acts 2002, c. [305](#).

§16.1-241.2. Proceedings against certain parents.

A. Upon the failure of a parent to comply with the provisions of § [22.1-279.3](#), the school board may, by petition to the juvenile and domestic relations court, proceed against such parent for willful and unreasonable refusal to participate in efforts to improve the student's behavior as follows:

1. If the court finds that the parent has willfully and unreasonably failed to meet, pursuant to a request of the principal as set forth in subsection D of § [22.1-279.3](#), to review the school board's standards of student conduct and the parent's responsibility to assist the school in disciplining the student, maintaining order, or ensuring the child's school attendance, and to discuss improvement of the child's behavior, school attendance, or educational progress, it may order the parent to so meet; or
2. If the court finds that the parent has willfully and unreasonably failed to accompany a suspended student to meet with school officials pursuant to subsection F of § [22.1-279.3](#), or upon the student receiving a second suspension or being expelled, it may order (i) the student or his parent to participate in such programs or such treatment as the court deems appropriate to improve the student's behavior, including,

but not limited to, extended day programs and summer school or other education programs and counseling, or (ii) the student or his parent to be subject to such conditions and limitations as the court deems appropriate for the supervision, care, and rehabilitation of the student or his parent; in addition, the court may order the parent to pay a civil penalty not to exceed \$500.

The court may use its contempt power to enforce any order entered under this section.

B. The civil penalties established pursuant to this section shall be enforceable in the juvenile and domestic relations court or its successor in interest in which the student's school is located and shall be paid into a fund maintained by the appropriate local governing body to support programs or treatments designed to improve the behavior and school attendance of students as described in subdivision 2 of subsection G of § [22.1-279.3](#). Upon the failure to pay any civil penalties imposed by this section and § [22.1-279.3](#), the attorney for the appropriate county, city, or town shall enforce the collection of such civil penalties.

C. For the purposes of this section and § [22.1-279.3](#), "parent" or "parents" means any parent, guardian, legal custodian, or other person having control or charge of a child.

1994, c. [813](#); 1995, c. [852](#); 1996, c. [771](#); 2004, c. [573](#).

§16.1-241.3. Newborn children; substance abuse.

Upon the filing of a petition alleging that an investigation has been commenced in response to a report of suspected abuse or neglect of the child based upon a factor specified in subsection B of § [63.2-1509](#), the court may enter any order authorized pursuant to this chapter which the court deems necessary to protect the health and welfare of the child pending final disposition of the investigation pursuant to Chapter 15 (§ [63.2-1500](#) et seq.) of Title 63.2 or other proceedings brought pursuant to this chapter. Such orders may include, but shall not be limited to, an emergency removal order pursuant to § [16.1-251](#), a preliminary protective order pursuant to § [16.1-253](#) or an order authorized pursuant to subdivisions A 1 through 4 of § [16.1-278.2](#). The fact that an order was entered pursuant to this section shall not be admissible as evidence in any criminal, civil or administrative proceeding other than a proceeding to enforce the order.

The order shall be effective for a limited duration not to exceed the period of time necessary to conclude the investigation and any proceedings initiated pursuant to

Chapter 15 (§ [63.2-1500](#) et seq.) of Title 63.2, but shall be a final order subject to appeal.

1998, cc. [704](#), [716](#); 2002, c. [860](#); 2012, cc. [504](#), [640](#).

§16.1-242. Retention of jurisdiction.

When jurisdiction has been obtained by the court in the case of any child, such jurisdiction may be retained by the court until such person becomes twenty-one years of age, except when the person is in the custody of the Department or when jurisdiction is divested under the provisions of § [16.1-244](#). In any event, when such person reaches the age of twenty-one and a prosecution has not been commenced against him, he shall be proceeded against as an adult, even if he was a juvenile when the offense was committed.

Code 1950, § 16.1-159; 1956, c. 555; 1977, c. 559; 1978, c. 740; 1992, c. 509.

§16.1-242.1. Retention of jurisdiction; appeals involving children in foster care.

Upon appeal to the circuit court of any case involving a child placed in foster care and in any appeal to the Court of Appeals or Supreme Court of Virginia, the juvenile court shall retain jurisdiction to continue to hear petitions filed pursuant to §§ [16.1-282](#) and [16.1-282.1](#). Orders of the juvenile court in such cases shall continue to be reviewed and enforced by the juvenile court until the circuit court, Court of Appeals or Supreme Court rules otherwise.

1998, c. [550](#).

§16.1-243. Venue.

A. Original venue:

1. Cases involving children, other than support or where protective order issued: Proceedings with respect to children under this law, except support proceedings as provided in subdivision 2 or family abuse proceedings as provided in subdivision 3, shall:

a. Delinquency: If delinquency is alleged, be commenced in the city or county where the acts constituting the alleged delinquency occurred or they may, with the written consent of the child and the attorney for the Commonwealth for both jurisdictions, be commenced in the city or county where the child resides;

b. Custody or visitation: In cases involving custody or visitation, be commenced in the court of the city or county which, in order of priority, (i) is the home of the child

at the time of the filing of the petition, or had been the home of the child within six months before the filing of the petition and the child is absent from the city or county because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as a parent continues to live in the city or county, (ii) has significant connection with the child and in which there is substantial evidence concerning the child's present or future care, protection, training and personal relationships, (iii) is where the child is physically present and the child has been abandoned or it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent or (iv) it is in the best interest of the child for the court to assume jurisdiction as no other city or county is an appropriate venue under the preceding provisions of this subdivision;

c. Adoption: In parental placement adoption consent hearings pursuant to §§ [16.1-241](#), [63.2-1233](#), and [63.2-1237](#), be commenced in any city or county, provided, however, that diligent efforts shall first be made to commence such hearings (i) in the city or county where the child to be adopted was born, (ii) in the city or county where the birth parent(s) reside, or (iii) in the city or county where the prospective adoptive parent(s) reside. In cases in which a hearing is commenced in a city or county other than one described in clauses (i) through (iii), the petitioner shall certify in writing to the court that diligent efforts to commence a hearing in such city or county have been made but have proven ineffective; and

d. All other cases: In all other proceedings, be commenced in the city or county where the child resides or in the city or county where the child is present when the proceedings are commenced.

2. Support: Proceedings that involve child or spousal support or child and spousal support, exclusive of proceedings arising under Chapter 5 (§ [20-61](#) et seq.) of Title 20, shall be commenced in the city or county where either party resides or in the city or county where the respondent is present when the proceeding commences.

3. Family abuse: Proceedings in which an order of protection is sought as a result of family abuse shall be commenced where (i) either party has his or her principal residence (ii) the abuse occurred or (iii) a protective order was issued if at the time the proceeding is commenced the order is in effect to protect the petitioner or a family or household member of the petitioner.

B. Transfer of venue:

1. Generally: Except in custody, visitation and support cases, if the child resides in a city or county of the Commonwealth and the proceeding is commenced in a court of another city or county, that court may at any time, on its own motion or a motion of a party for good cause shown, transfer the proceeding to the city or county of the child's residence for such further action or proceedings as the court receiving the transfer may deem proper. However, such transfer may occur only after adjudication in delinquency proceedings.

2. Custody and visitation: In custody and visitation cases, if venue lies in one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of venue. In the consideration of the motion, the best interests of the child shall determine the most appropriate forum.

3. Support: In support proceedings, exclusive of proceedings arising under Chapter 5 of Title 20, if the respondent resides in a city or county in the Commonwealth and the proceeding is commenced in a court of another city or county, that court may, at any time on its own motion or a motion of a party for good cause shown or by agreement of the parties, transfer the proceeding to the city or county of the respondent's residence for such further action or proceedings as the court receiving the transfer may deem proper. For the purposes of determining venue of cases involving support, the respondent's residence shall include any city or county in which the respondent has resided within the last six months prior to the commencement of the proceeding or in which the respondent is residing at the time that the motion for transfer of venue is made. If venue is transferable to one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of such venue.

When the support proceeding is a companion case to a child custody or visitation proceeding, the provisions governing venue in the proceeding involving the child's custody or visitation shall govern.

4. Subsequent transfers: Any court receiving a transferred proceeding as provided in this section may in its discretion transfer such proceeding to a court in an appropriate venue for good cause shown based either upon changes in circumstances or mistakes of fact or upon agreement of the parties. In any transfer of venue in cases

involving children, the best interests of the child shall be considered in deciding if and to which court a transfer of venue would be appropriate.

5. Enforcement of orders for support, maintenance and custody: Any juvenile and domestic relations district court to which a suit is transferred for enforcement of orders pertaining to support, maintenance, care or custody pursuant to § [20-79](#) (c) may transfer the case as provided in this section.

C. Records: Originals of all legal and social records pertaining to the case shall accompany the transfer of venue. Records imaged from the original documents shall be considered original documents for purposes of the transfer of venue. The transferor court may, in its discretion, retain copies as it deems appropriate.

Code 1950, § 16.1-160; 1956, c. 555; 1977, c. 559; 1985, c. 367; 1987, cc. 598, 608, 620; 1989, c. 545; 1995, cc. [772](#), [826](#); 1996, c. [866](#); 2000, c. [830](#); 2010, cc. [717](#), [760](#); 2012, c. [424](#).

§16.1-244. Concurrent jurisdiction; exceptions.

A. Nothing contained in this law shall deprive any other court of the concurrent jurisdiction to determine the custody of children upon a writ of habeas corpus under the law, or to determine the custody, guardianship, visitation or support of children when such custody, guardianship, visitation or support is incidental to the determination of causes pending in such courts, nor deprive a circuit court of jurisdiction to determine spousal support in a suit for separate maintenance. However, when a suit for divorce has been filed in a circuit court, in which the custody, guardianship, visitation or support of children of the parties or spousal support is raised by the pleadings and a hearing, including a pendente lite hearing, is set by the circuit court on any such issue for a date certain or on a motions docket to be heard within 21 days of the filing, the juvenile and domestic relations district courts shall be divested of the right to enter any further decrees or orders to determine custody, guardianship, visitation or support when raised for such hearing and such matters shall be determined by the circuit court unless both parties agreed to a referral to the juvenile court. Nothing in this section shall deprive a circuit court of the authority to refer any such case to a commissioner for a hearing or shall deprive the juvenile and domestic relations district courts of the jurisdiction to enforce its valid orders prior to the entry of a conflicting order of any circuit court for any period during which the order was in effect or to temporarily place a child in the custody of any person when that child has

been adjudicated abused, neglected, in need of services or delinquent subsequent to the order of any circuit court.

B. Jurisdiction of cases involving violations of federal law by a child shall be concurrent and shall be assumed only if waived by the federal court or the United States attorney.

Code 1950, § 16.1-161; 1956, c. 555; 1977, c. 559; 1978, c. 740; 1984, cc. 657, 669; 1985, c. 183; 1987, c. 36; 1989, c. 509; 1990, c. 600; 2000, c. [781](#); 2003, c. [129](#).

§16.1-245. Transfer from other courts.

If, during the pendency of a proceeding in any other court, it is ascertained for the first time that exclusive jurisdiction lies within the juvenile and domestic relations district court, such court shall forthwith transfer the case, together with all papers, documents and evidence connected therewith, to the juvenile and domestic relations district court of the city or county having jurisdiction. The court making the transfer shall determine who is to have custody of the child pending action by the juvenile and domestic relations district court pursuant to § [16.1-247](#). If, during the pendency of a proceeding in the juvenile and domestic relations district court, it is ascertained for the first time that exclusive jurisdiction lies in the general district or circuit court, the juvenile and domestic relations district court shall likewise transfer the case to the appropriate court.

Code 1950, § 16.1-175; 1956, c. 555; 1977, c. 559; 1992, c. 496.

§16.1-245.1. Medical evidence admissible in juvenile and domestic relations district court.

In any civil case heard in a juvenile and domestic relations district court involving allegations of child abuse or neglect or family abuse, any party may present evidence, by a report from the treating or examining health care provider as defined in § [8.01-581.1](#) or the records of a hospital, medical facility or laboratory at which the treatment, examination or laboratory analysis was performed, or both, as to the extent, nature, and treatment of any physical condition or injury suffered by a person and the examination of the person or the result of the laboratory analysis.

A medical report shall be admitted if the party intending to present such evidence at trial or hearing gives the opposing party or parties a copy of the evidence and written notice of intention to present it at least ten days, or in the case of a preliminary removal hearing under § [16.1-252](#) or § [16.1-253.1](#) at least twenty-four hours, prior to

the trial or hearing and if attached to such evidence is a sworn statement of the treating or examining health care provider or laboratory analyst who made the report that (i) the information contained therein is true, accurate, and fully describes the nature and extent of the physical condition or injury and (ii) the patient named therein was the person treated or examined by such health care provider; or, in the case of a laboratory analysis, that the information contained therein is true and accurate.

A hospital or other medical facility record shall be admitted if attached to it is a sworn statement of the custodian thereof that the same is a true and accurate copy of the record of such hospital or other medical facility. If thereafter a party summons the health care provider or custodian making such statement to testify in proper person or by deposition taken de bene esse, the court shall determine which party shall pay the fees and costs for such appearance or depositions, or may apportion the same among the parties in such proportion as the ends of justice may require. If such health care provider or custodian is not subject to subpoena for cross-examination in court or by a deposition de bene esse, then the court shall allow a reasonable opportunity for the party seeking the subpoena for such health care provider or custodian to obtain his testimony as the ends of justice may require.

1990, c. 560; 1996, c. [866](#); 2000, c. [163](#).

§16.1-246. When and how child may be taken into immediate custody.

No child may be taken into immediate custody except:

A. With a detention order issued by the judge, the intake officer or the clerk, when authorized by the judge, of the juvenile and domestic relations district court in accordance with the provisions of this law or with a warrant issued by a magistrate; or

B. When a child is alleged to be in need of services or supervision and (i) there is a clear and substantial danger to the child's life or health or (ii) the assumption of custody is necessary to ensure the child's appearance before the court; or

C. When, in the presence of the officer who makes the arrest, a child has committed an act designated a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under federal law and the officer believes that such is necessary for the protection of the public interest; or

C1. When a child has committed a misdemeanor offense involving (i) shoplifting in violation of § [18.2-103](#), (ii) assault and battery or (iii) carrying a weapon on school

property in violation of § [18.2-308.1](#) and, although the offense was not committed in the presence of the officer who makes the arrest, the arrest is based on probable cause on reasonable complaint of a person who observed the alleged offense; or

D. When there is probable cause to believe that a child has committed an offense which if committed by an adult would be a felony; or

E. When a law-enforcement officer has probable cause to believe that a person committed to the Department of Juvenile Justice as a child has run away or that a child has escaped from a jail or detention home; or

F. When a law-enforcement officer has probable cause to believe a child has run away from a residential, child-caring facility or home in which he had been placed by the court, the local department of social services or a licensed child welfare agency; or

G. When a law-enforcement officer has probable cause to believe that a child (i) has run away from home or (ii) is without adult supervision at such hours of the night and under such circumstances that the law-enforcement officer reasonably concludes that there is a clear and substantial danger to the child's welfare; or

H. When a child is believed to be in need of inpatient treatment for mental illness as provided in § [16.1-340](#).

Code 1950, § 16.1-194; 1956, c. 555; 1958, c. 344; 1974, cc. 585, 671; 1977, c. 559; 1978, cc. 643, 740; 1979, c. 701; 1981, c. 487; 1982, c. 683; 1985, c. 540; 1990, cc. 635, 642, 743, 744, 975; 2002, c. [747](#).

§16.1-247. Duties of person taking child into custody.

A. A person taking a child into custody pursuant to the provisions of subsection A of § [16.1-246](#), during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto, bring the child to the judge or intake officer of the court and the judge, intake officer or arresting officer shall, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

B. A person taking a child into custody pursuant to the provisions of subsection B, C, or D of § [16.1-246](#), during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to such child's parents, guardian, custodian or other suitable person able and willing to provide supervision and care for such child and issue oral counsel and warning as may be appropriate; or
2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco parentis upon their promise to bring the child before the court when requested; or
3. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis. Nothing herein shall prevent the child from being held for the purpose of administering a blood or breath test to determine the alcoholic content of his blood where the child has been taken into custody pursuant to § [18.2-266](#).

C. A person taking a child into custody pursuant to the provisions of subsections E and F of § [16.1-246](#), during such hours as the court is open, shall, with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to the institution, facility or home from which he ran away or escaped; or
2. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the institution, facility or home in which the child had been placed and orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

D. A person taking a child into custody pursuant to the provisions of subsection A of § [16.1-246](#), during such hours as the court is not open, shall with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child taken into custody pursuant to a warrant on bail or recognizance pursuant to Chapter 9 (§ [19.2-119](#) et seq.) of Title 19.2; or

2. Place the child in a detention home or in shelter care; or

3. Place the child in a jail subject to the provisions of § [16.1-249](#).

E. A person taking a child into custody pursuant to the provisions of subsection B, C, or D of § [16.1-246](#) during such hours as the court is not open, shall:

1. Release the child pursuant to the provisions of subdivision B 1 or B 2 of this section; or

2. Release the child on bail or recognizance pursuant to Chapter 9 (§ [19.2-119](#) et seq.) of Title 19.2; or

3. Place the child taken into custody pursuant to subsection B of § [16.1-246](#) in shelter care after the issuance of a detention order pursuant to § [16.1-255](#); or

4. Place the child taken into custody pursuant to subsection C or D of § [16.1-246](#) in shelter care or in a detention home after the issuance of a warrant by a magistrate; or

5. Place the child in a jail subject to the provisions of § [16.1-249](#) after the issuance of a warrant by a magistrate or after the issuance of a detention order pursuant to § [16.1-255](#); or

6. In addition to any other provisions of this subsection, detain the child for a reasonably necessary period of time in order to administer a breath or blood test to determine the alcohol content of his blood, if such child was taken into custody pursuant to § [18.2-266](#).

F. A person taking a child into custody pursuant to the provisions of subsection E of § [16.1-246](#), during such hours as the court is not open, shall:

1. Release the child to the institution or facility from which he ran away or escaped; or

2. Detain the child in a detention home or in a jail subject to the provisions of § [16.1-249](#) after the issuance of a warrant by a magistrate or after the issuance of a detention order pursuant to § [16.1-255](#).

G. A person taking a child into custody pursuant to the provisions of subsection F of § [16.1-246](#), during such hours as the court is not open, shall:

1. Release the child to the facility or home from which he ran away; or

2. Detain the child in shelter care after the issuance of a detention order pursuant to § [16.1-255](#) or after the issuance of a warrant by a magistrate.

H. If a parent, guardian or other custodian fails, when requested, to bring the child before the court as provided in subdivisions B 2 and E 1, the court may issue a detention order directing that the child be taken into custody and be brought before the court.

I. A law-enforcement officer taking a child into custody pursuant to the provisions of subsection G of § [16.1-246](#) shall notify the intake officer of the juvenile court of the action taken. The intake officer shall determine if the child's conduct or situation is within the jurisdiction of the court and if a petition should be filed on behalf of the child. If the intake officer determines that a petition should not be filed, the law-enforcement officer shall as soon as practicable:

1. Return the child to his home;
2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco parentis;
3. Place the child in shelter care for a period not longer than 24 hours after the issuance of a detention order pursuant to § [16.1-255](#); or
4. Release the child.

During the period of detention authorized by this subsection no child shall be confined in any detention home, jail or other facility for the detention of adults.

J. If a child is taken into custody pursuant to the provisions of subsection B, F, or G of § [16.1-246](#) by a law-enforcement officer during such hours as the court is not in session and the child is not released or transferred to a facility or institution in accordance with subsection E, G, or I of this section, the child shall be held in custody only so long as is reasonably necessary to complete identification, investigation and processing. The child shall be held under visual supervision in a nonlocked, multipurpose area which is not designated for residential use. The child shall not be handcuffed or otherwise secured to a stationary object.

K. When an adult is taken into custody pursuant to a warrant, detention order, or capias alleging a delinquent act committed when he was a juvenile, he may be released on bail or recognizance pursuant to Chapter 9 (§ [19.2-119](#) et seq.) of Title 19.2. An intake officer shall have the authority to issue a capias for an adult under

the age of 21 who is alleged to have committed, before attaining the age of 18, an offense that would be a crime if committed by an adult.

Code 1950, § 16.1-197; 1956, c. 550; 1958, c. 344; 1973, c. 440; 1974, c. 584; 1975, c. 248; 1977, c. 559; 1978, c. 643; 1979, c. 701; 1984, c. 567; 1992, cc. 728, 830; 2004, cc. [415](#), [439](#); 2012, c. [253](#); 2016, c. [626](#).

§16.1-248. Repealed.

Repealed by Acts 1985, c. 260.

§16.1-248.1. Criteria for detention or shelter care.

A. A juvenile taken into custody whose case is considered by a judge, intake officer or magistrate pursuant to § [16.1-247](#) shall immediately be released, upon the ascertainment of the necessary facts, to the care, custody and control of such juvenile's parent, guardian, custodian or other suitable person able and willing to provide supervision and care for such juvenile, either on bail or recognizance pursuant to Chapter 9 (§ [19.2-119](#) et seq.) of Title 19.2 or under such conditions as may be imposed or otherwise. However, at any time prior to an order of final disposition, a juvenile may be detained in a secure facility, pursuant to a detention order or warrant, only upon a finding by the judge, intake officer, or magistrate, that there is probable cause to believe that the juvenile committed the act alleged, and that at least one of the following conditions is met:

1. The juvenile is alleged to have (a) violated the terms of his probation or parole when the charge for which he was placed on probation or parole would have been a felony or Class 1 misdemeanor if committed by an adult; (b) committed an act that would be a felony or Class 1 misdemeanor if committed by an adult; or (c) violated any of the provisions of § [18.2-308.7](#), and there is clear and convincing evidence that:

a. Considering the seriousness of the current offense or offenses and other pending charges, the seriousness of prior adjudicated offenses, the legal status of the juvenile and any aggravating and mitigating circumstances, the liberty of the juvenile, constitutes a clear and substantial threat to the person or property of others;

b. The liberty of the juvenile would present a clear and substantial threat of serious harm to such juvenile's life or health; or

c. The juvenile has threatened to abscond from the court's jurisdiction during the pendency of the instant proceedings or has a record of willful failure to appear at a court hearing within the immediately preceding 12 months.

2. The juvenile has absconded from a detention home or facility where he has been directed to remain by the lawful order of a judge or intake officer.

3. The juvenile is a fugitive from a jurisdiction outside the Commonwealth and subject to a verified petition or warrant, in which case such juvenile may be detained for a period not to exceed that provided for in § [16.1-323](#) while arrangements are made to return the juvenile to the lawful custody of a parent, guardian or other authority in another state.

4. The juvenile has failed to appear in court after having been duly served with a summons in any case in which it is alleged that the juvenile has committed a delinquent act or that the child is in need of services or is in need of supervision; however, a child alleged to be in need of services or in need of supervision may be detained for good cause pursuant to this subsection only until the next day upon which the court sits within the county or city in which the charge against the child is pending, and under no circumstances longer than 72 hours from the time he was taken into custody. If the 72-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 72 hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

5. The juvenile failed to adhere to the conditions imposed upon him by the court, intake officer or magistrate following his release upon a Class 1 misdemeanor charge or a felony charge.

When a juvenile is placed in secure detention, the detention order shall state the offense for which the juvenile is being detained, and, to the extent practicable, other pending and previous charges.

B. Any juvenile not meeting the criteria for placement in a secure facility shall be released to a parent, guardian or other person willing and able to provide supervision and care under such conditions as the judge, intake officer or magistrate may impose. However, a juvenile may be placed in shelter care if:

1. The juvenile is eligible for placement in a secure facility;

2. The juvenile has failed to adhere to the directions of the court, intake officer or magistrate while on conditional release;

3. The juvenile's parent, guardian or other person able to provide supervision cannot be reached within a reasonable time;

4. The juvenile does not consent to return home;

5. Neither the juvenile's parent or guardian nor any other person able to provide proper supervision can arrive to assume custody within a reasonable time; or

6. The juvenile's parent or guardian refuses to permit the juvenile to return home and no relative or other person willing and able to provide proper supervision and care can be located within a reasonable time.

C. When a juvenile is detained in a secure facility, the juvenile's probation officer may review such placement for the purpose of seeking a less restrictive alternative to confinement in that secure facility.

D. The criteria for continuing the juvenile in detention or shelter care as set forth in this section shall govern the decisions of all persons involved in determining whether the continued detention or shelter care is warranted pending court disposition. Such criteria shall be supported by clear and convincing evidence in support of the decision not to release the juvenile.

E. Nothing in this section shall be construed to deprive the court of its power to punish a juvenile summarily for contempt for acts set forth in § [18.2-456](#), other than acts of disobedience of the court's dispositional order which are committed outside the presence of the court.

F. A detention order may be issued pursuant to subdivision 2 of subsection A by the committing court or by the court in the jurisdiction from which the juvenile fled or where he was taken into custody.

G. The court is authorized to detain a juvenile based upon the criteria set forth in subsection A at any time after a delinquency petition has been filed, both prior to adjudication and after adjudication pending final disposition subject to the time limitations set forth in § [16.1-277.1](#).

H. If the intake officer or magistrate releases the juvenile, either on bail or recognizance or under such conditions as may be imposed, no motion to revoke bail, or change such conditions may be made unless (i) the juvenile has violated a term or condition of his release, or is convicted of or taken into custody for an additional offense, or (ii) the attorney for the Commonwealth presents evidence that incorrect

or incomplete information regarding the factors in subsection A was relied upon by the intake officer or magistrate establishing the initial terms of release. If the juvenile court releases the juvenile, either on bail or recognizance or under such conditions as may be imposed, over the objection of the attorney for the Commonwealth, the attorney for the Commonwealth may appeal such decision to the circuit court. The order of the juvenile court releasing the juvenile shall remain in effect until the circuit court, Court of Appeals or Supreme Court rules otherwise.

1977, c. 559; 1979, c. 701; 1985, c. 260; 1986, c. 517; 1987, c. 632; 1989, c. 725; 1990, c. 257; 1996, cc. [755](#), [914](#); 2000, c. [836](#); 2001, c. [837](#); 2002, cc. [55](#), [359](#); 2003, cc. [104](#), [851](#); 2004, c. [374](#); 2005, c. [647](#); 2010, c. [683](#); 2011, c. [644](#).

§16.1-248.2. Mental health screening and assessment for certain juveniles.

Whenever a juvenile is placed in a secure facility pursuant to § [16.1-248.1](#), the staff of the facility shall gather such information from the juvenile and the probation officer as is reasonably available and deemed necessary by the facility staff. As part of the intake procedures at each such facility, the staff shall ascertain the juvenile's need for a mental health assessment. If it is determined that the juvenile needs such an assessment, the assessment shall take place within twenty-four hours of such determination. The community services board serving the jurisdiction where the facility is located shall be responsible for conducting the assessments and shall be compensated from funds appropriated to the Department of Juvenile Justice for this purpose. The Department of Juvenile Justice shall develop criteria and a compensation plan for such assessments.

1996, cc. [755](#), [914](#); 1998, c. [434](#).

§16.1-248.3. Medical records of juveniles in secure facility.

Whenever a juvenile is placed in a secure facility or a shelter care facility pursuant to § [16.1-248.1](#), the director of the facility or his designee shall be entitled to obtain medical records concerning the juvenile from a provider. Prior to using the authority granted by this section to obtain such records, the director of the facility or his designee shall make a reasonable attempt to obtain consent for the release of the records from the juvenile's parent or legal guardian or, in instances where the juvenile may consent pursuant to § [54.1-2969](#), from the juvenile. The director of the facility or his designee may proceed to obtain the records from the provider if such consent is refused or is not readily obtainable and the records are necessary (i) for the provision of health care to the juvenile, (ii) to protect the health and safety of the

juvenile or other residents or staff of the facility or (iii) to maintain the security and safety of the facility.

The director or his designee shall document in writing the reason that the records were requested and that a reasonable attempt was made to obtain consent for the release of records and that consent was refused or not readily obtainable.

No person to whom disclosure of records was made pursuant to this section shall redisclose or otherwise reveal the records, beyond the purpose for which such disclosure was made, without first obtaining specific consent to redisclose from the juvenile's parent or legal guardian or, in instances where the juvenile may consent pursuant to § [54.1-2969](#), from the juvenile.

Substance abuse records subject to federal regulations, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, shall not be subject to the provisions of this section. The disclosure of results of a test for human immunodeficiency virus shall not be permitted except as provided in § [32.1-36.1](#).

The definitions of "provider" and "records" in § [32.1-127.1:03](#) shall apply to this section.

2003, c. [983](#).

§16.1-249. Places of confinement for juveniles.

A. If it is ordered that a juvenile remain in detention or shelter care pursuant to § [16.1-248.1](#), such juvenile may be detained, pending a court hearing, in the following places:

1. An approved foster home or a home otherwise authorized by law to provide such care;
2. A facility operated by a licensed child welfare agency;
3. If a juvenile is alleged to be delinquent, in a detention home or group home approved by the Department;
4. Any other suitable place designated by the court and approved by the Department;
5. To the extent permitted by federal law, a separate juvenile detention facility located upon the site of an adult regional jail facility established by any county, city or any combination thereof constructed after 1994, approved by the Department of Juvenile Justice and certified by the Board of Juvenile Justice for the holding and detention of juveniles.

B. No juvenile shall be detained or confined in any jail or other facility for the detention of adult offenders or persons charged with crime except as provided in subsection D, E, F or G of this section.

C. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately when a juvenile who is or appears to be under the age of 18 years is received at the facility, and shall deliver him to the court upon request, or transfer him to a detention facility designated by the court.

D. When a case is transferred to the circuit court in accordance with the provisions of subsection A of § [16.1-269.1](#) and an order is entered by the circuit court in accordance with § [16.1-269.6](#), or in accordance with the provisions of § [16.1-270](#) where the juvenile has waived the jurisdiction of the district court, or when the district court has certified a charge to the grand jury pursuant to subsection B or C of § [16.1-269.1](#), the juvenile, if in confinement, shall be placed in a juvenile secure facility, unless the court determines that the juvenile is a threat to the security or safety of the other juveniles detained or the staff of the facility, in which case the court may transfer the juvenile to a jail or other facility for the detention of adults and need no longer be entirely separate and removed from adults.

E. If, in the judgment of the custodian, a juvenile has demonstrated that he is a threat to the security or safety of the other juveniles detained or the staff of the home or facility, the judge shall determine whether such juvenile should be transferred to another juvenile facility or, if the child is 14 years of age or older, a jail or other facility for the detention of adults; provided, that (i) the detention is in a room or ward entirely separate and removed from adults, (ii) adequate supervision is provided, and (iii) the facility is approved by the State Board of Corrections for detention of juveniles.

F. If, in the judgment of the custodian, it has been demonstrated that the presence of a juvenile in a facility creates a threat to the security or safety of the other juveniles detained or the staff of the home or facility, the custodian may transfer the juvenile to another juvenile facility, or, if the child is 14 years of age or older, a jail or other facility for the detention of adults pursuant to the limitations of clauses (i), (ii) and (iii) of subsection E for a period not to exceed six hours prior to a court hearing and an additional six hours after the court hearing unless a longer period is ordered pursuant to subsection E.

G. If a juvenile 14 years of age or older is charged with an offense which, if committed by an adult, would be a felony or Class 1 misdemeanor, and the judge or intake officer determines that secure detention is needed for the safety of the juvenile or the community, such juvenile may be detained for a period not to exceed six hours prior to a court hearing and six hours after the court hearing in a temporary lock-up room or ward for juveniles while arrangements are completed to transfer the juvenile to a juvenile facility. Such room or ward may be located in a building which also contains a jail or other facility for the detention of adults, provided (i) such room or ward is totally separate and removed from adults or juveniles transferred to the circuit court pursuant to Article 7 (§ [16.1-269.1](#) et seq.) of this chapter, (ii) constant supervision is provided, and (iii) the facility is approved by the State Board of Corrections for the detention of juveniles. The State Board of Corrections is authorized and directed to prescribe minimum standards for temporary lock-up rooms and wards based on the requirements set out in this subsection.

G1. Any juvenile who has been ordered detained in a secure detention facility pursuant to § [16.1-248.1](#) may be held incident to a court hearing (i) in a court holding cell for a period not to exceed six hours provided the juvenile is entirely separate and removed from detained adults or (ii) in a nonsecure area provided constant supervision is provided.

H. If a judge, intake officer or magistrate orders the predispositional detention of persons 18 years of age or older, such detention shall be in an adult facility; however, if the predispositional detention is ordered for a violation of the terms and conditions of release from a juvenile correctional center, the judge, intake officer or magistrate may order such detention be in a juvenile facility.

I. The Departments of Corrections, Juvenile Justice and Criminal Justice Services shall assist the localities or combinations thereof in implementing this section and ensuring compliance herewith.

1977, c. 559; 1979, c. 655; 1983, c. 336; 1985, c. 260; 1988, c. 886; 1989, c. 557; 1993, c. 435; 1994, cc. [859](#), [904](#), [949](#); 1995, cc. [746](#), [748](#), [798](#), [802](#); 1996, cc. [755](#), [914](#); 1998, cc. [576](#), [830](#); 2002, c. [558](#); 2004, cc. [415](#), [439](#); 2010, c. [739](#).

§16.1-249.1. Places of confinement to give notice of intake of certain persons.

A. At the time of receipt of any person, for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1 into a secure facility, the secure facility shall obtain from that

person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police. A person required to register shall register and submit to be photographed as part of the registration. The facility shall forthwith forward the registration information to the Department of State Police on the date of the receipt of the prisoner.

B. Whenever a person required to register has failed to comply with the provisions of subsection A, the facility shall promptly investigate or request the State Police promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant, or assist in obtaining an indictment charging a violation of § [18.2-472.1](#) in the jurisdiction in which the person was received. The facility shall notify the State Police forthwith of such actions taken pursuant to this section.

2006, cc. [857](#), [914](#).

§16.1-250. Procedure for detention hearing.

A. When a child has been taken into immediate custody and not released as provided in § [16.1-247](#) or § [16.1-248.1](#), such child shall appear before a judge on the next day on which the court sits within the county or city wherein the charge against the child is pending. In the event the court does not sit within the county or city on the following day, such child shall appear before a judge within a reasonable time, not to exceed 72 hours, after he has been taken into custody. If the 72-hour period expires on a Saturday, Sunday or other legal holiday, the 72 hours shall be extended to the next day which is not a Saturday, Sunday or legal holiday. In the event the court does not sit on the following day within the county or city wherein the charge against the child is pending, the court may conduct the hearing in another county or city, but only if two-way electronic video and audio communication is available in the courthouse of the county or city wherein the charge is pending.

B. The appearance of the child, the attorney for the Commonwealth, the attorney for the child and the parent, guardian, legal custodian or other person standing in loco parentis may be by (i) personal appearance before the judge or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by electronically transmitted facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force,

effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § [19.2-3.1](#).

C. Notice of the detention hearing or any rehearing, either oral or written, stating the time, place and purpose of the hearing shall be given to the parent, guardian, legal custodian or other person standing in loco parentis if he can be found, to the child's attorney, to the child if 12 years of age or older and to the attorney for the Commonwealth.

D. During the detention hearing, the parties shall be informed of the child's right to remain silent with respect to any allegation of delinquency and of the contents of the petition. The attorney for the child and the attorney for the Commonwealth shall be given the opportunity to be heard.

E. If the judge finds that there is not probable cause to believe that the child committed the delinquent act alleged, the court shall order his release. If the judge finds that there is probable cause to believe that the child committed the delinquent act alleged but that the full-time detention of a child who is alleged to be delinquent is not required, the court shall order his release, and in so doing, the court may impose one or more of the following conditions singly or in combination:

1. Place the child in the custody of a parent, guardian, legal custodian or other person standing in loco parentis under their supervision, or under the supervision of an organization or individual agreeing to supervise him;
2. Place restrictions on the child's travel, association or place of abode during the period of his release;
3. Impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children specified in § [16.1-248.1](#); or
4. Release the child on bail or recognizance in accordance with the provisions of Chapter 9 (§ [19.2-119](#) et seq.) of Title 19.2.

F. An order releasing a child on any of the conditions specified in this section may, at any time, be amended to impose additional or different conditions of release or to return the child who is alleged to be delinquent to custody for failure to conform to the conditions previously imposed.

G. All relevant and material evidence helpful in determining probable cause under this section or the need for detention may be admitted by the court even though not competent in a hearing on the petition.

H. If the child is not released and a parent, guardian, legal custodian or other person standing in loco parentis is not notified and does not appear or does not waive appearance at the hearing, upon the written request of such person stating that such person is willing and available to supervise the child upon release from detention and to return the child to court for all scheduled proceedings on the pending charges, the court shall rehear the matter on the next day on which the court sits within the county or city wherein the charge against the child is pending. If the court does not sit within the county or city on the following day, such hearing shall be held before a judge within a reasonable time, not to exceed 72 hours, after the request.

I. In considering probable cause under this section, if the court deems it necessary to summon witnesses to assist in such determination then the hearing may be continued and the child remain in detention, but in no event longer than three consecutive days, exclusive of Saturdays, Sundays, and legal holidays.

1977, c. 559; 1979, c. 338; 1985, c. 260; 1986, c. 542; 1988, c. 220; 1989, c. 549; 1992, c. 508; 1995, c. [451](#); 2004, c. [437](#); 2006, c. [89](#).

§16.1-250.1. Repealed.

Repealed by Acts 2004, c. [437](#), cl. 2, effective July 1, 2005.

§16.1-251. Emergency removal order.

A. A child may be taken into immediate custody and placed in shelter care pursuant to an emergency removal order in cases in which the child is alleged to have been abused or neglected. Such order may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that:

1. The child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition.

2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably protect the child's life or health pending a final hearing on

the petition. The alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § [16.1-253](#).

If the petitioner fails to obtain an emergency removal order within four hours of taking custody of the child, the affidavit or sworn testimony before the judge or intake officer shall state the reasons therefor.

When a child is removed from his home and there is no reasonable opportunity to provide preventive services, reasonable efforts to prevent removal shall be deemed to have been made.

The petitioner shall not be required by the court to make reasonable efforts to prevent removal of the child from his home if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § [16.1-283](#).

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect (i)

evinces a wanton or depraved indifference to human life or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but otherwise meets the definition of "aggravated circumstances."

B. Whenever a child is taken into immediate custody pursuant to an emergency removal order, a hearing shall be held in accordance with § [16.1-252](#) as soon as practicable, but in no event later than five business days after the removal of the child.

C. In the emergency removal order the court shall give consideration to temporary placement of the child with a relative or other interested individual, including grandparents, under the supervision of the local department of social services, until such time as the hearing in accordance with § [16.1-252](#) is held.

D. The local department of social services having "legal custody" of a child as defined in § [16.1-228](#) (i) shall not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

1977, c. 559; 1984, c. 499; 1985, c. 584; 1986, c. 308; 1990, c. 769; 2000, c. [385](#); 2003, c. [508](#); 2017, c. [190](#).

§16.1-252. Preliminary removal order; hearing.

A. A preliminary removal order in cases in which a child is alleged to have been abused or neglected may be issued by the court after a hearing wherein the court finds that reasonable efforts have been made to prevent removal of the child from his home. The hearing shall be in the nature of a preliminary hearing rather than a final determination of custody.

B. Prior to the removal hearing, notice of the hearing shall be given at least 24 hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian or other person standing in loco parentis of the child and to the child if he or she is 12 years of age or older. If notice to the parents, guardian, legal

custodian or other person standing in loco parentis cannot be given despite diligent efforts to do so, the hearing shall be held nonetheless, and the parents, guardian, legal custodian or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order. The notice provided herein shall include (i) the time, date and place for the hearing; (ii) a specific statement of the factual circumstances which allegedly necessitate removal of the child; and (iii) notice that child support will be considered if a determination is made that the child must be removed from the home.

C. All parties to the hearing shall be informed of their right to counsel pursuant to § [16.1-266](#).

D. At the removal hearing the child and his parent, guardian, legal custodian or other person standing in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf. If the child was 14 years of age or under on the date of the alleged offense and is 16 or under at the time of the hearing, the child's attorney or guardian ad litem, or if the child has been committed to the custody of the Department of Social Services, the local department of social services, may apply for an order from the court that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The provisions of § [63.2-1521](#) shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the person seeking the order shall apply for the order at least 48 hours before the hearing, unless the court for good cause shown allows the application to be made at a later time.

E. In order for a preliminary order to issue or for an existing order to be continued, the petitioning party or agency must prove:

1. The child would be subjected to an imminent threat to life or health to the extent that severe or irreparable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition; and

2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably and adequately protect the child's life or health pending a final hearing on the petition. The alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psy-

chological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § [16.1-253](#).

When a child is removed from his home and there is no reasonable opportunity to provide preventive services, reasonable efforts to prevent removal shall be deemed to have been made.

The petitioner shall not be required by the court to make reasonable efforts to prevent removal of the child from his home if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § [16.1-283](#).

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect (i) evinces a wanton or depraved indifference to human life or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but otherwise meets the definition of "aggravated circumstances."

F. If the court determines that pursuant to subsection E hereof the removal of the child is proper, the court shall:

1. Order that the child be placed in the temporary care and custody of a suitable person, subject to the provisions of subsection F1 of this section and under the supervision of the local department of social services, with consideration being given to placement in the temporary care and custody of a relative or other interested individual, including grandparents, until such time as the court enters an order of disposition pursuant to § [16.1-278.2](#), or, if such placement is not available, in the care and custody of a suitable agency;
2. Order that reasonable visitation be allowed between the child and his parents, guardian, legal custodian or other person standing in loco parentis, and between the child and his siblings, if such visitation would not endanger the child's life or health; and
3. Order that the parent or other legally obligated person pay child support pursuant to § [16.1-290](#).

In addition, the court may enter a preliminary protective order pursuant to § [16.1-253](#) imposing requirements and conditions as specified in that section which the court deems appropriate for protection of the welfare of the child.

F1. Prior to the entry of an order pursuant to subsection F of this section transferring temporary custody of the child to a relative or other interested individual, including grandparents, the court shall consider whether the relative or other interested individual is one who (i) is willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order transferring temporary custody to a relative or other interested individual should provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of § [16.1-253](#); initiation and completion of the investigation as directed by the court and court review of the child's placement

required in accordance with the provisions of § [16.1-278.2](#); and, as appropriate, ongoing provision of social services to the child and the temporary custodian.

G. At the conclusion of the preliminary removal order hearing, the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within 30 days of the date of the initial preliminary removal hearing. The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence. Parties who are present at the preliminary removal order hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in § [16.1-263](#). The hearing shall be held and an order may be entered, although a party to the preliminary removal order hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort.

The preliminary removal order and any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

H. If the preliminary removal order includes a finding of abuse or neglect and the child is removed from his home or a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § [16.1-278.2](#). The dispositional hearing shall be scheduled at the time of the preliminary removal order hearing and shall be held within 60 days of the preliminary removal order hearing. If an adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing shall nonetheless be scheduled at the initial preliminary removal order hearing. All parties present at the preliminary removal order hearing shall be given notice of the date scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in § [16.1-263](#).

I. The local department of social services having "legal custody" of a child as defined in § [16.1-228](#) (i) shall not be required to comply with the requirements of this

section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

J. Violation of any order issued pursuant to this section shall constitute contempt of court.

1977, c. 559; 1984, c. 499; 1985, c. 584; 1986, c. 308; 1990, c. 769; 1994, c. [42](#); 1995, c. [817](#); 1997, c. [790](#); 1999, c. [668](#); 2000, c. [385](#); 2008, c. [397](#); 2013, c. [130](#); 2017, c. [190](#).

§16.1-253. Preliminary protective order.

A. Upon the motion of any person or upon the court's own motion, the court may issue a preliminary protective order, after a hearing, if necessary to protect a child's life, health, safety or normal development pending the final determination of any matter before the court. The order may require a child's parents, guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to observe reasonable conditions of behavior for a specified length of time. These conditions shall include any one or more of the following:

1. To abstain from offensive conduct against the child, a family or household member of the child or any person to whom custody of the child is awarded;
2. To cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development;
3. To allow persons named by the court to come into the child's home at reasonable times designated by the court to visit the child or inspect the fitness of the home and to determine the physical or emotional health of the child;
4. To allow visitation with the child by persons entitled thereto, as determined by the court;
5. To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development;
6. To refrain from such contact with the child or family or household members of the child, as the court may deem appropriate, including removal of such person from the residence of the child. However, prior to the issuance by the court of an order removing such person from the residence of the child, the petitioner must prove by a preponderance of the evidence that such person's probable future conduct would constitute a danger to the life or health of such child, and that there are no less

drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition; or

7. To grant the person on whose behalf the order is issued the possession of any companion animal as defined in § [3.2-6500](#) if such person meets the definition of owner in § [3.2-6500](#).

B. A preliminary protective order may be issued ex parte upon motion of any person or the court's own motion in any matter before the court, or upon petition. The motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irreparable injury to the child's life or health. If an ex parte order is issued without an affidavit being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Following the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the shortest practicable time not to exceed five business days after the issuance of the order.

C. Prior to the hearing required by this section, notice of the hearing shall be given at least 24 hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian, or other person standing in loco parentis of the child, to any other family or household member of the child to whom the protective order may be directed and to the child if he or she is 12 years of age or older. The notice provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the factual circumstances which allegedly necessitate the issuance of a preliminary protective order.

D. All parties to the hearing shall be informed of their right to counsel pursuant to § [16.1-266](#).

E. At the hearing the child, his or her parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

F. If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this section the court shall determine whether the allegations of abuse or

neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within 30 days of the date of the initial preliminary protective order hearing. The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence. Parties who are present at the hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in § [16.1-263](#). The adjudicatory hearing shall be held and an order may be entered, although a party to the hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort.

Any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

G. If at the preliminary protective order hearing held pursuant to this section the court makes a finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § [16.1-278.2](#). The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court. A copy of the preliminary protective order containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department of State Police pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § [16.1-264](#) and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith

forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith upon the allegedly abusing person in person as provided in § [16.1-264](#). Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. The preliminary order shall specify a date for the dispositional hearing. The dispositional hearing shall be scheduled at the time of the hearing pursuant to this section, and shall be held within 60 days of this hearing. If an adjudicatory hearing is requested pursuant to subsection F, the dispositional hearing shall nonetheless be scheduled at the hearing pursuant to this section. All parties present at the hearing shall be given notice of the date and time scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in § [16.1-263](#).

H. Nothing in this section enables the court to remove a child from the custody of his or her parents, guardian, legal custodian or other person standing in loco parentis, except as provided in § [16.1-278.2](#), and no order hereunder shall be entered against a person over whom the court does not have jurisdiction.

I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

J. Violation of any order issued pursuant to this section shall constitute contempt of court.

K. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name,

date of birth, sex, and race of each protected person provided to the court. A copy of the preliminary protective order containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § [16.1-264](#) and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § [16.1-264](#). Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. The preliminary order shall specify a date for the full hearing.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § [16.1-264](#), the clerk shall forthwith forward an attested copy of the preliminary protective order to the primary law-enforcement agency and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal Information Network as described above. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of

State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

L. No fee shall be charged for filing or serving any petition or order pursuant to this section.

1977, c. 559; 1985, c. 595; 1986, c. 308; 1987, c. 497; 1996, c. [866](#); 1997, c. [790](#); 1998, c. [550](#); 2002, cc. [508](#), [810](#), [818](#); 2008, cc. [73](#), [246](#); 2009, c. [732](#); 2013, c. [130](#); 2014, c. [346](#).

§16.1-253.1. Preliminary protective orders in cases of family abuse; confidentiality.

A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause. Evidence that the petitioner has been subjected to family abuse within a reasonable time and evidence of immediate and present danger of family abuse may be established by a showing that (i) the allegedly abusing person is incarcerated and is to be released from incarceration within 30 days following the petition or has been released from incarceration within 30 days prior to the petition, (ii) the crime for which the allegedly abusing person was convicted and incarcerated involved family abuse against the petitioner, and (iii) the allegedly abusing person has made threatening contact with the petitioner while he was incarcerated, exhibiting a renewed threat to the petitioner of family abuse.

A preliminary protective order may include any one or more of the following conditions to be imposed on the allegedly abusing person:

1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property.
2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons.

3. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.

4. Enjoining the respondent from terminating any necessary utility service to a premises that the petitioner has been granted possession of pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to such premises.

5. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.

6. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member and, where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided.

7. Granting the petitioner the possession of any companion animal as defined in § [3.2-6500](#) if such petitioner meets the definition of owner in § [3.2-6500](#).

8. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner.

B. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court. A copy of a preliminary protective order containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § [16.1-264](#) and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith

forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § [16.1-264](#). Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. The preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of the issuance of the preliminary order. If the respondent fails to appear at this hearing because the respondent was not personally served, or if personally served was incarcerated and not transported to the hearing, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served forthwith on the respondent. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § [16.1-264](#), the clerk shall forthwith forward an attested copy of the preliminary protective order to the primary law-enforcement agency, and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal Information Network as described above. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of

State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

C. The preliminary order is effective upon personal service on the allegedly abusing person. Except as otherwise provided in § [16.1-253.2](#), a violation of the order shall constitute contempt of court.

D. At a full hearing on the petition, the court may issue a protective order pursuant to § [16.1-279.1](#) if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.

E. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

F. As used in this section, "copy" includes a facsimile copy.

G. No fee shall be charged for filing or serving any petition or order pursuant to this section.

1984, c. 631; 1987, c. 497; 1988, c. 165; 1992, c. 886; 1994, c. [907](#); 1996, c. [866](#); 1997, c. [603](#); 1998, c. [684](#); 2000, cc. [34](#), [654](#); 2001, c. [101](#); 2002, cc. [508](#), [810](#), [818](#); 2006, c. [308](#); 2007, c. [205](#); 2008, cc. [73](#), [246](#); 2009, cc. [343](#), [732](#); 2011, cc. [445](#), [480](#); 2014, c. [346](#).

§16.1-253.2. Violation of provisions of protective orders; penalty.

A. In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to § [16.1-253](#), [16.1-253.1](#), [16.1-253.4](#), [16.1-278.14](#), or [16.1-279.1](#) or subsection B of § [20-103](#), when such violation involves a provision of the protective order that prohibits such person from (i) going or remaining upon land, buildings, or premises; (ii) further acts of family abuse; or (iii) committing a criminal offense, or which prohibits contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person as the court deems appropriate, is guilty of a Class 1 misdemeanor. The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall

include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.

B. In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served issued pursuant to § [16.1-253](#), [16.1-253.1](#), [16.1-253.4](#), [16.1-278.14](#), or [16.1-279.1](#) or subsection B of § [20-103](#) is guilty of a Class 6 felony.

C. If the respondent commits an assault and battery upon any party protected by the protective order resulting in bodily injury to the party or stalks any party protected by the protective order in violation of § [18.2-60.3](#), he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § [16.1-279.1](#) for a specified period not exceeding two years from the date of conviction.

1987, c. 700; 1988, c. 501; 1991, cc. 534, 715; 1992, c. 886; 1996, c. [866](#); 2003, c. [219](#); 2004, cc. [972](#), [980](#); 2007, cc. [745](#), [923](#); 2012, c. [637](#); 2013, cc. [761](#), [774](#); 2016, cc. [583](#), [585](#), [638](#).

§16.1-253.3. Repealed.

Repealed by Acts 1992, c. 886.

§16.1-253.4. Emergency protective orders authorized in certain cases; penalty.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate (i) finds that a warrant for a violation of § [18.2-57.2](#) has been issued or issues a warrant for violation of § [18.2-57.2](#) and finds that there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) finds that reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate shall issue an ex parte emergency protective order, except if the respondent is a minor, an emergency protective order shall not be required, imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property;
2. Prohibiting such contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person, including prohibiting the respondent from being in the physical presence of the allegedly abused person or family or household members of the allegedly abused person, as the judge or magistrate deems necessary to protect the safety of such persons;
3. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property; and
4. Granting the petitioner the possession of any companion animal as defined in § [3.2-6500](#) if such petitioner meets the definition of owner in § [3.2-6500](#).

When the judge or magistrate considers the issuance of an emergency protective order pursuant to clause (i), he shall presume that there is probable danger of further acts of family abuse against a family or household member by the respondent unless the presumption is rebutted by the allegedly abused person.

C. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the emergency protective order shall be extended until 11:59

p.m. on the next day that the juvenile and domestic relations district court is in session. When issuing an emergency protective order under this section, the judge or magistrate shall provide the protected person or the law-enforcement officer seeking the emergency protective order with the form for use in filing petitions pursuant to § [16.1-253.1](#) and written information regarding protective orders that shall include the telephone numbers of domestic violence agencies and legal referral sources on a form prepared by the Supreme Court. If these forms are provided to a law-enforcement officer, the officer may provide these forms to the protected person when giving the emergency protective order to the protected person. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order issued hereunder. The hearing on the motion shall be given precedence on the docket of the court.

D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § [16.1-253.1](#) or [16.1-279.1](#), may request the extension of an emergency protective order for an additional period of time not to exceed three days after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the allegedly abused person.

E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court or magistrate. A copy of an emergency protective order issued pursuant to this section containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State

Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith on the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. One copy of the order shall be given to the allegedly abused person when it is issued, and one copy shall be filed with the written report required by subsection D of § [19.2-81.3](#). The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of the juvenile and domestic relations district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court. Upon request, the clerk shall provide the allegedly abused person with information regarding the date and time of service.

F. The availability of an emergency protective order shall not be affected by the fact that the family or household member left the premises to avoid the danger of family abuse by the respondent.

G. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

H. As used in this section, "law-enforcement officer" means (i) any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth; (ii) any member of an auxiliary police force established pursuant to § [15.2-1731](#); and (iii) any special conservator of the peace who meets the certification requirements for a law-enforcement officer as set forth in § [15.2-1706](#). Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

J. As used in this section:

"Copy" includes a facsimile copy.

"Physical presence" includes (i) intentionally maintaining direct visual contact with the petitioner or (ii) unreasonably being within 100 feet from the petitioner's residence or place of employment.

K. No fee shall be charged for filing or serving any petition or order pursuant to this section.

L. Except as provided in § [16.1-253.2](#), a violation of a protective order issued under this section shall constitute contempt of court.

1991, c. 715; 1992, c. 742; 1994, c. [907](#); 1996, c. [866](#); 1997, c. [603](#); 1998, cc. [677](#), [684](#); 1999, c. [807](#); 2001, c. [474](#); 2002, cc. [508](#), [706](#), [810](#), [818](#); 2007, cc. [396](#), [661](#); 2008, cc. [73](#), [246](#); 2009, c. [732](#); 2011, cc. [445](#), [480](#); 2012, cc. [637](#), [827](#); 2014, cc. [346](#), [779](#), [797](#); 2016, c. [455](#).

§16.1-254. Responsibility for and limitation on transportation of children.

A. The detention home having custody or responsibility for supervision of a child pursuant to §§ [16.1-246](#), [16.1-247](#), [16.1-248.1](#), [16.1-249](#), and [16.1-250](#) shall be responsible for transportation of the child to all local medical appointments, dental appointments, psychological and psychiatric evaluations. Transportation of youth to special placements pursuant to § [16.1-286](#) shall be the responsibility of the court service unit.

B. However, the chief judge of the juvenile and domestic relations district court, on the basis of guidelines approved by the Board, shall designate the appropriate agencies in each county, city and town, other than the Department of State Police, to be responsible for (i) the transportation of violent and disruptive children and (ii) the transportation of children to destinations other than those set forth in subsection A of this section, pursuant to §§ [16.1-246](#), [16.1-247](#), [16.1-248.1](#), [16.1-249](#), and [16.1-250](#), and as otherwise ordered by the judge.

No child shall be transported with adults suspected of or charged with criminal acts.

Code 1950, § 16.1-196; 1956, c. 555; 1958, c. 344; 1971, Ex. Sess., c. 109; 1973, c. 440; 1974, c. 358; 1977, c. 559; 1979, c. 202; 1990, cc. 629, 673.

§16.1-255. Limitation on issuance of detention orders for juveniles; appearance by juvenile.

No detention order shall be issued for any juvenile except when authorized by the judge or intake officer of a juvenile court or by a magistrate as provided in § [16.1-256](#).

In matters involving the issuance of detention orders each state or local court service unit shall ensure the capability of a prompt response by an intake officer who is either on duty or on call.

A child may appear before an intake officer either (i) by personal appearance before the intake officer or (ii) by the use of two-way electronic video and audio communication. All communications and proceedings shall be conducted in the same manner and the intake officer shall have the same powers as if the appearance were in person. Any documents filed may be transmitted by facsimile and the facsimile and any signatures thereon shall serve, for all purposes, as an original document. Any two-way electronic video and audio communication system used shall comply with the provisions of subsection B of § [19.2-3.1](#).

1977, c. 559; 1985, c. 260; 1996, cc. [755](#), [914](#); 1997, c. [862](#); 2002, c. [700](#).

§16.1-256. Limitations as to issuance of warrants for juveniles; detention orders.

No warrant of arrest shall be issued for any juvenile by a magistrate, except as follows:

1. As provided in § [16.1-260](#) on appeal from a decision of an intake officer; or
2. Upon a finding of probable cause to believe that the child is in need of services or is a delinquent, when (i) the court is not open and (ii) the judge and the intake officer of the juvenile and domestic relations district court are not reasonably available. For purposes of this section, the phrase "not reasonably available" means that neither the judge nor the intake officer of the juvenile and domestic relations district court could be reached after the appearance by the juvenile before a magistrate or that neither could arrive within one hour after he was contacted.

When a magistrate is authorized to issue a warrant pursuant to subdivision 2, he may also issue a detention order, if the criteria for detention set forth in § [16.1-248.1](#) have been satisfied.

Warrants issued pursuant to this section shall be delivered forthwith to the juvenile court.

Code 1950, § 16.1-195; 1956, c. 555; 1958, c. 344; 1973, c. 440; 1977, c. 559; 1979, c. 701; 1980, c. 234; 1981, c. 184; 1983, c. 349; 1986, c. 295; 1996, cc. [755](#), [914](#).

§16.1-257. Interference with or obstruction of officer; concealment or removal of child.

No person shall interfere with or obstruct any officer, juvenile probation officer or other officer or employee of the court in the discharge of his duties under this law, nor remove or conceal or cause to be removed or concealed any child in order that he or she may not be brought before the court, nor interfere with or remove or attempt to remove any child who is in the custody of the court or of an officer or who has been lawfully committed under this law. Any person willfully violating any provision of this section is guilty of a Class 1 misdemeanor.

Code 1950, § 16.1-191; 1956, c. 555; 1977, c. 559.

§16.1-258. Bonds and forfeitures thereof.

All bonds and other undertakings taken and approved by any judicial officer as defined in § [19.2-119](#), either for the appearance of any person or for the performance of any other duty or undertaking set forth in the bond, shall be valid and enforceable

even if the principal in the bond shall be a person under eighteen years of age. In the event of a failure upon the part of the principal or sureties in any bond taken in such court to faithfully carry out and discharge the undertakings of such bond, the judge shall have the right to declare the bond forfeited in accordance with § [19.2-143](#). The complainant in nonsupport cases shall not be required to furnish an indemnifying bond.

Code 1950, § 16.1-189; 1956, c. 555; 1973, c. 440; 1977, c. 559; 1986, c. 26.

§16.1-259. Procedure in cases of adults.

A. In cases where an adult is charged with violations of the criminal law pursuant to subsection I or J of § [16.1-241](#), the procedure and disposition applicable in the trial of such cases in general district court shall be applicable to trial in juvenile court. The provisions of this law shall govern in all other cases involving adults.

B. Proceedings in cases of adults may be instituted on petition by any interested party, or on a warrant issued as provided by law, or upon the court's own motion.

C. Proceedings in cases of adults under the age of 21 who are alleged to have committed, before attaining the age of 18, an offense that would be a crime if committed by an adult shall be commenced by the filing of a petition.

D. Proceedings for violations of probation or parole in cases of adults under the age of 21 where jurisdiction is retained pursuant to § [16.1-242](#) shall be commenced by the filing of a petition.

Code 1950, § 16.1-186; 1956, c. 555; 1977, c. 559; 1986, c. 95; 2016, c. [626](#).

§16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H and in § [16.1-259](#). The form and content of the petition shall be as provided in § [16.1-262](#). No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests, and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk; (ii) designated nonattorney employees of the Department of Social Services may complete, sign, and file petitions and motions relating to the establishment, modification, or enforcement of support on forms approved by the Supreme Court of Virginia with the clerk; (iii) designated

nonattorney employees of a local department of social services may complete, sign, and file with the clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions for permanency planning hearings, petitions to establish paternity, motions to establish or modify support, motions to amend or review an order, and motions for a rule to show cause; and (iv) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision, or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ [63.2-1500](#) et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify, or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § [19.2-3.1](#).

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § [16.1-241](#), the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision, or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony or (ii) has not previously been proceeded against informally or adjudicated delinquent for an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated delinquent for an offense that would be a felony if committed by an adult.

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § [22.1-258](#) and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § [22.1-258](#), then the intake officer shall file a petition with the court. The intake officer may defer filing the complaint for 90 days and proceed informally by developing a truancy plan. The intake officer may proceed informally only if the juvenile has not previously been proceeded against informally or adjudicated in need of supervision for failure to comply with compulsory school attendance as provided in § [22.1-254](#). The juvenile and his parent or parents, guardian, or other person standing in loco parentis must agree, in writing, for the development of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents, guardian, or other person standing in loco parentis participate in such programs, cooperate in such treatment, or be subject to such conditions and limitations as necessary to ensure the juvenile's compliance with compulsory school attendance as provided in § [22.1-254](#). The intake officer may refer the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an interagency interdisciplinary team approach. The team may include qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit, and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to § [2.2-5207](#). If at the end of the 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then the intake officer shall file the petition.

Whenever informal action is taken as provided in this subsection on a complaint alleging that a child is in need of services, in need of supervision, or delinquent, the

intake officer shall (i) develop a plan for the juvenile, which may include restitution and the performance of community service, based upon community resources and the circumstances which resulted in the complaint, (ii) create an official record of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise the juvenile and the juvenile's parent, guardian, or other person standing in loco parentis and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § [16.1-241](#) will result in the filing of a petition with the court.

C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation, or support of a child is the subject of controversy or requires determination, (ii) a person has deserted, abandoned, or failed to provide support for any person in violation of law, (iii) a child or such child's parent, guardian, legal custodian, or other person standing in loco parentis is entitled to treatment, rehabilitation, or other services which are required by law, (iv) family abuse has occurred and a protective order is being sought pursuant to § [16.1-253.1](#), [16.1-253.4](#), or [16.1-279.1](#), or (v) an act of violence, force, or threat has occurred, a protective order is being sought pursuant to § [19.2-152.8](#), [19.2-152.9](#), or [19.2-152.10](#), and either the alleged victim or the respondent is a juvenile. If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of supervision, or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a person seeking a protective order pursuant to § [16.1-253.1](#), [16.1-253.4](#), or [16.1-279.1](#) a written explanation of the conditions, procedures and time limits applicable to the issuance of protective orders pursuant to § [16.1-253.1](#), [16.1-253.4](#), or [16.1-279.1](#). If the person is seeking a protective order pursuant to § [19.2-152.8](#), [19.2-152.9](#), or [19.2-152.10](#), the intake officer shall provide a written explanation of the conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to § [19.2-152.8](#), [19.2-152.9](#), or [19.2-152.10](#).

D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need of supervision have utilized or

attempted to utilize treatment and services available in the community and have exhausted all appropriate nonjudicial remedies which are available to them. When the intake officer determines that the parties have not attempted to utilize available treatment or services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility, or individual to receive treatment or services, and a petition shall not be filed. Only after the intake officer determines that the parties have made a reasonable effort to utilize available community treatment or services may he permit the petition to be filed.

E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § [16.1-248.1](#) have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § [16.1-256](#), the intake officer shall accept and file a petition founded upon the warrant.

F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult.

G. Notwithstanding the provisions of Article 12 (§ [16.1-299](#) et seq.), the intake officer shall file a report with the division superintendent of the school division in which any student who is the subject of a petition alleging that such student who is a juvenile has committed an act, wherever committed, which would be a crime if committed by an adult, or that such student who is an adult has committed a crime and is alleged to be within the jurisdiction of the court. The report shall notify the division superintendent of the filing of the petition and the nature of the offense, if the violation involves:

1. A firearm offense pursuant to Article 4 (§ [18.2-279](#) et seq.), 5 (§ [18.2-288](#) et seq.), 6 (§ [18.2-299](#) et seq.), 6.1 (§ [18.2-307.1](#) et seq.), or 7 (§ [18.2-308.1](#) et seq.) of Chapter 7 of Title 18.2;
2. Homicide, pursuant to Article 1 (§ [18.2-30](#) et seq.) of Chapter 4 of Title 18.2;
3. Felonious assault and bodily wounding, pursuant to Article 4 (§ [18.2-51](#) et seq.) of Chapter 4 of Title 18.2;
4. Criminal sexual assault, pursuant to Article 7 (§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2;
5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2;
6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2;
7. Arson and related crimes, pursuant to Article 1 (§ [18.2-77](#) et seq.) of Chapter 5 of Title 18.2;
8. Burglary and related offenses, pursuant to §§ [18.2-89](#) through [18.2-93](#);
9. Robbery pursuant to § [18.2-58](#);
10. Prohibited criminal street gang activity pursuant to § [18.2-46.2](#);
11. Recruitment of other juveniles for a criminal street gang activity pursuant to § [18.2-46.3](#); or
12. An act of violence by a mob pursuant to § [18.2-42.1](#).

The failure to provide information regarding the school in which the student who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § [16.1-305.2](#).

H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws, or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations, animal control violations, or littering violations. In such cases the court may

proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subsection H of § [16.1-241](#).

3. In the case of a misdemeanor violation of § [18.2-250.1](#), [18.2-266](#), [18.2-266.1](#), or [29.1-738](#), or the commission of any other alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § [16.1-278.8](#), [16.1-278.8:01](#), or [16.1-278.9](#). If the juvenile so charged with a violation of § [18.2-51.4](#), [18.2-266](#), [18.2-266.1](#), [18.2-272](#), or [29.1-738](#) refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ [18.2-268.1](#) through [18.2-268.12](#) or [29.1-738.2](#), the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation is to be tried. When a violation of § [18.2-250.1](#) is charged by summons, the juvenile shall be entitled to have the charge referred to intake for consideration of informal proceedings pursuant to subsection B, provided such right is exercised by written notification to the clerk not later than 10 days prior to trial. At the time such summons alleging a violation of § [18.2-250.1](#) is served, the officer shall also serve upon the juvenile written notice of the right to have the charge referred to intake on a form approved by the Supreme Court and make return of such service to the court. If the officer fails to make such service or return, the court shall dismiss the summons without prejudice.

4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § [16.1-237](#) on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that

notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of the jurisdiction granted it in § [16.1-241](#).

Code 1950, § 16.1-164; 1956, c. 555; 1972, cc. 672, 835; 1973, c. 440; 1977, c. 559; 1979, c. 701; 1982, c. 91; 1983, c. 349; 1985, c. 488; 1986, c. 381; 1987, cc. 203, 632; 1988, cc. 792, 803; 1990, c. 742; 1991, cc. 496, 511, 534; 1992, cc. 502, 527, 542; 1993, c. 981; 1995, cc. [347](#), [429](#); 1996, cc. [755](#), [914](#); 1997, c. [862](#); 1999, cc. [54](#), [526](#), [952](#); 2002, c. [747](#); 2003, c. [587](#); 2004, cc. [105](#), [255](#), [309](#), [416](#), [517](#), [558](#); 2006, c. [677](#); 2008, cc. [136](#), [845](#); 2009, cc. [385](#), [726](#); 2010, c. [742](#); 2011, cc. [384](#), [410](#), [825](#); 2012, c. [637](#); 2013, c. [746](#); 2014, cc. [674](#), [719](#); 2016, c. [704](#).

§16.1-261. Statements made at intake or mental health screening and assessment.

Statements made by a child to the intake officer or probation officer during the intake process or during a mental health screening or assessment conducted pursuant to § [16.1-248.2](#) and prior to a hearing on the merits of the petition filed against the child, shall not be admissible at any stage of the proceedings.

1977, c. 559; 1996, cc. [755](#), [914](#).

§16.1-262. Form and content of petition.

A. The petition shall contain the facts below indicated

"Commonwealth of Virginia, In re _____ (name of child)" a child under eighteen years of age.

"In the Juvenile and Domestic Relations District Court of the county _____ (or city) of "

1. Statement of name, age, date of birth, if known, and residence of the child.
2. Statement of names and residence of his parents, guardian, legal custodian or other person standing in loco parentis and spouse, if any.
3. Statement of names and residence of the nearest known relatives if no parent or guardian can be found.
4. Statement of the specific facts which allegedly bring the child within the purview of this law. If the petition alleges a delinquent act, it shall make reference to the applicable sections of the Code which designate the act a crime.

5. Statement as to whether the child is in custody, and if so, the place of detention or shelter care, and the time the child was taken into custody, and the time the child was placed in detention or shelter care.

B. If the subject of the petition is an adult, the petition shall not state or include the name of or any information concerning the parents, guardians, legal custodian, or person standing in loco parentis of the adult subject of the petition except as may be necessary to state the conduct alleged in the petition.

C. If any of the facts herein required to be stated are not known by the petitioner, the petition shall so state. The petition shall be verified, except that petitions filed under § [63.2-1237](#) may be signed by the petitioner's counsel, and may be upon information.

In accordance with § [16.1-69.32](#), the Supreme Court may formulate rules for the form and content of petitions in the juvenile court concerning matters related to the custody, visitation or support of a child and the protection, support or maintenance of an adult where the provisions of this section are not appropriate.

Code 1950, § 16.1-165; 1956, c. 555; 1977, c. 559; 1979, c. 615; 1984, c. 631; 1995, cc. [772](#), [826](#); 2000, c. [830](#); 2016, c. [626](#).

§16.1-263. Summonses.

A. After a petition has been filed, the court shall direct the issuance of summonses, one directed to the juvenile, if the juvenile is twelve or more years of age, and another to at least one parent, guardian, legal custodian or other person standing in loco parentis, and such other persons as appear to the court to be proper or necessary parties to the proceedings.

After a petition has been filed against an adult pursuant to subsection C or D of § [16.1-259](#), the court shall direct the issuance of a summons against the adult.

The summons shall require them to appear personally before the court at the time fixed to answer or testify as to the allegations of the petition. Where the custodian is summoned and such person is not a parent of the juvenile in question, a parent shall also be served with a summons. The court may direct that other proper or necessary parties to the proceedings be notified of the pendency of the case, the charge and the time and place for the hearing.

Any such summons shall be deemed a mandate of the court, and willful failure to obey its requirements shall subject any person guilty thereof to liability for

punishment for contempt. Upon the failure of any person to appear as ordered in the summons, the court shall immediately issue an order for such person to show cause why he should not be held in contempt.

The parent, guardian, legal custodian, or other person standing in loco parentis shall not be summoned to appear or be punished for failure to appear in cases of adults who are brought before the court pursuant to subsection C or D of § [16.1-259](#) unless such person is summoned as a witness.

B. The summons shall advise the parties of their right to counsel as provided in § [16.1-266](#). A copy of the petition shall accompany each summons for the initial proceedings. The summons shall include notice that in the event that the juvenile is committed to the Department or to a secure local facility, at least one parent or other person legally obligated to care for and support the juvenile may be required to pay a reasonable sum for support and treatment of the juvenile pursuant to § [16.1-290](#). Notice of subsequent proceedings shall be provided to all parties in interest. In all cases where a party is represented by counsel and counsel has been provided with a copy of the petition and due notice as to time, date and place of the hearing, such action shall be deemed due notice to such party, unless such counsel has notified the court that he no longer represents such party.

C. The judge may endorse upon the summons an order directing a parent or parents, guardian or other custodian having the custody or control of the juvenile to bring the juvenile to the hearing.

D. A party, other than the juvenile, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

E. No such summons or notification shall be required if the judge shall certify on the record that (i) the identity of a parent or guardian is not reasonably ascertainable or (ii) in cases in which it is alleged that a juvenile has committed a delinquent act, crime, status offense or traffic infraction or is in need of services or supervision, the location, or in the case of a parent or guardian located outside of the Commonwealth the location or mailing address, of a parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. In cases referred to in clause (ii), an affidavit of a law-enforcement officer or juvenile probation officer that the location of a parent or guardian is not reasonably ascertainable shall be sufficient

evidence of this fact, provided that there is no other evidence before the court which would refute the affidavit.

Code 1950, §§ 16.1-166, 16.1-172; 1956, c. 555; 1974, c. 620; 1975, c. 128; 1977, c. 559; 1978, cc. 613, 740; 1996, cc. [755](#), [914](#); 1997, c. [441](#); 1999, c. [952](#); 2004, c. [573](#); 2016, c. [626](#).

§16.1-264. Service of summons; proof of service; penalty.

A. If a party designated in subsection A of § [16.1-263](#) to be served with a summons can be found within the Commonwealth, the summons shall be served upon him in person or by substituted service as prescribed in subdivision 2 of § [8.01-296](#).

If a party designated to be served in § [16.1-263](#) is without the Commonwealth but can be found or his address is known, or can with reasonable diligence be ascertained, service of summons may be made either by delivering a copy thereof to him personally or by mailing a copy thereof to him by certified mail return receipt requested.

If after reasonable effort a party other than the person who is the subject of the petition cannot be found or his post-office address cannot be ascertained, whether he is within or without the Commonwealth, the court may order service of the summons upon him by publication in accordance with the provisions of §§ [8.01-316](#) and [8.01-317](#).

A1. Any person who is subject to an emergency protective order issued pursuant to § [16.1-253.4](#) or [19.2-152.8](#) shall have been personally served with the protective order if a law-enforcement officer, as defined in § [9.1-101](#), personally provides to such person a notification of the issuance of the order, which shall be on a form approved by the Executive Secretary of the Supreme Court of Virginia, provided that all of the information and individual requirements of the order are included on the form. The officer making service shall enter or cause to be entered the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court.

B. Service of summons may be made under the direction of the court by sheriffs, their deputies and police officers in counties and cities or by any other suitable person designated by the court. However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony of a teacher or other school personnel who is not a party to the proceeding, if

such summons is served on school property, it shall be served only by a sheriff or his deputy.

C. Proof of service may be made by the affidavit of the person other than an officer designated in subsection B hereof who delivers a copy of the summons to the person summoned, but if served by a state, county or municipal officer his return shall be sufficient without oath.

D. The summons shall be considered a mandate of the court and willful failure to obey its requirements shall subject any person guilty thereof to liability for punishment as for contempt.

Code 1950, §§ 16.1-167 to 16.1-170; 1956, c. 555; 1977, c. 559; 1984, c. 594; 1987, c. 632; 1991, c. 62; 2004, c. [588](#); 2011, c. [482](#).

§16.1-265. Subpoena; attorney-issued subpoena.

Upon application of a party and pursuant to the rules of the Supreme Court of Virginia for the issuance of subpoenas, the clerk of the court shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents or other tangible objects at any hearing.

Subpoenas duces tecum for medical records shall be subject to the provisions of §§ [8.01-413](#) and [32.1-127.1:03](#) except that no separate fee shall be imposed. A subpoena may also be issued in a civil proceeding by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. Any such subpoena shall be on a form approved by the Committee on District Courts, signed by the attorney as if a pleading and shall include the attorney's address. A copy, together with the attorney's certificate of service pursuant to Rule 1:12, shall be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance by the attorney. The law governing subpoenas issued by a clerk shall apply mutatis mutandis, except that attorneys may not issue subpoenas in those cases in which they may not issue a summons as provided in § [8.01-407](#). When an attorney-at-law transmits one or more subpoenas or subpoenas duces tecum to a sheriff to be served in his jurisdiction, the provisions in § [8.01-407](#) regarding such transmittals shall apply. A sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five business days prior to the date production of evidence is required.

If the time for compliance with a subpoena issued by an attorney is less than 14 days after service of the subpoena, the person to whom it is directed may serve upon the party issuing the subpoena a written objection setting forth any grounds therefor. If objection is made, the party on whose behalf the subpoena was issued and served shall not be entitled to compliance, except pursuant to an order of the court, but may, upon notice to the person to whom the subpoena was directed, move for an order to compel compliance. Upon such timely motion, the court may quash, modify or sustain the subpoena.

1977, c. 559; 2000, c. [813](#); 2004, c. [335](#).

§16.1-266. Appointment of counsel and guardian ad litem.

A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition seeking termination of residual parental rights or who is otherwise before the court pursuant to subdivision A 4 of § [16.1-241](#) or § [63.2-1230](#), the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to § [16.1-266.1](#).

B. Prior to the detention hearing held pursuant to § [16.1-250](#), the court shall appoint a qualified and competent attorney-at-law to represent the child unless an attorney has been retained and appears on behalf of the child. For the purposes of appointment of counsel for the detention hearing held pursuant to § [16.1-250](#) only, a child's indigence shall be presumed. Nothing in this subsection shall prohibit a judge from releasing a child from detention prior to appointment of counsel.

C. Subsequent to the detention hearing, if any, and prior to the adjudicatory or transfer hearing by the court of any case involving a child who is alleged to be in need of services, in need of supervision or delinquent, such child and his parent, guardian, legal custodian or other person standing in loco parentis shall be informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal services pursuant to § [16.1-267](#) and be given an opportunity to:

1. Obtain and employ counsel of the child's own choice; or
2. Request that the court appoint counsel, provided that before counsel is appointed or the court continues any appointment previously made pursuant to subsection B, the court shall determine that the child is indigent within the contemplation of the

law pursuant to guidelines set forth in § [19.2-159](#) by requiring the child's parent, guardian, legal custodian or other person standing in loco parentis to complete a statement of indigence substantially in the form provided by § [19.2-159](#) and a financial statement, and upon determination of indigence the court shall appoint an attorney from the list maintained by the Indigent Defense Commission pursuant to § [19.2-163.01](#) to represent the child; or

3. Waive the right to representation by an attorney, if the court finds the child and the parent, guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, and such waiver is consistent with the interests of the child. Such written waiver shall be in accordance with law and shall be filed with the court records of the case. A child who is alleged to have committed an offense that would be a felony if committed by an adult, may waive such right only after he consults with an attorney and the court determines that his waiver is free and voluntary. The waiver shall be in writing, signed by both the child and the child's attorney and shall be filed with the court records of the case.

D. A judge, clerk or probation officer shall inform the parent or guardian of his right to counsel prior to the adjudicatory hearing of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in subdivision A 2a of § [16.1-241](#) and prior to a hearing at which a parent could be subjected to the loss of residual parental rights. In addition, prior to the hearing by the court of any case involving any other adult charged with abuse or neglect of a child, this adult shall be informed of his right to counsel. This adult and the parent or guardian shall be given an opportunity to:

1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or

2. If the court determines that the parent, guardian or other adult is indigent within the contemplation of the law pursuant to the guidelines set forth in § [19.2-159](#), a statement substantially in the form provided by § [19.2-159](#) and a financial statement shall be executed by such parent, guardian or other adult and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney in accordance with the provisions of § [19.2-160](#).

If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held.

Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to § [16.1-281](#), a foster care review hearing pursuant to § [16.1-282](#) and a permanency planning hearing pursuant to § [16.1-282.1](#), the court shall consider appointing counsel to represent the child's parent or guardian.

E. In those cases described in subsections A, B, C and D, which in the discretion of the court require counsel or a guardian ad litem to represent the child or children or the parent or guardian or other adult party in addition to the representation provided in those subsections, a discreet and competent attorney-at-law may be appointed by the court as counsel or a guardian ad litem.

F. In all other cases which in the discretion of the court require counsel or a guardian ad litem, or both, to represent the child or children or the parent or guardian, discreet and competent attorneys-at-law may be appointed by the court. However, in cases where the custody of a child or children is the subject of controversy or requires determination and each of the parents or other persons claiming a right to custody is represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent the interests of the child or children unless the court finds, at any stage in the proceedings in a specific case, that the interests of the child or children are not otherwise adequately represented.

G. Any state or local agency, department, authority or institution and any school, hospital, physician or other health or mental health care provider shall permit a guardian ad litem or counsel for the child appointed pursuant to this section to inspect and copy, without the consent of the child or his parents, any records relating to the child whom the guardian or counsel represents upon presentation by him of a copy of the court order appointing him or a court order specifically allowing him such access. Upon request therefor by the guardian ad litem or counsel for the child made at least 72 hours in advance, a mental health care provider shall make himself available to conduct a review and interpretation of the child's treatment records which are specifically related to the investigation. Such a request may be made in lieu of or in addition to inspection and copying of the records.

Code 1950, §§ 16.1-173, 63.1-248.12; 1956, c. 555; 1966, c. 709; 1968, c. 581; 1970, c. 87; 1973, c. 440; 1974, c. 513; 1975, cc. 341, 465, 559; 1977, c. 559; 1980, c. 572; 1982, c. 451; 1984, c. 709; 1985, c. 260; 1987, c. 632; 1994, c. [36](#); 1997, c. [790](#); 2002, c. [687](#); 2003, c. [98](#); 2004, cc. [66](#), [437](#), [884](#), [921](#), [1014](#); 2005, c. [427](#).

§16.1-266.1. Standards for attorneys appointed as guardians ad litem; list of qualified attorneys; attorneys appointed for parents or guardians.

A. On or before January 1, 1995, the Judicial Council of Virginia, in conjunction with the Virginia State Bar and the Virginia Bar Association, shall adopt standards for attorneys appointed as guardians ad litem pursuant to § [16.1-266](#). The standards shall, insofar as practicable, take into consideration the following criteria: (i) license or permission to practice law in Virginia, (ii) current training in the roles, responsibilities and duties of guardian ad litem representation, (iii) familiarity with the court system and general background in juvenile law, and (iv) demonstrated proficiency in this area of the law.

B. The Judicial Council shall maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as guardians ad litem based upon the standards and shall make the names available to the courts. If no attorney who is on the list is reasonably available, a judge in his discretion may appoint any discreet and competent attorney who is admitted to practice law in Virginia.

C. Counsel appointed for a parent or guardian pursuant to subsection D of § [16.1-266](#) shall be selected from the list of attorneys who are qualified to serve as guardians ad litem. If no attorney who is on the list is reasonably available or appropriate considering the circumstances of the parent or case, a judge in his discretion may appoint any discreet and competent attorney who is admitted to practice law in Virginia.

1994, c. [36](#); 1995, c. [273](#); 2016, cc. [182](#), [509](#).

§16.1-266.2. Appointment of pro bono counsel by judges of the First and Second Judicial District in certain cases.

The judges of the juvenile and domestic relations district court of the First and Second Judicial District are authorized to appoint pro bono counsel for alleged victims in family abuse cases in which the court is authorized to issue a preliminary protective order under § [16.1-253.1](#), or an emergency protective order under § [16.1-253.4](#). Such counsel shall have no prosecutorial authority except as granted in writing

by the attorney for the Commonwealth for the jurisdiction in which the representation is to occur.

Any attorney appointed under the provisions of this section shall be a volunteer and serve without compensation and shall be subject to any rules adopted by the court and approved by the Virginia Supreme Court providing for the establishment and conduct of a project providing pro bono services to victims of family abuse.

1995, c. [806](#).

§16.1-267. Compensation of appointed counsel.

A. When the court appoints counsel to represent a child pursuant to subsection A of § [16.1-266](#) and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parents for such legal services in the maximum amount of that awarded the attorney by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed the maximum amount specified in subdivision 1 of § [19.2-163](#) if the action is in district court.

When the court appoints counsel to represent a child pursuant to subsection B or C of § [16.1-266](#) and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in the amount awarded the attorney by the court. Such amount shall not exceed \$100 if the action is in circuit court or the maximum amount specified in subdivision 1 of § [19.2-163](#) if the action is in district court. In determining the financial ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement required by § [19.2-159](#).

In all other cases, except as provided in § [16.1-343](#), counsel appointed to represent a child shall be compensated for his services pursuant to § [19.2-163](#).

B. When the court appoints counsel to represent a parent, guardian or other adult pursuant to § [16.1-266](#), such counsel shall be compensated for his services pursuant to § [19.2-163](#).

C.1. In any proceeding in which the court appoints a guardian ad litem to represent a child pursuant to § [16.1-266](#), the court shall order the parent, or other party with a legitimate interest who has filed a petition in such proceeding, to reimburse the

Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian ad litem by the court. If the court determines that such party is unable to pay, the required reimbursement may be reduced or eliminated. No party whom the court determines to be indigent pursuant to § [19.2-159](#) shall be required to pay reimbursement except where the court finds good cause to do so. The Executive Secretary of the Supreme Court shall administer the guardian ad litem program and shall report August 1 and January 1 of each year to the Chairmen of the House Appropriations and Senate Finance Committees on the amounts paid for guardian ad litem purposes, amounts reimbursed, savings achieved, and management actions taken to further enhance savings under this program.

2. For the purposes of this subsection, "other party with a legitimate interest" shall not include child welfare agencies or local departments of social services.

Code 1950, § 16.1-173; 1956, c. 555; 1966, c. 709; 1968, c. 581; 1970, c. 87; 1973, c. 440; 1974, c. 513; 1975, cc. 465, 559; 1977, c. 559; 1981, c. 213; 1984, c. 709; 1986, c. 425; 1993, c. 344; 2004, cc. [342](#), [437](#); 2017, c. [676](#).

§16.1-268. Order of appointment.

The order of appointment of counsel pursuant to § [16.1-266](#) shall be filed with and become a part of the record of such proceeding. The attorney so appointed shall represent the child or parent, guardian or other adult at any such hearing and at all other stages of the proceeding unless relieved or replaced in the manner provided by law.

1977, c. 559.

§16.1-269. Repealed.

Repealed by Acts 1994, cc. [859](#) and [949](#).

§16.1-269.1. Trial in circuit court; preliminary hearing; direct indictment; remand.

A. Except as provided in subsections B and C, if a juvenile 14 years of age or older at the time of an alleged offense is charged with an offense which would be a felony if committed by an adult, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by

an adult. Any transfer to the appropriate circuit court shall be subject to the following conditions:

1. Notice as prescribed in §§ [16.1-263](#) and [16.1-264](#) shall be given to the juvenile and his parent, guardian, legal custodian or other person standing in loco parentis; or attorney;
2. The juvenile court finds that probable cause exists to believe that the juvenile committed the delinquent act as alleged or a lesser included delinquent act which would be a felony if committed by an adult;
3. The juvenile is competent to stand trial. The juvenile is presumed to be competent and the burden is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the evidence; and
4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the following factors:
 - a. The juvenile's age;
 - b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater than 20 years confinement if committed by an adult; (iv) whether the alleged offense involved the use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;
 - c. Whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation;
 - d. The appropriateness and availability of the services and dispositional alternatives in both the criminal justice and juvenile justice systems for dealing with the juvenile's problems;
 - e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the number and nature of previous contacts with juvenile or circuit courts, (ii)

the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;

f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;

g. The extent, if any, of the juvenile's degree of intellectual disability or mental illness;

h. The juvenile's school record and education;

i. The juvenile's mental and emotional maturity; and

j. The juvenile's physical condition and physical maturity.

No transfer decision shall be precluded or reversed on the grounds that the court failed to consider any of the factors specified in subdivision 4.

B. The juvenile court shall conduct a preliminary hearing whenever a juvenile 14 years of age or older is charged with murder in violation of § [18.2-31](#), [18.2-32](#) or [18.2-40](#), or aggravated malicious wounding in violation of § [18.2-51.2](#).

C. The juvenile court shall conduct a preliminary hearing whenever a juvenile 14 years of age or older is charged with murder in violation of § [18.2-33](#); felonious injury by mob in violation of § [18.2-41](#); abduction in violation of § [18.2-48](#); malicious wounding in violation of § [18.2-51](#); malicious wounding of a law-enforcement officer in violation of § [18.2-51.1](#); felonious poisoning in violation of § [18.2-54.1](#); adulteration of products in violation of § [18.2-54.2](#); robbery in violation of § [18.2-58](#) or carjacking in violation of § [18.2-58.1](#); rape in violation of § [18.2-61](#); forcible sodomy in violation of § [18.2-67.1](#); object sexual penetration in violation of § [18.2-67.2](#); manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance in violation of § [18.2-248](#) if the juvenile has been previously adjudicated delinquent on two or more occasions of violating § [18.2-248](#) provided the adjudications occurred after the juvenile was at least 14 years of age; manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine in violation of § [18.2-248.03](#) if the juvenile has been

previously adjudicated delinquent on two or more occasions of violating § [18.2-248.03](#) provided the adjudications occurred after the juvenile was at least 14 years of age; or felonious manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute anabolic steroids in violation of § [18.2-248.5](#) if the juvenile has been previously adjudicated delinquent on two or more occasions of violating § [18.2-248.5](#) provided the adjudications occurred after the juvenile was at least 14 years of age, provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. The notice shall be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification of the charge to the grand jury, he may proceed as provided in subsection A.

D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court.

If the court does not find probable cause to believe that the juvenile has committed the violent juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the circuit court. If the petition or warrant is terminated by nolle prosequi in the juvenile court, the attorney for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.

If the court finds that the juvenile was not 14 years of age or older at the time of the alleged commission of the offense or that the conditions specified in subdivision A 1, 2, or 3 have not been met, the case shall proceed as otherwise provided for by law.

E. An indictment in the circuit court cures any error or defect in any proceeding held in the juvenile court except with respect to the juvenile's age. If an indictment is terminated by nolle prosequi, the Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

1994, cc. [859](#), [949](#); 1996, cc. [755](#), [914](#); 1997, c. [862](#); 2012, cc. [476](#), [507](#), [772](#).

§16.1-269.2. Admissibility of statement; investigation and report; bail.

A. Statements made by the juvenile at the transfer hearing provided for under § [16.1-269.1](#) shall not be admissible against him over objection in any criminal proceedings following the transfer, except for purposes of impeachment.

B. Prior to a transfer hearing pursuant to subsection A of § [16.1-269.1](#), a study and report to the court, in writing, relevant to the factors set out in subdivision A 4 of § [16.1-269.1](#), as well as an assessment of any affiliation with a criminal street gang as defined in § [18.2-46.1](#), shall be made by the probation services or other qualified agency designated by the court. Upon motion of the attorney for the Commonwealth for a transfer hearing pursuant to subsection A of § [16.1-269.1](#), the attorney for the Commonwealth shall provide notice to the designated probation services or other qualified agency of the need for a transfer report. Counsel for the juvenile and the attorney for the Commonwealth shall have full access to the study and report and any other report or data concerning the juvenile which are available to the court. The court shall not consider the report until a finding has been made concerning probable cause. If the court so orders, the study and report may be expanded to include matters provided for in § [16.1-273](#), whereupon it may also serve as the report required by this subsection, but on the condition that it will not be submitted to the judge who will preside at any subsequent hearings except as provided for by law.

C. After the completion of the hearing, whether or not the juvenile court decides to retain jurisdiction over the juvenile or transfer such juvenile for criminal proceedings in the circuit court, the juvenile court shall set bail for the juvenile in accordance with Chapter 9 (§ [19.2-119](#) et seq.) of Title 19.2, if bail has not already been set.

1994, cc. [859](#), [949](#); 1999, c. [350](#); 2005, cc. [590](#), [843](#).

§16.1-269.3. Retention by juvenile court; appeal.

If a case is not transferred following a transfer hearing or is not certified following a probable cause hearing, the judge who conducted the hearing shall not, over the objection of any interested party, preside at the adjudicatory hearing on the petition, but rather it shall be presided over by another judge of that court. If the attorney for the Commonwealth deems it to be in the public interest, and the juvenile is fourteen years of age or older he may, within ten days after the juvenile court's final decision to retain the case in accordance with subsection A of § [16.1-269.1](#), file a notice of

appeal of the decision to the appropriate circuit court. A copy of such notice shall be furnished at the same time to the counsel for the juvenile.

1994, cc. [859](#), [949](#); 1996, cc. [755](#), [914](#).

§16.1-269.4. Transfer to circuit court; appeal by juvenile.

If the juvenile court transfers the case pursuant to subsection A of § [16.1-269.1](#), the juvenile may, within ten days after the juvenile court's final decision, file a notice of appeal of the decision to the appropriate circuit court. A copy of the notice shall be furnished at the same time to the attorney for the Commonwealth.

1994, cc. [859](#), [949](#); 1996, cc. [755](#), [914](#).

§16.1-269.5. Placement of juvenile.

The juvenile court may order placement of the transferred juvenile in either a local correctional facility as approved by the State Board of Corrections pursuant to the limitations of subsections D and E of § [16.1-249](#) or a juvenile detention facility.

1994, cc. [859](#), [949](#); 1995, cc. [746](#), [798](#), [802](#); 2010, c. [739](#).

§16.1-269.6. Circuit court hearing; jury; termination of juvenile court jurisdiction; objections and appeals.

A. Within seven days after receipt of notice of an appeal from the transfer decision pursuant to subsection A of § [16.1-269.1](#), by either the attorney for the Commonwealth or the juvenile, or if an appeal to such a decision to transfer is not noted, upon expiration of the time in which to note such an appeal, the clerk of the court shall forward to the circuit court all papers connected with the case, including any report required by subsection B of § [16.1-269.2](#), as well as a written court order setting forth the reasons for the juvenile court's decision. Within seven days after receipt of notice of an appeal, the clerk shall forward copies of the order to the attorney for the Commonwealth and other counsel of record.

B. The circuit court, when practicable, shall, within 45 days after receipt of the case from the juvenile court pursuant to subsection A of § [16.1-269.1](#), (i) if either the juvenile or the attorney for the Commonwealth has appealed the transfer decision, examine all such papers, reports and orders and conduct a hearing to take further evidence on the issue of transfer, to determine if there has been substantial compliance with subsection A of § [16.1-269.1](#), but without redetermining whether the juvenile court had sufficient evidence to find probable cause; and (ii) enter an order either remanding the case to the juvenile court or advising the attorney for the

Commonwealth that he may seek an indictment. A juvenile held continuously in secure detention shall be released from confinement if there is no hearing on the merits of his case within 45 days of the filing of the appeal. The circuit court may extend the time limitations for a reasonable period of time based upon good cause shown, provided the basis for such extension is recorded in writing and filed among the papers of the proceedings. However, in cases where a charge has been certified by the juvenile court to the grand jury pursuant to subsection B or C of § [16.1-269.1](#), the attorney for the Commonwealth may seek an indictment upon such charge and any ancillary charge without obtaining an order of the circuit court advising him that he may do so.

C. The circuit court order advising the attorney for the Commonwealth that he may seek an indictment shall divest the juvenile court of its jurisdiction over the case as well as the juvenile court's jurisdiction over any other allegations of delinquency arising from the same act, transaction or scheme giving rise to the charge for which the juvenile has been transferred. In addition, upon conviction of the juvenile following transfer or certification and trial as an adult, the circuit court shall issue an order terminating the juvenile court's jurisdiction over that juvenile with respect to any future criminal acts alleged to have been committed by such juvenile and with respect to any pending allegations of delinquency which have not been disposed of by the juvenile court at the time of the criminal conviction. However, such an order terminating the juvenile court's jurisdiction shall not apply to any allegations of criminal conduct that would properly be within the jurisdiction of the juvenile and domestic relations district court if the defendant were an adult. Upon receipt of the order terminating the juvenile court's jurisdiction over the juvenile, the clerk of the juvenile court shall forward any pending petitions of delinquency for proceedings in the appropriate general district court.

D. The judge of the circuit court who reviewed the case after receipt from the juvenile court shall not, over the objection of any interested party, preside over the trial of such charge or charges.

E. Any objection to the jurisdiction of the circuit court pursuant to this article shall be waived if not made before arraignment.

F. The time period beginning with the filing of a notice of appeal pursuant to § [16.1-269.3](#) or § [16.1-269.4](#) and ending with the order of the circuit court disposing of the appeal shall not be included as applying to the provisions of § [19.2-243](#).

1994, cc. [859](#), [949](#); 1996, cc. [755](#), [914](#); 1997, c. [862](#); 2003, c. [144](#); 2004, c. [468](#); 2010, c. [739](#).

§16.1-270. Waiver of jurisdiction of juvenile court in certain cases.

At any time prior to commencement of the adjudicatory hearing, a juvenile fourteen years of age or older charged with an offense which if committed by an adult could be punishable by confinement in a state correctional facility, with the written consent of his counsel, may elect in writing to waive the jurisdiction of the juvenile court and have his case transferred to the appropriate circuit court, in which event his case shall thereafter be dealt with in the same manner as if he had been transferred pursuant to this article.

Code 1950, § 16.1-176.2; 1973, c. 440; 1977, c. 559; 1994, cc. [859](#), [949](#).

§16.1-271. Subsequent offenses by juvenile.

Conviction of a juvenile as an adult pursuant to the provisions of this chapter shall preclude the juvenile court from taking jurisdiction of such juvenile for subsequent offenses committed by that juvenile.

Any juvenile who is tried and convicted in a circuit court as an adult under the provisions of this article shall be considered and treated as an adult in any criminal proceeding resulting from any alleged future criminal acts and any pending allegations of delinquency which have not been disposed of by the juvenile court at the time of the criminal conviction.

All procedures and dispositions applicable to adults charged with such a criminal offense shall apply in such cases, including, but not limited to, arrest; probable cause determination by a magistrate or grand jury; the use of a warrant, summons, or capias instead of a petition to initiate the case; adult bail; preliminary hearing and right to counsel provisions; trial in a court having jurisdiction over adults; and trial and sentencing as an adult. The provisions of this article regarding a transfer hearing shall not be applicable to such juveniles.

1977, c. 559; 1989, c. 675; 1990, c. 668; 1994, cc. [859](#), [949](#); 2007, c. [221](#).

§16.1-272. Power of circuit court over juvenile offender.

A. In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary charges shall be tried in the same manner as provided for in the trial of adults, except as otherwise provided with regard to sentencing. Upon a finding of guilty of any charge, the court shall fix the sentence without the intervention of a

jury. Nothing in this subsection shall be construed to require a court to review the results of an investigation completed pursuant to § [16.1-273](#).

1. If a juvenile is convicted of a violent juvenile felony, for that offense and for all ancillary crimes the court may order that (i) the juvenile serve a portion of the sentence as a serious juvenile offender under § [16.1-285.1](#) and the remainder of such sentence in the same manner as provided for adults; (ii) the juvenile serve the entire sentence in the same manner as provided for adults; or (iii) the portion of the sentence to be served in the same manner as provided for adults be suspended conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case including, but not limited to, commitment under subdivision A 14 of § [16.1-278.8](#) or § [16.1-285.1](#).

2. If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this chapter for the hearing and disposition of cases in the juvenile court, including, but not limited to, commitment under § [16.1-285.1](#) or may in its discretion impose an adult sentence and suspend the sentence conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case.

3. If the juvenile is not convicted of a felony but is convicted of a misdemeanor, the court shall deal with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the juvenile court.

B. If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile court and places the juvenile on probation, the juvenile may be supervised by a juvenile probation officer.

C. Whether the court sentences and commits the juvenile as a juvenile under this chapter or under the criminal law, in cases where the juvenile is convicted of a felony in violation of § [18.2-61](#), [18.2-63](#), [18.2-64.1](#), [18.2-67.1](#), [18.2-67.2](#), [18.2-67.3](#), [18.2-67.5](#), [18.2-370](#) or [18.2-370.1](#) or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § [18.2-67.10](#), subsection B of § [18.2-361](#) or subsection B of § [18.2-366](#), the clerk shall make the report required by § [19.2-390](#) to the Sex Offender and Crimes Against Minors Registry established pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1.

D. A juvenile sentenced pursuant to clause (i) of subdivision A 1 shall be eligible to earn sentence credits in the manner prescribed by § [53.1-202.2](#) for the portion of the sentence served as a serious juvenile offender under § [16.1-285.1](#).

E. If the court sentences the juvenile as a juvenile under this chapter, the clerk shall provide a copy of the court's final order or judgment to the court service unit in the same locality as the juvenile court to which the case had been transferred.

Code 1950, § 16.1-177; 1956, c. 555; 1977, c. 559; 1994, c. [362](#); 1996, cc. [755](#), [914](#); 2000, c. [793](#); 2002, c. [511](#); 2003, c. [584](#); 2005, c. [590](#); 2007, c. [460](#); 2008, c. [517](#); 2014, cc. [20](#), [249](#).

§16.1-272.1. Claim of error to be raised within one year.

In addition to any other curative provisions, waivers, procedural defaults, or requirements for timely objection, including but not limited to those in subsection J of § [16.1-241](#), subsection E of § [16.1-269.1](#) and subsection E of § [16.1-269.6](#), any claim of error or defect under this chapter, jurisdictional or otherwise, that is not raised within one year from the date of final judgment of the circuit court or one year from the effective date of this act, whichever is later, shall not constitute a ground for relief in any judicial proceeding.

2000, c. [418](#).

§16.1-273. Court may require investigation of social history and preparation of victim impact statement.

A. When a juvenile and domestic relations district court or circuit court has adjudicated any case involving a child subject to the jurisdiction of the court hereunder, except for a traffic violation, a violation of the game and fish law, or a violation of any city ordinance regulating surfing or establishing curfew violations, the court before final disposition thereof may require an investigation, which (i) shall include a drug screening and (ii) may, and for the purposes of subdivision A 14 or A 17 of § [16.1-278.8](#) shall, include a social history of the physical, mental, and social conditions, including an assessment of any affiliation with a criminal street gang as defined in § [18.2-46.1](#), and personality of the child and the facts and circumstances surrounding the violation of law. However, in the case of a juvenile adjudicated delinquent on the basis of an act committed on or after January 1, 2000, which would be a felony if committed by an adult, or a violation under Article 1 (§ [18.2-247](#) et seq.) or Article 1.1 (§ [18.2-265.1](#) et seq.) of Chapter 7 of Title 18.2 and such offense would be punishable as a Class 1 or Class 2 misdemeanor if committed by an adult, the court

shall order the juvenile to undergo a drug screening. If the drug screening indicates that the juvenile has a substance abuse or dependence problem, an assessment shall be completed by a certified substance abuse counselor as defined in § [54.1-3500](#) employed by the Department of Juvenile Justice or by a locally operated court services unit or by an individual employed by or currently under contract to such agencies and who is specifically trained to conduct such assessments under the supervision of such counselor.

B. The court also shall, on motion of the attorney for the Commonwealth with the consent of the victim, or may in its discretion, require the preparation of a victim impact statement in accordance with the provisions of § [19.2-299.1](#) if the court determines that the victim may have suffered significant physical, psychological, or economic injury as a result of the violation of law.

Code 1950, § 16.1-164; 1956, c. 555; 1972, cc. 672, 835; 1973, c. 440; 1977, cc. 559, 627; 1993, c. 603; 1998, cc. [783](#), [840](#); 1999, cc. [350](#), [891](#), [913](#); 2000, cc. [1020](#), [1041](#); 2005, c. [843](#); 2007, c. [510](#); 2014, cc. [20](#), [249](#).

§16.1-274. Time for filing of reports; copies furnished to attorneys; amended reports; fees.

A. Whenever any court directs an investigation pursuant to subdivision A of § [16.1-237](#) or § [16.1-273](#) or [9.1-153](#), or an evaluation pursuant to § [16.1-278.5](#), the probation officer, court-appointed special advocate, or other agency conducting such investigation shall file such report with the clerk of the court directing the investigation. The clerk shall furnish a copy of such report to all attorneys representing parties in the matter before the court no later than 72 hours, and in cases of child custody, 15 days, prior to the time set by the court for hearing the matter. If such probation officer or other agency discovers additional information or a change in circumstance after the filing of the report, an amended report shall be filed forthwith and a copy sent to each person who received a copy of the original report. Whenever such a report is not filed or an amended report is filed, the court shall grant such continuance of the proceedings as justice requires. All attorneys receiving such report or amended report shall return such to the clerk upon the conclusion of the hearing and shall not make copies of such report or amended report or any portion thereof. However, the chief judge of each juvenile and domestic relations district court may provide for an alternative means of copying and distributing reports or amended reports filed pursuant to § [9.1-153](#).

B. Notwithstanding the provisions of §§ [16.1-69.48:2](#) and [17.1-275](#), when the court directs the appropriate local department of social services to conduct supervised visitation or directs the appropriate local department of social services or court services unit to conduct an investigation pursuant to § [16.1-273](#) or to provide mediation services in matters involving a child's custody, visitation, or support, the court shall assess a fee against the petitioner, the respondent, or both, in accordance with fee schedules established by the appropriate local board of social services when the service is provided by a local department of social services or by a court services unit. The fee schedules shall include (i) standards for determining the paying party's or parties' ability to pay and (ii) a scale of fees based on the paying party's or parties' income and family size and the actual cost of the services provided. The fee charged shall not exceed the actual cost of the service. The fee shall be assessed as a cost of the case and shall be paid as prescribed by the court to the local department of social services, locally operated court services unit or Department of Juvenile Justice, whichever performed the service, unless payment is waived. The method and medium for payment for such services shall be determined by the local department of social services, Department of Juvenile Justice, or the locally operated court services unit that provided the services.

C. When a local department of social services or any court services unit is requested by another local department or court services unit in the Commonwealth or by a similar department or entity in another state to conduct an investigation involving a child's custody, visitation or support pursuant to § [16.1-273](#) or, in the case of a request from another state pursuant to a provision corresponding to § [16.1-273](#), or to provide mediation services, or for a local department of social services to provide supervised visitation, the local department or the court services unit performing the service may require payment of fees prior to conducting the investigation or providing mediation services or supervised visitation.

Code 1950, § 16.1-208.1; 1972, c. 111; 1975, c. 286; 1977, c. 559; 1983, c. 174; 1987, c. 5; 1989, c. 725; 1990, c. 752; 1991, cc. 534, 618; 1992, c. 554; 1993, c. 975; 2001, c. [364](#); 2006, c. [675](#); 2012, cc. [164](#), [456](#).

§16.1-274.1. Admission of evidence of juvenile's age.

In any proceeding in a district court or circuit court where a juvenile is alleged to have committed a delinquent act, the Commonwealth shall be permitted to introduce

evidence establishing the age of the juvenile at any time prior to adjudication of the case.

1994, c. [913](#); 1996, cc. [755](#), [914](#).

§16.1-274.2. Certain education records as evidence.

A. In any proceeding where (i) a juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult and whether such act was committed intentionally or willfully by the juvenile is an element of the delinquent act and (ii) such act was committed (a) during school hours, and during school-related or school-sponsored activities upon the property of a public or private elementary or secondary school or child day center; (b) on any school bus as defined in § [46.2-100](#); or (c) upon any property, public or private, during hours when such property is solely being used by a public or private elementary or secondary school for a school-related or school-sponsored activity, the juvenile shall be permitted to introduce into evidence as relevant to whether he acted intentionally or willfully any document created prior to the commission of the alleged delinquent act that relates to (a) an Individualized Education Program developed pursuant to the federal Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; (b) a Section 504 Plan prepared pursuant to § 504 of the federal Rehabilitation Act of 1973, 29 U.S.C. § 794; (c) a behavioral intervention plan as defined in 8VAC20-81-10; or (d) a functional behavioral assessment as defined in 8VAC20-81-10.

Any such document shall be admitted as evidence of the facts stated therein.

B. At least 10 days prior to the commencement of the proceeding in which a document listed in subsection A will be offered as evidence, the juvenile intending to offer the document shall notify the attorney for the Commonwealth, in writing, of the intent to offer the document and shall provide or make available copies of the document to be introduced.

C. Copies of documents listed in subsection A shall be received as evidence, provided that such copies are authenticated to be true and accurate copies by the custodian thereof, or by the person to whom the custodian reports if they are different. An affidavit signed by the custodian of such documents, or by the person to whom the custodian reports if they are different, stating that such documents are true and accurate copies of such documents shall be valid authentication for the purposes of this section.

D. Upon motion of the juvenile, any document admitted pursuant to this section shall be placed under seal by the court.

2016, c. [726](#).

§16.1-275. Physical and mental examinations and treatment; nursing and medical care.

The juvenile court or the circuit court may cause any juvenile within its jurisdiction under the provisions of this law to be physically examined and treated by a physician or to be examined and treated at a local mental health center. If no such appropriate facility is available locally, the court may order the juvenile to be examined and treated by any physician or psychiatrist or examined by a clinical psychologist. The Commissioner of Behavioral Health and Developmental Services shall provide for distribution a list of appropriate mental health centers available throughout the Commonwealth. Upon the written recommendation of the person examining the juvenile that an adequate evaluation of the juvenile's treatment needs can only be performed in an inpatient hospital setting, the court shall have the power to send any such juvenile to a state mental hospital for not more than 10 days for the purpose of obtaining a recommendation for the treatment of the juvenile. No juvenile sent to a state mental hospital pursuant to this provision shall be held or cared for in any maximum security unit where adults determined to be criminally insane reside; the juvenile shall be kept separate and apart from such adults. However, the Commissioner of Behavioral Health and Developmental Services may place a juvenile who has been certified to the circuit court for trial as an adult pursuant to § [16.1-269.6](#) or [16.1-270](#) or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff or the public.

Whenever the parent or other person responsible for the care and support of a juvenile is determined by the court to be financially unable to pay the costs of such examination as ordered by the juvenile court or the circuit court, such costs may be paid according to procedures and rates adopted by the Department from funds appropriated in the general appropriation act for the Department.

The juvenile court or the circuit court may cause any juvenile within its jurisdiction who is found to be delinquent for an offense that is eligible for commitment pursuant to subdivision A 14 of § [16.1-278.8](#) or § [16.1-285.1](#) to be placed in the

temporary custody of the Department of Juvenile Justice for a period of time not to exceed 30 days for diagnostic assessment services after the adjudicatory hearing and prior to final disposition of his or her case. Prior to such a placement, the Department shall determine that the personnel, services and space are available in the appropriate correctional facility for the care, supervision and study of such juvenile and that the juvenile's case is appropriate for referral for diagnostic services.

Whenever a juvenile concerning whom a petition has been filed appears to be in need of nursing, medical or surgical care, the juvenile court or the circuit court may order the parent or other person responsible for the care and support of the juvenile to provide such care in a hospital or otherwise and to pay the expenses thereof. If the parent or other person is unable or fails to provide such care, the juvenile court or the circuit court may refer the matter to the authority designated in accordance with law for the determination of eligibility for such services in the county or city in which such juvenile or his parents have residence or legal domicile.

In any such case, if a parent who is able to do so fails or refuses to comply with the order, the juvenile court or the circuit court may proceed against him as for contempt or may proceed against him for nonsupport.

Code 1950, § 16.1-190; 1956, c. 555; 1972, c. 354; 1975, c. 430; 1976, c. 321; 1977, c. 559; 1978, c. 739; 1982, c. 636; 1983, c. 358; 1984, c. 44; 1988, cc. 47, 826; 1990, c. 975; 1994, cc. [859](#), [949](#); 2004, c. [321](#); 2009, cc. [813](#), [840](#); 2012, cc. [164](#), [456](#).

§16.1-276. Fees and travel expenses of witnesses.

The judge may authorize the payment of the fees and mileage provided by law in § [19.2-278](#) of any witness or person summoned or otherwise required to appear at the hearing of any case coming within the jurisdiction of the court, which sum shall be paid by the State Treasurer out of funds appropriated in the general appropriations act to the Supreme Court of Virginia.

Code 1950, § 16.1-171; 1956, c. 555; 1977, c. 559; 1982, c. 636.

§16.1-276.1. Repealed.

Repealed by Acts 2002, c. [305](#).

§16.1-276.2. Transportation orders in certain proceedings.

In any proceeding (i) pursuant to subdivisions 2, 4 or 5 of subsection A of § [16.1-241](#), (ii) pursuant to subsections K or U of § [16.1-241](#), (iii) involving a child who is alleged to be abused or neglected, or (iv) involving a child who is before the court

pursuant to §§ [16.1-281](#), [16.1-282](#) or § [16.1-282.1](#), if the judge finds that the presence at a hearing of a prisoner in a state, local or regional correctional institution is essential to the just adjudication and disposition of the proceeding, the judge may issue an order to the Director of the Department of Corrections or the administrator of the state, local or regional correctional institution to deliver such witness to the sheriff of the jurisdiction of the court issuing the order. Such orders shall be executed in accordance with § [8.01-410](#). Any such orders shall issue only upon consideration of the importance of the personal appearance of the person.

The party seeking the testimony of such prisoner shall advance a sum sufficient to defray the expenses and compensation of the officers, which the court shall tax as costs. When the party seeking the attendance of the prisoner is an agency of the Commonwealth or when the attendance is sought on motion of the court, no sum shall be advanced to defray the expenses or compensation of the correctional officers and sheriff nor shall any such sum be taxed as costs.

2001, c. [513](#).

§16.1-276.3. Use of telephonic communication systems or electronic video and audio communication systems to conduct hearing.

Notwithstanding any other provision of law, in any civil proceeding under this chapter in which a party or witness is incarcerated or when otherwise authorized by the court, the court may, in its discretion, conduct any hearing using a telephonic communication system or an electronic audio and video communication system to provide for the appearance of any parties and witnesses. Any electronic audio and video communication system used to conduct such a hearing shall meet the standards set forth in subsection B of § [19.2-3.1](#).

2001, c. [513](#).

§16.1-277. Repealed.

Repealed by Acts 1999, c. [889](#).

§16.1-277.01. Approval of entrustment agreement.

A. In any case in which a child has been entrusted pursuant to § [63.2-903](#) or [63.2-1817](#) to the local board of social services or to a child welfare agency, a petition for approval of the entrustment agreement by the board or agency:

1. Shall be filed within a reasonable period of time, no later than 89 days after the execution of an entrustment agreement for less than 90 days, if the child is not returned to the caretaker from whom he was entrusted within that period;
2. Shall be filed within a reasonable period of time, not to exceed 30 days after the execution of an entrustment agreement for 90 days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child; and
3. May be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.

The board or agency shall file a foster care plan pursuant to § [16.1-281](#) to be heard with any petition for approval of an entrustment agreement.

B. Upon the filing of a petition for approval of an entrustment agreement pursuant to subsection A of § [16.1-241](#), the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of § [16.1-266](#), and shall schedule the matter for a hearing to be held as follows: within 45 days of the filing of a petition pursuant to subdivision A 1, A 2 or A 3, except where an order of publication has been ordered by the court, in which case the hearing shall be held within 75 days of the filing of the petition. The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

1. The local board of social services or child welfare agency;
2. The child, if he is 12 years of age or older;
3. The guardian ad litem for the child; and
4. The child's parents, guardian, legal custodian or other person standing in loco parentis to the child. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. A birth father shall be given notice of the proceedings if he is an acknowledged father pursuant to § [20-49.1](#), adjudicated pursuant to § [20-49.8](#), or presumed pursuant to § [63.2-1202](#), or has registered with the Virginia Birth Father Registry pursuant to Article 7 (§ [63.2-1249](#) et seq.). An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. Failure to register with the Virginia Birth Father Registry pursuant

to Article 7 (§ [63.2-1249](#) et seq.) of Chapter 12 of Title 63.2 shall be evidence that the identity of the father is not reasonably ascertainable. The hearing shall be held and an order may be entered, although a parent, guardian, legal custodian or person standing in loco parentis fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. However, when a petition seeks approval of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child, a summons shall be served upon the parent or parents and the other parties specified in § [16.1-263](#). The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § [16.1-264](#). The remaining parent's parental rights may be terminated even though that parent has not entered into an entrustment agreement if the court finds, based upon clear and convincing evidence, that it is in the best interest of the child and that (i) the identity of the parent is not reasonably ascertainable; (ii) the identity and whereabouts of the parent are known or reasonably ascertainable, and the parent is personally served with notice of the termination proceeding pursuant to § [8.01-296](#) or [8.01-320](#); (iii) the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings by certified or registered mail to the last known address and such parent fails to object to the proceedings within 15 days of the mailing of such notice; or (iv) the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings through an order of publication pursuant to §§ [8.01-316](#) and [8.01-317](#), and such parent fails to object to the proceedings.

C. At the hearing held pursuant to this section, the court shall hear evidence on the petition filed and shall review the foster care plan for the child filed by the local board or child welfare agency in accordance with § [16.1-281](#).

D. At the conclusion of the hearing, the court shall make a finding, based upon a preponderance of the evidence, whether approval of the entrustment agreement is in the best interest of the child. However, if the petition seeks approval of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child, the court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best

interest of the child. If the court makes either of these findings, the court may make any of the orders of disposition permitted in a case involving an abused or neglected child pursuant to § [16.1-278.2](#). Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § [16.1-278.2](#) and shall be subject to the provisions of subsection D1. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services. At any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent or parents of the child and the pre-adoptive parent or parents may enter into a written post-adoption contact and communication agreement in accordance with the provisions of § [16.1-283.1](#) and Article 1.1 (§ [63.2-1220.2](#) et seq.) of Chapter 12 of Title 63.2. The court shall not require a written post-adoption contact and communication agreement as a precondition to entry of an order in any case involving the child.

The effect of the court's order approving a permanent entrustment agreement is to terminate an entrusting parent's residual parental rights. Any order terminating parental rights shall be accompanied by an order (i) continuing or granting custody to a local board of social services or to a licensed child-placing agency or (ii) granting custody or guardianship to a relative or other interested individual. Such an order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto. A final order terminating parental rights pursuant to this section renders the approved entrustment agreement irrevocable. Such order may be appealed in accordance with the provisions of § [16.1-296](#).

D1. Any order transferring custody of the child to a relative or other interested individual pursuant to subsection D shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who (i) after an investigation as directed by the court, is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or other interested individual should further provide for, as

appropriate, any terms and conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

E. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered pursuant to this section shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

1999, c. [889](#); 2000, c. [385](#); 2006, c. [825](#); 2009, cc. [98](#), [260](#); 2010, c. [331](#); 2017, c. [200](#).

§16.1-277.02. Petition for relief of care and custody.

A. Requests for petitions for relief of the care and custody of a child shall be referred initially to the local department of social services for investigation and the provision of services, if appropriate, in accordance with the provisions of § [63.2-319](#) or Chapter 15 (§ [63.2-1500](#) et seq.) of Title 63.2. Upon the filing of a petition for relief of a child's care and custody pursuant to subdivision A 4 of § [16.1-241](#), the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of § [16.1-266](#), and shall schedule the matter for a hearing on the petition. Such hearing on the petition may include partial or final disposition of the matter. The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

1. The child, if he is 12 years of age or older;
2. The guardian ad litem for the child;
3. The child's parents, custodian or other person standing in loco parentis to the child. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent is not reasonably ascertainable. An affidavit of

the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. The hearing on the petition shall be held pursuant to this section although a parent fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. However, in the case of a hearing to grant a petition for permanent relief of custody and terminate a parent's residual parental rights, notice to the parent whose rights may be affected shall be provided in accordance with the provisions of §§ [16.1-263](#) and [16.1-264](#); and

4. The local board of social services. Upon receiving notice of the hearing pursuant to this section, the local board of social services shall investigate the matter and provide services, as appropriate, in accordance with the provisions of § [63.2-319](#) or Chapter 15 (§ [63.2-1500](#) et seq.) of Title 63.2.

B. At the hearing, the local board of social services, the child, the child's parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

C. At the conclusion of the hearing on the petition, the court shall make a finding, based upon a preponderance of the evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody, unless the petition seeks permanent relief of custody and termination of parental rights. If the petition seeks permanent relief of custody and termination of parental rights, the court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child. If the court makes either of these findings, the court may enter:

1. A preliminary protective order pursuant to § [16.1-253](#);
2. An order that requires the local board of social services to provide services to the family as required by law;
3. An order that is consistent with any of the dispositional alternatives pursuant to § [16.1-278.3](#); or

4. Any combination of these orders.

Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § [16.1-278.2](#) and shall be subject to the provisions of subsection C1. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services. Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services, to a licensed child-placing agency or the granting of custody or guardianship to a relative or other interested individual. Such an order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto. At any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent or parents of the child and the pre-adoptive parent or parents may enter into a written post-adoption contact and communication agreement in accordance with the provisions of § [16.1-283.1](#) and Article 1.1 (§ [63.2-1220.2](#) et seq.) of Chapter 12 of Title 63.2. The court shall not require a written post-adoption contact and communication agreement as a precondition to entry of an order in any case involving the child.

The court shall schedule a subsequent hearing within 60 days of the hearing held pursuant to this section: (a) to enter a final order of disposition pursuant to § [16.1-278.3](#) or (b) if the child is placed in foster care, for review of the foster care plan filed pursuant to § [16.1-281](#). If a party is required to be present at the subsequent hearing, and (1) is present at the hearing on the petition, the party shall be given notice of the date set for the subsequent hearing; (2) if not present, shall be summoned as provided in § [16.1-263](#).

C1. Any order transferring temporary custody of the child to a relative or other interested individual pursuant to subsection C shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; and (iii) is willing and has the ability to protect the child from abuse and neglect. The

court's order transferring temporary custody to a relative or other interested individual should further provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of § [16.1-253](#); and, as appropriate, ongoing provision of social services to the child and the child's custodian; and court review of the child's placement with the relative or other individual. Any final order transferring custody of the child to a relative or other interested individual pursuant to this section shall, in addition, be entered only after an investigation as directed by the court and upon a finding, stated in the court's order, that the relative or other interested individual is one who satisfies clauses (i), (ii), and (iii) and is committed to providing a permanent, suitable home for the child.

D. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered pursuant to this section shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

1999, c. [889](#); 2000, c. [385](#); 2009, cc. [98](#), [260](#); 2010, c. [331](#); 2013, c. [130](#).

§16.1-277.1. Time limitation.

A. When a child is held continuously in secure detention, he shall be released from confinement if there is no adjudicatory or transfer hearing conducted by the court for the matters upon which he was detained within twenty-one days from the date he was first detained.

B. If a child is not held in secure detention or is released from same after having been confined, an adjudicatory or transfer hearing on the matters charged in the petition or petitions issued against him shall be conducted within 120 days from the date the petition or petitions are filed.

C. When a child is held in secure detention after the completion of his adjudicatory hearing or is detained when the juvenile court has retained jurisdiction as a result of a transfer hearing, he shall be released from such detention if the disposition hearing is not completed within thirty days from the date of the adjudicatory or transfer hearing.

D. The time limitations provided for in this section shall be tolled during any period in which (i) the whereabouts of the child are unknown, (ii) the child has escaped from custody, or (iii) the child has failed to appear pursuant to a court order. The limitations also may be extended by the court for a reasonable period of time based upon good cause shown, provided that the basis for such extension is recorded in writing and filed among the papers of the proceedings. For the purposes of this section, good cause includes, but is not limited to, extension of limitations necessary to obtain the presence of a witness to testify regarding the results of scientific analyses or examinations.

1985, c. 260; 1988, c. 220; 1999, c. [58](#); 2009, Sp. Sess. I, cc. [1](#), [4](#).

§16.1-277.2. Rejection of plea agreement; recusal.

Upon rejecting a plea agreement in any delinquency matter, a judge shall immediately recuse himself from any further proceedings on the same matter unless the parties agree otherwise.

2014, c. [165](#).

§16.1-278. Cooperation of certain agencies, officials, institutions and associations.

A. The judge may order, after notice and opportunity to be heard, any state, county or municipal officer or employee or any governmental agency or other governmental institution to render only such information, assistance, services and cooperation as may be provided for by state or federal law or an ordinance of any city, county or town.

The officer, employee, agency or institution may appeal such order to the circuit court in accordance with § [16.1-296](#). The circuit court shall advance such appeals on its docket and may stay the order of the juvenile court during the pendency of the appeal. The circuit court may affirm or reverse the order of the juvenile court. Upon reversal, the circuit court may remand the case to the juvenile court for an alternative disposition.

B. The court is authorized to cooperate with and make use of the services of all public or private societies or organizations which seek to protect or aid children or families, in order that the court may be assisted in giving the children and families within its jurisdiction such care, protection and assistance as will best enhance their welfare.

Code 1950, § 16.1-156; 1956, c. 555; 1977, c. 559; 1980, c. 245.

§16.1-278.1. Definitions.

As used in this article, unless the context clearly indicates otherwise:

"Parent" includes parent, guardian, legal custodian, or other person standing in loco parentis.

"Public service project" means any governmental or quasi-governmental agency project or any project of a nonprofit corporation or association operated exclusively for charitable or community purposes.

1991, c. 534.

§16.1-278.2. Abused, neglected, or abandoned children or children without parental care.

A. Within 60 days of a preliminary removal order hearing held pursuant to § [16.1-252](#) or a hearing on a preliminary protective order held pursuant to § [16.1-253](#), a dispositional hearing shall be held if the court found abuse or neglect and (i) removed the child from his home or (ii) entered a preliminary protective order. Notice of the dispositional hearing shall be provided to the child's parent, guardian, legal custodian, or other person standing in loco parentis in accordance with § [16.1-263](#). The hearing shall be held and a dispositional order may be entered, although a parent, guardian, legal custodian, or person standing in loco parentis fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. Notice shall also be provided to the local department of social services, the guardian ad litem and, if appointed, the court-appointed special advocate.

If a child is found to be (a) abused or neglected; (b) at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his care; or (c) abandoned by his parent or other custodian, or without parental care and guardianship because of his parent's absence or physical or

mental incapacity, the juvenile court or the circuit court may make any of the following orders of disposition to protect the welfare of the child:

1. Enter an order pursuant to the provisions of § [16.1-278](#);
2. Permit the child to remain with his parent, subject to such conditions and limitations as the court may order with respect to such child and his parent or other adult occupant of the same dwelling;
3. Prohibit or limit contact as the court deems appropriate between the child and his parent or other adult occupant of the same dwelling whose presence tends to endanger the child's life, health or normal development. The prohibition may exclude any such individual from the home under such conditions as the court may prescribe for a period to be determined by the court but in no event for longer than 180 days from the date of such determination. A hearing shall be held within 150 days to determine further disposition of the matter that may include limiting or prohibiting contact for another 180 days;
4. Permit the local board of social services or a public agency designated by the community policy and management team to place the child, subject to the provisions of § [16.1-281](#), in suitable family homes, child-caring institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and control of the child. The board or public agency that places the child shall have the final authority to determine the appropriate placement for the child.

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child; and the order shall so state.

5. After a finding that there is no less drastic alternative, transfer legal custody, subject to the provisions of § [16.1-281](#), to any of the following:
 - a. A relative or other interested individual subject to the provisions of subsection A1 of this section;
 - b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such child; however, a court shall

not transfer legal custody of an abused or neglected child to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed 14 days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this section shall prohibit the commitment of a child to any local board of social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

Any order authorizing removal from the home and transferring legal custody of a child to a local board of social services as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child; and the order shall so state.

A finding by the court that reasonable efforts were made to prevent removal of the child from his home shall not be required if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense

was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § [16.1-283](#).

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect (i) evinces a wanton or depraved indifference to human life or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but otherwise meets the definition of "aggravated circumstances."

6. Transfer legal custody pursuant to subdivision 5 of this section and order the parent to participate in such services and programs or to refrain from such conduct as the court may prescribe; or

7. Terminate the rights of the parent pursuant to § [16.1-283](#).

A1. Any order transferring custody of the child to a relative or other interested individual pursuant to subdivision A 5 a shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or other interested individual should further provide for, as appropriate, any terms or conditions which would promote the child's interest and

welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

B. If the child has been placed in foster care, at the dispositional hearing the court shall review the foster care plan for the child filed in accordance with § [16.1-281](#) by the local department of social services, a public agency designated by the community policy and management team which places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardians, or child welfare agency.

C. Any preliminary protective orders entered on behalf of the child shall be reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order.

D. A dispositional order entered pursuant to this section is a final order from which an appeal may be taken in accordance with § [16.1-296](#).

1991, c. 534; 1994, c. [865](#); 1997, c. [790](#); 2000, c. [385](#); 2002, c. [747](#); 2013, c. [130](#); 2017, c. [190](#).

§16.1-278.3. Relief of care and custody.

A. Within 60 days of a hearing on a petition for relief of the care and custody of any child pursuant to § [16.1-277.02](#) at which the court found (i) good cause for the petitioner's desire to be relieved of a child's care and custody or (ii) that permanent relief of custody and termination of residual parental rights is in the best interest of the child, a dispositional hearing shall be held, if a final order disposing of the matter was not entered at the conclusion of the hearing on the petition held pursuant to § [16.1-277.02](#).

B. Notice of the dispositional hearing shall be provided to the local department of social services, the guardian ad litem for the child, the child if he is at least 12 years of age, and the child's parents, custodian or other person standing in loco parentis. However, if a parent's residual parental rights were terminated at the hearing on the petition held pursuant to § [16.1-277.02](#), no such notice of the hearing pursuant to this section shall be provided to the parent. The hearing shall be held and a dispositional order may be entered, although a parent, guardian, legal custodian or person standing in loco parentis fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that the person cannot be found, after reasonable effort, or in the case of a

person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. However, in the case of a hearing to grant a petition for permanent relief of custody and terminate a parent's residual parental rights, notice to the parent whose rights may be affected shall be provided in accordance with the provisions of §§ [16.1-263](#) and [16.1-264](#).

C. The court may make any of the orders of disposition permitted in a case involving an abused or neglected child pursuant to § [16.1-278.2](#). Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § [16.1-278.2](#) and shall be subject to the provisions of subsection D1. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services. Any preliminary protective orders entered on behalf of the child shall be reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order. If the child has been placed in foster care, at the dispositional hearing the court shall review the foster care plan for the child filed by the local board of social services or child welfare agency in accordance with § [16.1-281](#).

D. If the parent or other custodian seeks to be relieved permanently of the care and custody of any child and the court finds by clear and convincing evidence that termination of the parent's parental rights is in the best interest of the child, the court may terminate the parental rights of that parent. If the remaining parent has not petitioned for permanent relief of the care and custody of the child, the remaining parent's parental rights may be terminated in accordance with the provisions of § [16.1-283](#). Any order terminating parental rights shall be accompanied by an order (i) continuing or granting custody to a local board of social services or to a licensed child-placing agency, or (ii) granting custody or guardianship to a relative or other interested individual. Such an order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto. Proceedings under this section shall be advanced on the docket so as to provide for their earliest practicable disposition. At any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent or parents of the child and the pre-adoptive parent or parents may enter into a written post-

adoption contact and communication agreement in accordance with the provisions of § [16.1-283.1](#) and Article 1.1 (§ [63.2-1220.2](#) et seq.) of Chapter 12 of Title 63.2. The court shall not require a written post-adoption contact and communication agreement as a precondition to entry of an order in any case involving the child.

D1. Any order transferring custody of the child to a relative or other interested individual pursuant to subsection C or D shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or other interested individual should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

E. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered pursuant to this section shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

F. A dispositional order entered pursuant to this section is a final order from which an appeal may be taken in accordance with § [16.1-296](#).

1991, c. 534; 1999, c. [889](#); 2000, c. [385](#); 2009, cc. [98](#), [260](#); 2010, c. [331](#); 2013, c. [130](#).

§16.1-278.4. Children in need of services.

If a child is found to be in need of services or a status offender, the juvenile court or the circuit court may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter an order pursuant to the provisions of § [16.1-278](#).
2. Permit the child to remain with his parent subject to such conditions and limitations as the court may order with respect to such child and his parent.
3. Order the parent with whom the child is living to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and his parent.
4. Beginning July 1, 1992, in the case of any child fourteen years of age or older, where the court finds that the child is not able to benefit appreciably from further schooling, the court may excuse the child from further compliance with any legal requirement of compulsory school attendance as provided under § [22.1-254](#) or authorize the child, notwithstanding the provisions of any other law, to be employed in any occupation which is not legally declared hazardous for children under the age of eighteen.
5. Permit the local board of social services or a public agency designated by the community policy and management team to place the child, subject to the provisions of § [16.1-281](#), in suitable family homes, child caring-institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and control of the child. The board or public agency that places the child shall have the final authority to determine the appropriate placement for the child.

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

6. Transfer legal custody to any of the following:
 - a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the child;

b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such child. The court shall not transfer legal custody of a child in need of services to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a child to any local board of social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

Any order authorizing removal from the home and transferring legal custody of a child to a local board of social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

A finding by the court that reasonable efforts were made to prevent removal of the child from his home shall not be required if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially

similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § [16.1-283](#).

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect (i) evinces a wanton or depraved indifference to human life or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but otherwise meets the definition of "aggravated circumstances."

7. Require the child to participate in a public service project under such conditions as the court prescribes.

1991, c. 534; 1994, c. [865](#); 1997, c. [463](#); 1999, cc. [488](#), [552](#); 2002, c. [747](#); 2017, c. [190](#).

§16.1-278.5. Children in need of supervision.

A. If a child is found to be in need of supervision, the court shall, before final disposition of the case, direct the appropriate public agency to evaluate the child's service needs using an interdisciplinary team approach. The team shall consist of qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit and other appropriate and available public and private agencies and may be the

family assessment and planning team established pursuant to § [2.2-5207](#). A report of the evaluation shall be filed as provided in § [16.1-274](#) A. In lieu of directing an evaluation be made, the court may consider the report concerning the child of an interdisciplinary team which met not more than ninety days prior to the court's making a finding that the child is in need of supervision.

B. The court may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter any order of disposition authorized by § [16.1-278.4](#) for a child found to be in need of services;
2. Place the child on probation under such conditions and limitations as the court may prescribe including suspension of the child's driver's license upon terms and conditions which may include the issuance of a restricted license for those purposes set forth in subsection E of § [18.2-271.1](#);
3. Order the child and/or his parent to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child;
4. Require the child to participate in a public service project under such conditions as the court may prescribe; or
5. a. Beginning July 1, 1992, in the case of any child subject to compulsory school attendance as provided in § [22.1-254](#), where the court finds that the child's parent is in violation of §§ [22.1-254](#), [22.1-255](#), [22.1-265](#), or § [22.1-267](#), in addition to any penalties provided in § [22.1-263](#) or § [22.1-265](#), the court may order the parent with whom the child is living to participate in such programs, cooperate in such treatment, or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and/or the parent. Upon the failure of the parent to so participate or cooperate, or to comply with the conditions and limitations that the court orders, the court may impose a fine of not more than \$100 for each day in which the person fails to comply with the court order.

b. If the court finds that the parent has willfully disobeyed a lawful process, judgment, decree, or court order requiring such person to comply with the compulsory school attendance law, in addition to any conditions or limitations that the court may order or any penalties provided by §§ [16.1-278.2](#) through [16.1-278.19](#), [22.1-263](#) or § [22.1-265](#), the court may impose the penalty authorized by § [18.2-371](#).

C. Any order entered pursuant to this section shall be provided in writing to the child, his parent or legal custodian, and to the child's attorney and shall contain adequate notice of the provisions of § [16.1-292](#) regarding willful violation of such order.

1991, c. 534; 1992, cc. 837, 880; 1996, c. [45](#); 1997, c. [210](#).

§16.1-278.6. Status offenders.

If a child is alleged to be a status offender, including but not limited to those cases in which the juvenile is alleged to have committed a curfew violation or a violation of the law regarding tobacco, the juvenile court or the circuit court may enter any order of disposition authorized by § [16.1-278.4](#).

1991, c. 534; 1997, c. [463](#).

§16.1-278.7. Commitment to Department of Juvenile Justice.

Only a juvenile who is adjudicated as a delinquent and is 11 years of age or older may be committed to the Department of Juvenile Justice. In cases where a waiver of an investigation has been granted pursuant to subdivision A 14 or A 17 of § [16.1-278.8](#), at the time a court commits a child to the Department of Juvenile Justice the court shall order an investigation pursuant to § [16.1-273](#) to be completed within 15 days. No juvenile court or circuit court shall order the commitment of any child jointly to the Department of Juvenile Justice and to a local board of social services or transfer the custody of a child jointly to a court service unit of a juvenile court and to a local board of social services. Any person sentenced and committed to an active term of incarceration in the Department of Corrections who is, at the time of such sentencing, in the custody of the Department of Juvenile Justice, upon pronouncement of sentence, shall be immediately transferred to the Department of Corrections.

1991, c. 534; 2000, cc. [954](#), [981](#), [988](#); 2007, c. [510](#); 2014, cc. [20](#), [249](#).

§16.1-278.7:01. Department to give notice of the receipt of certain persons.

A. At the time of receipt of any person, for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1, the Department shall obtain from that person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police. A person required to register shall register and submit to be photographed as part of the registration. The Department

shall forthwith forward the registration information and photograph to the Department of State Police on the date of the receipt of the person.

B. Whenever a person required to register has failed to comply with the provisions of subsection A, the Department shall promptly investigate or request the State Police promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or petition or assist in obtaining an indictment charging a violation of § [18.2-472.1](#) in the jurisdiction in which the person was received. The Department shall notify the State Police forthwith of such actions taken pursuant to this section.

2006, cc. [857](#), [914](#).

§16.1-278.7:02. Department to give notice of Sex Offender and Crimes Against Minors Registry requirements to certain persons.

A. Prior to the release or discharge of any persons for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1, the Department shall give notice to the persons of his duty to register with the State Police. A person required to register shall register, submit to be photographed as part of the registration, and provide information regarding place of employment, if available, to the Department. The Department shall also obtain from that person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police; inform the person of his duties regarding reregistration and change of address; and inform the person of his duty to register. The Department of Juvenile Justice shall forward the registration information to the Department of State Police on the date of the person's release or discharge.

B. Whenever a person required to register has failed to comply with the provisions of subsection A, the Department shall promptly investigate or request the State Police promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § [18.2-472.1](#) in the jurisdiction in which the person was discharged. The Department shall notify the State Police forthwith of such actions taken pursuant to this section.

2006, cc. [857](#), [914](#).

§16.1-278.8. Delinquent juveniles.

A. If a juvenile is found to be delinquent, except where such finding involves a refusal to take a breath test in violation of § [18.2-268.2](#) or a similar ordinance, the juvenile court or the circuit court may make any of the following orders of disposition for his supervision, care and rehabilitation:

1. Enter an order pursuant to the provisions of § [16.1-278](#);
2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the court may order with respect to the juvenile and his parent;
3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile and his parent;
4. Defer disposition for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, after which time the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred;
- 4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a boot camp established pursuant to § [66-13](#) provided bed space is available for confinement and the juvenile (i) has been found delinquent for an offense that would be a Class 1 misdemeanor or felony if committed by an adult, (ii) has not previously been and is not currently being adjudicated delinquent or found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not previously been committed to and received by the Department, and (v) has had an assessment completed by the Department or its contractor concerning the appropriateness of the candidate for a boot camp. Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition as authorized by this section which could have been imposed at the time the juvenile was placed in the custody of the Department;
5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer disposition of the delinquency charge for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, and place the juvenile on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the

court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt;

6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile where the court determines this participation to be in the best interest of the juvenile and other parties concerned and where the court determines it reasonable to expect the parent to be able to comply with such order;

7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or drugs in a program licensed by the Department of Behavioral Health and Developmental Services for the treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse screening and assessment pursuant to § [16.1-273](#) and that such assessment reasonably indicates that the commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition authorized by this section. The court shall review such placements at 30-day intervals;

8. Impose a fine not to exceed \$500 upon such juvenile;

9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the juvenile as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license is suspended may be referred for an assessment and subsequent referral to appropriate services, upon such terms and conditions as the court may order. The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who enters such program for any of the purposes set forth in subsection E of § [18.2-271.1](#) or for travel to and from school. The restricted permit shall be issued in accordance with the provisions of such subsection. However, only an abstract of the

court order that identifies the juvenile and the conditions under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the physical custody of the court during any period of curfew restriction. The court shall send an abstract of any order issued under the provisions of this section to the Department of Motor Vehicles, which shall preserve a record thereof. Notwithstanding the provisions of Article 12 (§ [16.1-299](#) et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be noted all curfew restrictions, shall be provided to the juvenile and shall contain such information regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor vehicle under the court order in accordance with its terms.

Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this section is guilty of a violation of § [46.2-301](#).

The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order imposing the curfew;

10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the juvenile was found to be delinquent;

11. Require the juvenile to participate in a public service project under such conditions as the court prescribes;

12. In case of traffic violations, impose only those penalties that are authorized to be imposed on adults for such violations. However, for those violations punishable by confinement if committed by an adult, confinement shall be imposed only as authorized by this title;

13. Transfer legal custody to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the juvenile;

b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such juvenile. The court shall not

transfer legal custody of a delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the approval of the Director; or

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the juvenile has residence if other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed 14 days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a juvenile to any local board of social services in the Commonwealth when such local board consents to the commitment. The board to which the juvenile is committed shall have the final authority to determine the appropriate placement for the juvenile. Any order authorizing removal from the home and transferring legal custody of a juvenile to a local board of social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the juvenile, and the order shall so state;

14. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile and his attorney or other legal representative, upon consideration of the results of an investigation completed pursuant to § [16.1-273](#), commit the juvenile to the Department of Juvenile Justice, but only if he is 11 years of age or older and the current offense is (i) an offense that would be a felony if committed by an adult, (ii) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent based on an offense that would be a felony if committed by an adult, or (iii) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been adjudicated delinquent of three or more offenses that would be a Class 1 misdemeanor if committed by an adult, and each such offense was not a part of a common act, transaction or scheme;

15. Impose the penalty authorized by § [16.1-284](#);

16. Impose the penalty authorized by § [16.1-284.1](#);

17. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile and his attorney or other legal representative, upon consideration of the results of an investigation completed pursuant to § [16.1-273](#), impose the penalty authorized by § [16.1-285.1](#);

18. Impose the penalty authorized by § [16.1-278.9](#); or

19. Require the juvenile to participate in a gang-activity prevention program including, but not limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to § [16.1-309.7](#), if available, when a juvenile has been found delinquent of any of the following violations: § [18.2-51](#), [18.2-51.1](#), [18.2-52](#), [18.2-53](#), [18.2-55](#), [18.2-56](#), [18.2-57](#), [18.2-57.2](#), [18.2-121](#), [18.2-127](#), [18.2-128](#), [18.2-137](#), [18.2-138](#), [18.2-146](#), or [18.2-147](#), or any violation of a local ordinance adopted pursuant to § [15.2-1812.2](#).

B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the offense: § [18.2-51](#), [18.2-51.1](#), [18.2-52](#), [18.2-53](#), [18.2-55](#), [18.2-56](#), [18.2-57](#), [18.2-57.2](#), [18.2-121](#), [18.2-127](#), [18.2-128](#), [18.2-137](#), [18.2-138](#), [18.2-146](#), or [18.2-147](#); or for any violation of a local ordinance adopted pursuant to § [15.2-1812.2](#). The court shall further require the juvenile to participate in a community service project under such conditions as the court prescribes.

1991, c. 534; 1992, c. 830; 1994, cc. [859](#), [949](#); 1996, cc. [755](#), [914](#); 1997, c. [318](#); 1999, cc. [350](#), [622](#); 2000, cc. [954](#), [978](#), [981](#), [988](#), [1020](#), [1041](#); 2004, cc. [325](#), [462](#); 2005, c. [810](#); 2009, cc. [813](#), [840](#); 2014, cc. [20](#), [249](#); 2017, c. [623](#).

§16.1-278.8:01. Juveniles found delinquent of first drug offense; screening; assessment; drug tests; costs and fees; education or treatment programs.

Whenever any juvenile who has not previously been found delinquent of any offense under Article 1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2 or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant or hallucinogenic drugs, or has not previously had a proceeding against him for a violation of such an offense dismissed as provided in § [18.2-251](#), is found delinquent of any offense concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances and like substances, the juvenile court or the circuit court shall require such juvenile to undergo a substance abuse screening pursuant to § [16.1-273](#) and to submit to such periodic

substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be conducted by a court services unit of the Department of Juvenile Justice, or by a locally operated court services unit or by personnel of any program or agency approved by the Department. The cost of such testing ordered by the court shall be paid by the Commonwealth from funds appropriated to the Department for this purpose. The court shall also order the juvenile to undergo such treatment or education program for substance abuse, if available, as the court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program licensed by the Department of Behavioral Health and Developmental Services or by a similar program available through a facility or program operated by or under contract to the Department of Juvenile Justice or a locally operated court services unit or a program funded through the Virginia Juvenile Community Crime Control Act (§ [16.1-309.2](#) et seq.).

2000, cc. [1020](#), [1041](#); 2009, cc. [813](#), [840](#); 2011, cc. [384](#), [410](#); 2014, cc. [674](#), [719](#).

§16.1-278.9. Delinquent children; loss of driving privileges for alcohol, firearm, and drug offenses; truancy.

A. If a court has found facts which would justify a finding that a child at least 13 years of age at the time of the offense is delinquent and such finding involves (i) a violation of § [18.2-266](#) or of a similar ordinance of any county, city or town, (ii) a refusal to take a breath test in violation of § [18.2-268.2](#), (iii) a felony violation of § [18.2-248](#), [18.2-248.1](#) or [18.2-250](#), (iv) a misdemeanor violation of § [18.2-248](#), [18.2-248.1](#), or [18.2-250](#) or a violation of § [18.2-250.1](#), (v) the unlawful purchase, possession or consumption of alcohol in violation of § [4.1-305](#) or the unlawful drinking or possession of alcoholic beverages in or on public school grounds in violation of § [4.1-309](#), (vi) public intoxication in violation of § [18.2-388](#) or a similar ordinance of a county, city or town, (vii) the unlawful use or possession of a handgun or possession of a "streetsweeper" as defined below, or (viii) a violation of § [18.2-83](#), the court shall order, in addition to any other penalty that it may impose as provided by law for the offense, that the child be denied a driver's license. In addition to any other penalty authorized by this section, if the offense involves a violation designated under clause (i) and the child was transporting a person 17 years of age or younger, the court shall impose the additional fine and order community service as provided in § [18.2-270](#). If the offense involves a violation designated under clause (i), (ii), (iii) or (viii), the denial of a driver's license shall be for a period of one year or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of

one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent such offense. If the offense involves a violation designated under clause (iv), (v) or (vi) the denial of driving privileges shall be for a period of six months unless the offense is committed by a child under the age of 16 years and three months, in which case the child's ability to apply for a driver's license shall be delayed for a period of six months following the date he reaches the age of 16 and three months. If the offense involves a first violation designated under clause (v) or (vi), the court shall impose the license sanction and may enter a judgment of guilt or, without entering a judgment of guilt, may defer disposition of the delinquency charge until such time as the court disposes of the case pursuant to subsection F of this section. If the offense involves a violation designated under clause (iii) or (iv), the court shall impose the license sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or § [18.2-251](#). If the offense involves a violation designated under clause (vii), the denial of driving privileges shall be for a period of not less than 30 days, except when the offense involves possession of a concealed handgun or a striker 12, commonly called a "streetsweeper," or any semi-automatic folding stock shotgun of like kind with a spring tension drum magazine capable of holding 12 shotgun shells, in which case the denial of driving privileges shall be for a period of two years unless the offense is committed by a child under the age of 16 years and three months, in which event the child's ability to apply for a driver's license shall be delayed for a period of two years following the date he reaches the age of 16 and three months.

A1. If a court finds that a child at least 13 years of age has failed to comply with school attendance and meeting requirements as provided in § [22.1-258](#), the court shall order the denial of the child's driving privileges for a period of not less than 30 days. If such failure to comply involves a child under the age of 16 years and three months, the child's ability to apply for a driver's license shall be delayed for a period of not less than 30 days following the date he reaches the age of 16 and three months.

If the court finds a second or subsequent such offense, it may order the denial of a driver's license for a period of one year or until the juvenile reaches the age of 18, whichever is longer, or delay the child's ability to apply for a driver's license for a period of one year following the date he reaches the age of 16 and three months, as may be appropriate.

A2. If a court finds that a child at least 13 years of age has refused to take a blood test in violation of § [18.2-268.2](#), the court shall order that the child be denied a driver's license for a period of one year or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent such offense.

B. Any child who has a driver's license at the time of the offense or at the time of the court's finding as provided in subsection A1 or A2 shall be ordered to surrender his driver's license, which shall be held in the physical custody of the court during any period of license denial.

C. The court shall report any order issued under this section to the Department of Motor Vehicles, which shall preserve a record thereof. The report and the record shall include a statement as to whether the child was represented by or waived counsel or whether the order was issued pursuant to subsection A1 or A2. Notwithstanding the provisions of Article 12 (§ [16.1-299](#) et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. No other record of the proceeding shall be forwarded to the Department of Motor Vehicles unless the proceeding results in an adjudication of guilt pursuant to subsection F.

The Department of Motor Vehicles shall refuse to issue a driver's license to any child denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order of denial under subsection E.

D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii) or (vi) of subsection A or a violation designated under subsection A2, the child may be referred to a certified alcohol safety action program in accordance with § [18.2-271.1](#) upon such terms and conditions as the court may set forth. If the finding as to such child involves a violation designated under clause (iii), (iv), (v), (vii) or (viii) of subsection A, such child may be referred to appropriate rehabilitative or educational services upon such terms and conditions as the court may set forth.

The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted permit to operate a motor vehicle by any child who has a driver's license at the time of the offense or at the time of the court's finding as provided in subsection A1 or A2 for any of the purposes set forth in subsection E of § [18.2-271.1](#) or for travel to and from school, except that no restricted license shall be issued for

travel to and from home and school when school-provided transportation is available and no restricted license shall be issued if the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, or if it involves a second or subsequent violation of any offense designated in subsection A, a second finding by the court of failure to comply with school attendance and meeting requirements as provided in subsection A1, or a second or subsequent finding by the court of a refusal to take a blood test as provided in subsection A2. The issuance of the restricted permit shall be set forth within the court order, a copy of which shall be provided to the child, and shall specifically enumerate the restrictions imposed and contain such information regarding the child as is reasonably necessary to identify him. The child may operate a motor vehicle under the court order in accordance with its terms. Any child who operates a motor vehicle in violation of any restrictions imposed pursuant to this section is guilty of a violation of § [46.2-301](#).

E. Upon petition made at least 90 days after issuance of the order, the court may review and withdraw any order of denial of a driver's license if for a first such offense or finding as provided in subsection A1 or A2. For a second or subsequent such offense or finding, the order may not be reviewed and withdrawn until one year after its issuance.

F. If the finding as to such child involves a first violation designated under clause (vii) of subsection A, upon fulfillment of the terms and conditions prescribed by the court and after the child's driver's license has been restored, the court shall or, in the event the violation resulted in the injury or death of any person or if the finding involves a violation designated under clause (i), (ii), (v), or (vi) of subsection A, may discharge the child and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without an adjudication of guilt but a record of the proceeding shall be retained for the purpose of applying this section in subsequent proceedings. Failure of the child to fulfill such terms and conditions shall result in an adjudication of guilt. If the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of pursuant to the provisions of this chapter or § [18.2-251](#). If the finding as to such child involves a second violation under clause (v), (vi) or (vii) of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of under § [16.1-278.8](#).

1991, cc. 534, 696; 1992, cc. 701, 736, 830; 1993, cc. 482, 866, 972; 1994, c. [338](#); 2000, c. [835](#); 2001, cc. [248](#), [266](#); 2002, cc. [519](#), [755](#); 2003, c. [118](#); 2005, c. [895](#); 2007, c. [731](#); 2010, cc. [522](#), [569](#), [570](#); 2017, c. [623](#).

§16.1-278.10. Traffic infractions.

In cases involving a child who is charged with a traffic infraction, the court may impose only those penalties which are authorized to be imposed on adults for such infractions.

1991, c. 534.

§16.1-278.11. Mental illness and intellectual disability.

In cases involving a person who is involuntarily admitted because of a mental illness or is judicially certified as eligible for admission to a training center for persons with intellectual disability, disposition shall be in accordance with the provisions of Chapter 8 (§ [37.2-800](#) et seq.) of Title 37.2. A child shall not be committed pursuant to §§ [16.1-278.2](#) through [16.1-278.8](#) or the provisions of Title 37.2 to a maximum security unit within any state hospital where adults determined to be criminally insane reside.

1991, c. 534; 2005, c. [716](#); 2012, cc. [476](#), [507](#).

§16.1-278.12. When judicial consent in lieu of parental consent authorized.

In cases involving judicial consent to the matters set out in subsections C and D of § [16.1-241](#), the juvenile court or the circuit court providing consent may also make any appropriate order to protect the health and welfare of the child.

1991, c. 534.

§16.1-278.13. Work permits; petitions for treatment, etc.

In cases involving judicial consent to apply for a work permit for a child, the juvenile court shall enter an order either granting, in whole or in part, consent to such application or withholding such consent as is appropriate to protect the health and welfare of the child.

In cases involving petitions filed by or on behalf of a child or such child's parent to obtain treatment, rehabilitation or other services required by law to be provided for such persons, the juvenile court or the circuit court may enter an order in accordance with § [16.1-278](#).

1991, cc. 511, 534.

§16.1-278.14. Criminal jurisdiction; protective orders; family offenses.

In cases involving the violation of any law, regulation or ordinance for the education, protection or care of children or involving offenses committed by one family or household member against another, the juvenile court or the circuit court may impose a penalty prescribed by applicable sections of the Code and may impose conditions and limitations upon the defendant to protect the health or safety of family or household members, including, but not limited to, a protective order as provided in § [16.1-279.1](#), treatment and counseling for the defendant and payment by the defendant for crisis shelter care for the complaining family or household member.

1991, c. 534; 1992, c. 742; 1996, c. [866](#).

§16.1-278.15. Custody or visitation, child or spousal support generally.

A. In cases involving the custody, visitation or support of a child pursuant to subdivision A 3 of § [16.1-241](#), the court may make any order of disposition to protect the welfare of the child and family as may be made by the circuit court. The parties to any petition where a child whose custody, visitation, or support is contested shall show proof that they have attended within the 12 months prior to their court appearance or that they shall attend within 45 days thereafter an educational seminar or other like program conducted by a qualified person or organization approved by the court. The court may require the parties to attend such seminar or program in uncontested cases only if the court finds good cause. The seminar or other program shall be a minimum of four hours in length and shall address the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution and financial responsibilities. Once a party has completed one educational seminar or other like program, the required completion of additional programs shall be at the court's discretion. Parties under this section shall include natural or adoptive parents of the child, or any person with a legitimate interest as defined in § [20-124.1](#). The fee charged a party for participation in such program shall be based on the party's ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before participating in mediation or alternative dispute resolution to address custody, visitation or support, each party shall have attended the educational seminar or other like program. The court may grant an exemption from attendance of such program for good cause shown or if there is no program reasonably available. Other than statements or admissions by a party admitting criminal activity or child abuse or neglect, no statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding. If support is ordered for a child, the

order shall also provide that support will continue to be paid for a child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until the child reaches the age of 19 or graduates from high school, whichever occurs first. The court may also order that support be paid or continue to be paid for any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, and such disability existed prior to the child reaching the age of 18 or the age of 19 if the child met the requirements of clauses (i), (ii), and (iii); (b) unable to live independently and support himself; and (c) residing in the home of the parent seeking or receiving child support. Upon request of either party, the court may also order that support payments be made to a special needs trust or an ABLE savings trust account as defined in § [23.1-700](#).

B. In any case involving the custody or visitation of a child, the court may award custody upon petition to any party with a legitimate interest therein, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The term "legitimate interest" shall be broadly construed to accommodate the best interest of the child. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the custody of the child has previously been awarded to a local board of social services.

C. In any determination of support obligation under this section, the support obligation as it becomes due and unpaid creates a judgment by operation of law. Such judgment becomes a lien against real estate only when docketed in the county or city where such real estate is located. Nothing herein shall be construed to alter or amend the process of attachment of any lien on personal property.

D. Orders entered prior to July 1, 2008, shall not be deemed void or voidable solely because the petition or motion that resulted in the order was completed, signed and filed by a nonattorney employee of the Department of Social Services.

E. In cases involving charges for desertion, abandonment or failure to provide support by any person in violation of law, disposition shall be made in accordance with Chapter 5 (§ [20-61](#) et seq.) of Title 20.

F. In cases involving a spouse who seeks spousal support after having separated from his spouse, the court may enter any appropriate order to protect the welfare of the spouse seeking support.

G. In any case or proceeding involving the custody or visitation of a child, the court shall consider the best interest of the child, including the considerations for determining custody and visitation set forth in Chapter 6.1 (§ [20-124.1](#) et seq.) of Title 20.

G1. In any case or proceeding involving the custody or visitation of a child, as to a parent, the court may, in its discretion, use the phrase "parenting time" to be synonymous with the term "visitation."

H. In any proceeding before the court for custody or visitation of a child, the court may order a custody or a psychological evaluation of any parent, guardian, legal custodian or person standing in loco parentis to the child, if the court finds such evaluation would assist it in its determination. The court may enter such orders as it deems appropriate for the payment of the costs of the evaluation by the parties.

I. When deemed appropriate by the court in any custody or visitation matter, the court may order drug testing of any parent, guardian, legal custodian or person standing in loco parentis to the child. The court may enter such orders as it deems appropriate for the payment of the costs of the testing by the parties.

J. In any custody or visitation case or proceeding wherein an order prohibiting a party from picking the child up from school is entered pursuant to this section, the court shall order a party to such case or proceeding to provide a copy of such custody or visitation order to the school at which the child is enrolled within three business days of such party's receipt of such custody or visitation order.

If a custody determination affects the school enrollment of the child subject to such custody order and prohibits a party from picking the child up from school, the court shall order a party to provide a copy of such custody order to the school at which the child will be enrolled within three business days of such party's receipt of such order. Such order directing a party to provide a copy of such custody or visitation order shall further require such party, upon any subsequent change in the child's school enrollment, to provide a copy of such custody or visitation order to the new school at which the child is subsequently enrolled within three business days of such enrollment.

If the court determines that a party is unable to deliver the custody or visitation order to the school, such party shall provide the court with the name of the principal and address of the school, and the court shall cause the order to be mailed by first class mail to such school principal.

Nothing in this section shall be construed to require any school staff to interpret or enforce the terms of such custody or visitation order.

1991, c. 534; 1992, cc. 585, 716, 742; 1994, c. [769](#); 1996, cc. [767](#), [879](#), [884](#); 2000, c. [586](#); 2002, c. [300](#); 2003, cc. [31](#), [45](#); 2004, c. [732](#); 2008, cc. [136](#), [845](#); 2015, cc. [653](#), [654](#); 2017, cc. [46](#), [95](#), [509](#).

§16.1-278.16. Failure to comply with support obligation; payroll deduction; commitment.

In cases involving (i) the custody, visitation or support of a child arising under subdivision A 3 of § [16.1-241](#), (ii) spousal support arising under subsection L of § [16.1-241](#), (iii) support, maintenance, care, and custody of a child or support and maintenance of a spouse transferred to the juvenile and domestic relations district court pursuant to § [20-79](#), or (iv) motions to enforce administrative support orders entered pursuant to Chapter 19 (§ [63.2-1900](#) et seq.) of Title 63.2, when the court finds that the respondent (i) has failed to perform or comply with a court order concerning the custody and visitation of a child or a court or administrative order concerning the support and maintenance of a child or a court order concerning the support and maintenance of a spouse or (ii) under existing circumstances, is under a duty to render support or additional support to a child or pay the support and maintenance of a spouse, the court may order a payroll deduction as provided in § [20-79.1](#), or the giving of a recognizance as provided in § [20-114](#). If the court finds that the respondent has failed to perform or comply with such order, and personal or substitute service has been obtained, the court may issue a civil show cause summons or a capias pursuant to this section. The court also may order the commitment of the person as provided in § [20-115](#) or the court may, in its discretion, impose a sentence of up to 12 months in jail, notwithstanding the provisions of §§ [16.1-69.24](#) and [18.2-458](#), relating to punishment for contempt. If the court finds that an employer, who is under a payroll deduction order pursuant to § [20-79.1](#), has failed to comply with such order after being given a reasonable opportunity to show cause why he failed to comply with such order, then the court may proceed to impose sanctions on the employer pursuant to subdivision A 9 of § [20-79.3](#).

1991, c. 534; 2003, cc. [929](#), [942](#); 2004, c. [219](#).

§16.1-278.17. Pendente lite support.

In cases involving (i) the custody, visitation or support of a child arising under subdivision A 3 of § [16.1-241](#), (ii) spousal support arising under subsection L of § [16.1-](#)

[241](#), or (iii) support, maintenance, care, and custody of a child or support and maintenance of a spouse transferred to the juvenile and domestic relations district court pursuant to § [20-79](#), the court may enter support orders in pendente lite proceedings, provided such proceedings are not ex parte.

1991, c. 534.

§16.1-278.17:1. Formula for determination of pendente lite spousal support.

A. There shall be a presumption in any judicial proceeding for pendente lite spousal support and maintenance under this title that the amount of the award that would result from the application of the formula set forth in this section is the correct amount of spousal support to be awarded. The court may deviate from the presumptive amount as provided in subsection D.

B. If the court is determining both an award of pendente lite spousal support and maintenance and an award of child support, the court shall first make a determination of the amount of the award of pendente lite spousal support, if any, owed by one party to the other under this section.

C. If the parties have minor children in common, the presumptive amount of an award of pendente lite spousal support and maintenance shall be the difference between 28% of the payor spouse's monthly gross income and 58% of the payee spouse's monthly gross income. If the parties have no minor children in common, the presumptive amount of the award shall be the difference between 30% of the payor spouse's monthly gross income and 50% of the payee spouse's monthly gross income. For the purposes of this section, monthly gross income shall have the same meaning as it does in section § [20-108.2](#), as amended.

D. The court may deviate from the presumptive amount for good cause shown, including any relevant evidence relating to the parties' current financial circumstances that indicates the presumptive amount is inappropriate.

E. The formula set forth in this section shall only apply to cases where the parties' combined monthly gross income does not exceed \$10,000.

2007, c. [909](#).

§16.1-278.18. Money judgments.

A. Each juvenile and domestic relations district court may enter judgment for money in any amount for arrears of support and maintenance of any person in cases in which (i) the court has previously acquired personal jurisdiction over all necessary

parties or a proceeding in which such jurisdiction has been obtained has been referred or transferred to the court by a circuit court or another juvenile and domestic relations district court and (ii) payment of such money has been previously ordered by the court, a circuit court, or another juvenile and domestic relations district court. Such judgment shall include reasonable attorneys' fees in cases where the total arrearage for support and maintenance, excluding interest, is equal to or greater than three months of support and maintenance. However, no judgment shall be entered unless the motion of a party, a probation officer, a local director of social services, or the court's own motion is duly served on the person against whom judgment is sought, in accordance with the applicable provisions of law relating to notice when proceedings are reopened. The motion shall contain a caption stating the name of the court, the title of the action, the names of all parties and the address of the party against whom judgment is sought, the amount of arrearage for which judgment is sought, and the date and time when such judgment will be sought. No support order may be retroactively modified. It may, however, be modified with respect to any period during which there is a pending petition for modification in any court, but only from the date that notice of such petition has been given to the responding party.

B. The judge or clerk of the court shall, upon written request of the obligee under a judgment entered pursuant to this section, certify and deliver an abstract of that judgment to the obligee or Department of Social Services, who may deliver the abstract to the clerk of the circuit court having jurisdiction over appeals from juvenile and domestic relations district court. The clerk shall issue executions of the judgment.

C. If the judgment amount does not exceed the jurisdictional limits of subdivision (1) of § [16.1-77](#), exclusive of interest and any attorneys' fees, an abstract of any such judgment entered pursuant to this section may be delivered to the clerk of the general district court of the same judicial district. The clerk shall issue executions upon the judgment.

D. Arrearages accumulated prior to July 1, 1976, shall also be subject to the provisions of this section.

1991, c. 534; 2002, c. [747](#); 2004, c. [204](#); 2005, c. [880](#).

§16.1-278.19. Attorneys' fees.

In any matter properly before the court, the court may award attorneys' fees and costs on behalf of any party as the court deems appropriate based on the relative financial ability of the parties.

1991, c. 534.

§16.1-279. Repealed.

Repealed by Acts 1991, c. 534.

§16.1-279.1. Protective order in cases of family abuse.

A. In cases of family abuse, including any case involving an incarcerated or recently incarcerated respondent against whom a preliminary protective order has been issued pursuant to § [16.1-253.1](#), the court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property;
2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;
3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property;
4. Enjoining the respondent from terminating any necessary utility service to the residence to which the petitioner was granted possession pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to that residence;
5. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the respondent and enjoining the respondent from terminating any insurance, registration, or taxes on the motor vehicle and directing the respondent to maintain the insurance, registration, and taxes, as appropriate; however, no such grant of possession or use shall affect title to the vehicle;

6. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, any other family or household member and where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided;
7. Ordering the respondent to participate in treatment, counseling or other programs as the court deems appropriate;
8. Granting the petitioner the possession of any companion animal as defined in § [3.2-6500](#) if such petitioner meets the definition of owner in § [3.2-6500](#); and
9. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner, including a provision for temporary custody or visitation of a minor child.

A1. If a protective order is issued pursuant to subsection A, the court may also issue a temporary child support order for the support of any children of the petitioner whom the respondent has a legal obligation to support. Such order shall terminate upon the determination of support pursuant to § [20-108.1](#).

B. The protective order may be issued for a specified period of time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. If the petitioner was a family or household member of the respondent at the time the initial protective order was issued, the court may extend the protective order for a period not longer than two years to protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued.

C. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The court, including a circuit court if the circuit court issued the order, shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and

the name, date of birth, sex, and race of each protected person provided to the court and shall forthwith forward the attested copy of the protective order containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

D. Except as otherwise provided in § [16.1-253.2](#), a violation of a protective order issued under this section shall constitute contempt of court.

E. The court may assess costs and attorneys' fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

F. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent

with federal law. A person entitled to protection under such a foreign order may file the order in any juvenile and domestic relations district court by filing with the court an attested or exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of the order to the primary law-enforcement agency responsible for service and entry of protective orders which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ [52-12](#) et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network.

Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy available of any foreign order filed with that court. A law-enforcement officer may, in the performance of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been provided to him by any source and may also rely upon the statement of any person protected by the order that the order remains in effect.

G. Either party may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. Proceedings to dissolve or modify a protective order shall be given precedence on the docket of the court.

H. As used in this section:

"Copy" includes a facsimile copy; and

"Protective order" includes an initial, modified or extended protective order.

I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

J. No fee shall be charged for filing or serving any petition or order pursuant to this section.

1984, c. 631; 1987, c. 497; 1992, c. 886; 1994, cc. [360](#), [521](#), [739](#), [907](#); 1996, cc. [866](#), [900](#), [945](#); 1997, c. [603](#); 1998, c. [684](#); 2000, cc. [34](#), [654](#); 2002, cc. [508](#), [810](#), [818](#);

2004, cc. [972](#), [980](#); 2006, c. [308](#); 2008, cc. [73](#), [246](#); 2009, cc. [343](#), [732](#); 2010, cc. [425](#), [468](#); 2011, cc. [445](#), [480](#); 2012, cc. [152](#), [261](#); 2014, cc. [318](#), [346](#), [613](#); 2016, c. [102](#).

§16.1-280. Commitment of juveniles with mental illness or intellectual disability.

When any juvenile court has found a juvenile to be in need of services or delinquent pursuant to the provisions of this law and reasonably believes such juvenile has mental illness or intellectual disability, the court may commit him to an appropriate hospital or order mandatory outpatient treatment in accordance with the provisions of Article 16 (§ [16.1-335](#) et seq.) or admit him to a training center in accordance with the provisions of § [37.2-806](#) for observation as to his mental condition. No juvenile shall be committed pursuant to this section or Article 16 (§ [16.1-335](#) et seq.) to a maximum security unit within any state hospital where adults determined to be criminally insane reside. However, the Commissioner of Behavioral Health and Developmental Services may place a juvenile who has been certified to the circuit court for trial as an adult pursuant to § [16.1-269.6](#) or [16.1-270](#) or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff, or the public. The Commissioner shall notify the committing court of any placement in such unit. The committing court shall review the placement at 30-day intervals.

Code 1950, § 16.1-178.2; 1960, c. 103; 1974, cc. 44, 45; 1977, c. 559; 1978, c. 739; 1981, c. 487; 1988, c. 826; 1990, c. 975; 1994, cc. [859](#), [949](#); 2009, cc. [813](#), [840](#); 2010, cc. [778](#), [825](#); 2012, cc. [476](#), [507](#).

§16.1-281. Foster care plan.

A. In any case in which (i) a local board of social services places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardian, or (ii) legal custody of a child is given to a local board of social services or a child welfare agency, the local department of social services or child welfare agency shall prepare a foster care plan for such child, as described hereinafter. The individual family service plan developed by the family assessment and planning team pursuant to § [2.2-5208](#) may be accepted by the court as the foster care plan if it meets the requirements of this section.

The representatives of such department or agency shall involve the child's parent(s) in the development of the plan, except when parental rights have been terminated or

the local department of social services or child welfare agency has made diligent efforts to locate the parent(s) and such parent(s) cannot be located, and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed the child. The representatives of such department or agency shall involve a child who is 14 years of age or older in the development of the plan and, at the option of such child, up to two members of the case planning team who are chosen by the child and who are not a foster parent of, or caseworker for, the child. A child under 14 years of age may be involved in the development of the plan if such involvement is consistent with the best interests of the child. In cases where either the parent(s) or child is not involved in the development of the plan, the department or agency shall include in the plan a full description of the reasons therefor.

The department or child welfare agency shall file the plan with the juvenile and domestic relations district court within 45 days following the transfer of custody or the board's placement of the child unless the court, for good cause shown, allows an extension of time, which shall not exceed an additional 60 days. However, a foster care plan shall be filed in accordance with the provisions of § [16.1-277.01](#) with a petition for approval of an entrustment agreement. A foster care plan need not be prepared if the child is returned to his prior family or placed in an adoptive home within 45 days following transfer of custody to the board or agency or the board's placement of the child.

B. The foster care plan shall describe in writing (i) the programs, care, services and other support which will be offered to the child and his parents and other prior custodians; (ii) the participation and conduct which will be sought from the child's parents and other prior custodians; (iii) the visitation and other contacts which will be permitted between the child and his parents and other prior custodians, and between the child and his siblings; (iv) the nature of the placement or placements which will be provided for the child; (v) for school-age children, the school placement of the child; (vi) for children 14 years of age and older, the child's needs and goals in the areas of counseling, education, housing, employment, and money management skills development, along with specific independent living services that will be provided to the child to help him reach these goals; (vii) for children 14 years and older, an explanation of the child's rights with respect to education, health, visitation, court participation, and the right to stay safe and avoid exploitation; and (viii) all documentation specified in 42 U.S.C. § 675(5)(l) and § [63.2-905.3](#). In cases in which a

foster care plan approved prior to July 1, 2011, identifies independent living as the goal for the child, and in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living, the plan shall also describe the programs and services which will help the child prepare for the transition from foster care to independent living. If consistent with the child's health and safety, the plan shall be designed to support reasonable efforts which lead to the return of the child to his parents or other prior custodians within the shortest practicable time which shall be specified in the plan. The child's health and safety shall be the paramount concern of the court and the agency throughout the placement, case planning, service provision and review process. For a child 14 years of age and older, the plan shall include a signed acknowledgment by the child that the child has received a copy of the plan and that the rights contained therein have been explained to the child in an age-appropriate manner.

If the department or child welfare agency concludes that it is not reasonably likely that the child can be returned to his prior family within a practicable time, consistent with the best interests of the child, the department, child welfare agency or team shall (a) include a full description of the reasons for this conclusion; (b) provide information on the opportunities for placing the child with a relative or in an adoptive home; (c) design the plan to lead to the child's successful placement with a relative if a subsequent transfer of custody to the relative is planned, or in an adoptive home within the shortest practicable time, and if neither of such placements is feasible; (d) explain why permanent foster care is the plan for the child or independent living is the plan for the child in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living.

"Independent living" as used in this section has the meaning set forth in § [63.2-100](#).

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent if the court finds that (1) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (2) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to

commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; (3) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (4) based on clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances which would justify the termination of residual parental rights pursuant to subsection D of § [16.1-283](#).

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once, but otherwise meets the definition of "aggravated circumstances."

Within 30 days of making a determination that reasonable efforts to reunite the child with the parents are not required, the court shall hold a permanency planning hearing pursuant to § [16.1-282.1](#).

C. A copy of the entire foster care plan shall be sent by the court to the child, if he is 12 years of age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other person standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed the child, to the parents or other person standing in loco parentis, and such other persons as appear to the

court to have a proper interest in the plan. However, a copy of the plan shall not be sent to a parent whose parental rights regarding the child have been terminated. A copy of the plan shall be sent by the court to the foster parents. A hearing shall be held for the purpose of reviewing and approving the foster care plan. The hearing shall be held within 60 days of (i) the child's initial foster care placement, if the child was placed through an agreement between the parents or guardians and the local department of social services or a child welfare agency; (ii) the original preliminary removal order hearing, if the child was placed in foster care pursuant to § [16.1-252](#); (iii) the hearing on the petition for relief of custody, if the child was placed in foster care pursuant to § [16.1-277.02](#); or (iv) the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to § [16.1-278.2](#), [16.1-278.3](#), [16.1-278.4](#), [16.1-278.5](#), [16.1-278.6](#), or [16.1-278.8](#). However, the hearing shall be held in accordance with the provisions of § [16.1-277.01](#) with a petition for approval of an entrustment agreement. If the judge makes any revision in any part of the foster care plan, a copy of the changes shall be sent by the court to all persons who received a copy of the original of that part of the plan.

C1. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

C2. Any order entered at the conclusion of the hearing that has the effect of achieving a permanent goal for the child by terminating residual parental rights pursuant to § [16.1-277.01](#), [16.1-277.02](#), [16.1-278.3](#), or [16.1-283](#); by placing the child in permanent foster care pursuant to clause (iv) of subsection A of § [16.1-282.1](#); or, in cases in which independent living was identified as the goal for a child in a foster care plan approved prior to July 1, 2011, or in which a child has been admitted to the United States as a refugee or asylee and is over 16 years of age and independent living has been identified as the permanency goal for the child, by directing the board or agency

to provide the child with services to achieve independent living status, if the child has attained the age of 16 years, pursuant to clause (v) of subsection A of § [16.1-282.1](#) shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child.

D. The court in which the foster care plan is filed shall be notified immediately if the child is returned to his parents or other persons standing in loco parentis at the time the board or agency obtained custody or the board placed the child.

E. At the conclusion of the hearing at which the initial foster care plan is reviewed, the court shall schedule a foster care review hearing to be held within four months in accordance with § [16.1-282](#). However, if an order is entered pursuant to subsection C2, the court shall schedule a foster care review hearing to be held within 12 months of the entry of such order in accordance with the provisions of § [16.1-282.2](#). Parties who are present at the hearing at which the initial foster care plan is reviewed shall be given notice of the date set for the foster care review hearing and parties who are not present shall be summoned as provided in § [16.1-263](#).

F. Nothing in this section shall limit the authority of the juvenile judge or the staff of the juvenile court, upon order of the judge, to review the status of children in the custody of local boards of social services or placed by local boards of social services on its own motion. The court shall appoint an attorney to act as guardian ad litem to represent the child any time a hearing is held to review the foster care plan filed for the child or to review the child's status in foster care.

1977, c. 559; 1978, cc. 732, 740; 1982, c. 171; 1984, c. 373; 1985, c. 210; 1991, c. 98; 1994, cc. [604](#), [865](#); 1997, c. [790](#); 1998, c. [550](#); 2000, c. [385](#); 2002, cc. [397](#), [512](#), [664](#), [729](#), [747](#); 2005, c. [653](#); 2008, cc. [397](#), [475](#), [483](#), [678](#); 2009, c. [80](#); 2011, cc. [154](#), [730](#); 2013, c. [130](#); 2015, c. [120](#); 2016, c. [631](#).

§16.1-282. Foster care review.

A. In the case of a child who was the subject of a foster care plan filed with the court pursuant to § [16.1-281](#), a foster care review hearing shall be held within four months of the dispositional hearing at which the foster care plan pursuant to § [16.1-281](#) was reviewed if the child: (a) was placed through an agreement between the parents or guardians and the local board of social services where legal custody remains with the parents or guardians and such agreement has not been dissolved by court order; or (b) is under the legal custody of a local board of social services or a child welfare

agency and has not had a petition to terminate parental rights granted, filed or ordered to be filed on the child's behalf; has not been placed in permanent foster care; or is age 16 or over and the plan for the child is not independent living.

Any interested party, including the parent, guardian or person who stood in loco parentis prior to the board's placement of the child or the board's or child welfare agency's assumption of legal custody, may file with the court the petition for a foster care review hearing hereinafter described at any time after the initial foster care placement of the child. However, the board or child welfare agency shall file the petition within three months of the dispositional hearing at which the foster care plan was reviewed pursuant to § [16.1-281](#).

B. The petition shall:

1. Be filed in the court in which the foster care plan for the child was reviewed and approved. Upon the order of such court, however, the petition may be filed in the court of the county or city in which the board or child welfare agency having legal custody or having placed the child has its principal office or where the child resides;
2. State, if such is reasonably obtainable, the current address of the child's parents and, if the child was in the custody of a person or persons standing in loco parentis at the time the board or child welfare agency obtained legal custody or the board placed the child, of such person or persons;
3. Describe the placement or placements provided for the child while in foster care and the services or programs offered to the child and his parents and, if applicable, the persons previously standing in loco parentis;
4. Describe the nature and frequency of the contacts between the child and his parents and, if applicable, the persons previously standing in loco parentis;
5. Set forth in detail the manner in which the foster care plan previously filed with the court was or was not complied with and the extent to which the goals thereof have been met; and
6. Set forth the disposition sought and the grounds therefor; however, in the case of a child who has attained age 16 and for whom the plan is independent living, the foster care plan shall be included and shall address the services needed to assist the child to transition from foster care to independent living.

C. Upon receipt of the petition filed by the board, child welfare agency, or any interested party as provided in subsection B of this section, the court shall schedule a hearing to be held within 30 days if a hearing was not previously scheduled. The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

1. The child, if he is 12 years of age or older;
2. The attorney-at-law representing the child as guardian ad litem;
3. The child's parents and, if the child was in the custody of a person standing in loco parentis at the time the department obtained custody, such person or persons. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. If the parent or guardian of the child did not appear at the dispositional hearing and was not noticed to return for the foster care review hearing in accordance with subsection E of § [16.1-281](#), the parent or guardian shall be summoned to appear at the foster care review hearing in accordance with § [16.1-263](#). The review hearing shall be held pursuant to this section although a parent or guardian fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent or guardian, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort;
4. The foster parent or foster parents or other care providers of the child;
5. The petitioning board or child welfare agency; and
6. Such other persons as the court, in its discretion, may direct. The local board of social services or other child welfare agency shall identify for the court such other persons as have a legitimate interest in the hearing, including, but not limited to, preadoptive parents for a child in foster care.

D. At the conclusion of the hearing, the court shall, upon the proof adduced in accordance with the best interests of the child and subject to the provisions of subsection D1, enter any appropriate order of disposition consistent with the dispositional alternatives available to the court at the time of the original hearing. The court order

shall state whether reasonable efforts, if applicable, have been made to reunite the child with his parents, guardian or other person standing in loco parentis to the child. Any order entered at the conclusion of this hearing that has the effect of achieving a permanent goal for the child by terminating residual parental rights pursuant to § [16.1-277.01](#), [16.1-277.02](#), [16.1-278.3](#), or [16.1-283](#); by placing the child in permanent foster care pursuant to subdivision A iv of § [16.1-282.1](#); or, if the child has attained the age of 16 years and the plan for the child is independent living, directing the board or agency to provide the necessary services to transition from foster care, pursuant to subdivision A v of § [16.1-282.1](#) shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child.

D1. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide for, as appropriate, any terms and conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

E. The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a child remains in a foster care placement or, when a child is returned to his prior family subject to conditions imposed by the court, for so long as such conditions are effective. After the hearing required pursuant to subsection C, the court shall schedule a permanency planning hearing on the case to be held five months thereafter in accordance with § [16.1-282.1](#) or within 30 days upon the petition of any party entitled to notice in proceedings under this section when the judge determines there is good cause shown for such a hearing. However, in the case of a child who is the subject of an order that has the effect of achieving a permanent goal for the child by terminating residual parental rights pursuant to § [16.1-277.01](#), [16.1-277.02](#), [16.1-278.3](#), or [16.1-283](#); by placing the child in permanent foster care pursuant to subdivision A iv of § [16.1-282.1](#); or by directing the board or agency to

provide the child with services to achieve independent living status, if the child has attained the age of 16 years, pursuant to subdivision A v of § [16.1-282.1](#), a permanency planning hearing within five months shall not be required and the court shall schedule a foster care review hearing to be held within 12 months of the entry of such order in accordance with the provisions of § [16.1-282.2](#).

1977, c. 559; 1978, c. 740; 1982, c. 171; 1984, c. 71; 1987, c. 250; 1991, c. 98; 1992, c. 869; 1994, cc. [223](#), [604](#), [865](#); 1997, c. [790](#); 1998, c. [550](#); 1999, c. [889](#); 2000, c. [385](#); 2002, c. [512](#); 2008, cc. [475](#), [483](#), [678](#); 2009, c. [80](#); 2011, c. [730](#); 2013, c. [130](#).

§16.1-282.1. Permanency planning hearing for children in foster care.

A. In the case of a child who was the subject of a foster care plan filed with the court pursuant to § [16.1-281](#), a permanency planning hearing shall be held within 10 months of the dispositional hearing at which the foster care plan pursuant to § [16.1-281](#) was reviewed if the child (a) was placed through an agreement between the parents or guardians and the local board of social services where legal custody remains with the parents or guardians and such agreement has not been dissolved by court order; or (b) is under the legal custody of a local board of social services or a child welfare agency and has not had a petition to terminate parental rights filed on the child's behalf, has not been placed in permanent foster care, or is age 16 or over and the plan for the child is not independent living. The board or child welfare agency shall file a petition for a permanency planning hearing 30 days prior to the date of the permanency planning hearing scheduled by the court. The purpose of this hearing is to establish a permanent goal for the child and either to achieve the permanent goal or to defer such action through the approval of an interim plan for the child.

To achieve the permanent goal, the petition for a permanency planning hearing shall seek to (i) transfer the custody of the child to his prior family, or dissolve the board's placement agreement and return the child to his prior family; (ii) transfer custody of the child to a relative other than the child's prior family, subject to the provisions of subsection A1; (iii) terminate residual parental rights pursuant to § [16.1-277.01](#) or [16.1-283](#); (iv) place a child who is 16 years of age or older in permanent foster care pursuant to § [63.2-908](#); (v) if the child has been admitted to the United States as a refugee or asylee and has attained the age of 16 years or older and the plan is independent living, direct the board or agency to provide the child with services to transition from foster care; or (vi) place a child who is 16 years of age or older in another planned permanent living arrangement in accordance with the provisions of

subsection A2. In cases in which a foster care plan approved prior to July 1, 2011, includes independent living as the goal for a child who is not admitted to the United States as an asylee or refugee, the petition shall direct the board or agency to provide the child with services to transition from foster care.

For approval of an interim plan, the petition for a permanency planning hearing shall seek to continue custody with the board or agency, or continue placement with the board through a parental agreement; or transfer custody to the board or child welfare agency from the parents or guardian of a child who has been in foster care through an agreement where the parents or guardian retains custody.

Upon receipt of the petition, if a permanency planning hearing has not already been scheduled, the court shall schedule such a hearing to be held within 30 days. The permanency planning hearing shall be held within 10 months of the dispositional hearing at which the foster care plan was reviewed pursuant to § [16.1-281](#). The provisions of subsection B of § [16.1-282](#) shall apply to this petition. The procedures of subsection C of § [16.1-282](#) and the provisions of subsection E of § [16.1-282](#) shall apply to the scheduling and notice of proceedings under this section.

A1. The following requirements shall apply to the transfer of custody of the child to a relative other than the child's prior family in accordance with the provisions of (ii) of subsection A. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide, as appropriate, for any terms or conditions which would promote the child's interest and welfare.

A2. The following requirements shall apply to the selection and approval of placement in another planned permanent living arrangement as the permanent goal for the child in accordance with clause (vi) of subsection A:

1. The board or child welfare agency shall petition for alternative (vi) of subsection A only if the child has a severe and chronic emotional, physical or neurological disabling condition for which the child requires long-term residential treatment; and

the board or child welfare agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i) through (v) of subsection A and determined that none of those alternatives is in the best interests of the child. In a foster care plan filed with the petition pursuant to this section, the board or agency shall document the following: (i) the investigation conducted of the placement alternatives listed in clauses (i) through (v) of subsection A and why each of these is not currently in the best interest of the child; (ii) at least one compelling reason why none of the alternatives listed in clauses (i) through (v) is achievable for the child at the time placement in another planned permanent living arrangement is selected as the permanent goal for the child; (iii) the identity of the long-term residential treatment service provider; (iv) the nature of the child's disability; (v) the anticipated length of time required for the child's treatment; and (vi) the status of the child's eligibility for admission and long-term treatment. The court shall ensure that the local department has documentation of the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to return the child home or secure a placement for the child with a fit and willing relative, including adult siblings, or an adoptive parent, including through efforts that utilize search technology, including social media, to find the child's biological family members. The court shall ask the child about the child's desired permanency outcome and make a judicial determination, accompanied by an explanation of the reasons that the alternatives listed in clauses (i) through (iii) of subsection A continue to not be in the best interest of the child.

2. Before approving alternative (vi) of subsection A as the plan for the child, the court shall find (i) that the child has a severe and chronic emotional, physical or neurological disabling condition; (ii) that the child requires long-term residential treatment for the disabling condition; and (iii) that none of the alternatives listed in clauses (i) through (v) of subsection A is achievable for the child at the time placement in another planned permanent living arrangement is approved as the permanent goal for the child. If the board or agency petitions for alternative (vi), alternative (vi) may be approved by the court for a period of six months at a time.

3. At the conclusion of the permanency planning hearing, if alternative (vi) of subsection A is the permanent plan, the court shall schedule a hearing to be held within six months to review the child's placement in another planned permanent living arrangement in accordance with subdivision 4 of subsection A2. All parties present at the hearing at which clause (vi) of subsection A is approved as the permanent plan for the child shall be given notice of the date scheduled for the foster care review

hearing. Parties not present shall be summoned to appear as provided in § [16.1-263](#). Otherwise, this subsection A2 shall govern the scheduling and notice for such hearings.

4. The court shall review a foster care plan for any child who is placed in another planned permanent living arrangement every six months from the date of the permanency planning hearing held pursuant to this subsection, so long as the child remains in the legal custody of the board or child welfare agency. The board or child welfare agency shall file such petitions for review pursuant to the provisions of § [16.1-282](#) and shall, in addition, include in the petition the information required by subdivision 1 of subsection A2 of this section. The petition for foster care review shall be filed no later than 30 days prior to the hearing scheduled in accordance with subdivision 3 of subsection A2. At the conclusion of the foster care review hearing, if alternative (vi) of subsection A remains the permanent plan, the court shall enter an order that states whether reasonable efforts have been made to place the child in a timely manner in accordance with the permanency plan and to monitor the child's status in another planned permanent living arrangement.

However, if at any time during the six-month approval periods permitted by this subsection, a determination is made by treatment providers that the child's need for long-term residential treatment for the child's disabling condition is eliminated, the board or agency shall immediately begin to plan for post-discharge services and shall, within 30 days of making such a determination, file a petition for a permanency planning hearing pursuant to subsection A of this section. Upon receipt of the petition, the court shall schedule a permanency planning hearing to be held within 30 days. The provisions of subsection B of § [16.1-282](#) shall apply to this petition. The procedures of subsection C of § [16.1-282](#) and the provisions of subsection E of § [16.1-282](#) shall apply to proceedings under this section.

A3. The following requirements shall apply to the selection and approval of permanent foster care pursuant to clause (iv) of subsection A:

1. The court shall ensure that the local department has documentation of the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to return the child home or secure a placement for the child with a fit and willing relative, including adult siblings, or an adoptive parent, including through efforts that utilize search technology, including social media, to find the child's biological family members.

2. The court shall ask the child about the child's desired permanency outcome and make a judicial determination, accompanied by an explanation of the reasons that the alternatives listed in clauses (i) through (iii) of subsection A continue to not be in the best interest of the child.

B. The following requirements shall apply to the selection and approval of an interim plan for the child in accordance with subsection A:

1. The board or child welfare agency shall petition for approval of an interim plan only if the board or child welfare agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i) through (v) of subsection A and determined that none of those alternatives is in the best interest of the child. If the board or agency petitions for approval of an interim plan, such plan may be approved by the court for a maximum period of six months. The board or agency shall also file a foster care plan that (i) identifies a permanent goal for the child that corresponds with one of the alternatives specified in clauses (i) through (v) of subsection A; (ii) includes provisions for accomplishing the permanent goal within six months; and (iii) summarizes the investigation conducted of the alternatives listed in clauses (i) through (v) of subsection A and why achieving each of these is not in the best interest of the child at this time. The foster care plan shall describe the child's placement, including the in-state and out-of-state placement options and whether the child's placement is in state or out of state. If the child's placement is out of state, the foster care plan shall provide the reason why the out-of-state placement is appropriate and in the best interests of the child.

2. Before approving an interim plan for the child, the court shall find:

a. When returning home remains the plan for the child, that the parent has made marked progress toward reunification with the child, the parent has maintained a close and positive relationship with the child, and the child is likely to return home within the near future, although it is premature to set an exact date for return at the time of this hearing; or

b. When returning home is not the plan for the child, that marked progress is being made to achieve the permanent goal identified by the board or child welfare agency and that it is premature to set an exact date for accomplishing the goal at the time of this hearing. The court shall consider the in-state and out-of-state placement options, and if the child has been placed out of state, determine whether the out-of-state placement is appropriate and in the best interests of the child.

3. Upon approval of an interim plan, the court shall schedule a hearing to be held within six months to determine that the permanent goal is accomplished and to enter an order consistent with alternative (i), (ii), (iii), (iv), or (v) of subsection A. All parties present at the initial permanency planning hearing shall be given notice of the date scheduled for the second permanency planning hearing. Parties not present shall be summoned to appear as provided in § [16.1-263](#). Otherwise, subsection A shall govern the scheduling and notice for such hearings.

C. In each permanency planning hearing and in any hearing regarding the transition of the child from foster care to independent living, the court shall consult with the child in an age-appropriate manner regarding the proposed permanency plan or transition plan for the child, unless the court finds that such consultation is not in the best interests of the child.

D. At the conclusion of the permanency planning hearing held pursuant to this section, whether action is taken or deferred to achieve the permanent goal for the child, the court shall enter an order that states whether reasonable efforts have been made to reunite the child with the child's prior family, if returning home is the permanent goal for the child; or whether reasonable efforts have been made to achieve the permanent goal identified by the board or agency, if the goal is other than returning the child home.

In making this determination, the court shall give consideration to whether the board or agency has placed the child in a timely manner in accordance with the foster care plan and completed the steps necessary to finalize the permanent placement of the child.

1997, c. [790](#); 1998, c. [550](#); 1999, c. [889](#); 2000, c. [385](#); 2002, c. [512](#); 2008, cc. [475](#), [483](#), [678](#); 2011, c. [730](#); 2013, c. [130](#); 2016, c. [631](#); 2017, c. [190](#).

§16.1-282.2. Annual foster care review.

A. The court shall review a foster care plan annually for any child who remains in the legal custody of a local board of social services or a child welfare agency and (i) on whose behalf a petition to terminate parental rights has been granted, filed or ordered to be filed, (ii) who is placed in permanent foster care, or (iii) who is age 16 or over and for whom the plan is independent living. The foster care review hearing shall be scheduled at the conclusion of a hearing held pursuant to § [16.1-281](#), [16.1-282](#), or [16.1-282.1](#) at which the order is entered: terminating parental rights, directing the filing of a petition for termination of parental rights by the board or

agency, placing the child in permanent foster care, or directing the board or agency to provide the child who is age 16 or over and for whom the plan is independent living with services to transition from foster care. The foster care review hearing shall be held within 12 months of the date of such order, so long as the child remains in the custody of the board or agency.

The board or agency shall file the petition for a foster care review hearing, and the court shall provide notice of the foster care review hearing in accordance with the provisions of § [16.1-282](#). The board or agency shall file a written Adoption Progress Report with the juvenile court pursuant to § [16.1-277.01](#), [16.1-277.02](#), [16.1-278.3](#), or [16.1-283](#), if applicable, with the petition required by this section. The court order entered at the conclusion of the hearing held on the petition shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the approved foster care plan that established a permanent goal for the child and to complete the steps necessary to finalize the permanent placement of the child.

B. At the foster care review hearing in the case of a child who is placed in permanent foster care, the court shall give consideration to the appropriateness of the services being provided to the child and permanent foster parents, to any change in circumstances since the entry of the order placing the child in permanent foster care, and to such other factors as the court deems proper.

2002, c. [512](#); 2008, cc. [475](#), [483](#).

§16.1-283. Termination of residual parental rights.

A. The residual parental rights of a parent or parents may be terminated by the court as hereinafter provided in a separate proceeding if the petition specifically requests such relief. No petition seeking termination of residual parental rights shall be accepted by the court prior to the filing of a foster care plan, pursuant to § [16.1-281](#), which documents termination of residual parental rights as being in the best interests of the child. The court may hear and adjudicate a petition for termination of parental rights in the same proceeding in which the court has approved a foster care plan which documents that termination is in the best interests of the child. The court may terminate the residual parental rights of one parent without affecting the rights of the other parent. The local board of social services or a licensed child-placing agency need not have identified an available and eligible family to adopt a child for whom termination of parental rights is being sought prior to the entry of an order terminating parental rights.

Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services, to a licensed child-placing agency or the granting of custody or guardianship to a relative or other interested individual, subject to the provisions of subsection A1. However, in such cases the court shall give a consideration to granting custody to relatives of the child, including grandparents. An order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto.

The summons shall be served upon the parent or parents and the other parties specified in § [16.1-263](#). Written notice of the hearing shall also be provided to the foster parents of the child, a relative providing care for the child, and any preadoptive parents for the child informing them that they may appear as witnesses at the hearing to give testimony and otherwise participate in the proceeding. The persons entitled to notice and an opportunity to be heard need not be made parties to the proceedings. The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § [16.1-264](#).

A1. Any order transferring custody of the child to a relative or other interested individual pursuant to subsection A shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or other interested individual should further provide, as appropriate, for any terms and conditions which would promote the child's interest and welfare.

B. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused and placed in foster care as a result of (i) court commitment; (ii) an entrustment agreement entered into by the parent or parents; or (iii) other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The neglect or abuse suffered by such child presented a serious and substantial threat to his life, health or development; and
2. It is not reasonably likely that the conditions which resulted in such neglect or abuse can be substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within a reasonable period of time. In making this determination, the court shall take into consideration the efforts made to rehabilitate the parent or parents by any public or private social, medical, mental health or other rehabilitative agencies prior to the child's initial placement in foster care.

Proof of any of the following shall constitute prima facie evidence of the conditions set forth in subdivision B 2:

a. The parent or parents have a mental or emotional illness or intellectual disability of such severity that there is no reasonable expectation that such parent will be able to undertake responsibility for the care needed by the child in accordance with his age and stage of development;

b. The parent or parents have habitually abused or are addicted to intoxicating liquors, narcotics or other dangerous drugs to the extent that proper parental ability has been seriously impaired and the parent, without good cause, has not responded to or followed through with recommended and available treatment which could have improved the capacity for adequate parental functioning; or

c. The parent or parents, without good cause, have not responded to or followed through with appropriate, available and reasonable rehabilitative efforts on the part of social, medical, mental health or other rehabilitative agencies designed to reduce, eliminate or prevent the neglect or abuse of the child.

C. The residual parental rights of a parent or parents of a child placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent or parents or other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The parent or parents have, without good cause, failed to maintain continuing contact with and to provide or substantially plan for the future of the child for a period of six months after the child's placement in foster care notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to communicate with the parent or parents and to strengthen the

parent-child relationship. Proof that the parent or parents have failed without good cause to communicate on a continuing and planned basis with the child for a period of six months shall constitute prima facie evidence of this condition; or

2. The parent or parents, without good cause, have been unwilling or unable within a reasonable period of time not to exceed 12 months from the date the child was placed in foster care to remedy substantially the conditions which led to or required continuation of the child's foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end. Proof that the parent or parents, without good cause, have failed or been unable to make substantial progress towards elimination of the conditions which led to or required continuation of the child's foster care placement in accordance with their obligations under and within the time limits or goals set forth in a foster care plan filed with the court or any other plan jointly designed and agreed to by the parent or parents and a public or private social, medical, mental health or other rehabilitative agency shall constitute prima facie evidence of this condition. The court shall take into consideration the prior efforts of such agencies to rehabilitate the parent or parents prior to the placement of the child in foster care.

D. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused upon the ground of abandonment may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The child was abandoned under such circumstances that either the identity or the whereabouts of the parent or parents cannot be determined; and

2. The child's parent or parents, guardian or relatives have not come forward to identify such child and claim a relationship to the child within three months following the issuance of an order by the court placing the child in foster care; and

3. Diligent efforts have been made to locate the child's parent or parents without avail.

E. The residual parental rights of a parent or parents of a child who is in the custody of a local board or licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has

been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) the parent has subjected any child to aggravated circumstances.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or a child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse which place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once, but otherwise meets the definition of "aggravated circumstances."

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent who has been convicted of one of the felonies specified in this subsection or who has been found by the court to have subjected any child to aggravated circumstances.

F. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered shall file a written Adoption Progress Report with the juvenile court

on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first written Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

G. Notwithstanding any other provisions of this section, residual parental rights shall not be terminated if it is established that the child, if he is 14 years of age or older or otherwise of an age of discretion as determined by the court, objects to such termination. However, residual parental rights of a child 14 years of age or older may be terminated over the objection of the child, if the court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise of an age of discretion.

1977, c. 559; 1978, c. 340; 1979, c. 281; 1980, c. 295; 1985, c. 584; 1987, c. 6; 1988, c. 791; 1998, c. [550](#); 1999, c. [889](#); 2000, c. [385](#); 2002, cc. [664](#), [729](#); 2012, cc. [476](#), [507](#).

§16.1-283.1. Authority to enter into voluntary post-adoption contact and communication agreement.

A. In any case in which a child has been placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent or parents, or other voluntary relinquishment by the parent or parents, or in which the parent or parents have voluntarily consented to the adoption of the child, the child's birth parent or parents may enter into a written post-adoption contact and communication agreement with the pre-adoptive parent or parents as provided in Article 1.1 (§ [63.2-1220.2](#) et seq.) of Chapter 12 of Title 63.2.

B. The court may consider the appropriateness of a written post-adoption contact and communication agreement entered into pursuant to subsection A and in accordance with Article 1.1 (§ [63.2-1220.2](#) et seq.) of Chapter 12 of Title 63.2 at the permanency planning hearing pursuant to § [16.1-282.1](#) and, if the court finds that all of the requirements of subsection A and Article 1.1 (§ [63.2-1220.2](#) et seq.) of Chapter 12

of Title 63.2 have been met, shall incorporate the written post-adoption contact and communication agreement into an order entered at the conclusion of such hearing.

2009, cc. [98](#), [260](#); 2010, c. [331](#).

§16.1-283.2. Restoration of parental rights.

A. If a child is in the custody of the local department of social services and a pre-adoptive parent or parents have not been identified and approved for the child, the child's guardian ad litem or the local board of social services may file a petition to restore the previously terminated parental rights of the child's parent under the following circumstances:

1. The child is at least 14 years of age;
2. The child was previously adjudicated to be an abused or neglected child, child in need of services, child in need of supervision, or delinquent child;
3. The parent's rights were terminated under a final order pursuant to subsection B, C, or D of § [16.1-283](#) at least two years prior to the filing of the petition to restore parental rights;
4. The child has not achieved his permanency goal or the permanency goal was achieved but not sustained; and
5. The child, if he is 14 years of age or older, and the parent whose rights are to be reinstated consent to the restoration of the parental rights.

B. Notwithstanding the provisions of subsection A, the court may accept (i) a petition involving a child younger than 14 years of age if (a) the child is the sibling of a child for whom a petition for restoration of parental rights has been filed and the child who is younger than 14 years of age meets all other criteria for restoration of parental rights set forth in subsection A, or (b) the child's guardian ad litem and the local department of social services jointly file the petition for restoration; or (ii) a petition filed before the expiration of the two-year period following termination of parental rights if the child will turn 18 before the expiration of the two-year period, and the court finds that accepting such a petition is in the best interest of the child.

C. The court shall set a hearing on the petition and serve notice of the hearing along with a copy of the petition on the former parent of the child whose rights are the subject of the petition, any other parent who retains legal rights to the child, the child's court-appointed special advocate, if one has been appointed, and either the child's

guardian ad litem or the local board of social services, whichever is not the petitioner.

D. If the court finds, based upon clear and convincing evidence, that the parent is willing and able to (i) receive and care for the child; (ii) have a positive, continuous relationship with the child; (iii) provide a permanent, suitable home for the child; and (iv) protect the child from abuse and neglect, the court may enter an order permitting the local board of social services to place the child with the former parent whose rights are the subject of the petition, subject to the requirements of the placement plan developed pursuant to subsection E and for visitation required pursuant to subsection F.

E. Within 60 days of the filing of the petition for restoration of parental rights and prior to the entry of an order pursuant to subsection D, the local board of social services shall develop a written placement plan for the child, which shall (i) describe the programs, services, and other supports that shall be offered to the child and the former parent with whom the child has been placed and (ii) set forth requirements for the participation of the former parent with whom the child has been placed in programs and services described in the placement plan and the conduct of the child's former parent with whom the child has been placed. Such plan shall be incorporated into the order entered pursuant to subsection D.

F. Following the placement of a child with his former parent following entry of an order pursuant to subsection D, the director of the local department of social services shall cause the child to be visited by an agent of such local board or local department at least three times within the six-month period immediately following placement of the child in order to evaluate the suitability of the placement and the progress of the former parent toward remedying the factors and conditions that led to or required continuation of the child's foster care placement; however, no less than 90 days shall elapse between the first visit and the last visit. At least one of the visits shall be conducted in the home of the former parent whose rights are the subject of the petition in the presence of the former parent.

G. Upon completion of the visitation required pursuant to subsection F, the director of the local department of social services shall make a written report to the court, in such form as the Commissioner of Social Services may prescribe, describing (i) findings made as a result of the visits required pursuant to subsection F and (ii) findings

and information related to the former parent's compliance with requirements of the placement plan developed pursuant to subsection E.

H. Upon receipt of the report required pursuant to subsection G, the court shall set a hearing on the petition for restoration of parental rights and serve notice of the hearing, along with a copy of the report required pursuant to subsection G, on the former parent of the child whose rights are the subject of the petition, any other parent who retains legal rights to the child, the child's court-appointed special advocate, if one has been appointed, and the child's guardian ad litem.

I. If, upon consideration of the report required pursuant to subsection G, the court finds by clear and convincing evidence that the restoration of parental rights is in the child's best interest, the court shall enter an order restoring the parental rights of the child's parent. In determining whether restoration is in the best interest of the child, the court shall consider the following:

1. Whether the parent whose rights are to be reinstated agrees to the reinstatement and has substantially remedied the conditions that led to or required continuation of the child's foster care placement;
2. The age and maturity of the child and whether the child consents to the reinstatement of the former parent's rights, if the child is 14 years of age or older, or the child's preference with regard to the reinstatement of the former parent's rights, if the child is younger than 14 years of age;
3. Whether the restoration of parental rights will present a risk to the child's life, health, or development;
4. Whether the restoration of parental rights will affect benefits available to the child; and
5. Other material changes in circumstances, if any, that warrant the granting of the petition.

J. The court may revoke its order permitting the placement of a child with his former parent pursuant to subsection D at any time prior to entry of an order restoring parental rights to the former parent of the child, for good cause shown, on its own motion or on the motion of the child's guardian ad litem or the local department.

K. A petition for restoration of parental rights filed while the child is younger than 18 years of age shall not become invalid because the child reaches 18 years of age prior

to the entry of an order of restoration of parental rights. Any order restoring parental rights to a parent of a child pursuant to this section entered after a child reaches 18 years of age, where the petition was filed prior to the child turning 18 years of age, shall have the same effect as if the child was under 18 years of age at the time the order was entered by the court.

L. The granting of a petition under this section does not vacate the findings of fact or conclusions of law contained in the original order that terminated the parental rights of the child's parent.

2013, cc. [338](#), [685](#).

§16.1-284. When adult sentenced for juvenile offense.

A. When the juvenile court sentences an adult who has committed, before attaining the age of 18, an offense that would be a crime if committed by an adult, the court may impose, for each offense, the penalties that are authorized to be imposed on adults for such violations, not to exceed the punishment for a Class 1 misdemeanor, provided that the total jail sentence imposed shall not exceed 36 continuous months and the total fine shall not exceed \$2,500 or the court may order a disposition as provided in subdivision A 4, 5, 7, 11, 12, 14, or 17 and subsection B of § [16.1-278.8](#).

B. A person sentenced pursuant to this section shall be entitled to good time credit as authorized by § [53.1-116](#).

Code 1950, § 16.1-177.1; 1956, c. 555; 1973, c. 440; 1977, c. 559; 1978, c. 142; 1980, c. 235; 1983, c. 336; 1985, c. 260; 1996, cc. [755](#), [914](#); 2016, c. [626](#).

§16.1-284.1. Placement in secure local facility.

A. If a juvenile 14 years of age or older is found to have committed an offense which if committed by an adult would be punishable by confinement in a state or local correctional facility as defined in § [53.1-1](#), and the court determines (i) that the juvenile has not previously been and is not currently adjudicated delinquent of a violent juvenile felony or found guilty of a violent juvenile felony, (ii) that the juvenile has not been released from the custody of the Department within the previous 18 months, (iii) that the interests of the juvenile and the community require that the juvenile be placed under legal restraint or discipline, and (iv) that other placements authorized by this title will not serve the best interests of the juvenile, then the court may order the juvenile confined in a detention home or other secure facility for juveniles for a period not to exceed six months from the date the order is entered, for a

single offense or multiple offenses. However, if the single offense or multiple offenses, which if committed by an adult would be punishable as a felony or a Class 1 misdemeanor, caused the death of any person, then the court may order the juvenile confined in a detention home or other secure facility for juveniles for a period not to exceed 12 months from the date the order is entered.

The period of confinement ordered may exceed 30 calendar days if the juvenile has had an assessment completed by the secure facility to which he is ordered concerning the appropriateness of the placement.

B. If the period of confinement in a detention home or other secure facility for juveniles is to exceed 30 calendar days, and the juvenile is eligible for commitment pursuant to subdivision A 14 of § [16.1-278.8](#), then the court shall order the juvenile committed to the Department, but suspend such commitment. In suspending the commitment to the Department as provided for in this subsection, the court shall specify conditions for the juvenile's satisfactory completion of one or more community or facility based treatment programs as may be appropriate for the juvenile's rehabilitation.

C. During any period of confinement which exceeds 30 calendar days ordered pursuant to this section, the court shall conduct a mandatory review hearing at least once during each 30 days and at such other times upon the request of the juvenile's probation officer, for good cause shown. If it appears at such hearing that the purpose of the order of confinement has been achieved, the juvenile shall be released on probation for such period and under such conditions as the court may specify and remain subject to the order suspending commitment to the State Department of Juvenile Justice. If the juvenile's commitment to the Department has been suspended as provided in subsection B of this section, and if the court determines at the first or any subsequent review hearing that the juvenile is consistently failing to comply with the conditions specified by the court or the policies and program requirements of the facility, then the court shall order that the juvenile be committed to the State Department of Juvenile Justice. If the court determines at the first or any subsequent review hearing that the juvenile is not actively involved in any community facility based treatment program through no fault of his own, then the court shall order that the juvenile be released under such conditions as the court may specify subject to the suspended commitment.

C1. The appearance of the juvenile before the court for a hearing pursuant to subsection C may be by (i) personal appearance before the judge or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. A facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § [19.2-3.1](#).

D. A juvenile may only be ordered confined pursuant to this section to a facility in compliance with standards established by the State Board for such placements. Standards for these facilities shall require juveniles placed pursuant to this section for a period which exceeds 30 calendar days be provided separate services for their rehabilitation, consistent with the intent of this section.

E. The Department of Juvenile Justice shall assist the localities or combinations thereof in implementing this section consistent with the statewide plan required by § [16.1-309.4](#) and pursuant to standards promulgated by the State Board, in order to ensure the availability and reasonable access of each court to the facilities the use of which is authorized by this section.

1985, c. 260; 1989, c. 733; 1995, cc. [696](#), [699](#); 1996, cc. [755](#), [914](#); 2000, c. [978](#); 2001, c. [140](#); 2012, c. [94](#); 2013, c. [651](#); 2015, c. [391](#).

§16.1-285. Duration of commitments.

Except as provided in § [16.1-285.1](#), all commitments under this chapter shall be for an indeterminate period having regard to the welfare of the juvenile and interests of the public, but no juvenile committed hereunder shall be held or detained longer than thirty-six continuous months or after such juvenile has attained the age of twenty-one years. However, the thirty-six month limitation shall not apply in cases of commitment for an act of murder or manslaughter. The Department shall have the authority to discharge any juvenile or person from its custody, including releasing a juvenile or person to parole supervision, in accordance with policies and procedures established by the State Board and with other provisions of law. Parole supervision programs shall be operated through the court services units established pursuant to §

[16.1-233](#). A juvenile or person who violates the conditions of his parole granted pursuant to this section may be proceeded against for a revocation or modification of parole status pursuant to § [16.1-291](#).

Code 1950, § 16.1-180; 1956, c. 555; 1977, c. 559; 1985, cc. 260, 388; 1996, cc. [755](#), [914](#); 2000, cc. [954](#), [981](#), [988](#); 2001, c. [853](#).

§16.1-285.1. Commitment of serious offenders.

A. In the case of a juvenile fourteen years of age or older who has been found guilty of an offense which would be a felony if committed by an adult, and either (i) the juvenile is on parole for an offense which would be a felony if committed by an adult, (ii) the juvenile was committed to the state for an offense which would be a felony if committed by an adult within the immediately preceding twelve months, (iii) the felony offense is punishable by a term of confinement of greater than twenty years if the felony was committed by an adult, or (iv) the juvenile has been previously adjudicated delinquent for an offense which if committed by an adult would be a felony punishable by a term of confinement of twenty years or more, and the circuit court, or the juvenile or family court, as the case may be, finds that commitment under this section is necessary to meet the rehabilitative needs of the juvenile and would serve the best interests of the community, then the court may order the juvenile committed to the Department of Juvenile Justice for placement in a juvenile correctional center for the period of time prescribed pursuant to this section.

Alternatively, in order to determine if a juvenile, transferred from a juvenile and domestic relations district court to a circuit court pursuant to § [16.1-269.1](#), appropriately qualifies for commitment pursuant to this section, notwithstanding the inapplicability of the qualification criteria set forth in clauses (i) through (iv), the circuit court may consider the commitment criteria set forth in subdivisions 1, 2, and 3 of subsection B as well as other components of the juvenile's life history and, if upon such consideration in the opinion of the court the needs of the juvenile and the interests of the community would clearly best be served by commitment hereunder, may so commit the juvenile.

B. Prior to committing any juvenile pursuant to this section, the court shall consider:

1. The juvenile's age;
2. The seriousness and number of the present offenses, including (i) whether the offense was committed in an aggressive, violent, premeditated, or willful manner; (ii)

whether the offense was against persons or property, with greater weight being given to offenses against persons, especially if death or injury resulted; (iii) whether the offense involved the use of a firearm or other dangerous weapon by brandishing, displaying, threatening with or otherwise employing such weapon; and (iv) the nature of the juvenile's participation in the alleged offense;

3. The record and previous history of the juvenile in this or any other jurisdiction, including (i) the number and nature of previous contacts with courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the offense is part of a repetitive pattern of similar adjudicated offenses; and

4. The Department's estimated length of stay.

Such commitment order must be supported by a determination that the interests of the juvenile and community require that the juvenile be placed under legal restraint or discipline and that the juvenile is not a proper person to receive treatment or rehabilitation through other juvenile programs or facilities.

C. In ordering commitment pursuant to this section, the court shall specify a period of commitment not to exceed seven years or the juvenile's twenty-first birthday, whichever shall occur first. The court may also order a period of determinate or indeterminate parole supervision to follow the commitment but the total period of commitment and parole supervision shall not exceed seven years or the juvenile's twenty-first birthday, whichever occurs first.

D. Upon receipt of a juvenile committed under the provisions of this section, the Department shall evaluate the juvenile for the purpose of considering placement of the juvenile in an appropriate juvenile correctional center for the time prescribed by the committing court. Such a placement decision shall be made based on the availability of treatment programs at the facility; the level of security at the facility; the offense for which the juvenile has been committed; and the welfare, age and gender of the juvenile.

E. The court which commits the juvenile to the Department under this section shall have continuing jurisdiction over the juvenile throughout his commitment. The

continuing jurisdiction of the court shall not prevent the Department from removing the juvenile from a juvenile correctional center without prior court approval for the sole purposes of routine or emergency medical treatment, routine educational services, or family emergencies.

F. Any juvenile committed under the provisions of this section shall not be released at a time earlier than that specified by the court in its dispositional order except as provided for in § [16.1-285.2](#). The Department may petition the committing court for a hearing as provided for in § [16.1-285.2](#) for an earlier release of the juvenile when good cause exists for an earlier release. In addition, the Department shall petition the committing court for a determination as to the continued commitment of each juvenile sentenced under this section at least sixty days prior to the second anniversary of the juvenile's date of commitment and sixty days prior to each annual anniversary thereafter.

1985, c. 260; 1989, c. 717; 1992, c. 484; 1994, cc. [859](#), [949](#); 1996, cc. [755](#), [914](#); 2001, c. [563](#).

§16.1-285.2. Release and review hearing for serious offender.

A. Upon receipt of a petition of the Department of Juvenile Justice for a hearing concerning a juvenile committed under § [16.1-285.1](#), the court shall schedule a hearing within thirty days and shall appoint counsel for the juvenile pursuant to § [16.1-266](#). The court shall provide a copy of the petition, the progress report required by this section, and notice of the time and place of the hearing to (i) the juvenile, (ii) the juvenile's parent, legal guardian, or person standing in loco parentis, (iii) the juvenile's guardian ad litem, if any, (iv) the juvenile's legal counsel, and (v) the attorney for the Commonwealth who prosecuted the juvenile during the delinquency proceeding. The attorney for the Commonwealth shall provide notice of the time and place of the hearing by first-class mail to the last known address of any victim of the offense for which the juvenile was committed if such victim has submitted a written request for notification to the attorney for the Commonwealth.

B. The petition shall be filed in the committing court and shall be accompanied by a progress report from the Department. This report shall describe (i) the facility and living arrangement provided for the juvenile by the Department, (ii) the services and treatment programs afforded the juvenile, (iii) the juvenile's progress toward treatment goals and objectives, which shall include a summary of his educational pro-

gress, (iv) the juvenile's potential for danger to either himself or the community, and (v) a comprehensive aftercare plan for the juvenile.

B1. The appearance of the juvenile before the court may be by (i) personal appearance before the judge, or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. A facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § [19.2-3.1](#).

C. At the hearing the court shall consider the progress report. The court may also consider additional evidence from (i) probation officers, the juvenile correctional center, treatment professionals, and the court service unit; (ii) the juvenile, his legal counsel, parent, guardian or family member; or (iii) other sources the court deems relevant. The hearing and all records relating thereto shall be governed by the confidentiality provisions of Article 12 (§ [16.1-299](#) et seq.) of this chapter.

D. At the conclusion of the hearing, the court shall order (i) continued commitment of the juvenile to the Department for completion of the original determinate period of commitment or such lesser time as the court may order or (ii) release of the juvenile under such terms and conditions as the court may prescribe. In making a determination under this section, the court shall consider (i) the experiences and character of the juvenile before and after commitment, (ii) the nature of the offenses that the juvenile was found to have committed, (iii) the manner in which the offenses were committed, (iv) the protection of the community, (v) the recommendations of the Department, and (vi) any other factors the court deems relevant. The order of the court shall be final and not subject to appeal.

E. In the case of a juvenile convicted as an adult and committed as a serious offender under subdivision A 1 of § [16.1-272](#), at the conclusion of the review hearing, the circuit court shall order (i) the juvenile to begin serving any adult sentence in whole or in part that may include any remaining part of the original determinate period of commitment, or (ii) the suspension of the unserved portion of the adult sentence in

whole or in part based upon the juvenile's successful completion of the commitment as a serious offender, or (iii) the continued commitment of the juvenile to the Department for completion of the original determinate period of commitment or such lesser time as the court may order, or (iv) the release of the juvenile under such terms and conditions as the court may prescribe.

1994, cc. [859](#), [949](#); 1995, c. [536](#); 1996, cc. [755](#), [914](#); 2002, c. [511](#).

§16.1-286. Cost of maintenance; approval of placement; semiannual review.

A. When the court determines that the behavior of a child within its jurisdiction is such that it cannot be dealt with in the child's own locality or with the resources of his locality, the judge shall refer the child to the locality's family assessment and planning team for assessment and a recommendation for services. Based on this recommendation, the court may take custody and place the child, pursuant to the provisions of subdivision 5 of § [16.1-278.4](#) or subdivision A 13 b of § [16.1-278.8](#), in a private or locally operated public facility, or nonresidential program with funding in accordance with the Children's Services Act (§ [2.2-5200](#) et seq.). No child shall be placed outside the Commonwealth by a court without first complying with the appropriate provisions of Chapter 11 (§ [63.2-1100](#) et seq.) of Title 63.2 or with regulations of the State Board of Social Services relating to resident children placed out of the Commonwealth.

The Board shall establish a per diem allowance to cover the cost of such placements. This allowance may be drawn from funds allocated through the state pool of funds to the community policy and management team of the locality where the child resides as such residence is determined by the court. The cost, however, shall not exceed that amount which would be incurred if the services required by the child were provided in a juvenile facility operated by the Department of Juvenile Justice. However, when the court determines after an investigation and a hearing that the child's parent or other person legally obligated to provide support is financially able to contribute to support of the child, the court may order that the parent or other legally obligated person pay, pursuant to § [16.1-290](#). If the parent or other obligated person willfully fails or refuses to pay such sum, the court may proceed against him for contempt. Alternatively, the court, after reasonable notice to the obligor, may enter an order adjudicating that the obligor is delinquent and such order shall have the effect of a civil judgment when duly docketed in the manner prescribed for the docketing of other judgments for money provided.

B. The court service unit of the locality which made the placement shall be responsible for monitoring and supervising all children placed pursuant to this section. The court shall receive and review, at least semiannually, recommendations concerning the continued care of each child in such placements.

Code 1950, § 16.1-181.1; 1976, c. 464; 1977, c. 559; 1978, c. 310; 1982, c. 166; 1987, c. 667; 1989, c. 733; 1991, c. 534; 1992, cc. 732, 837, 880; 1995, cc. [696](#), [699](#); 1997, c. [347](#); 1999, c. [669](#); 2003, c. [579](#); 2015, c. [366](#).

§16.1-287. Transfer of information upon commitment; information to be furnished by and to local school boards.

Whenever the court commits a child to the Department of Juvenile Justice, or to any other institution or agency, it shall transmit with the order of commitment copies of the clinical reports, predisposition study and other information it has pertinent to the care and treatment of the child. The Department shall not be responsible for any such committed child until it has received the court order and the information concerning the child. All local school boards shall be required to furnish the Department promptly with any information from their files that the Department deems to be necessary in the classification, evaluation, placement or treatment of any child committed to the Department. The Department of Juvenile Justice's Education Division, pursuant to § [22.1-289](#), shall likewise be required to furnish local school boards academic, and career and technical education and related achievement information promptly from its files that the local school board may deem necessary when children are returned to the community from the Department's care. The Department and other institutions or agencies shall give to the court such information concerning the child as the court at any time requires. All such information shall be treated as confidential.

Code 1950, § 16.1-181; 1956, c. 555; 1974, cc. 44, 45, 266; 1977, c. 559; 1981, c. 487; 1989, c. 733; 2001, c. [483](#); 2005, c. [154](#); 2012, cc. [803](#), [835](#).

§16.1-288. Protection of religious affiliations.

In placing a child under the guardianship or custody of an individual or of a private agency or institution, the court shall whenever practicable select a person, or an agency or institution governed by persons, of the same religious faith as that of the parents of the child, or in case of a difference in the religious faith of the parents and religious faith of the child, or, if the religious faith of the child is not ascertainable,

then of the faith of either of the parents or of the child, unless the parent or parents of the child waive such selection.

Code 1950, § 16.1-182; 1956, c. 555; 1977, c. 559.

§16.1-289. Review of order of commitment.

The juvenile court or the circuit court, as the case may be, of its own motion may reopen any case and may modify or revoke its order. The juvenile court or the circuit court shall before modifying or revoking such order grant a hearing after notice in writing to the complainant, if any, and to the person or agency having custody of the child; provided, however, that this section shall not apply in the case of a child committed to the Department after sixty days from the date of the order of commitment.

Code 1950, § 16.1-183; 1956, c. 555; 1977, c. 559.

§16.1-289.1. Motions to reconsider orders for participation in continuing programs.

When a person is ordered to participate in therapy, counseling or similar continuing programs, a motion may be filed with the court to reconsider the order, whether interlocutory or final, or the terms and conditions of participation at any time after the order is entered. The motion shall be heard within thirty days. Any order disposing of such motion shall be deemed to be a final order for purposes of appeal pursuant to Article 11 (§ [16.1-296](#) et seq.), of this chapter.

1988, c. 771.

§16.1-290. Support of committed juvenile; support from estate of juvenile.

A. Whenever (i) legal custody of a juvenile is vested by the court in someone other than his parents or (ii) a juvenile is placed in temporary shelter care regardless of whether or not legal custody is retained by his parents, after due notice in writing to the parents, the court, pursuant to §§ [20-108.1](#) and [20-108.2](#), or the Department of Social Services, pursuant to Chapter 19 (§ [63.2-1900](#) et seq.) of Title 63.2, shall order the parents to pay support to the Department of Social Services. If the parents fail or refuse to pay such support, the court may proceed against them for contempt, or the order may be filed and shall have the effect of a civil judgment.

B. If a juvenile has an estate in the hands of a guardian or trustee, the guardian or trustee may be required to pay for his education and maintenance so long as there may be funds for that purpose.

C. Whenever a juvenile is placed in foster care by the court, the court shall order and decree that the parents shall pay the Department of Social Services pursuant to §§ [20-108.1](#), [20-108.2](#), [63.2-909](#), and [63.2-1910](#).

D. Whenever a juvenile is placed in temporary custody of the Department pursuant to subdivision A 4a of § [16.1-278.8](#) or committed to the Department pursuant to subdivision A 14 or A 17 of § [16.1-278.8](#), the Department shall apply for child support with the Department of Social Services. The parents shall be responsible for child support, pursuant to §§ [20-108.1](#) and [20-108.2](#), from the date the Department receives the juvenile. The Department shall notify in writing the parents of their responsibilities to pay child support from the date the Department receives the juvenile.

Code 1950, §§ 16.1-184, 16.1-185; 1956, c. 555; 1972, c. 177; 1977, c. 559; 1995, cc. [448](#), [817](#); 1996, cc. [755](#), [914](#); 2003, c. [579](#); 2006, c. [282](#).

§16.1-290.1. Payment for court-ordered counseling, treatment or programs.

The court shall order the participant in any treatment, counseling or other program for the rehabilitation of a minor child or his family to pay as much of the applicable fee for participation as such person is able to pay. A finding of guilt shall not be required for the court so to order payment.

2004, c. [573](#).

§16.1-291. Revocation or modification of probation, protective supervision or parole; proceedings; disposition.

A. A juvenile or person who violates an order of the juvenile court entered into pursuant to §§ [16.1-278.2](#) through [16.1-278.10](#) or § [16.1-284](#), who violates the conditions of his probation granted pursuant to § [16.1-278.5](#) or [16.1-278.8](#), or who violates the conditions of his parole granted pursuant to § [16.1-285](#), [16.1-285.1](#) or [16.1-293](#), may be proceeded against for a revocation or modification of such order or parole status. A proceeding to revoke or modify probation, protective supervision or parole shall be commenced by the filing of a petition. Except as otherwise provided, such petitions shall be screened, reviewed and prepared in the same manner and shall contain the same information as provided in §§ [16.1-260](#) and [16.1-262](#). The petition shall recite the date that the juvenile or person was placed on probation, under protective supervision or on parole and shall state the time and manner in which notice of the terms of probation, protective supervision or parole were given.

B. If a juvenile or person is found to have violated a prior order of the court or the terms of probation or parole, the court may, in accordance with the provisions of §§ [16.1-278.2](#) through [16.1-278.10](#), upon a revocation or modification hearing, modify or extend the terms of the order of probation or parole, including termination of probation or parole. However, notwithstanding the contempt power of the court as provided in § [16.1-292](#), the court shall be limited in the actions it may take to those that the court may have taken at the time of the court's original disposition pursuant to §§ [16.1-278.2](#) through [16.1-278.10](#), except as hereinafter provided.

C. In the event that a child in need of supervision is found to have willfully and materially violated an order of the court or the terms of his probation granted pursuant to § [16.1-278.5](#), in addition to or in lieu of the dispositions specified in that section, the court may enter any of the following orders of disposition:

1. Suspend the child's driver's license upon terms and conditions which may include the issuance of a restricted license for those purposes set forth in subsection E of § [18.2-271.1](#); or

2. Order any such child fourteen years of age or older to be (i) placed in a foster home, group home or other nonsecure residential facility, or, (ii) if the court finds that such placement is not likely to meet the child's needs, that all other treatment options in the community have been exhausted, and that secure placement is necessary in order to meet the child's service needs, detained in a secure facility for a period of time not to exceed ten consecutive days for violation of any order of the court or violation of probation arising out of the same petition. The court shall state in its order for detention the basis for all findings required by this section. When any child is detained in a secure facility pursuant to this section, the court shall direct the agency evaluating the child pursuant to § [16.1-278.5](#) to reconvene the interdisciplinary team participating in such evaluation, develop further treatment plans as may be appropriate and submit its report to the court of its determination as to further treatment efforts either during or following the period the child is in secure detention. A child may only be detained pursuant to this section in a detention home or other secure facility in compliance with standards established by the State Board. Any order issued pursuant to this subsection is a final order and is appealable as provided by law.

D. Nothing in this section shall be construed to reclassify a child in need of supervision as a delinquent.

E. If a person adjudicated delinquent and found to have violated an order of the court or the terms of his probation or parole was a juvenile at the time of the original offense and is eighteen years of age or older when the court enters disposition for violation of the order of the court or the terms of his probation or parole, the dispositional alternative specified in § [16.1-284](#) shall be available to the court.

Code 1950, § 16.1-188; 1956, c. 555; 1977, c. 559; 1991, c. 534; 1992, c. 90; 2001, c. [853](#); 2016, c. [626](#).

§16.1-292. Violation of court order by any person.

A. Any person violating an order of the juvenile court entered pursuant to §§ [16.1-278.2](#) through [16.1-278.19](#) or § [16.1-284](#), including a parent subject to an order issued pursuant to subdivision 3 of § [16.1-278.8](#), may be proceeded against (i) by an order requiring the person to show cause why the order of the court entered pursuant to §§ [16.1-278.2](#) through [16.1-278.19](#) has not been complied with, (ii) for contempt of court pursuant to § [16.1-69.24](#) or as otherwise provided in this section, or (iii) by both. Except as otherwise expressly provided herein, nothing in this chapter shall deprive the court of its power to punish summarily for contempt for such acts as set forth in § [18.2-456](#), or to punish for contempt after notice and an opportunity for a hearing on the contempt except that confinement in the case of a juvenile shall be in a secure facility for juveniles rather than in jail and shall not exceed a period of ten days for each offense. However, if the person violating the order was a juvenile at the time of the original act and is eighteen years of age or older when the court enters a disposition for violation of the order, the judge may order confinement in jail.

B. Upon conviction of any party for contempt of court in failing or refusing to comply with an order of a juvenile court for spousal support or child support under § [16.1-278.15](#), the court may commit and sentence such party to confinement in a jail, workhouse, city farm or work squad as provided in §§ [20-61](#) and [20-62](#), for a fixed or indeterminate period or until the further order of the court. In no event, however, shall such sentence be imposed for a period of more than twelve months. The sum or sums as provided for in § [20-63](#) shall be paid as therein set forth, to be used for the support and maintenance of the spouse or the child or children for whose benefit such order or decree provided.

C. Notwithstanding the contempt power of the court, the court shall be limited in the actions it may take with respect to a child violating the terms and conditions of an order to those which the court could have taken at the time of the court's original

disposition pursuant to §§ [16.1-278.2](#) through [16.1-278.10](#), except as hereinafter provided. However, this limitation shall not be construed to deprive the court of its power to (i) punish a child summarily for contempt for acts set forth in § [18.2-456](#) or (ii) punish a child for contempt for violation of a dispositional order in a delinquency proceeding after notice and an opportunity for a hearing regarding such contempt, including acts of disobedience of the court's dispositional order which are committed outside the presence of the court.

D. In the event a child in need of services is found to have willfully and materially violated for a second or subsequent time the order of the court pursuant to § [16.1-278.4](#), the dispositional alternatives specified in subdivision 9 of § [16.1-278.8](#) shall be available to the court.

E. In the event a child in need of supervision is found to have willfully and materially violated an order of the court pursuant to § [16.1-278.5](#), the court may enter any of the following orders of disposition:

1. Suspend the child's motor vehicle driver's license;
2. Order any such child fourteen years of age or older to be (i) placed in a foster home, group home or other nonsecure residential facility, or, (ii) if the court finds that such placement is not likely to meet the child's needs, that all other treatment options in the community have been exhausted, and that secure placement is necessary in order to meet the child's service needs, detained in a secure facility for a period of time not to exceed ten consecutive days for violation of any order of the court arising out of the same petition. The court shall state in its order for detention the basis for all findings required by this section. When any child is detained in a secure facility pursuant to this section, the court shall direct the agency evaluating the child pursuant to § [16.1-278.5](#) to reconvene the interdisciplinary team participating in such evaluation as promptly as possible to review its evaluation, develop further treatment plans as may be appropriate and submit its report to the court for its determination as to further treatment efforts either during or following the period the child is in secure detention. A juvenile may only be detained pursuant to this section in a detention home or other secure facility in compliance with standards established by the State Board. Any order issued pursuant to this subsection is a final order and is appealable to the circuit court as provided by law.

F. Nothing in this section shall be construed to reclassify a child in need of services or in need of supervision as a delinquent.

1977, c. 559; 1983, c. 501; 1985, cc. 1, 260; 1987, c. 632; 1988, c. 771; 1989, c. 725; 1990, c. 110; 1991, c. 534; 1993, c. 632; 1994, c. [21](#); 2000, c. [978](#); 2016, c. [626](#).

§16.1-293. Supervision of juvenile or person during commitment and on parole; placing juvenile in halfway house.

At such time as the court commits a juvenile to the Department, the juvenile and domestic relations district court service unit shall maintain contact with the juvenile during the juvenile's commitment.

If a person is placed on parole supervision following that person's release from commitment to the Department, the court services unit providing parole supervision shall furnish the person a written statement of the conditions of his parole and shall instruct him regarding the same. The conditions of the reenrollment plan may be included in the conditions of parole. Violations of parole shall be heard by the court pursuant to § [16.1-291](#). If the parole supervision is for an indeterminate period of time, the director of the supervising court services unit may approve termination of parole supervision.

The Department shall notify the school division superintendent in the locality where the person was enrolled of his commitment to a facility. The court services unit shall, in consultation with the local school division, the Department's Division of Education and the juvenile correctional counselor, develop a reenrollment plan if the person is of compulsory school attendance age or is eligible for special education services pursuant to § [22.1-213](#). The reenrollment plan shall be in accordance with regulations adopted by the Board of Education pursuant to § [22.1-17.1](#). The superintendent shall provide the person's scholastic records, as defined in § [22.1-289](#), and the terms and conditions of any expulsion which was in effect at the time of commitment or which will be in effect upon release. A court may not order a local school board to reenroll a person who has been expelled in accordance with the procedures set forth in § [22.1-277.06](#). At least 14 days prior to the person's scheduled release, the Department shall notify the school division superintendent in the locality where the person will reside.

In the event it is determined by the juvenile and domestic relations district court that a person may benefit from placement in the halfway house program operated by the Department, the person may be referred for care and treatment to a halfway house. Persons so placed in a halfway house shall remain in parole status and cannot be transferred or otherwise placed in another institutional setting or institutional

placement operated by the Department except as elsewhere provided by law for those persons who have violated their parole status.

In the event that the person was in the custody of the local department of social services immediately prior to his commitment to the Department and has not attained the age of 18 years, the local department of social services shall resume custody upon the person's release from commitment, unless an alternative arrangement for the custody of the person has been made and communicated in writing to the Department. At least 90 days prior to the person's release from commitment on parole supervision, (i) the court services unit shall consult with the local department of social services concerning return of the person to the locality and the placement of the person and (ii) the local department of social services and the court services unit shall collaborate to develop a plan that prepares the person for successful transition from the Department's commitment to the custody of the local department of social services or to an alternative custody arrangement if applicable. The plan shall identify the services necessary for such transition and how the services are to be provided. The court services unit will be responsible for supervising the person's terms and conditions of parole.

In the event that the person was in the custody of the local department of social services immediately prior to his commitment to the Department, is between 18 and 21 years of age, provides written notice of his intent to receive independent living services to the local department of social services, and enters into a written agreement with the local department of social services as set forth in § [63.2-905.1](#), the person shall be eligible to receive independent living services from the local department or a child-placing agency pursuant to § [63.2-905.1](#). At least 90 days prior to the person's release from commitment on parole supervision, (i) the court services unit shall inform the person of the availability of independent living services and shall consult with the local department of social services concerning return of the person to the locality and living arrangements for the person and (ii) the local department of social services and the court services unit shall work collaboratively to develop a plan for the successful transition of the person from the custody of the Department to independent living, which shall identify the services necessary to facilitate the person's transition to independent living and describe how the necessary services shall be provided.

In all cases in which a person who is in the custody of the local department of social services is committed to the Department, the local department of social services and the Department shall work cooperatively through the duration of the person's commitment to ensure communication of information regarding the status of the person and to facilitate transition planning for the person prior to his release.

Code 1950, § 16.1-210; 1956, c. 555; 1962, c. 628; 1972, cc. 73, 708; 1973, cc. 440, 546; 1977, c. 559; 1980, c. 217; 1981, c. 487; 1985, c. 203; 1988, c. 453; 1996, cc. [755](#), [914](#), [916](#), [1000](#); 2001, cc. [688](#), [820](#), [853](#); 2010, c. [742](#); 2011, cc. [39](#), [442](#); 2012, cc. [803](#), [835](#); 2013, cc. [362](#), [564](#).

§16.1-293.1. Mental health services transition plan.

A. The Board of Juvenile Justice, after consultation with the Department of Behavioral Health and Developmental Services, shall promulgate regulations for the planning and provision of post-release services for persons committed to the Department of Juvenile Justice pursuant to subdivision A 14 of § [16.1-278.8](#) or placed in a postdispositional detention program pursuant to subsection B of § [16.1-284.1](#) and identified as having a recognized mental health, substance abuse, or other therapeutic treatment need. The plan shall be in writing and completed prior to the person's release. The purpose of the plan shall be to ensure continuity of necessary treatment and services.

B. The mental health services transition plan shall identify the mental health, substance abuse, or other therapeutic needs of the person being released. Appropriate treatment providers and other persons from state and local agencies or entities, as defined by the Board, shall participate in the development of the plan. Appropriate family members, caregivers, or other persons, as defined by the Board, shall be invited to participate in the development of the person's plan.

C. Prior to the person's release from incarceration, the identified agency or agencies responsible for the case management of the mental health services transition plan shall make the necessary referrals specified in the plan and assist the person in applying for insurance and other services identified in the plan, including completing and submitting applications that may only be submitted upon release.

2005, cc. [334](#), [405](#); 2009, cc. [813](#), [840](#).

§16.1-294. Placing child on parole in foster home or with institution; how cost paid.

When the child is returned to the custody of the court for parole supervision by the court service unit or the local department of social services for supervision, and, after a full investigation, the court is of the opinion that the child should not be placed in his home or is in need of treatment, and there are no funds available to board and maintain the child or to purchase the needed treatment services, the court service unit or the local department of social services shall arrange with the Director of the Department of Juvenile Justice for the boarding of the child in a foster home or with any private institution, society or association or for the purchase of treatment services. In determining the proper placement for such a child, the Department may refer the child to the locality's family assessment and planning team for assessment and recommendation for services. The cost of maintaining such child shall be paid monthly, according to schedules prepared and adopted by the Department, out of funds appropriated for such purposes. Treatment services for such child shall be paid from funds appropriated to the Department for such purpose.

Code 1950, § 16.1-211; 1956, c. 555; 1972, cc. 73, 708; 1973, c. 546; 1974, cc. 44, 45; 1977, c. 559; 1982, c. 636; 1983, c. 358; 1985, c. 203; 1988, c. 376; 1989, c. 733; 1992, cc. 837, 880; 2002, c. [747](#).

§16.1-295. Transfer of supervision from one county or city to another, or to another state.

If any person on probation to or under the supervision of any juvenile probation officer or other officer of the court removes his residence or place of abode from the county or city in which he was so placed on probation or under supervision to another county or city in the Commonwealth, the court in the city or county from which he removed his residence or place of abode may then arrange the transfer of the supervision to the city or county to which he moves his place of residence or abode, or such transfer may be ordered by the transferring court.

The Director of the Department of Juvenile Justice may make provision for the transfer of a juvenile placed on probation in this Commonwealth to another state to be there placed on probation under the terms of Article 4 (§ [53.1-166](#) et seq.) of Chapter 4 of Title 53.1.

The costs of returning juveniles on probation or parole to their places of residence, whether within or outside of this Commonwealth, shall be paid in accordance with regulations established by the State Board from funds appropriated in the general appropriation act for criminal costs.

Code 1950, § 16.1-212; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, cc. 44, 45; 1977, c. 559; 1989, c. 733.

§16.1-296. Jurisdiction of appeals; procedure.

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken to the circuit court within 10 days from the entry of a final judgment, order or conviction and shall be heard de novo. However, in a case arising under the Uniform Interstate Family Support Act (§ [20-88.32](#) et seq.), a party may take an appeal pursuant to this section within 30 days from entry of a final order or judgment. Protective orders issued pursuant to § [16.1-279.1](#) in cases of family abuse and orders entered pursuant to § [16.1-278.2](#) are final orders from which an appeal may be taken.

B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney for the Commonwealth a report incorporating the results of any investigation conducted pursuant to § [16.1-273](#), which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such juvenile court.

C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § [16.1-278.8](#), trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled to a jury of 12 persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of § [16.1-278.8](#) after taking into consideration the report of any investigation made pursuant to § [16.1-237](#) or [16.1-273](#).

C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on a disposition pursuant to § [16.1-278.8](#), the provisions of § [16.1-302](#) shall apply mutatis mutandis, except in the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to this subsection, any records or portions thereof relating to such closed proceedings shall remain confidential.

C2. Where an appeal is taken by a juvenile on a finding that he is delinquent and on a disposition pursuant to § [16.1-278.8](#) and the juvenile is in a secure facility pending

the appeal, the circuit court, when practicable, shall hold a hearing on the merits of the case within 45 days of the filing of the appeal. Upon receipt of the notice of appeal from the juvenile court, the circuit court shall provide a copy of the order and a copy of the notice of appeal to the attorney for the Commonwealth within seven days after receipt of notice of an appeal. The time limitations shall be tolled during any period in which the juvenile has escaped from custody. A juvenile held continuously in secure detention shall be released from confinement if there is no hearing on the merits of his case within 45 days of the filing of the appeal. The circuit court may extend the time limitations for a reasonable period of time based upon good cause shown, provided the basis for such extension is recorded in writing and filed among the papers of the proceedings.

D. When an appeal is taken in a case involving termination of parental rights brought under § [16.1-283](#), the circuit court shall hold a hearing on the merits of the case within 90 days of the perfecting of the appeal. An appeal of the case to the Court of Appeals shall take precedence on the docket of the Court.

E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an appeal from a general district court pursuant to §§ [16.1-132](#) through [16.1-137](#); however, where an appeal is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in prosecutions under Chapter 5 (§ [20-61](#) et seq.) of Title 20.

F. In all other cases on appeal, proceedings in the circuit court shall be heard without a jury; however, hearing of an issue by an advisory jury may be allowed, in the discretion of the judge, upon the motion of any party. An appeal from an order of protection issued pursuant to § [16.1-279.1](#) shall be given precedence on the docket of the court over other civil appeals taken to the circuit court from the district courts, but shall otherwise be docketed and processed as other civil cases.

G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee could have been assessed in the juvenile and domestic relations court and shall be collected in the circuit court, except that the appeal to circuit court of any case in which a fee either was or could have been assessed pursuant to § [16.1-69.48:5](#) shall also be in accordance with § [16.1-296.2](#).

H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic relations district court except for that portion of any order or judgment

establishing a support arrearage or suspending payment of support during pendency of an appeal. In cases involving support, no appeal shall be allowed until the party applying for the same or someone for him gives bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment of the court in which it was rendered. Upon appeal from a conviction for failure to support or from a finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations district court may require the party applying for the appeal or someone for him to give bond, with or without surety, to insure his appearance and may also require bond in an amount and with sufficient surety to secure the payment of prospective support accruing during the pendency of the appeal. An appeal will not be perfected unless such appeal bond as may be required is filed within 30 days from the entry of the final judgment or order. However, no appeal bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

If bond is furnished by or on behalf of any party against whom judgment has been rendered for money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against the party on appeal, and for the payment of all damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery, the bond shall be conditioned for the payment of any damages as may be awarded against him on the appeal. The provisions of § [16.1-109](#) shall apply to bonds required pursuant to this subsection.

This subsection shall not apply to release on bail pursuant to other subsections of this section or § [16.1-298](#).

I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers and authority granted by the chapter to the juvenile and domestic relations district court. Unless otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint counsel for the parties and compensate such counsel in accordance with the provisions of Article 6 (§ [16.1-266](#) et seq.) of this chapter.

J. In any case which has been referred or transferred from a circuit court to a juvenile court and an appeal is taken from an order or judgment of the juvenile court, the

appeal shall be taken to the circuit court in the same locality as the juvenile court to which the case had been referred or transferred.

Code 1950, § 16.1-214; 1956, c. 555; 1966, c. 237; 1977, c. 559; 1978, c. 445; 1981, c. 109; 1982, c. 465; 1983, c. 88; 1984, c. 631; 1986, cc. 143, 465; 1989, c. 473; 1991, c. 534; 1993, c. 970; 1994, c. [673](#); 1995, c. [517](#); 1996, c. [866](#); 1997, cc. [654](#), [664](#), [790](#), [862](#); 1998, c. [550](#); 2004, cc. [468](#), [659](#), [727](#); 2005, c. [681](#); 2007, c. [464](#); 2009, c. [729](#).

§16.1-296.1. Repealed.

Repealed by Acts 1999, c. [161](#).

§16.1-296.2. Appeals of certain custody and visitation proceedings.

A. In any matter in which a filing fee either was or could have been assessed pursuant to § [16.1-69.48:5](#), no appeal shall be allowed unless and until the party applying for appeal shall, within 10 days from the entry of the final judgment or order, either (i) pay to the clerk of the court from which the appeal is taken the amount of the writ tax of the court to which the appeal is taken and all other applicable costs or (ii) file with the clerk of the court from which the appeal is taken a petition to have the court to which the appeal is taken determine that the writ tax and costs need not be paid on account of poverty as provided in § [17.1-606](#). The judge or clerk of any court from which the appeal is taken shall promptly transmit to the clerk of the appellate court the original pleadings, together with all exhibits and other papers filed in the trial of the case, and either (i) the writ tax and costs paid or (ii) a petition filed to have the court to which the appeal is taken determine that the writ tax and costs need not be paid on account of poverty as provided in § [17.1-606](#). Upon receipt of the foregoing by the clerk of the appellate court, the case shall then be docketed.

B. Notwithstanding any other provision of law, the writ tax of the court to which the appeal is taken and other applicable costs shall be assessed only once for all custody and visitation petitions simultaneously appealed by a single appellant.

2004, cc. [659](#), [727](#).

§16.1-297. Final judgment; copy filed with juvenile court; proceeding may be remanded to juvenile court.

Upon the rendition of final judgment upon an appeal from the juvenile and domestic relations district court, the circuit court shall cause a copy of its judgment to be filed with the juvenile court within twenty-one days of entry of its order, which shall thereupon become the judgment of the juvenile court. In the event such circuit court

does not dismiss the proceedings or discharge such child or adult, the circuit court may remand the child or adult to the jurisdiction of the juvenile court for its supervision and care, under the terms of its order or judgment, and thereafter such child or adult shall be and remain under the jurisdiction of the juvenile court in the same manner as if such court had rendered the judgment in the first instance.

Code 1950, § 16.1-215; 1956, c. 555; 1977, c. 559; 1996, c. [828](#).

§16.1-298. Effect of petition for or pendency of appeal; bail.

A. Except as provided herein, a petition for or the pendency of an appeal or writ of error shall not suspend any judgment, order or decree of the juvenile court nor operate to discharge any child concerned or involved in the case from the custody of the court or other person, institution or agency to which the child has been committed unless so ordered by the judge of the juvenile court, the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court or a judge or justice thereof.

B. The judgment, order or decree of the juvenile court shall be suspended upon a petition for or the pendency of an appeal or writ of error:

1. In cases of delinquency in which the final order of the juvenile court is pursuant to subdivision 8, 9, 10, 12, 14, or 15 of § [16.1-278.8](#).
2. In cases involving a child and any local ordinance.
3. In cases involving any person over the age of 18 years.

Such suspension as is provided for in this subsection shall not apply to (i) an order for support of a spouse, parent or child or to a preliminary protective order issued pursuant to § [16.1-253](#), (ii) an order disposing of a motion to reconsider relating to participation in continuing programs pursuant to § [16.1-289.1](#), (iii) a protective order in cases of family abuse issued pursuant to § [16.1-279.1](#), including a protective order required by § [16.1-253.2](#), or a protective order entered in conjunction with a disposition pursuant to § [16.1-278.2](#), [16.1-278.4](#), [16.1-278.5](#), [16.1-278.6](#), [16.1-278.8](#), or [16.1-278.14](#), (iv) a protective order issued pursuant to § [19.2-152.10](#), including a protective order required by § [18.2-60.4](#), or (v) an order pertaining to the custody, visitation, or placement of a minor child, unless so ordered by the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.

C. In cases where the order of the juvenile court is suspended pursuant to subsection B hereof or by order of the juvenile court or the circuit court, bail may be required as provided for in § [16.1-135](#).

D. If an appeal to the circuit court is withdrawn in accordance with § [16.1-106.1](#), the judgment, order, or decree rendered by the juvenile court shall have the same legal effect as if no appeal had been noted, except as to the disposition of any bond in circuit court or as modified by the circuit court pursuant to subsection F of § [16.1-106.1](#). If an appeal is withdrawn, any court-appointed counsel or court-appointed guardian ad litem shall, absent further order of the court, be relieved of any further obligation respecting the matter for which they were appointed.

E. Except as to matters pending on the docket of a circuit court as of July 1, 2008, all orders that were entered by a juvenile and domestic relations district court prior to July 1, 2008, and appealed to a circuit court, where the appeal was withdrawn, shall have the same effect as if no appeal had been noted.

Code 1950, § 16.1-216; 1956, c. 555; 1966, c. 224; 1977, c. 559; 1984, cc. 631, 703; 1988, c. 771; 1991, c. 534; 1996, c. [866](#); 1997, c. [831](#); 1998, c. [550](#); 2008, c. [706](#); 2013, cc. [73](#), [97](#).

§16.1-299. Fingerprints and photographs of juveniles.

A. All duly constituted police authorities having the power of arrest shall take fingerprints and photographs of any juvenile who is taken into custody and charged with a delinquent act an arrest for which, if committed by an adult, is required to be reported to the Central Criminal Records Exchange pursuant to subsection A of § [19.2-390](#). Whenever fingerprints are taken, they shall be maintained separately from adult records and a copy shall be filed with the juvenile court on forms provided by the Central Criminal Records Exchange.

B. If a juvenile of any age (i) is convicted of a felony, (ii) is adjudicated delinquent of an offense that would be a felony if committed by an adult, (iii) has a case involving an offense, which would be a felony if committed by an adult, that is dismissed pursuant to the deferred disposition provisions of § [16.1-278.8](#), or (iv) is convicted or adjudicated delinquent of any other offense for which a report to the Central Criminal Records Exchange is required by subsection C of § [19.2-390](#) if the offense were committed by an adult, copies of his fingerprints and a report of the disposition shall be forwarded to the Central Criminal Records Exchange and to the jurisdiction making the arrest by the clerk of the court which heard the case.

C. If a petition or warrant is not filed against a juvenile whose fingerprints or photographs have been taken in connection with an alleged violation of law, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed 60 days after fingerprints were taken. If a juvenile charged with a delinquent act other than a violent juvenile felony or a crime ancillary thereto is found not guilty, or in any other case resulting in a disposition for which fingerprints are not required to be forwarded to the Central Criminal Records Exchange, the court shall order that the fingerprint card, all copies of the fingerprints and all photographs be destroyed within six months of the date of disposition of the case.

1977, c. 559; 1978, c. 383; 1979, c. 267; 1982, c. 514; 1985, c. 211; 1986, c. 264; 1993, cc. 468, 926; 1994, cc. [859](#), [949](#); 1996, cc. [755](#), [914](#); 1997, c. [657](#); 2000, c. [431](#); 2004, c. [464](#); 2008, c. [636](#).

§16.1-299.1. Sample required for DNA analysis upon conviction or adjudication of felony.

A juvenile convicted of a felony or adjudicated delinquent on the basis of an act which would be a felony if committed by an adult shall have a sample of his blood, saliva or tissue taken for DNA analysis provided the juvenile was 14 years of age or older at the time of the commission of the offense.

The provisions of Article 1.1 (§ [19.2-310.2](#) et seq.) of Chapter 18 of Title 19.2 shall apply to all persons and all DNA samples taken as required by this section, mutatis mutandis.

The Department of Juvenile Justice shall verify that a DNA sample required to be taken has been received by the Department of Forensic Science. In any case where a DNA sample has not been received, the Department of Juvenile Justice shall notify the court and the court shall require the person to submit a sample for DNA analysis.

1996, cc. [755](#), [914](#); 1998, c. [280](#); 2003, cc. [150](#), [607](#); 2007, c. [528](#).

§16.1-299.2. Repealed.

Repealed by Acts 2005, c. [843](#), cl. 2.

§16.1-300. Confidentiality of Department records.

A. The social, medical, psychiatric and psychological reports and records of children who are or have been (i) before the court, (ii) under supervision, or (iii) receiving services from a court service unit or who are committed to the Department of Juvenile Justice shall be confidential and shall be open for inspection only to the following:

1. The judge, prosecuting attorney, probation officers and professional staff assigned to serve a court having the child currently before it in any proceeding;
2. Any public agency, child welfare agency, private organization, facility or person who is treating or providing services to the child pursuant to a contract with the Department or pursuant to the Virginia Juvenile Community Crime Control Act as set out in Article 12.1 (§ [16.1-309.2](#) et seq.);
3. The child's parent, guardian, legal custodian or other person standing in loco parentis and the child's attorney;
4. Any person who has reached the age of majority and requests access to his own records or reports;
5. Any state agency providing funds to the Department of Juvenile Justice and required by the federal government to monitor or audit the effectiveness of programs for the benefit of juveniles which are financed in whole or in part by federal funds;
6. Any other person, agency or institution, including any law-enforcement agency, school administration, or probation office by order of the court, having a legitimate interest in the case, the juvenile, or in the work of the court;
7. Any person, agency, or institution, in any state, having a legitimate interest (i) when release of the confidential information is for the provision of treatment or rehabilitation services for the juvenile who is the subject of the information, (ii) when the requesting party has custody or is providing supervision for a juvenile and the release of the confidential information is in the interest of maintaining security in a secure facility, as defined by § [16.1-228](#) if the facility is located in Virginia, or as similarly defined by the law of the state in which such facility is located if it is not located in Virginia, or (iii) when release of the confidential information is for consideration of admission to any group home, residential facility, or postdispositional facility, and copies of the records in the custody of such home or facility shall be destroyed if the child is not admitted to the home or facility;
8. Any attorney for the Commonwealth, any pretrial services officer, local community-based probation officer and adult probation and parole officer for the purpose of preparing pretrial investigation, including risk assessment instruments, presentence reports, including those provided in § [19.2-299](#), discretionary sentencing guidelines worksheets, including related risk assessment instruments, as directed by

the court pursuant to subsection C of § [19.2-298.01](#) or any court-ordered post-sentence investigation report;

9. Any person, agency, organization or institution outside the Department that, at the Department's request, is conducting research or evaluation on the work of the Department or any of its divisions; or any state criminal justice agency that is conducting research, provided that the agency agrees that all information received shall be kept confidential, or released or published only in aggregate form;

10. With the exception of medical, psychiatric, and psychological records and reports, any full-time or part-time employee of the Department of State Police or of a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the enforcement of the penal, traffic, or motor vehicle laws of the Commonwealth, is entitled to any information related to a criminal street gang, including that a person is a member of a criminal street gang as defined in § [18.2-46.1](#). Information shall be provided by the Department to law enforcement without their request to aid in initiating an investigation or assist in an ongoing investigation of a criminal street gang as defined in § [18.2-46.1](#). This information may also be disclosed, at the Department's discretion, to a gang task force, provided that the membership (i) consists of only representatives of state or local government or (ii) includes a law-enforcement officer who is present at the time of the disclosure of the information. The Department shall not release the identifying information of a juvenile not affiliated with or involved in a criminal street gang unless that information relates to a specific criminal act. No person who obtains information pursuant to this subdivision shall divulge such information except in connection with gang-activity intervention and prevention, a criminal investigation regarding a criminal street gang as defined in § [18.2-46.1](#) that is authorized by the Attorney General or by the attorney for the Commonwealth, or in connection with a prosecution or proceeding in court;

11. The Commonwealth's Attorneys' Services Council and any attorney for the Commonwealth, as permitted under subsection B of § [66-3.2](#);

12. Any state or local correctional facility as defined in § [53.1-1](#) when such facility has custody of or is providing supervision for a person convicted as an adult who is the subject of the reports and records. The reports and records shall remain confidential and shall be open for inspection only in accordance with this section; and

13. The Office of the Attorney General, for all criminal justice activities otherwise permitted and for purposes of performing duties required by Chapter 9 (§ [37.2-900](#) et seq.) of Title 37.2.

A designated individual treating or responsible for the treatment of a person may inspect such reports and records as are kept by the Department on such person or receive copies thereof, when the person who is the subject of the reports and records or his parent, guardian, legal custodian or other person standing in loco parentis if the person is under the age of 18, provides written authorization to the Department prior to the release of such reports and records for inspection or copying to the designated individual.

B. The Department may withhold from inspection by a child's parent, guardian, legal custodian or other person standing in loco parentis that portion of the records referred to in subsection A, when the staff of the Department determines, in its discretion, that disclosure of such information would be detrimental to the child or to a third party, provided that the juvenile and domestic relations district court (i) having jurisdiction over the facility where the child is currently placed or (ii) that last had jurisdiction over the child if such child is no longer in the custody or under the supervision of the Department shall concur in such determination.

If any person authorized under subsection A to inspect Department records requests to inspect the reports and records and if the Department withholds from inspection any portion of such record or report pursuant to the preceding provisions, the Department shall (i) inform the individual making the request of the action taken to withhold any information and the reasons for such action; (ii) provide such individual with as much information as is deemed appropriate under the circumstances; and (iii) notify the individual in writing at the time of the request of his right to request judicial review of the Department's decision. The circuit court (a) having jurisdiction over the facility where the child is currently placed or (b) that had jurisdiction over the original proceeding or over an appeal of the juvenile and domestic relations district court final order of disposition concerning the child if such child is no longer in the custody or under the supervision of the Department shall have jurisdiction over petitions filed for review of the Department's decision to withhold reports or records as provided herein.

1977, c. 559; 1978, cc. 738, 740; 1981, c. 487; 1988, c. 541; 1989, c. 733; 1994, c. [19](#); 2000, c. [212](#); 2002, c. [735](#); 2003, cc. [108](#), [143](#); 2006, cc. [431](#), [500](#); 2007, c. [511](#); 2009, c. [740](#); 2010, cc. [367](#), [472](#); 2011, cc. [99](#), [169](#); 2012, cc. [262](#), [421](#); 2017, cc. [207](#), [210](#).

§16.1-301. Confidentiality of juvenile law-enforcement records; disclosures to school principal and others.

A. The court shall require all law-enforcement agencies to take special precautions to ensure that law-enforcement records concerning a juvenile are protected against disclosure to any unauthorized person. The police departments of the cities of the Commonwealth, and the police departments or sheriffs of the counties, as the case may be, shall keep separate records as to violations of law other than violations of motor vehicle laws committed by juveniles. Such records with respect to such juvenile shall not be open to public inspection nor their contents disclosed to the public unless a juvenile 14 years of age or older is charged with a violent juvenile felony as specified in subsections B and C of § [16.1-269.1](#).

B. Notwithstanding any other provision of law, the chief of police or sheriff of a jurisdiction or his designee may disclose, for the protection of the juvenile, his fellow students and school personnel, to the school principal that a juvenile is a suspect in or has been charged with (i) a violent juvenile felony, as specified in subsections B and C of § [16.1-269.1](#); (ii) a violation of any of the provisions of Article 1 (§ [18.2-77](#) et seq.) of Chapter 5 of Title 18.2; or (iii) a violation of law involving any weapon as described in subsection A of § [18.2-308](#). If a chief of police, sheriff or a designee has disclosed to a school principal pursuant to this section that a juvenile is a suspect in or has been charged with a crime listed above, upon a court disposition of a proceeding regarding such crime in which a juvenile is adjudicated delinquent, convicted, found not guilty or the charges are reduced, the chief of police, sheriff or a designee shall, within 15 days of the expiration of the appeal period, if there is no notice of appeal, provide notice of the disposition ordered by the court to the school principal to whom disclosure was made. If the court defers disposition or if charges are withdrawn, dismissed or nolle prosequi, the chief of police, sheriff or a designee shall, within 15 days of such action provide notice of such action to the school principal to whom disclosure was made. If charges are withdrawn in intake or handled informally without a court disposition or if charges are not filed within 90 days of the initial disclosure, the chief of police, sheriff or a designee shall so notify the school principal to whom disclosure was made. In addition to any other disclosure that is permitted by this subsection, the principal in his discretion may provide such

information to a threat assessment team established by the local school division. No member of a threat assessment team shall (a) disclose any juvenile record information obtained pursuant to this section or (b) use such information for any purpose other than evaluating threats to students and school personnel. For the purposes of this subsection, "principal" also refers to the chief administrator of any private primary or secondary school.

C. Inspection of law-enforcement records concerning juveniles shall be permitted only by the following:

1. A court having the juvenile currently before it in any proceeding;
2. The officers of public and nongovernmental institutions or agencies to which the juvenile is currently committed, and those responsible for his supervision after release;
3. Any other person, agency, or institution, by order of the court, having a legitimate interest in the case or in the work of the law-enforcement agency;
4. Law-enforcement officers of other jurisdictions, by order of the court, when necessary for the discharge of their current official duties;
5. The probation and other professional staff of a court in which the juvenile is subsequently convicted of a criminal offense for the purpose of a presentence report or other dispositional proceedings, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him;
6. The juvenile, parent, guardian or other custodian and counsel for the juvenile by order of the court; and
7. As provided in §§ [19.2-389.1](#) and [19.2-390](#).

D. The police departments of the cities and towns and the police departments or sheriffs of the counties may release, upon request to one another and to state and federal law-enforcement agencies, and to law-enforcement agencies in other states, current information on juvenile arrests. The information exchanged shall be used by the receiving agency for current investigation purposes only and shall not result in the creation of new files or records on individual juveniles on the part of the receiving agency.

E. Upon request, the police departments of the cities and towns and the police departments or sheriffs of the counties may release current information on juvenile arrests or juvenile victims to the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an award to the victim of a crime, and such information shall not be disseminated or used by the Commission for any other purpose than provided in § [19.2-368.3](#).

F. Nothing in this section shall prohibit the exchange of other criminal investigative or intelligence information among law-enforcement agencies.

G. Nothing in this section shall prohibit the disclosure of law-enforcement records concerning a juvenile to a court services unit-authorized diversion program in accordance with this chapter, which includes programs authorized by subdivision 1 of § [16.1-227](#) and § [16.1-260](#). Such records shall not be further disclosed by the authorized diversion program or any participants therein. Law-enforcement officers may prohibit a disclosure to such a program to protect a criminal investigation or intelligence information.

Code 1950, § 16.1-163; 1956, c. 555; 1977, cc. 559, 618; 1978, c. 740; 1981, c. 175; 1993, cc. 468, 926; 1994, cc. [859](#), [949](#); 1995, c. [752](#); 1996, cc. [755](#), [914](#); 1997, c. [430](#); 2000, c. [211](#); 2001, c. [770](#); 2003, c. [119](#); 2005, c. [683](#); 2009, c. [286](#); 2013, c. [769](#); 2016, c. [234](#).

§16.1-302. Dockets, indices and order books; when hearings and records private; right to public hearing; presence of juvenile in court.

A. Every juvenile court shall keep a separate docket of cases arising under this law.

B. Every circuit court shall keep a separate docket, index, and, for entry of its orders, a separate order book or file for cases on appeal from the juvenile court except: (i) cases involving support pursuant to § [20-61](#) or subdivisions A 3, F or L of § [16.1-241](#); (ii) cases involving criminal offenses committed by adults which are commenced on a warrant or a summons as described in Title 19.2; and (iii) cases involving civil commitments of adults pursuant to Title 37.2. Such cases shall be docketed on the appropriate docket and the orders in such cases shall be entered in the appropriate order book as used with similar cases commenced in circuit court.

C. The general public shall be excluded from all juvenile court hearings and only such persons admitted as the judge shall deem proper. However, proceedings in cases involving an adult charged with a crime and hearings held on a petition or warrant

alleging that a juvenile fourteen years of age or older committed an offense which would be a felony if committed by an adult shall be open. Subject to the provisions of subsection D for good cause shown, the court may, sua sponte or on motion of the accused or the attorney for the Commonwealth close the proceedings. If the proceedings are closed, the court shall state in writing its reasons and the statement shall be made a part of the public record.

D. In any hearing held for the purpose of adjudicating an alleged violation of any criminal law, or law defining a traffic infraction, the juvenile or adult so charged shall have a right to be present and shall have the right to a public hearing unless expressly waived by such person. The chief judge may provide by rule that any juvenile licensed to operate a motor vehicle who has been charged with a traffic infraction may waive court appearance and admit to the infraction or infractions charged if he or she and a parent, legal guardian, or person standing in loco parentis to the juvenile appear in person at the court or before a magistrate or sign and either mail or deliver to the court or magistrate a written form of appearance, plea and waiver, provided that the written form contains the notarized signature of the parent, legal guardian, or person standing in loco parentis to the juvenile. An emancipated juvenile charged with a traffic infraction shall have the opportunity to waive court appearance and admit to the infraction or infractions if he or she appears in person at the court or before a magistrate or signs and either mails or delivers to the court or magistrate a written form of appearance, plea, and waiver, provided that the written plea form containing the signature of the emancipated juvenile is accompanied by a notarized sworn statement which details the facts supporting the claim of emancipated status. Whenever the sole purpose of a proceeding is to determine the custody of a child of tender years, the presence of such juvenile in court may be waived by the judge at any stage thereof.

Code 1950, § 16.1-162; 1956, c. 555; 1958, c. 353; 1971, Ex. Sess., c. 228; 1975, c. 334; 1977, cc. 559, 585; 1978, c. 605; 1979, c. 393; 1983, c. 293; 1996, cc. [755](#), [914](#).

§16.1-302.1. Right of victim or representative to attend certain proceedings; notice of hearings.

During proceedings involving petitions or warrants alleging that a juvenile is delinquent, including proceedings on appeal, a victim may remain in the courtroom and shall not be excluded unless the court determines in its discretion, that the presence of the victim would impair the conduct of a fair trial. In any such case involving a

minor victim, the court may permit an adult chosen by the minor victim to be present in the courtroom during the proceedings in addition to or in lieu of the minor's parent or guardian.

The attorney for the Commonwealth shall give prior notice of any such proceedings and changes in the scheduling thereof to any known victim and to any known adult chosen in accordance with this section by a minor victim at the address or telephone number, or both, provided in writing by such persons.

1996, cc. [755](#), [914](#); 2000, c. [339](#).

§16.1-303. Reports of court officials and employees when privileged.

All information obtained in discharge of official duties by any official or by any employee of the court shall be privileged, and shall not be disclosed to anyone other than the judge unless and until otherwise ordered by the judge or by the judge of a circuit court; provided, however, that in any case when such information shall disclose that an offense has been committed which would be a felony if committed by an adult, it shall be the duty of the official or employee of the court obtaining such information to report the same promptly to the attorney for the Commonwealth or the police in the county, city or town where the offense occurred. It shall not be deemed a violation of this section if the disclosed information is otherwise available to the public.

Code 1950, § 16.1-209; 1956, c. 555; 1958, c. 354; 1977, c. 559; 1996, cc. [755](#), [914](#).

§16.1-304. Repealed.

Repealed by Acts 1983, c. 499.

§16.1-305. Confidentiality of court records.

A. Social, medical and psychiatric or psychological records, including reports or preliminary inquiries, predisposition studies and supervision records, of neglected and abused children, children in need of services, children in need of supervision and delinquent children shall be filed with the other papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and records of the court and shall be open for inspection only to the following:

1. The judge, probation officers and professional staff assigned to serve the juvenile and domestic relations district courts;

2. Representatives of a public or private agency or department providing supervision or having legal custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;
3. The attorney for any party, including the attorney for the Commonwealth;
4. Any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court. However, for the purposes of an investigation conducted by a local community-based probation services agency, preparation of a pretrial investigation report, or of a presentence or postsentence report upon a finding of guilty in a circuit court or for the preparation of a background report for the Parole Board, adult probation and parole officers, including United States Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or operated pursuant to Article 5 (§ [19.2-152.2](#) et seq.) of Chapter 9 of Title 19.2, and any officer of a local community-based probation services agency established or operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ [9.1-173](#) et seq.) shall have access to an accused's or inmate's records in juvenile court without a court order and for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the court pursuant to subsection C of § [19.2-298.01](#), the attorney for the Commonwealth and any pretrial services or probation officer shall have access to the defendant's records in juvenile court without a court order;
5. Any attorney for the Commonwealth and any local pretrial services or community-based probation officer or state adult probation or parole officer shall have direct access to the defendant's juvenile court delinquency records maintained in an electronic format by the court for the strictly limited purposes of preparing a pretrial investigation report, including any related risk assessment instrument, any presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

A copy of the court order of disposition in a delinquency case shall be provided to a probation officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing guidelines. The copies shall remain confidential, but reports may be prepared using the information contained therein as provided in §§ [19.2-298.01](#) and [19.2-299](#).

6. The Office of the Attorney General, for all criminal justice activities otherwise permitted and for purposes of performing duties required by Chapter 9 (§ [37.2-900](#) et seq.) of Title 37.2.

A1. Any person, agency, or institution that may inspect juvenile case files pursuant to subdivisions A 1 through A 4 shall be authorized to have copies made of such records, subject to any restrictions, conditions, or prohibitions that the court may impose.

B. All or any part of the records enumerated in subsection A, or information secured from such records, which is presented to the judge in court or otherwise in a proceeding under this law shall also be made available to the parties to the proceedings and their attorneys.

B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, all court records regarding that adjudication and any subsequent adjudication of delinquency, other than those records specified in subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that certain records or portions thereof remain confidential to the extent necessary to protect any juvenile victim or juvenile witness.

C. All other juvenile records, including the docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by those persons and agencies designated in subsections A and B of this section. However, a licensed bail bondsman shall be entitled to know the status of a bond he has posted or provided surety on for a juvenile under § [16.1-258](#). This shall not authorize a bail bondsman to have access to or inspect any other portion of his principal's juvenile court records.

D. Attested copies of papers filed in connection with an adjudication of guilty for an offense for which the clerk is required by § [46.2-383](#) to furnish an abstract to the Department of Motor Vehicles, which shows the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney shall be furnished to an attorney for the Commonwealth upon certification by the prosecuting attorney that such papers are needed as evidence in a pending criminal, traffic, or habitual offender proceeding and that such papers will be only used for such evidentiary purpose.

D1. Attested copies of papers filed in connection with an adjudication of guilt for a delinquent act that would be a felony if committed by an adult, which show the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney by the juvenile, shall be furnished to an attorney for the Commonwealth upon his certification that such papers are needed as evidence in a pending criminal prosecution for a violation of § [18.2-308.2](#) and that such papers will be only used for such evidentiary purpose.

E. Upon request, a copy of the court order of disposition in a delinquency case shall be provided to the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an award to the victim of a crime, and such information shall not be disseminated or used by the Commission for any other purpose including but not limited to actions pursuant to § [19.2-368.15](#).

F. Staff of the court services unit or the attorney for the Commonwealth shall provide notice of the disposition in a case involving a juvenile who is committed to state care after being adjudicated for a criminal sexual assault as specified in Article 7 (§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2 to the victim or a parent of a minor victim, upon request. Additionally, if the victim or parent submits a written request, the Department of Juvenile Justice shall provide advance notice of such juvenile offender's anticipated date of release from commitment.

G. Any record in a juvenile case file which is open for inspection by the professional staff of the Department of Juvenile Justice pursuant to subsection A and is maintained in an electronic format by the court, may be transmitted electronically to the Department of Juvenile Justice. Any record so transmitted shall be subject to the provisions of § [16.1-300](#).

Code 1950, § 16.1-162; 1956, c. 555; 1958, c. 353; 1971, Ex. Sess., c. 228; 1975, c. 334; 1977, c. 559; 1979, c. 605; 1983, c. 389; 1984, c. 34; 1988, c. 541; 1989, c. 182; 1990, c. 258; 1992, c. 547; 1994, c. [603](#); 1995, c. [430](#); 1996, cc. [755](#), [870](#), [914](#); 1998, cc. [278](#), [521](#); 2002, cc. [701](#), [735](#), [741](#); 2003, c. [143](#); 2004, c. [446](#); 2007, c. [133](#); 2009, cc. [138](#), [308](#), [740](#).

§16.1-305.1. Disclosure of disposition in certain delinquency cases.

Upon a court's disposition of a proceeding where a juvenile is charged with a crime listed in subsection G of § [16.1-260](#) in which a juvenile is adjudicated delinquent, convicted, found not guilty or the charges are reduced, the clerk of the court in which the disposition is entered shall, within 15 days of the expiration of the appeal period,

if there has been no notice of an appeal, provide written notice of the disposition ordered by the court, including the nature of the offense upon which the disposition was based, to the superintendent of the school division in which the child is enrolled at the time of the disposition or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense. If the court defers disposition, or the charges are nolle prosequi, withdrawn, or dismissed the clerk shall, within 15 days of such action, provide written notice of such action to the superintendent of the school division in which the child is enrolled at such time or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense. If charges are withdrawn in intake or handled informally without a court disposition, the intake officer shall, within 15 days of such action, provide written notification of the action to the superintendent of the school division in which the child is enrolled at that time or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense.

If the child is not enrolled in the school division that receives notification under this section, the superintendent of that division may forward the notification to the superintendent of the school division where the child is enrolled.

A superintendent who receives notification under this section may disclose the information received to anyone to whom he or a principal disclosed that a petition had been filed. Further disclosure of information received under this section by the superintendent to school personnel is authorized only as provided in § [22.1-288.2](#).

1993, cc. 645, 889; 1994, cc. [835](#), [913](#); 1996, cc. [755](#), [914](#); 1997, c. [371](#); 1999, c. [952](#); 2003, c. [119](#).

§16.1-305.2. Disclosure of notice of the filing of a petition and certain reports by division superintendent.

Except as otherwise provided in this section, a division superintendent shall not disclose information contained in or derived from a (i) notice of petition received pursuant to § [16.1-260](#) or (ii) report received pursuant to § [66-25.2:1](#). If the juvenile is not enrolled as a student in a public school in the division to which the notice or report was given, the superintendent shall promptly so notify the intake officer of the juvenile court in which the petition was filed or the Director of the Department who sent the report and may forward the notice of petition or report to the superintendent of the division in which the juvenile is enrolled, if known.

If the division superintendent believes that disclosure of information regarding a petition to school personnel is necessary to ensure the physical safety of the juvenile, other students or school personnel within the division, he may at any time prior to receipt of the notice of disposition in accordance with § [16.1-305.1](#), disclose the fact of the filing of the petition and the nature of the offense to the principal of the school in which the juvenile who is the subject of the petition is enrolled. The principal may further disseminate the information regarding a petition, after the juvenile has been taken into custody, whether or not the child has been released, only to those students and school personnel having direct contact with the juvenile and need of the information to ensure physical safety or the appropriate educational placement or other educational services.

If the division superintendent believes that disclosure of information regarding a report received pursuant to § [66-25.2:1](#) to school personnel is necessary to ensure the physical safety of the juvenile, other students, or school personnel within the division he may disclose the information to the principal of the school in which the juvenile is enrolled. The principal may further disseminate the information regarding such report only to school personnel as necessary to protect the juvenile, the subject or subjects of the danger, other students, or school personnel.

1995, c. [429](#); 2003, c. [119](#); 2009, c. [276](#).

§16.1-306. Expungement of court records.

A. Notwithstanding the provisions of § [16.1-69.55](#), the clerk of the juvenile and domestic relations district court shall, on January 2 of each year or on a date designated by the court, destroy its files, papers and records, including electronic records, connected with any proceeding concerning a juvenile in such court, if such juvenile has attained the age of 19 years and five years have elapsed since the date of the last hearing in any case of the juvenile which is subject to this section. However, if the juvenile was found guilty of an offense for which the clerk is required by § [46.2-383](#) to furnish an abstract to the Department of Motor Vehicles, the records shall be destroyed when the juvenile has attained the age of 29. If the juvenile was found guilty of a delinquent act which would be a felony if committed by an adult, the records shall be retained.

B. However, in all files in which the court records concerning a juvenile contain a finding of guilty of any offense ancillary to (i) a delinquent act that would be a felony if committed by an adult or (ii) any offense for which the clerk is required by § [46.2-](#)

[383](#) to furnish an abstract to the Department of Motor Vehicles, the records of any such ancillary offense shall also be retained for the time specified for the felony or the offense reported to the Department of Motor Vehicles as specified in subsection A, and all such records shall be available for inspection as provided in § [16.1-305](#).

C. A person who has been the subject of a delinquency or traffic proceeding and (i) has been found innocent thereof or (ii) such proceeding was otherwise dismissed, may file a motion requesting the destruction of all records pertaining to such charge. Notice of such motion shall be given to the attorney for the Commonwealth. Unless good cause is shown why such records should not be destroyed, the court shall grant the motion, and shall send copies of the order to all officers or agencies that are repositories of such records, and all such officers and agencies shall comply with the order.

D. Each person shall be notified of his rights under subsections A and C of this section at the time of his dispositional hearing.

E. Upon destruction of the records of a proceeding as provided in subsections A, B, and C, the violation of law shall be treated as if it never occurred. All index references shall be deleted and the court and law-enforcement officers and agencies shall reply and the person may reply to any inquiry that no record exists with respect to such person.

F. All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the docket sheet.

Code 1950, § 16.1-193; 1956, c. 555; 1977, c. 559; 1979, cc. 736, 737; 1989, c. 183; 1990, c. 258; 1993, cc. 468, 589, 926; 1994, cc. [859](#), [949](#); 1996, c. [463](#); 2008, c. [519](#); 2014, c. [271](#).

§16.1-307. Circuit court records regarding juveniles.

In proceedings against a juvenile in the circuit court in which the circuit court deals with the child in the same manner as a case in the juvenile court, the clerk of the court shall preserve all records connected with the proceedings in files separate from other files and records of the court as provided in § [16.1-302](#). Except as provided in §§ [19.2-389.1](#) and [19.2-390](#), such records shall be open for inspection only in accordance with the provisions of § [16.1-305](#) and shall be subject to expungement provisions of § [16.1-306](#). In proceedings in which a juvenile, fourteen years of age or older at the time of the offense, was adjudicated delinquent in juvenile court on the

basis of an act which would be a felony if committed by an adult, or was found guilty of a felony in the circuit court, any court records, other than those specified in subsection A of § [16.1-305](#), regarding that adjudication or conviction and any subsequent adjudication of delinquency or conviction of a crime, shall be available and shall be treated in the same manner as adult criminal records.

1977, c. 559; 1990, c. 258; 1993, cc. 468, 926; 1996, cc. [755](#), [914](#).

§16.1-308. Effect of adjudication on status of child.

Except as otherwise provided by law for a juvenile found guilty of a felony in circuit court whose case is disposed of in the same manner as an adult criminal case, a finding of guilty on a petition charging delinquency under the provisions of this law shall not operate to impose any of the civil disabilities ordinarily imposed by conviction for a crime, nor shall any such finding operate to disqualify the child for employment by any state or local governmental agency.

Nothing in this section shall prohibit the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof from denying employment to a person who had been adjudicated delinquent where such denial is based on the nature and gravity of the offense, the time since adjudication, the time since completion of any sentence, and the nature of the job sought.

Code 1950, § 16.1-179; 1956, c. 555; 1977, c. 559; 1996, cc. [755](#), [914](#); 2011, c. [622](#).

§16.1-309. Penalty.

A. Except as provided in §§ [16.1-299](#), [16.1-300](#), [16.1-301](#), [16.1-305](#) and [16.1-307](#), any person who (i) files a petition, (ii) receives a petition or has access to court records in an official capacity, (iii) participates in the investigation of allegations which form the basis of a petition, (iv) is interviewed concerning such allegations and whose information is derived solely from such interview or (v) is present during any court proceeding, who discloses or makes use of or knowingly permits the use of identifying information not otherwise available to the public concerning a juvenile who is suspected of being or is the subject of a proceeding within the jurisdiction of the juvenile court pursuant to subdivisions A 1 through 5 or subdivision A 7 of § [16.1-241](#) or who is in the custody of the State Department of Juvenile Justice, which information is directly or indirectly derived from the records or files of a law-enforcement agency, court or the Department of Juvenile Justice or acquired in the course of official duties, is guilty of a Class 3 misdemeanor.

B. The provisions of this section shall not apply to any law-enforcement officer or school employee who discloses to school personnel identifying information concerning a juvenile who is suspected of committing or has committed a delinquent act that has met applicable criteria of § [16.1-260](#) and is committed or alleged to have been committed on school property during a school-sponsored activity or on the way to or from such activity, if the disclosure is made solely for the purpose of enabling school personnel to take appropriate disciplinary action within the school setting against the juvenile. Further, the provisions of this section shall not apply to school personnel who disclose information obtained pursuant to §§ [16.1-305.1](#) and [22.1-288.2](#), if the disclosure is made in compliance with those sections.

1977, c. 559; 1978, c. 626; 1979, c. 481; 1989, cc. 520, 733; 1993, cc. 645, 889; 1994, cc. [835](#), [913](#); 1996, cc. [755](#), [914](#); 2003, c. [119](#); 2017, c. [623](#).

§16.1-309.1. Exception as to confidentiality.

A. Notwithstanding any other provision of this article, where consideration of public interest requires, the judge shall make available to the public the name and address of a juvenile and the nature of the offense for which a juvenile has been adjudicated delinquent (i) for an act which would be a Class 1, 2, or 3 felony, forcible rape, robbery or burglary or a related offense as set out in Article 2 (§ [18.2-89](#) et seq.) of Chapter 5 of Title 18.2 if committed by an adult or (ii) in any case where a juvenile is sentenced as an adult in circuit court.

B. 1. a. At any time prior to disposition, if a juvenile charged with a delinquent act which would constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the Commonwealth or, upon notice to the Commonwealth's attorney, the Department of Juvenile Justice or a locally operated court services unit, may, with notice to the juvenile's attorney of record, petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated and any other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public. If a juvenile charged with a delinquent act that would constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice at a time when the court is not in session, the

Commonwealth's attorney, the Department of Juvenile Justice, or a locally operated court services unit may, with notice to the juvenile's attorney of record, authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information which may expedite his apprehension.

b. At any time prior to disposition, if a juvenile charged with a delinquent act which would constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the Commonwealth may, with notice to the juvenile's attorney of record, petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated and any other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public. If a juvenile charged with a delinquent act that would constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice at a time when the court is not in session, the attorney for the Commonwealth may, with notice to the juvenile's attorney of record, authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information which may expedite his apprehension.

2. After final disposition, if a juvenile (i) found to have committed a delinquent act becomes a fugitive from justice or (ii) who has been committed to the Department of Juvenile Justice pursuant to subdivision 14 of § [16.1-278.8](#) or [16.1-285.1](#) becomes a fugitive from justice by escaping from a facility operated by or under contract with the Department or from the custody of any employee of such facility, the Department may release to the public the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was committed, and any other information which may expedite his apprehension. The Department shall promptly notify the attorney for the Commonwealth of the jurisdiction in which the juvenile was tried whenever information is released pursuant to this subdivision. If a juvenile specified in clause (i) being held after disposition in a secure facility not operated by or under contract with the Department becomes a fugitive by such escape, the

attorney for the Commonwealth of the locality in which the facility is located may release the information as provided in this subdivision.

C. Whenever a juvenile 14 years of age or older is charged with a delinquent act that would be a criminal violation of Article 2 (§ [18.2-38](#) et seq.) of Chapter 4 of Title 18.2, a felony involving a weapon, a felony violation of Article 1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2, or an "act of violence" as defined in subsection A of § [19.2-297.1](#) if committed by an adult, the judge may, where consideration of the public interest requires, make the juvenile's name and address available to the public.

D. Upon the request of a victim of a delinquent act that would be a felony or that would be a misdemeanor violation of § [16.1-253.2](#), [18.2-57](#), [18.2-57.2](#), [18.2-60.3](#), [18.2-60.4](#), [18.2-67.4](#), or [18.2-67.5](#) if committed by an adult, the court may order that such victim be informed of the charge or charges brought, the findings of the court, and the disposition of the case. For purposes of this section, "victim" shall be defined as in § [19.2-11.01](#).

E. Upon request, the judge or clerk may disclose if an order of emancipation of a juvenile pursuant to § [16.1-333](#) has been entered, provided (i) the order is not being appealed, (ii) the order has not been terminated, or (iii) there has not been a judicial determination that the order is void ab initio.

F. Notwithstanding any other provision of law, a copy of any court order that imposes a curfew or other restriction on a juvenile may be provided to the chief law-enforcement officer of the county or city wherein the juvenile resides. The chief law-enforcement officer shall only disclose information contained in the court order to other law-enforcement officers in the conduct of official duties.

G. Notwithstanding any other provision of law, where consideration of public safety requires, the Department and locally operated court service unit shall release information relating to a juvenile's criminal street gang involvement, if any, and the criminal street gang-related activity and membership of others, as criminal street gang is defined in § [18.2-46.1](#), obtained from an investigation or supervision of a juvenile and shall include the identity or identifying information of the juvenile; however, the Department and local court service unit shall not release the identifying information of a juvenile not affiliated with or involved in a criminal street gang unless that information relates to a specific criminal act. Such information shall be released to any State Police, local police department, sheriff's office, or law-enforcement task force that is a part of or administered by the Commonwealth or any political

subdivision thereof, and that is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth. The exchange of information shall be for the purpose of an investigation into criminal street gang activity.

H. Notwithstanding any other provision of Article 12 (§ [16.1-299](#) et seq.), an intake officer shall report to the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security a juvenile who has been detained in a secure facility based on an allegation that the juvenile committed a violent juvenile felony and who the intake officer has probable cause to believe is in the United States illegally.

1979, c. 94; 1981, c. 307; 1986, c. 506; 1988, c. 749; 1993, c. 297; 1994, cc. [499](#), [542](#); 1995, cc. [558](#), [687](#), [804](#); 1997, cc. [434](#), [452](#); 1999, c. [710](#); 2000, cc. [563](#), [603](#); 2005, c. [364](#); 2006, cc. [259](#), [309](#), [682](#); 2008, c. [798](#); 2010, cc. [367](#), [472](#), [526](#); 2014, c. [230](#).

§16.1-309.2. Purpose and intent.

The General Assembly, to ensure the imposition of appropriate and just sanctions and to make the most efficient use of correctional resources for those juveniles before intake on complaints or the court on petitions alleging that the juvenile is a child in need of services, child in need of supervision, or delinquent, has determined that it is in the best interest of the Commonwealth to establish a community-based system of progressive intensive sanctions and services that correspond to the severity of offense and treatment needs. The purpose of this system shall be to deter crime by providing immediate, effective punishment that emphasizes accountability of the juvenile offender for his actions as well as reduces the pattern of repeat offending. In furtherance of this purpose, counties, cities or combinations thereof are encouraged to develop, implement, operate and evaluate programs and services responsive to their specific juvenile offender needs and juvenile crime trends.

This article shall be interpreted and construed to accomplish the following purposes:

1. Promote an adequate level of services to be available to every juvenile and domestic relations district court.
2. Ensure local autonomy and flexibility in addressing juvenile crime.
3. Encourage a public and private partnership in the design and delivery of services for juveniles who come before intake on a complaint or the court on a petition alleging a child is in need of services, in need of supervision or delinquent.

4. Emphasize parental responsibility and provide community-based services for juveniles and their families which hold them accountable for their behavior.
5. Establish a locally driven statewide planning process for the allocation of state resources.
6. Promote the development of an adequate service capacity for juveniles before intake on a complaint or the court on petitions alleging status or delinquent offenses.

1995, cc. [698](#), [840](#); 1996, cc. [671](#), [682](#).

§16.1-309.3. Establishment of a community-based system of services; biennial local plan; quarterly report.

A. Any county, city or combination thereof may establish a community-based system pursuant to this article, which shall provide, or arrange to have accessible, a variety of predispositional and postdispositional services. These services may include, but are not limited to, diversion, community service, restitution, house arrest, intensive juvenile supervision, substance abuse assessment and testing, first-time offender programs, intensive individual and family treatment, structured day treatment and structured residential programs, aftercare/parole community supervision and residential and nonresidential services for juvenile offenders who are before intake on complaints or the court on petitions alleging that the juvenile is delinquent, in need of services or in need of supervision but shall not include secure detention for the purposes of this article. Such community-based systems shall be based on an annual review of court-related data and an objective assessment of the need for services and programs for juveniles before intake on complaints or the court on petitions alleging that the juvenile is a child in need of services, in need of supervision, or delinquent. The community-based system shall be developed after consultation with the judge or judges of the juvenile and domestic relations district court, the director of the court services unit, the community policy and management team established under § [2.2-5205](#), and, if applicable, the director of any program established pursuant to § [66-26](#).

B. Community-based services instituted pursuant to this article shall be administered by a county, city or combination thereof, and may be administered through a community policy and management team established under § [2.2-5204](#) or a commission established under § [16.1-315](#). Such programs and services may be provided by qualified public or private agencies, pursuant to appropriate contracts. Any commission established under § [16.1-315](#) providing predispositional and postdispositional

services prior to the enactment of this article which serves the City of Chesapeake or the City of Hampton shall directly receive the proportion of funds calculated under § [16.1-309.7](#) on behalf of the owner localities. The funds received shall be allocated directly to the member localities. Any member locality which elects to withdraw from the commission shall be entitled to its full allocation as provided in §§ [16.1-309.6](#) and [16.1-309.7](#). The Department of Juvenile Justice shall provide technical assistance to localities, upon request, for establishing or expanding programs or services pursuant to this article.

C. Funds provided to implement the provisions of this article shall not be used to supplant funds established as the state pool of funds under § [2.2-5211](#).

D. Any county, city or combination thereof which establishes a community-based system pursuant to this article shall biennially submit to the State Board for approval a local plan for the development, implementation and operation of such services, programs and facilities pursuant to this article. The plan shall provide (i) the projected number of juveniles served by alternatives to secure detention and (ii) any reduction in secure detention rates and commitments to state care as a result of programs funded pursuant to this article. The State Board shall solicit written comments on the plan from the judge or judges of the juvenile and domestic relations court, the director of the court services unit, and if applicable, the director of programs established pursuant to § [66-26](#). Prior to the initiation of any new services, the plan shall also include a cost comparison for the private operation of such services.

E. Each locality shall report quarterly to the Director the data required by the Department to measure progress on stated objectives and to evaluate programs and services within such locality's plan.

1995, cc. [698](#), [840](#); 1996, cc. [671](#), [682](#); 1997, c. [347](#); 2000, cc. [195](#), [806](#); 2007, c. [813](#).

§16.1-309.4. Statewide plan for juvenile services.

It shall be the duty of the Department of Juvenile Justice to devise, develop and promulgate a statewide plan for the establishment and maintenance of a range of institutional and community-based, diversion, predispositional and postdispositional services to be reasonably accessible to each court. The Department shall be responsible for the collection and dissemination of the required court data necessary for the development of the plan. The plan shall utilize the information provided by local plans submitted under § [16.1-309.3](#). The plan shall be submitted to the Board on or before July 1 in odd-numbered years. The plan shall include a biennial forecast with

appropriate annual updates as may be required of future juvenile correctional center and detention home needs.

1995, cc. [698](#), [840](#); 1996, cc. [671](#), [682](#), [755](#), [914](#).

§16.1-309.5. Construction, etc., of detention homes and other facilities; reimbursement in part by Commonwealth.

A. The Commonwealth shall reimburse any county, city or any combination thereof for one-half the cost of construction, enlargement, renovation, purchase or rental of a detention home or other facilities the plans and specifications of which were approved by the Board and the Governor in accordance with the provisions of subsection C of this section.

B. The construction, renovation, purchase, rental, maintenance and operation of a detention home or other facilities established by a county, city or any combination thereof and the necessary expenses incurred in operating such facilities shall be the responsibility of the county, city or any combination thereof.

C. The Board shall promulgate regulations to include criteria to serve as guidelines in evaluating requests for such reimbursements and to ensure the geographically equitable distribution of state funds provided for such purpose. Priority funding shall be given to multijurisdictional initiatives. No such reimbursement for costs of construction shall be made, however, unless the plans and specifications, including the need for additional personnel therefor, have been submitted to the Governor and the construction has been approved by him. Such reimbursement shall be paid by the State Treasurer out of funds appropriated to the Department. In the event that a county or city requests and receives financial assistance from other public fund sources outside the provisions of this law, the total financial assistance and reimbursement shall not exceed the total construction cost of the project exclusive of land and site improvement costs, and such funds shall not be considered state funds.

1995, cc. [698](#), [840](#); 2000, cc. [562](#), [601](#).

§16.1-309.6. How state appropriations for operating costs of Juvenile Community Crime Control Act programs determined; notice of financial aid.

The Governor's proposed biennial budget shall include, for each fiscal year, an appropriation for operating costs for Juvenile Community Crime Control Act programs. The proposed appropriation shall include amounts for compensating counties, cities and combinations thereof which elect to establish a system of community-based services

pursuant to this article. Upon approval pursuant to the provisions of this article, any county, city or combination thereof which utilized predispositional or postdispositional block grant services or programs in fiscal year 1995 shall contribute an amount not less than the sum of its fiscal year 1995 expenditures for child care day placements in predispositional and postdispositional block grant alternatives to secure detention for implementation of its local plan. Such amount shall not include any expenditures in fiscal year 1995 for secure detention and placements made pursuant to § [2.2-5211](#).

The Department shall review annually the costs of operating services, programs and facilities pursuant to this article and recommend adjustments to maintain the Commonwealth's proportionate share. The Department shall no later than the fifteenth day following adjournment sine die of the General Assembly provide each county and city an estimate of funds appropriated pursuant to this article.

1995, cc. [698](#), [840](#); 1996, cc. [671](#), [682](#); 1998, c. [54](#).

§16.1-309.7. Determination of payment.

A. The Commonwealth shall provide financial assistance to localities whose plans have been approved pursuant to subsection D of § [16.1-309.3](#) in quarterly payments based on the annual calculated costs which shall be determined as follows:

1. For community diversion services, one-half of the calculated costs as determined by the following factors: (i) the statewide daily average costs for predispositional non-residential services and (ii) the total number of children in need of services and children in need of supervision complaints diverted at intake by the locality in the previous year.
2. For predispositional community-based services, three-quarters of the calculated costs as determined by the following factors: (i) the statewide daily average cost evenly divided for predispositional community-based residential and nonresidential services and (ii) the number of arrests of juveniles based on the locality's most recent year available Uniform Crime Reports for (a) one-third of all Part 1 crimes against property, (b) one-third of all drug offenses and (c) all remaining Part 2 arrests.
3. For postdispositional community-based services for adjudicated juveniles, one-half of the calculated costs as determined by the following factors: (i) the statewide average daily costs for postdispositional community-based nonresidential services and (ii)

the locality's total number of juveniles, who, in the previous year, were adjudicated delinquent for the first time.

4. For postdispositional community-based services for juveniles adjudicated delinquent for a second or subsequent offense, one-half of the calculated costs as determined by the following factors: (i) the statewide average daily costs evenly divided for postdispositional community-based residential and nonresidential services and (ii) the locality's total number of court dispositions which, in the previous year, adjudicated juveniles as (a) delinquent for a second or subsequent offense, (b) children in need of services, or (c) children in need of supervision, less those juveniles receiving services under the provisions of §§ [16.1-285.1](#) and [16.1-286](#).

B. Any moneys distributed by the Commonwealth under this article which are unexpended at the end of each fiscal year within a biennium shall be retained by the county, city or combination thereof and subsequently expended for operating expenses of Juvenile Community Crime Control Act programs. Any surplus funds remaining at the end of a biennium shall be returned to the state treasury.

1995, cc. [698](#), [840](#); 1996, cc. [820](#), [970](#).

§16.1-309.8. Costs of maintenance of juveniles in Community Crime Control Act programs.

Any county, city or combination thereof operating a Juvenile Community Crime Control Act program may collect from any locality of this Commonwealth from which a juvenile is placed in its program a daily rate calculated to allow the operating locality or localities to meet but not exceed the costs of providing services. Additionally, this rate may not be higher than the rate charged other counties, cities or combinations thereof using the same program.

1995, cc. [698](#), [840](#); 1996, cc. [671](#), [682](#); 1998, c. [538](#).

§16.1-309.9. Establishment of standards; determination of compliance.

A. The State Board of Juvenile Justice shall develop, promulgate and approve standards for the development, implementation, operation and evaluation of the range of community-based programs, services and facilities authorized by this article. The State Board shall also approve minimum standards for the construction and equipment of detention homes or other facilities and for food, clothing, medical attention, and supervision of juveniles to be housed in these facilities and programs.

B. The State Board may prohibit, by its order, the placement of juveniles in any place of residence which does not comply with the minimum standards. It may limit the number of juveniles to be detained or housed in a detention home or other facility and may designate some other place of detention or housing for juveniles who would otherwise be held therein.

C. The Department shall periodically review all services established and annually review expenditures made under this article to determine compliance with the approved local plans and operating standards. If the Department determines that a program is not in substantial compliance with the approved plan or standards, the Department may suspend all or any portion of financial aid made available to the locality until there is compliance.

D. Orders of the State Board of Juvenile Justice shall be enforced by circuit courts as is provided for the enforcement of orders of the State Board of Corrections under § [53.1-70](#).

1995, cc. [698](#), [840](#).

§16.1-309.10. Visitation and management of detention homes; other facilities; reports of superintendent.

In the event that a detention home, group home or other residential care facility for children in need of services or delinquent or alleged delinquent youth is established by a county, city, or any combination thereof, it shall be subject to visitation, inspection and regulation by the State Board or its agents, and shall be furnished and operated so far as possible as a family home under the management of a superintendent. It shall be the duty of the superintendent to furnish the Department such reports and other statistical data relating to the operation of such detention homes, group homes or other residential care facilities for children in need of services or delinquent or alleged delinquent youth as may be required by the Director.

1995, cc. [698](#), [840](#).

§16.1-310. Repealed.

Repealed by Acts 1995, cc. [698](#) and [840](#).

§16.1-315. Joint or regional citizen detention commissions authorized.

The governing bodies of three or more counties, cities or towns (hereinafter referred to as "political subdivisions") may, by concurrent ordinances or resolutions, provide for the establishment of a joint or regional citizen juvenile detention home, group

home or other residential care facility commission. Such commission shall be a public body corporate, with such powers as are set forth in this article.

Code 1950, § 16.1-202.2; 1974, c. 645; 1977, c. 559.

§16.1-316. Number and terms of members; admission of additional local governing bodies.

A juvenile detention home, group home or other residential care facility commission shall consist of not less than three members and shall be comprised of at least one member from each participating political subdivision. In addition, the participating political subdivisions may provide for the appointment of an alternate for each principal member of such a commission. The alternate members may attend and participate in all meetings of the commission and may vote in the absence of their respective principals. Such members and alternates, if any, shall be appointed, after consultation with the chief judge of the juvenile and domestic relations district court, by the governing body. Neither the chief judge nor any judge of the juvenile and domestic relations district court from his district shall be a member of the commission.

The term of office of all members and alternates, if any, shall be for four years. When additional local governing bodies desire to join the commission, they may do so upon the recommendation of the commission and with the approval of the sponsoring local governing bodies. The number of members which the applicant local governments will be entitled to appoint to such commission and other conditions relating to the expansion of sponsoring membership shall be determined by the agreement entered into between or among the sponsoring local governments and such applicant local governments.

Code 1950, § 16.1-202.3; 1966, c. 509; 1972, cc. 365, 430; 1974, c. 645; 1976, c. 448; 1977, c. 559; 1978, cc. 37, 717; 1984, c. 77; 1988, c. 885; 1992, c. 441; 1998, c. [488](#).

§16.1-317. Quorum; chairman; rules of procedure; compensation.

The appointive members of the commission shall constitute the commission, and the powers of the commission shall be vested in and exercised by the members in office from time to time. Neither the chief judge nor any judge of the juvenile and domestic relations district court shall be a member of the commission.

A majority of the members in office shall constitute a quorum. The commission shall elect a chairman, and shall adopt rules and regulations for its own procedure and

government. The governing bodies of the participating political subdivisions may by ordinance or resolution provide for the payment of compensation to the members of the commission and for the reimbursement of their actual expenses incurred in the performance of their duties.

Code 1950, § 16.1-202.4; 1966, c. 509; 1977, c. 559; 1978, cc. 37, 717; 1988, c. 885; 1992, c. 441.

§16.1-318. Powers of commission generally; supervision by Director of Department of Juvenile Justice.

Each commission created hereunder shall have all powers necessary or convenient for carrying out the general purposes of this article, including the following powers in addition to others herein granted, and subject to such supervision by the Director of the Department of Juvenile Justice as is provided in §§ [16.1-309.4](#), [16.1-309.9](#), and [16.1-309.10](#) of this law:

A. In general. -- To adopt a seal and alter the same at pleasure; to have perpetual succession; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

B. Officers, agents and employees. -- To employ such technical experts, and such other officers, agents and employees as it may require, to fix their qualifications, duties and compensation and to remove such employees at pleasure.

C. Acquisition of property. -- To acquire within the territorial limits of the political subdivisions for which it is formed, by purchase, lease, gift, or exercise of the right of eminent domain, subject to conditions hereinafter set forth, whatever lands, buildings and structures may be reasonably necessary for the purpose of establishing, constructing, enlarging, maintaining and operating one or more juvenile detention homes or facilities for the reception of juveniles committed thereto under the provisions of this chapter; however, such lands, buildings and structures may be acquired by purchase, lease or gift, although not within the territorial limits, if the location thereof is feasible and practicable with relation to the several political subdivisions for which such commission is formed. Such location shall be approved by resolution of the governing bodies of the participating political subdivisions and of the governing body of the political subdivision in which such lands, buildings and structures are to be located, and the consent in writing of the Director of the Department is given thereto.

D. Construction. -- To acquire, establish, construct, enlarge, improve, maintain, equip and operate any juvenile detention home or facility.

E. Rules and regulations for management. -- To make and enforce rules and regulations for the management and conduct of its business and affairs and for the use, maintenance and operation of its facilities and properties.

F. Acceptance of donations. -- To accept gifts and grants from the Commonwealth or any political subdivision thereof, and from the United States and any of its agencies; and to accept donations of money, personal property or real estate, and take title thereto from any person, firm, corporation or association.

G. Regulations as to juveniles under care. -- To make regulations and policies governing the care, guidance and training of juveniles in such detention facilities.

H. Borrowing. -- To borrow money for any of its corporate purposes and to execute evidences of such indebtedness and to secure the same and to issue negotiable revenue bonds payable solely from funds pledged for that purpose and to provide for the payment of the same and for the rights of the holders thereof. Any city or county participating in the commission may lend, advance or give money or materials or property of any kind to the commission.

I. Issuance of revenue bonds. -- To issue revenue bonds in accordance with, and subject to the terms and conditions of § [53.1-95.10](#), in the same manner in which jail authorities are authorized to issue such bonds.

Bonds issued under the provisions of this section shall not be deemed to constitute a pledge of the faith and credit of the Commonwealth or of any political subdivision thereof. All such bonds shall contain a statement on their face substantially to the effect that neither the faith and credit of the Commonwealth nor the faith and credit of any county, city, town, or other subdivision of the Commonwealth is pledged to the payment of the principal of or the interest on such bonds. The issuance of bonds under the provisions of this section shall not directly, indirectly or contingently obligate the Commonwealth or any county, city, town, or other subdivision of the Commonwealth to levy any taxes whatever therefor or to make any appropriation for their payment except from the funds pledged under the provisions of this section. Any reimbursement payments made pursuant to § [16.1-309.5](#) for juvenile detention homes or facilities for which bonds are issued pursuant to this section shall not (i) exceed the maximum reimbursement limits established by the Board of Juvenile

Justice or (ii) include any sums for the payment of interest costs incurred by the Commission in connection with the issuance of such bonds.

Code 1950, § 16.1-202.5; 1964, Ex. Sess., c. 21; 1974, cc. 44, 45; 1977, c. 559; 1989, c. 733; 1993, c. 833; 1995, cc. [696](#), [699](#); 1997, c. [752](#).

§16.1-319. Acquisition of property by commission.

The commission shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this article, after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use; provided, however, that no such real property shall be so acquired or such facility established within the territorial limits of such political subdivision without the approval, after public hearing, of the governing body of such political subdivision.

Subject to the provisions of § [25.1-102](#), property already devoted to a public use may be acquired, provided, that no property belonging to any county or city, religious corporation, unincorporated church or charitable corporation may be acquired without its consent.

Code 1950, § 16.1-202.6; 1977, c. 559; 2003, c. [940](#); 2006, c. [673](#).

§16.1-320. Property of commission exempt from execution and judgment liens.

All property of the commission shall be exempt from levy and sale by virtue of an execution. No judgment against the commission shall be a charge or lien upon its property, real or personal.

Code 1950, § 16.1-202.7; 1977, c. 559.

§16.1-321. Appropriations by political subdivisions; issuance of bonds.

The political subdivisions for which the commission is created are authorized to make appropriations to the commission from available funds for the construction, improvement, maintenance and operation of any juvenile detention facility operated or proposed to be operated by the commission; and subject to other applicable provisions of law may issue general obligation bonds and appropriate the proceeds thereof for capital costs of such facility.

Code 1950, § 16.1-202.8; 1977, c. 559.

§16.1-322. Record of commission; reports.

The commission shall keep and preserve complete records of its administrative operations and transactions, which records shall be open to inspection by the participating political subdivisions at all times. It shall make reports to such subdivisions annually, and at such other times as they may require.

Code 1950, § 16.1-202.9; 1977, c. 559.

§16.1-322.1. Apportionment of funds to localities or commissions operating juvenile secure detention facilities or programs; standards for apportionment.

The Department shall apportion among the localities or commissions operating a juvenile secure detention facility the moneys appropriated to the Department in the general appropriation act for the support of such facilities, excluding amounts approved for the state share of construction and rental of facilities, state ward per diem allowances, and payments for the United States Department of Agriculture lunch program. Such apportionment shall be made as follows:

The allocation shall be apportioned to provide each locality or commission operating a juvenile secure detention facility an allowance for salaries and expenses. Such allowance shall be at least equal to the amount of the allowance provided to each locality or commission for such salaries and expenses in the immediately preceding fiscal year for similar services. The Department may adjust such allowance, where applicable, for new programs and facilities or for discontinued programs and services.

The Department may reduce the apportionments made in accordance with this section from time to time if any facility fails to comply with Department policy or standards approved by the Board. In effecting such a reduction of funds, the Department shall not be required to comply with the provisions of Chapter 40 (§ [2.2-4000](#) et seq.) of Title 2.2. Each locality or commission eligible to receive state funds apportioned under this section shall maintain operational and financial records which shall be open for evaluation by the Department and audit by the Auditor of Public Accounts.

The Governor may withhold approval for state expenditures, by reimbursement or otherwise, for the purposes set out in this section as provided in the current general appropriations act.

1982, c. 636; 1983, c. 358; 1986, c. 394; 1995, cc. [698](#), [840](#).

§16.1-322.2. Payment of funds quarterly; distribution and reallocation of reserve.

State moneys appropriated to the Department for the support of local juvenile secure detention facilities and apportioned in accordance with § [16.1-322.1](#) shall be paid to localities or commissions quarterly. If a local juvenile secure detention facility fails to comply with Department policy or standards adopted by the State Board, the next quarterly payment may be reduced and the difference paid into the general fund of the state treasury. In effecting such a reduction of funds, the Department shall not be required to comply with the provisions of Chapter 40 (§ [2.2-4000](#) et seq.) of Title 2.2.

Any moneys distributed by the Commonwealth under this section which are unexpended at the end of each fiscal year within a biennium shall be retained by the locality or commission and subsequently expended for operating expenses of juvenile secure detention facilities. Any surplus funds remaining at the end of the biennium shall be returned to the state treasury.

The Governor may withhold approval for state expenditures, by reimbursement or otherwise, for the purpose set out in this section as provided in the current general appropriations act.

1982, c. 636; 1983, c. 358; 1986, c. 394; 1995, cc. [698](#), [840](#).

§16.1-322.3. Localities and commissions to make monthly reports to Director; penalty for willfully falsifying information; procedure when locality or commission fails to make report.

Each locality or commission eligible to receive state funds in accordance with the terms of this article shall report each month to the Director on blank forms furnished by the Department the number of child care days registered during the preceding month by each juvenile correctional program or facility operated by such locality or commission. Such report shall be signed by both the chief administrative officer of the facility or program and fiscal officer of the locality or commission who shall certify the accuracy of the report. Either signer found guilty of willfully falsifying the information contained in such report shall be guilty of a Class 1 misdemeanor.

If any locality or commission fails to send such report within five days after the date when the report should be forwarded, the Director shall notify the chief administrative officer of such locality or commission of such failure. If the locality or commission fails to make the report within ten days from the date of such notice, then the Director shall cause the report to be prepared from the books of the locality or commission and shall certify the cost thereof to the Comptroller. The Comptroller shall issue his warrant on the Treasurer for that amount, deducting the same from

any that may be due the locality or commission pursuant to § [16.1-322.2](#) by the Commonwealth.

1983, c. 358.

§16.1-322.4. Payments for children from other counties or cities.

Any locality or commission operating a juvenile secure detention facility may collect from any locality of this Commonwealth from which a child is placed in its facility a daily rate which does not exceed the sum total of the daily operating costs less any state aid for the purposes of construction and operation of such program. Daily cost shall be based on the cost of capital construction debt service and the cost of feeding, clothing, caring for, and furnishing medicine and medical attention for such child as may be agreed upon by the governmental units involved.

1983, c. 358; 1995, cc. [698](#), [840](#); 1998, c. [856](#).

§16.1-322.5. State Board may authorize private construction, operation, etc., of local or regional detention homes, etc.

A. The State Board of Juvenile Justice may authorize a county or city or any combination of counties, cities, or towns established pursuant to § [16.1-315](#) to contract with a private entity for the financing, site selection, acquisition, construction, maintenance, leasing, management or operation of a local or regional detention home or other secure facility, or any combination of those services. Any project authorized pursuant to this article shall be consistent with the statewide plan developed pursuant to § [16.1-309.4](#).

B. Any project the State Board authorizes pursuant to subsection A of this section shall be subject to the provisions of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) and subject to the requirements and limitations set out below.

1. Contracts entered into under the terms of this article shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which meets all the requirements in the request for proposals. However, no such contract may be entered into unless the private contractor demonstrates that it has:

a. The qualifications, experience and management personnel necessary to carry out the terms of this contract;

b. The financial resources to provide indemnification for liability arising from detention home or other secure facility management projects;

- c. Evidence of past performance of similar contracts; and
 - d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and local laws; court orders; and standards for a detention home or other secure facility.
2. Contracts awarded under the provisions of this article, including contracts for the provision of juvenile correctional facilities or programs or for the lease or use of public lands or buildings for use in the operation of facilities, may be entered into for a period of up to thirty years, subject to the requirements for expenditure of funds by the local governing body or bodies.
3. No contract for juvenile correctional facilities or programs shall be entered into unless the following requirements are met:
- a. The contractor provides audited financial statements for the previous five years or for each of the years the contractor has been in operation if fewer than five years, and provides other financial information as requested; and
 - b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims. The indemnification plan shall be adequate to protect the county or city or combination of counties, cities, or towns established pursuant to § [16.1-315](#) and public officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a contractor or the county or city or combination of counties, cities, or towns established pursuant to § [16.1-315](#) of the benefits of any law limiting exposure to liability or setting a limit on damages.
4. No contract for correctional services shall be executed unless:
- a. The proposed contract has been reviewed and approved by the State Board;
 - b. An appropriation for the services to be provided under the contract has been expressly approved as is otherwise provided by law;
 - c. The juvenile correctional facilities or programs proposed by the contract are of at least the same quality as those routinely provided by a governmental agency to similarly situated children; and
 - d. An evaluation of the proposed contract demonstrates a cost benefit to the county or city or combination of counties, cities, or towns established pursuant to § [16.1-315](#) when compared to alternative means of providing the services through governmental agencies.

1991, c. 258; 1992, c. 652; 1995, cc. [696](#), [699](#).

§16.1-322.6. Powers and duties not delegable to contractor.

No contract for juvenile correctional facilities or programs shall authorize, allow, or imply a delegation of authority or responsibility to a juvenile correctional facilities or programs contractor for any of the following:

1. Developing and implementing procedures for calculating a detainee's release date;
2. Classifying detainees or placing detainees in less restrictive custody or more restrictive custody;
3. Transferring a detainee; however, the contractor may make written recommendations regarding the transfer of a detainee or detainees;
4. Formulating rules of detainee behavior, violations of which may subject detainees to sanctions; however, the contractor may propose such rules for review and adoption, rejection, or modification as otherwise provided by law or regulation; and
5. Disciplining detainees in any manner which requires a discretionary application of rules of detainee behavior or a discretionary imposition of a sanction for violations of such rules.

1991, c. 258; 1992, c. 652.

§16.1-322.7. State Board to promulgate regulations.

The State Board shall make, adopt, and promulgate regulations governing the following aspects of private management and operation of local or regional detention homes or other secure facilities:

1. The schedule for state reimbursement to the cities or counties or any combination thereof, as the case may be, for costs of construction;
2. The manner of state payment to the localities for the care and custody costs at the facility of children for whom the Commonwealth is required to provide funds. However, in no event shall the payment to the localities, when calculated on a per diem per child basis, exceed the total cost ordinarily paid by the Commonwealth to the locality for the care and custody expenses of such children, when calculated on a per diem per child basis;
3. Minimum standards for the construction, equipment, administration, and operation of the facilities; however, the standards must be at least as stringent as those established for other local or regional detention homes or other secure facilities;

4. Contingency plans for operation of a contractor-operated facility in the event of a termination of the contract;
5. The powers and duties of contractors' personnel charged with the care and custody of detainees, including use of force and discipline;
6. Methods of monitoring a contractor-operated facility by an appropriate state or local governmental entity or entities;
7. Public access to a contractor-operated facility; and
8. Such other regulations as may be necessary to carry out the provisions of this article.

1991, c. 258; 1992, c. 652.

§16.1-323. Governor to execute; form of compact.

The Governor of Virginia is hereby authorized and requested to execute, on behalf of the Commonwealth of Virginia, with any other state or states legally joining therein, a compact which shall be in form substantially as follows:

Article I. Purpose.

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to (i) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (ii) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (iii) return juveniles who have run away, absconded or escaped from

supervision or control or have been accused of an offense to the state requesting their return; (iv) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (v) provide for the effective tracking and supervision of juveniles; (vi) equitably allocate the costs, benefits and obligations of the compacting states; (vii) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders; (viii) ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; (ix) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact; (x) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (xi) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct non-compliance; (xii) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (xiii) coordinate the implementation and operation of the compact with the Interstate Compact on the Placement of Children, the Interstate Compact for Adult Offender Supervision, and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

Article II. Definitions.

As used in this compact, unless the context clearly requires a different construction:

"Bylaws" means those bylaws established by the Interstate Commission for its governance or for directing or controlling its actions or conduct.

"Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

"Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the state council under this compact.

"Compacting state" means any state that has enacted the enabling legislation for this compact.

"Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

"Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the state council under this compact.

"Interstate Commission" means the Interstate Commission for Juveniles created by Article III of this compact.

"Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

1. Accused delinquent: a person charged with an offense that, if committed by an adult, would be a criminal offense;
2. Accused status offender: a person charged with an offense that would not be a criminal offense if committed by an adult;
3. Adjudicated delinquent: a person found to have committed an offense that, if committed by an adult, would be a criminal offense;
4. Adjudicated status offender: a person found to have committed an offense that would not be a criminal offense if committed by an adult; and
5. Nonoffender: a person in need of supervision who has not been accused of being or adjudicated a status offender or delinquent.

"Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

"Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

"Rule" means a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, that has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

"State" means a state of the United States, the District of Columbia or its designee, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Northern Marianas Islands.

Article III. Interstate Commission for Juveniles.

A. The compacting states hereby create the "Interstate Commission for Juveniles." The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein and additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created in Article IX. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations. Such noncommissioner members shall include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact on the Placement of Children, juvenile justice and juvenile corrections

officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional ex officio (nonvoting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

E. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administer enforcement and compliance with the provisions of the compact, its bylaws, and rules; and perform other duties as directed by the Interstate Commission or set forth in the bylaws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specific meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission

may exempt from disclosure any information or official records to the extent that they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings, and all meetings shall be open to the public except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;
2. Disclose matters specifically exempted from disclosure by statute;
3. Disclose trade secrets or commercial or financial information that is privileged or confidential;
4. Involve accusing any person of a crime or formally censuring any person;
5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
6. Disclose investigative records compiled for law-enforcement purposes;
7. Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;
8. Disclose information the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or
9. Specifically relate to the Interstate Commission's issuance of a subpoena or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in the minutes.

K. The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules that shall specify the data to be collected, the means of collection and data exchange, and reporting requirements. Such methods of data collection, exchange, and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

Article IV. Powers and Duties of the Interstate Commission.

The commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states;
2. To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;
3. To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission;
4. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;
5. To establish and maintain offices that shall be located within one or more of the compacting states;
6. To purchase and maintain insurance and bonds;
7. To borrow, accept, hire, or contract for services of personnel;
8. To establish and appoint committees and hire staff that it deems necessary for carrying out its functions including but not limited to an executive committee as required by Article III that shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder;
9. To elect or appoint such officers, attorneys, employees, agents, or consultants and to fix their compensation, define their duties and determine their qualifications and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel;

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it;
11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use, any property, real, personal, or mixed;
12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact;
14. To sue and be sued;
15. To adopt a seal and bylaws governing the management and operation of the Interstate Commission;
16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;
17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission;
18. To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity;
19. To establish uniform standards of the reporting, collecting, and exchanging of data; and
20. To maintain its corporate books and records in accordance with the bylaws.

Article V. Organization and Operation of the Interstate Commission.

A. Bylaws.

1. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:
 - a. Establishing the fiscal year of the Interstate Commission;

- b. Establishing an executive committee and such other committees as may be necessary;
- c. Providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;
- d. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each such meeting;
- e. Establishing the titles and responsibilities of the officers of the Interstate Commission;
- f. Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all its debts and obligations;
- g. Providing start-up rules for initial administration of the compact; and
- h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

B. Officers and staff.

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairman and a vice-chairman, each of whom shall have such authority and duties as may be specified in the bylaws. The chairman or, in the chairman's absence or disability, the vice-chairman shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission but shall not be a member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

C. Qualified immunity, defense and indemnification.

1. The commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by, arising out of, or relating to any actual or alleged act, error, or omission that occurred or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; however, any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

2. The liability of any commissioner or the employee or agent of a commissioner, acting within the scope of such person's employment or duties, for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Nothing in this subdivision shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

3. The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

4. The Interstate Commission shall indemnify and hold the commissioner of a compacting state, the commissioner's representatives or employees, or the Interstate Commission's representatives or employees harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error,

or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

Article VI. Rulemaking Functions of the Interstate Commission.

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the Model State Administrative Procedure Act, 1981 Act, Uniform Laws Annotated, vol. 15, p. 1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. Publish the proposed rule's entire text, stating the reasons for that proposed rule;
2. Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record and be made publicly available;
3. Provide an opportunity for an informal hearing if petitioned by 10 or more persons; and
4. Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials or interested parties.

D. Allow, not later than 60 days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the federal district court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedure Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superseded by this act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

G. Upon determination by the Interstate Commission that a state of emergency exists, it may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to the rule as soon as reasonably possible, but no later than 90 days after the effective date of the emergency rule.

Article VII. Oversight, Enforcement and Dispute Resolution by the Interstate Commission.

A. Oversight.

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states that might significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

B. Dispute resolution.

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and

activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any means set forth in Article XI of this compact.

Article VIII. Finance.

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff that shall be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states that governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet them; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Article IX. The State Council.

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own state council, its membership shall include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator, or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state, including but not limited to development of policy concerning operations and procedures of the compact within that state.

Article X. Compacting States, Effective Date and Amendment.

A. Any state, the District of Columbia or its designee, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands are eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment of the compact into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

C. The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XI. Withdrawal, Default, Termination, and Judicial Enforcement.

A. Withdrawal.

1. Once effective, the compact shall continue in force and remain binding upon each compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the chairman of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations the performance of which extends beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state's reenacting the compact or upon such later date as determined by the Interstate Commission.

B. Technical assistance, fines, suspension, termination, and default.

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws, or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

a. Remedial training and technical assistance as directed by the Interstate Commission;

b. Alternative dispute resolution;

c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include but are not limited to failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The

commission shall stipulate the conditions and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within 60 days of the effective date of the termination of a defaulting state, the commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council.

3. The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

C. Judicial enforcement.

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules, and bylaws, against any compacting state in default. In the event that judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

D. Dissolution of compact.

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate

Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

Article XII. Severability and Construction.

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XIII. Binding Effect of Compact and Other Laws.

A. Other laws.

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

B. Binding effect of the compact.

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

3. When there is a conflict over meaning or interpretation of Interstate Commission, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation upon the request of a party to the conflict and upon a majority vote of the compacting states.

4. In the event that any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective, and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Code 1950, § 16.1-213.1; 1977, c. 559; 2007, cc. [277](#), [387](#).

§16.1-323.1. State Council for Interstate Compact for Juveniles.

A. The Virginia Council for the Interstate Compact for Juveniles (the Council) is created as a policy council, within the meaning of § [2.2-2100](#), in the executive branch of state government. The Council shall consist of five members:

1. One representative of the legislative branch appointed by the Joint Rules Committee;
2. One representative of the judicial branch appointed by the Chief Justice of the Supreme Court;
3. One representative of the executive branch appointed by the Governor;
4. One nonlegislative citizen member, representing a victims' group appointed by the Governor; and
5. One nonlegislative citizen member who in addition to serving as a member of the Council shall serve as the compact administrator for Virginia, appointed by the Governor.

The appointments shall be subject to confirmation by the General Assembly. The legislative members and other state officials appointed to the Council shall serve terms coincident with their terms of office. Members who are not state officials shall be appointed for four-year terms. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

B. The Council shall appoint the compact administrator as the Virginia commissioner to the Interstate Commission. The Virginia commissioner shall serve on the Interstate Commission in such capacity under or pursuant to the applicable laws of this Commonwealth.

C. The Council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by the Council, including development of policies concerning operations and procedures of the compact within Virginia.

D. The Council shall elect a chairman and vice-chairman annually. A majority of the members of the Council shall constitute a quorum. Meetings of the Council shall be held at the call of the chairman or whenever the majority of the members so request.

E. Legislative members of the Council shall receive such compensation as provided in § [30-19.12](#) and nonlegislative citizen members shall receive such compensation as provided in § [2.2-2813](#) for their services. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the costs of compensation and expenses of the members shall be provided by the Department of Juvenile Justice.

F. The Department of Juvenile Justice shall provide staff support to the Council.

2007, cc. [277](#), [387](#).

§16.1-324. Repealed.

Repealed by Acts 2007, cc. [277](#) and [387](#), cl. 2, effective August 26, 2008.

§16.1-330.1. Serious or Habitual Offender Comprehensive Action Program; definition; disclosure of information; penalty.

A. For purposes of this article, a serious or habitual juvenile offender is a minor who has been (i) adjudicated delinquent or convicted of murder or attempted murder, armed robbery, any felony sexual assault or malicious wounding, or a felony violation of a gang-related crime pursuant to Article 2.1 (§ [18.2-46.1](#) et seq.) of Chapter 4 of Title 18.2, or (ii) convicted at least three times for offenses which would be felonies or Class 1 misdemeanors if committed by an adult. Qualifying convictions or adjudications shall include only those for offenses occurring after July 1, 1993. However, any Serious or Habitual Offender Comprehensive Action Program (SHOCAP) in existence on July 1, 1993, shall be deemed to have been established pursuant to this article and, notwithstanding the limitations of this subsection, may continue to supervise persons who were being supervised on July 1, 1993. Juvenile offenders under SHOCAP supervision at the time of their eighteenth birthday who have been committed to state care pursuant to subdivision A 14 of § [16.1-278.8](#) or § [16.1-285.1](#) may continue to be supervised by SHOCAP until their twenty-first birthday.

B. The Serious or Habitual Offender Comprehensive Action Program (SHOCAP) is a multidisciplinary interagency case management and information sharing system which enables the juvenile and criminal justice system, schools, and social service agencies to make more informed decisions regarding juveniles who repeatedly commit serious criminal and delinquent acts. Each SHOCAP shall supervise serious or habitual juvenile offenders in the community as well as those under probation or parole supervision and enhance current conduct control, supervision and treatment efforts to provide a more coordinated public safety approach to serious juvenile

crime, increase the opportunity for success with juvenile offenders and assist in the development of early intervention strategies.

C. Any county or city in the Commonwealth may by action of its governing body establish a SHOCAP committee. The committee shall consist of representatives from local law enforcement, schools, attorneys for the Commonwealth, juvenile court services, juvenile detention centers or group homes, mental and medical health agencies, state and local children and family service agencies, and the Department of Juvenile Justice. Any county or city which establishes a SHOCAP committee shall, within 45 days of such action, notify the Department of Criminal Justice Services. The Department shall issue statewide SHOCAP guidelines and provide technical assistance to local jurisdictions on implementation of SHOCAP.

D. Each SHOCAP committee shall share among its members and with other SHOCAP committees otherwise confidential information on identified serious or habitual juvenile offenders. Every person, including members of the SHOCAP committee, who is to receive confidential information pursuant to this article shall maintain the confidentiality of that information.

All records and reports concerning serious or habitual juvenile offenders made available to members of a SHOCAP committee and all records and reports identifying an individual offender which are generated by the committee from such reports shall be confidential and shall not be disclosed, except as specifically authorized by this article or other applicable law. Disclosure of the information may be made to other staff from member agencies as authorized by the SHOCAP committee for the furtherance of case management, community supervision, conduct control and locating of the offender for the application and coordination of appropriate services. Staff from the member agencies who receive such information will be governed by the confidentiality provisions of this article. The staff from the member agencies who will qualify to have access to the SHOCAP information shall be limited to those individuals who provide direct services to the offender or who provide community conduct control and supervision to the offender.

The provisions of this article authorizing information sharing between and among SHOCAP committees shall take precedence over the provisions of (i) Article 12 (§ [16.1-299](#) et seq.) of Chapter 11 of this title governing dissemination of court and law-enforcement records concerning juveniles, (ii) Article 5 (§ [22.1-287](#) et seq.) of Chapter 14 of Title 22.1 governing access to pupil records, (iii) Title 37.2 and any

regulations enacted pursuant thereto governing access to juvenile mental health records, and (iv) Title 63.2 and any regulations enacted pursuant thereto governing access to records concerning treatments or services provided to a juvenile.

E. It shall be unlawful for any staff person from a member agency to disclose or to knowingly permit, assist or encourage the unauthorized release of any identifying information contained in any reports or records received or generated by a SHOCAP committee. A violation of this subsection shall be punishable as a Class 3 misdemeanor.

1993, cc. 465, 927; 1996, c. [293](#); 1999, c. [508](#); 2004, c. [418](#).

§16.1-330.2. Immunity.

Any staff person or agency who is sharing information within the structure of a SHOCAP committee established pursuant to this article shall have immunity from civil or criminal liability that otherwise might result by reason of the type of information exchanged.

1993, cc. 465, 927.

§16.1-331. Petition for emancipation.

Any minor who has reached his sixteenth birthday and is residing in this Commonwealth, or any parent or guardian of such minor, may petition the juvenile and domestic relations district court for the county or city in which either the minor or his parents or guardian resides for a determination that the minor named in the petition be emancipated. The petition shall contain, in addition to the information required by § [16.1-262](#), the gender of the minor and, if the petitioner is not the minor, the name of the petitioner and the relationship of the petitioner to the minor. If the petition is based on the minor's desire to enter into a valid marriage, the petition shall also include the name, age, date of birth, if known, and residence of the intended spouse. The petitioner shall also attach copies of any criminal records of each individual intending to be married. The petitioner shall also attach copies of any protective order issued between the individuals to be married.

1986, c. 506; 2016, cc. [457](#), [543](#).

§16.1-332. Orders of court; investigation, report and appointment of counsel.

If deemed appropriate the court may (i) require the local department of social services or any other agency or person to investigate the allegations in the petition and file a report of that investigation with the court, (ii) appoint counsel for the minor's

parents or guardian, or (iii) make any other orders regarding the matter which the court deems appropriate. In any case pursuant to this article the court shall appoint counsel for the minor to serve as guardian ad litem.

1986, c. 506; 2002, c. [747](#).

§16.1-333. Findings necessary to order that minor is emancipated.

The court may enter an order declaring the minor emancipated if, after a hearing, it is found that: (i) the minor has entered into a valid marriage, whether or not that marriage has been terminated by dissolution; (ii) the minor is on active duty with any of the armed forces of the United States of America; (iii) the minor willingly lives separate and apart from his parents or guardian, with the consent or acquiescence of the parents or guardian, and that the minor is or is capable of supporting himself and competently managing his own financial affairs; or (iv) the minor desires to enter into a valid marriage and the requirements of § [16.1-333.1](#) are met.

1986, c. 506; 2016, cc. [457](#), [543](#).

§16.1-333.1. Written findings necessary to order that minor is emancipated on the basis of intent to marry.

The court may enter an order declaring such a minor who desires to get married emancipated if, after a hearing where both individuals intending to marry are present, the court makes written findings that:

1. It is the minor's own will that the minor enter into marriage, and the minor is not being compelled against the minor's will by force, threats, persuasions, menace, or duress;
2. The individuals to be married are mature enough to make such a decision to marry;
3. The marriage will not endanger the safety of the minor. In making this finding, the court shall consider (i) the age difference between the parties intending to be married; (ii) whether either individual to be married has a criminal record containing any conviction of an act of violence, as defined in § [19.2-297.1](#), or any conviction of a barrier crime, as defined in § [19.2-392.02](#); and (iii) any history of violence between the parties to be married; and
4. It is in the best interests of the minor petitioning for an order of emancipation that such order be entered. Neither a past or current pregnancy of either individual to be married or between the individuals to be married nor the wishes of the parents or legal guardians of the minor desiring to be married shall be sufficient evidence to

establish that the best interests of the minor would be served by entering the order of emancipation.

2016, c. [457](#), [543](#); 2017, c. [809](#).

§16.1-334. Effects of order.

An order that a minor is emancipated shall have the following effects:

1. The minor may consent to medical, dental, or psychiatric care, without parental consent, knowledge, or liability;
2. The minor may enter into a binding contract or execute a will;
3. The minor may sue and be sued in his own name;
4. The minor shall be entitled to his own earnings and shall be free of control by his parents or guardian;
5. The minor may establish his own residence;
6. The minor may buy and sell real property;
7. The minor may not thereafter be the subject of a petition under this chapter as abused, neglected, abandoned, in need of services, in need of supervision, or in violation of a juvenile curfew ordinance enacted by a local governing body;
8. The minor may enroll in any school or institution of higher education, without parental consent;
9. The minor may secure a driver's license under § [46.2-334](#) or § [46.2-335](#) without parental consent;
10. The parents of the minor shall no longer be the guardians of the minor;
11. The parents of a minor shall be relieved of any obligations respecting his school attendance under Article 1 (§ [22.1-254](#) et seq.) of Chapter 14 of Title 22.1;
12. The parents shall be relieved of all obligation to support the minor;
13. The minor shall be emancipated for the purposes of parental liability for his acts;
14. The minor may execute releases in his own name;
15. The minor may not have a guardian ad litem appointed for him pursuant to any statute solely because he is under age 18; and
16. The minor may marry without parental, judicial, or other consent.

The acts done when such order is or is purported to be in effect shall be valid notwithstanding any subsequent action terminating such order or a judicial determination that the order was void ab initio.

1986, c. 506; 1990, c. 568; 1993, c. 778.

§16.1-334.1. Identification card issued to minor by DMV.

When entering an emancipation order under § [16.1-333](#), the court shall issue to the emancipated minor a copy of the order. Upon application to the Department of Motor Vehicles and submission of the copy, the Department shall issue to the minor an identification card containing the minor's photograph, a statement that such minor is emancipated, and a listing of all effects of the emancipation order as set forth in § [16.1-334](#).

1990, c. 568.

§16.1-335. Short title.

The provisions of this article shall be known and may be cited as "The Psychiatric Treatment of Minors Act."

1990, c. 975; 2010, cc. [778](#), [825](#).

§16.1-336. Definitions.

When used in this article, unless the context otherwise requires:

"Community services board" has the same meaning as provided in § [37.2-100](#).

Whenever the term community services board appears, it shall include behavioral health authority, as that term is defined in § [37.2-100](#).

"Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor 14 years of age or older and by a parent or a legally authorized custodian.

"Designee of the local community services board" means an examiner designated by the local community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department of Behavioral Health and Developmental Services, (iii) is able to provide an independent examination of the minor, (iv) is not related by blood, marriage, or adoption to, or is not the legal guardian of, the minor being evaluated, (v) has no financial interest in the admission or treatment of the minor being evaluated, (vi) has no investment interest in the facility detaining or admitting the minor under this

article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

"Employee" means an employee of the local community services board who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department of Behavioral Health and Developmental Services.

"Incapable of making an informed decision" means unable to understand the nature, extent, or probable consequences of a proposed treatment or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to the treatment. Persons with dysphasia or other communication disorders who are mentally competent and able to communicate shall not be considered incapable of giving informed consent.

"Inpatient treatment" means placement for observation, diagnosis, or treatment of mental illness in a psychiatric hospital or in any other type of mental health facility determined by the Department of Behavioral Health and Developmental Services to be substantially similar to a psychiatric hospital with respect to restrictions on freedom and therapeutic intrusiveness.

"Investment interest" means the ownership or holding of an equity or debt security, including shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

"Judge" means a juvenile and domestic relations district judge. In addition, "judge" includes a retired judge sitting by designation pursuant to § [16.1-69.35](#), substitute judge, or special justice authorized by § [37.2-803](#) who has completed a training program regarding the provisions of this article, prescribed by the Executive Secretary of the Supreme Court.

"Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the minor or others from physical injury.

"Mental health facility" means a public or private facility for the treatment of mental illness operated or licensed by the Department of Behavioral Health and Developmental Services.

"Mental illness" means a substantial disorder of the minor's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior. Intellectual disability, head injury, a learning disability, or a seizure disorder is not sufficient, in itself, to justify a finding of mental illness within the meaning of this article.

"Minor" means a person less than 18 years of age.

"Parent" means (i) a biological or adoptive parent who has legal custody of the minor, including either parent if custody is shared under a joint decree or agreement, (ii) a biological or adoptive parent with whom the minor regularly resides, (iii) a person judicially appointed as a legal guardian of the minor, or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law. The director of the local department of social services, or his designee, may stand as the minor's parent when the minor is in the legal custody of the local department of social services.

"Qualified evaluator" means a psychiatrist or a psychologist licensed in Virginia by either the Board of Medicine or the Board of Psychology, or if such psychiatrist or psychologist is unavailable, (i) any mental health professional licensed in Virginia through the Department of Health Professions as a clinical social worker, professional counselor, marriage and family therapist, psychiatric nurse practitioner, or clinical nurse specialist, or (ii) any mental health professional employed by a community services board. All qualified evaluators shall (a) be skilled in the diagnosis and treatment of mental illness in minors, (b) be familiar with the provisions of this article, and (c) have completed a certification program approved by the Department of Behavioral Health and Developmental Services. The qualified evaluator shall (1) not be related by blood, marriage, or adoption to, or is not the legal guardian of, the minor being evaluated, (2) not be responsible for treating the minor, (3) have no financial interest in the admission or treatment of the minor, (4) have no investment interest in the facility detaining or admitting the minor under this article, and (5) except for employ-

ees of state hospitals, the U.S. Department of Veterans Affairs, and community services boards, not be employed by the facility.

"Treatment" means any planned intervention intended to improve a minor's functioning in those areas which show impairment as a result of mental illness.

1990, c. 975; 1991, c. 159; 2007, cc. [500](#), [897](#); 2008, cc. [139](#), [774](#); 2009, cc. [455](#), [555](#), [813](#), [840](#); 2010, cc. [778](#), [825](#); 2012, cc. [476](#), [507](#).

§16.1-336.1. Admission forms.

The Office of the Executive Secretary of the Supreme Court of Virginia shall prepare the petitions, orders, and such other legal forms as may be required in proceedings for custody, detention, and involuntary admission pursuant to this article, and shall distribute such forms to the clerks of the juvenile and domestic relations district courts of the Commonwealth. The Department of Behavioral Health and Developmental Services shall prepare the preadmission screening report, evaluation, and such other clinical forms as may be required in proceedings for custody, detention, and admission pursuant to this article, and shall distribute such forms to community services boards, mental health care providers, and directors of state facilities.

2010, cc. [778](#), [825](#).

§16.1-337. Inpatient treatment of minors; general applicability; disclosure of records.

A. A minor may be admitted to a mental health facility for inpatient treatment only pursuant to § [16.1-338](#), [16.1-339](#), or [16.1-340.1](#) or in accordance with an order of involuntary commitment entered pursuant to §§ [16.1-341](#) through [16.1-345](#). The provisions of Article 12 (§ [16.1-299](#) et seq.) of Chapter 11 of this title relating to the confidentiality of files, papers, and records shall apply to proceedings under this article.

B. Any health care provider, as defined in § [32.1-127.1:03](#), or other provider rendering services to a minor who is the subject of proceedings under this article, upon request, shall disclose to a magistrate, the juvenile intake officer, the court, the minor's attorney, the minor's guardian ad litem, the qualified evaluator performing the evaluation required under §§ [16.1-338](#), [16.1-339](#), and [16.1-342](#), the community services board or its designee performing the evaluation, preadmission screening, or monitoring duties under this article, or a law-enforcement officer any and all information that is necessary and appropriate to enable each of them to perform his duties under this article. These health care providers and other service providers shall

disclose to one another health records and information where necessary to provide care and treatment to the person and to monitor that care and treatment. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the minor, or the public from physical injury or to address the health care needs of the minor. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider providing services to a minor who is the subject of proceedings under this article shall make a reasonable attempt to notify the minor's parent of information that is directly relevant to such individual's involvement with the minor's health care, which may include the minor's location and general condition, in accordance with subdivision D 34 of § [32.1-127.1:03](#), unless the provider has actual knowledge that the parent is currently prohibited by court order from contacting the minor. No health care provider shall be required to notify a person's family member or personal representative pursuant to this section if the health care provider has actual knowledge that such notice has been provided.

Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.

C. Any order entered where a minor is the subject of proceedings under this article shall provide for the disclosure of health records pursuant to subsection B. This subsection shall not preclude any other disclosures as required or permitted by law.

1990, c. 975; 1992, c. 539; 2008, cc. [782](#), [850](#), [870](#); 2009, cc. [455](#), [555](#); 2010, cc. [778](#), [825](#); 2016, cc. [569](#), [693](#).

§16.1-338. Parental admission of minors younger than 14 and nonobjecting minors 14 years of age or older.

A. A minor younger than 14 years of age may be admitted to a willing mental health facility for inpatient treatment upon application and with the consent of a parent. A minor 14 years of age or older may be admitted to a willing mental health facility for inpatient treatment upon the joint application and consent of the minor and the minor's parent.

B. Admission of a minor under this section shall be approved by a qualified evaluator who has conducted a personal examination of the minor within 48 hours after admission and has made the following written findings:

1. The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; and
2. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; and
3. If the minor is 14 years of age or older, that he has been provided with an explanation of his rights under this Act as they would apply if he were to object to admission, and that he has consented to admission; and
4. All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor.

If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide, in lieu of the examination required by this section, a preadmission screening report conducted by an employee or designee of the community services board and shall ensure that the necessary written findings have been made before approving the admission. A copy of the written findings of the evaluation or preadmission screening report required by this section shall be provided to the consenting parent and the parent shall have the opportunity to discuss the findings with the qualified evaluator or employee or designee of the community services board.

C. Within 10 days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured. A copy of the plan shall be provided to the minor and to his parents.

D. If the parent who consented to a minor's admission under this section revokes his consent at any time, or if a minor 14 or older objects at any time to further treatment, the minor shall be discharged within 48 hours to the custody of such consenting parent unless the minor's continued hospitalization is authorized pursuant to § [16.1-339](#), [16.1-340.1](#), or [16.1-345](#). If the 48-hour time period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 48 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. If a minor 14 or older objects to further treatment, the mental health facility shall (i) immediately notify the consenting parent of the minor's objections and (ii) provide to the consenting parent a summary, prepared by the Office of the Attorney General, of the procedures for requesting continued treatment of the minor pursuant to § [16.1-339](#), [16.1-340.1](#), or [16.1-345](#).

E. Inpatient treatment of a minor hospitalized under this section may not exceed 90 consecutive days unless it has been authorized by appropriate hospital medical personnel, based upon their written findings that the criteria set forth in subsection B of this section continue to be met, after such persons have examined the minor and interviewed the consenting parent and reviewed reports submitted by members of the facility staff familiar with the minor's condition.

F. Any minor admitted under this section while younger than 14 and his consenting parent shall be informed orally and in writing by the director of the facility for inpatient treatment within 10 days of his fourteenth birthday that continued voluntary treatment under the authority of this section requires his consent.

G. Any minor 14 years of age or older who joins in an application and consents to admission pursuant to subsection A, shall, in addition to his parent, have the right to access his health information. The concurrent authorization of both the parent and the minor shall be required to disclose such minor's health information.

H. A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court or circuit court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody.

1990, c. 975; 1991, c. 159; 2005, cc. [181](#), [227](#); 2008, cc. [783](#), [808](#); 2009, cc. [455](#), [555](#); 2010, cc. [778](#), [825](#); 2015, cc. [504](#), [543](#).

§16.1-339. Parental admission of an objecting minor 14 years of age or older.

A. A minor 14 years of age or older who (i) objects to admission or (ii) is incapable of making an informed decision may be admitted to a willing facility for up to 120 hours, pending the review required by subsections B and C, upon the application of a parent. If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide the preadmission screening report required by subsection B of § [16.1-338](#) and shall ensure that the necessary written findings, except the minor's consent, have been made before approving the admission.

B. A minor admitted under this section shall be examined within 24 hours of his admission by a qualified evaluator designated by the community services board serving the area where the facility is located. If the 24-hour time period expires on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the 24 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The evaluator shall prepare a report that shall include written findings as to whether:

1. The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment;
2. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; and
3. All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor.

The qualified evaluator shall submit his report to the juvenile and domestic relations district court for the jurisdiction in which the facility is located.

C. Upon admission of a minor under this section, the facility shall file a petition for judicial approval no sooner than 24 hours and no later than 120 hours after admission with the juvenile and domestic relations district court for the jurisdiction in which the facility is located. To the extent available, the petition shall contain the information required by § [16.1-339.1](#). A copy of this petition shall be delivered to the minor's consenting parent. Upon receipt of the petition and of the evaluator's report submitted pursuant to subsection B, the judge shall appoint a guardian ad litem for the minor and counsel to represent the minor, unless it has been determined that

the minor has retained counsel. A copy of the evaluator's report shall be provided to the minor's counsel and guardian ad litem. The court and the guardian ad litem shall review the petition and evaluator's report and shall ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist. The court shall conduct its review in such place and manner, including the facility, as it deems to be in the best interests of the minor. Based upon its review and the recommendations of the guardian ad litem, the court shall order one of the following dispositions:

1. If the court finds that the minor does not meet the criteria for admission specified in subsection B, the court shall issue an order directing the facility to release the minor into the custody of the parent who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms and provisions of any valid court order of custody affecting the minor.
2. If the court finds that the minor meets the criteria for admission specified in subsection B, the court shall issue an order authorizing continued hospitalization of the minor for up to 90 days on the basis of the parent's consent.

Within 10 days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem and to counsel for the minor. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured.

3. If the court determines that the available information is insufficient to permit an informed determination regarding whether the minor meets the criteria specified in subsection B, the court shall schedule a commitment hearing that shall be conducted in accordance with the procedures specified in §§ [16.1-341](#) through [16.1-345](#). The minor may be detained in the hospital for up to 120 additional hours pending the holding of the commitment hearing.

D. A minor admitted under this section who rescinds his objection may be retained in the hospital pursuant to § [16.1-338](#).

E. If the parent who consented to a minor's admission under this section revokes his consent at any time, the minor shall be released within 48 hours to the parent's custody unless the minor's continued hospitalization is authorized pursuant to § [16.1-340.1](#) or [16.1-345](#). If the 48-hour time period expires on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the 48 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

F. A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court or circuit court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody.

1990, c. 975; 1991, c. 159; 2005, c. [716](#); 2007, cc. [500](#), [897](#); 2008, cc. [139](#), [774](#), [783](#), [807](#), [808](#); 2009, cc. [455](#), [555](#); 2010, cc. [778](#), [825](#); 2015, cc. [504](#), [535](#), [543](#).

§16.1-339.1. Minors in detention homes or shelter care facilities.

If a minor admitted to a mental health facility pursuant to this article was in a detention home or a shelter care facility at the time of his admission, the director of the detention home or shelter care facility or his designee shall provide, if available, the charges against the minor that are the basis of the detention and the names and addresses of the minor's parents and the juvenile and domestic relations district court ordering the minor's placement in detention or shelter care to the mental health facility and to the juvenile and domestic relations district court for the jurisdiction in which the mental health facility is located if different from the court ordering the minor's placement in detention or shelter care.

2009, cc. [455](#), [555](#).

§16.1-340. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district

court, or upon his own motion, an emergency custody order when he has probable cause to believe that (i) because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irreparable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § [16.1-337](#). This subsection shall not preclude any other disclosures as required or permitted by law. To the extent possible, the petition shall contain the information required by § [16.1-339.1](#).

When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the minor, (3) any past mental health treatment of the minor, (4) any relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

B. Any minor for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether he meets the criteria for temporary detention pursuant to § [16.1-340.1](#) and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board serving the area in which the minor is located who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the order, a representative of the community services

board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the minor being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in accordance with state and federal law. Transportation under this section shall include transportation to a medical facility for a medical evaluation if a physician at the hospital in which the minor subject to the emergency custody order may be detained requires a medical evaluation prior to admission.

D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the community services board that designated the person to perform the evaluation required in subsection B to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. If the community services board serves more than one jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board's service area

where the minor who is the subject of the emergency custody order was taken into custody or, if the minor has not yet been taken into custody, the primary law-enforcement agency from the jurisdiction where the minor is presently located to execute the order and provide transportation.

E. The law-enforcement agency or alternative transportation provider providing transportation pursuant to this section may transfer custody of the minor to the facility or location to which the minor is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed to provide the level of security necessary to protect both the minor and others from harm, (ii) is actually capable of providing the level of security necessary to protect the minor and others from harm, and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody, provided, however, that the facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer of custody.

F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section.

G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a minor meets the criteria for emergency custody as stated in this section may take that minor into custody and transport that minor to an appropriate location to assess the need for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the minor into custody.

H. A law-enforcement officer who is transporting a minor who has voluntarily consented to be transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits of the county, city, or town in which he serves may take such minor into custody and transport him to an appropriate location to assess the need for hospitalization or treatment without prior authorization when the law-enforcement officer determines (i) that the minor has revoked consent to be

transported to a facility for the purpose of assessment or evaluation and (ii) based upon his observations, that probable cause exists to believe that the minor meets the criteria for emergency custody as stated in this section. The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the minor into custody.

I. A representative of the primary law-enforcement agency specified to execute an emergency custody order or a representative of the law-enforcement agency employing a law-enforcement officer who takes a person into custody pursuant to subsection G or H shall notify the community services board responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after execution of the emergency custody order or after the person has been taken into custody pursuant to subsection G or H.

J. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a minor in his custody as provided in this section.

K. The minor shall remain in custody until a temporary detention order is issued, until the minor is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time of execution.

L. If an emergency custody order is not executed within eight hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving the jurisdiction of the issuing court.

M. (Expires June 30, 2018) In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if the minor is detained in a state facility pursuant to subsection D of § [16.1-340.1](#), the state facility and an employee or designee of the community services board may, for an additional four hours, continue to attempt to identify an alternative facility that is able and willing to provide temporary detention and appropriate care to the minor.

N. Payments shall be made pursuant to § [37.2-804](#) to licensed health care providers for medical screening and assessment services provided to minors with mental illnesses while in emergency custody.

O. No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

1990, c. 975; 1991, c. 159; 1992, c. 884; 2000, cc. [65](#), [246](#); 2001, c. [837](#); 2004, c. [283](#); 2005, c. [346](#); 2006, c. [401](#); 2008, cc. [783](#), [808](#); 2009, cc. [455](#), [555](#); 2010, cc. [778](#), [825](#); 2011, c. [249](#); 2014, cc. [691](#), [761](#); 2015, cc. [297](#), [308](#).

§16.1-340.1. Involuntary temporary detention; issuance and execution of order.

A. A magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, or upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § [16.1-345.1](#) by an employee or designee of the local community services board to determine whether the minor meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that (i) because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. The magistrate shall also consider the recommendations of the minor's parents and of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision. To the extent possible, the petition shall contain the information required by § [16.1-339.1](#). Any temporary detention order entered pursuant to this section shall be effective until such time as the juvenile and domestic relations district court serving the jurisdiction in which the minor is located conducts a hearing pursuant to subsection B of § [16.1-341](#). Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § [16.1-337](#). This subsection shall not preclude any other disclosures as required or permitted by law.

B. When considering whether there is probable cause to issue a temporary detention order, the magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the minor, (iii) any past mental health treatment of the minor, (iv) any relevant hearsay evidence, (v) any medical records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue a temporary detention order.

C. A magistrate may issue a temporary detention order without an emergency custody order proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to subsection A if (i) the minor has been personally examined within the previous 72 hours by an employee or designee of the local community services board or (ii) there is a significant physical, psychological, or medical risk to the minor or to others associated with conducting such evaluation.

D. An employee or designee of the community services board shall determine the facility of temporary detention in accordance with the provisions of § [16.1-340.1:1](#) for all minors detained pursuant to this section. The facility shall be identified on the preadmission screening report and indicated on the temporary detention order. Subject to the provisions of § [16.1-340.1:1](#), if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § [16.1-340](#), the minor shall be detained in a state facility for the treatment of minors with mental illness and such facility shall be indicated on the temporary detention order. Except for minors who are detained for a criminal offense by a juvenile and domestic relations district court and who require hospitalization in accordance with this article, the minor shall not be detained in a jail or other place of confinement for persons charged with criminal offenses and shall remain in the custody of law enforcement until the minor is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by the facility identified in the temporary detention order.

E. Any facility caring for a minor placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the minor within its care. The costs incurred as a result of the hearings and by the

facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § [37.2-804](#). The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

F. The employee or designee of the local community services board who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the minor. Where coverage by a third party payor exists, the facility seeking reimbursement under this section shall first seek reimbursement from the third party payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances covered by the third party payor have been received.

G. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § [16.1-342](#), preparation of the preadmission screening report required by § [16.1-340.4](#), and initiation of mental health treatment to stabilize the minor's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 96 hours prior to a hearing. If the 96-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the minor may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal holiday. The minor may be released, pursuant to § [16.1-340.3](#), before the 96-hour period herein specified has run.

H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee or designee of the local community services board prior to issuing a subsequent order upon the original petition. Any petition for which no temporary detention order or other process in connection therewith is served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

I. For purposes of this section a healthcare provider or an employee or designee of the local community services board shall not be required to encrypt any email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

J. The employee or designee of the local community services board who is conducting the evaluation pursuant to this section shall, if he recommends that the minor should not be subject to a temporary detention order, inform the petitioner and an on-site treating physician of his recommendation.

K. Each community services board shall provide to each juvenile and domestic relations district court and magistrate's office within its service area a list of employees and designees who are available to perform the evaluations required herein.

2010, cc. [778](#), [825](#); 2014, cc. [691](#), [773](#).

§16.1-340.1:1. Facility of temporary detention.

A. In each case in which an employee or designee of the local community services board is required to make an evaluation of a minor pursuant to subsection B, G, or H of § [16.1-340](#), an employee or designee of the local community services board shall, upon being notified of the need for such evaluation, contact the state facility for the area in which the community services board is located and notify the state facility that the minor will be transported to the facility upon issuance of a temporary detention order if no other facility of temporary detention can be identified by the time of the expiration of the period of emergency custody pursuant to § [16.1-340](#). Upon completion of the evaluation, the employee or designee of the local community services board shall convey to the state facility information about the minor necessary to allow the state facility to determine the services the minor will require upon admission.

B. A state facility may, following the notice in accordance with subsection A, conduct a search for an alternative facility that is able and willing to provide temporary detention and appropriate care to the minor, which may include another state facility if the state facility notified in accordance with subsection A is unable to provide temporary detention and appropriate care for the minor. Under no circumstances shall a state facility fail or refuse to admit a minor who meets the criteria for temporary detention pursuant to § [16.1-340.1](#) unless an alternative facility that is able to provide temporary detention and appropriate care agrees to accept the minor for temporary detention, and the minor shall not during the duration of the temporary detention order

be released from custody except for purposes of transporting the minor to the state facility or alternative facility in accordance with the provisions of § [16.1-340.2](#). If an alternative facility is identified and agrees to accept the minor for temporary detention, the state facility shall notify the community services board, and an employee or designee of the community services board shall designate the alternative facility on the prescreening report.

C. The facility of temporary detention designated in accordance with this section shall be one that has been approved pursuant to regulations of the State Board of Behavioral Health and Developmental Services.

2014, cc. [691](#), [773](#); 2015, cc. [121](#), [309](#).

§16.1-340.2. Transportation of minor in the temporary detention process.

A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the minor resides to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the jurisdiction in which the minor resides is more than 50 miles from the nearest boundary of the jurisdiction in which the minor is located, the law-enforcement agency of the jurisdiction in which the minor is located shall execute the order and provide transportation.

B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to execute the order and provide transportation. However, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the temporary detention order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner.

When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative transportation provider identified in the order. In such cases, a copy of the temporary detention order shall accompany the minor being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the temporary detention facility. The temporary detention facility shall return a copy of the temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

The order may include transportation of the minor to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a minor in his custody as provided in this section. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law.

C. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

D. No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

2010, cc. [778](#), [825](#); 2015, cc. [297](#), [308](#).

§16.1-340.3. Release of minor prior to commitment hearing for involuntary admission.

Prior to a hearing as authorized in § [16.1-341](#), the judge may release the minor to his parent if it appears from all evidence readily available that the minor does not meet the commitment criteria specified in § [16.1-345](#). The director of any facility in which

the minor is detained may release the minor prior to a hearing as authorized in § [16.1-341](#) if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the minor, that the minor would not meet the commitment criteria specified in § [16.1-345](#) if released.

2010, cc. [778](#), [825](#).

§16.1-340.4. Involuntary commitment; preadmission screening report.

The juvenile and domestic relations district court shall require a preadmission screening report from the community services board that serves the area where the minor resides or, if impractical, where the minor is located. The report shall be prepared by an employee or designee of the community services board. The report shall be admitted as evidence of the facts stated therein and shall state (i) whether the minor has mental illness and whether, because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; (ii) whether the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; (iii) whether inpatient treatment is the least restrictive alternative that meets the minor's needs; and (iv) the recommendations for the minor's placement, care, and treatment including, where appropriate, recommendations for mandatory outpatient treatment. The board shall provide the preadmission screening report to the court prior to the hearing, and the report shall be admitted into evidence and made part of the record of the case.

2010, cc. [778](#), [825](#).

§16.1-341. Involuntary commitment; petition; hearing scheduled; notice and appointment of counsel.

A. A petition for the involuntary commitment of a minor may be filed with the juvenile and domestic relations district court serving the jurisdiction in which the minor is located by a parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court. The petition shall include the name and address of the petitioner and the minor and shall set forth in specific terms why the petitioner believes the minor

meets the criteria for involuntary commitment specified in § [16.1-345](#). To the extent available, the petition shall contain the information required by § [16.1-339.1](#). The petition shall be taken under oath.

If a commitment hearing has been scheduled pursuant to subdivision 3 of subsection C of § [16.1-339](#), the petition for judicial approval filed by the facility under subsection C of § [16.1-339](#) shall serve as the petition for involuntary commitment as long as such petition complies in substance with the provisions of this subsection.

B. Upon the filing of a petition for involuntary commitment of a minor, the juvenile and domestic relations district court serving the jurisdiction in which the minor is located shall schedule a hearing which shall occur no sooner than 24 hours and no later than 96 hours from the time the petition was filed or from the issuance of the temporary detention order as provided in § [16.1-340.1](#), whichever occurs later, or from the time of the hearing held pursuant to subsection C of § [16.1-339](#) if the commitment hearing has been conducted pursuant to subdivision C 3 of § [16.1-339](#). If the 96-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 96 hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. The attorney for the minor, the guardian ad litem for the minor, the attorney for the Commonwealth in the jurisdiction giving rise to the detention, and the juvenile and domestic relations district court having jurisdiction over any minor in detention or shelter care shall be given notice prior to the hearing.

If the petition is not dismissed or withdrawn, copies of the petition, together with a notice of the hearing, shall be served immediately upon the minor and the minor's parents, if they are not petitioners, by the sheriffs of the jurisdictions in which the minor and his parents are located. No later than 24 hours before the hearing, the court shall appoint a guardian ad litem for the minor and counsel to represent the minor, unless it has determined that the minor has retained counsel. Upon the request of the minor's counsel, for good cause shown, and after notice to the petitioner and all other persons receiving notice of the hearing, the court may continue the hearing once for a period not to exceed 96 hours.

Any recommendation made by a state mental health facility or state hospital regarding the minor's involuntary commitment may be admissible during the course of the hearing.

1990, c. 975; 1991, c. 159; 1992, c. 539; 2001, c. [837](#); 2004, c. [283](#); 2005, c. [346](#); 2006, c. [401](#); 2007, cc. [500](#), [897](#); 2008, cc. [140](#), [776](#), [783](#), [807](#), [808](#); 2009, cc. [455](#), [555](#); 2010, cc. [778](#), [825](#).

§16.1-342. Involuntary commitment; clinical evaluation.

A. Upon the filing of a petition for involuntary commitment, the juvenile and domestic relations district court shall direct the community services board serving the area in which the minor is located to arrange for an evaluation by a qualified evaluator, if one has not already been performed pursuant to subsection B of § [16.1-339](#). All such evaluations shall be conducted in private. In conducting a clinical evaluation of a minor in detention or shelter care, if the evaluator finds, irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary commitment in § [16.1-345](#), the evaluator shall recommend that the minor meets the criteria for involuntary commitment. The petitioner, all public agencies, and all providers or programs which have treated or who are treating the minor, shall cooperate with the evaluator and shall promptly deliver, upon request and without charge, all records of treatment or education of the minor. At least 24 hours before the scheduled hearing, the evaluator shall submit to the court a written report which includes the evaluator's opinion regarding whether the minor meets the criteria for involuntary commitment specified in § [16.1-345](#). A copy of the evaluator's report shall be provided to the minor's guardian ad litem and to the minor's counsel. The evaluator, if not physically present at the hearing, shall be available for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § [16.1-345.1](#). When the qualified evaluator attends the hearing in person or by electronic communication, he shall not be excluded from the hearing pursuant to an order of sequestration of witnesses.

B. Any evaluation conducted pursuant to this section shall be a comprehensive evaluation of the minor conducted in-person or, if that is not practicable, by a two-way electronic video and audio communication system as authorized in § [16.1-345.1](#). Translation or interpreter services shall be provided during the evaluation where necessary. The examination shall consist of (i) a clinical assessment that includes a mental status examination; determination of current use of psychotropic and other medications; a medical and psychiatric history; a substance use, abuse, or dependency determination; and a determination of the likelihood that, because of mental illness, the minor is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusional

thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; (ii) a substance abuse screening, when indicated; (iii) a risk assessment that includes an evaluation of the likelihood that, because of mental illness, the minor presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats; (iv) for a minor 14 years of age or older, an assessment of the minor's capacity to consent to treatment, including his ability to maintain and communicate choice, understand relevant information, and comprehend the situation and its consequences; (v) if prior to the examination the minor has been temporarily detained pursuant to this article, a review of the temporary detention facility's records for the minor, including the treating physician's evaluation, any collateral information, reports of any laboratory or toxicology tests conducted, and all admission forms and nurses' notes; (vi) a discussion of treatment preferences expressed by the minor or his parents or contained in a document provided by the minor or his parents in support of recovery; (vii) an assessment of alternatives to involuntary inpatient treatment; and (viii) recommendations for the placement, care, and treatment of the minor.

1990, c. 975; 2005, c. [346](#); 2009, cc. [455](#), [555](#); 2010, cc. [778](#), [825](#).

§16.1-343. Involuntary commitment; duties of attorney for the minor.

As far in advance as practicable after an attorney is appointed to represent a minor under this article, the minor's attorney shall interview the minor; the minor's parent, if available; the petitioner; and the qualified evaluator. He shall interview all other material witnesses, and examine all relevant diagnostic and other reports.

Any state or local agency, department, authority or institution and any school, hospital, physician or other health or mental health care provider shall permit the attorney appointed pursuant to this article to inspect and copy, without the consent of the minor or his parents, any records relating to the minor whom the attorney represents.

The obligation of the minor's attorney during the hearing or appeal is to interview witnesses, obtain independent experts when possible, cross-examine adverse witnesses, present witnesses on behalf of the minor, articulate the wishes of the minor, and otherwise fully represent the minor in the proceeding. Counsel appointed by the court shall be compensated in an amount not to exceed \$100.

1990, c. 975; 1993, c. 344; 2004, cc. [66](#), [1014](#); 2008, c. [807](#); 2010, cc. [778](#), [825](#).

§16.1-344. Involuntary commitment; hearing.

A. The court shall summon to the hearing all material witnesses requested by either the minor or the petitioner. All testimony shall be under oath. The rules of evidence shall apply. The petitioner, minor and, with leave of court for good cause shown, any other person shall be given the opportunity to present evidence and cross-examine witnesses. The hearing shall be closed to the public unless the minor and petitioner request that it be open.

B. At the commencement of the hearing involving a minor 14 years of age or older, the court shall inform the minor whose involuntary commitment is being sought of his right to be voluntarily admitted for inpatient treatment as provided for in § [16.1-338](#) and shall afford the minor an opportunity for voluntary admission, provided that the minor's parent consents to such voluntary admission. In determining whether a minor is capable of consenting to voluntary admission, the court may consider evidence regarding the minor's past compliance or noncompliance with treatment.

C. An employee or a designee of the community services board that arranged for the evaluation of the minor shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § [16.1-345.1](#). If (i) the minor does not reside in the jurisdiction served by the juvenile and domestic relations district court that conducts the hearing and (ii) the minor is being considered for mandatory outpatient treatment pursuant to § [16.1-345.2](#), an employee or designee of the community services board serving the area where the minor resides shall also attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § [16.1-345.1](#). The employee or designee of the community services board serving the area where the minor resides may, instead of attending the hearing, make arrangements with the community services board that arranged for the evaluation of the minor to present on its behalf the recommendations for a specific course of treatment and programs for the provision of mandatory outpatient treatment required by subsection C of § [16.1-345.2](#) and the initial mandatory outpatient treatment plan required by subsection D of § [16.1-345.2](#). When a community services board attends the hearing on behalf of the community services board serving the area where the minor resides, the attending community services board shall inform the community services board serving the area where the minor resides of the disposition of the matter upon the conclusion of the hearing. In addition, the attending community services board shall transmit the disposition

through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means to the community services board serving the area where the minor resides. Any employee or designee of the community services board attending or participating in the hearing shall not be excluded from the hearing pursuant to an order of sequestration of witnesses.

At least 12 hours prior to the hearing, the court shall provide the time and location of the hearing to the community services board that arranged for the evaluation of the minor. If the community services board will be present by telephonic means, the court shall provide the telephone number to the board.

1990, c. 975; 1992, c. 539; 2009, cc. [455](#), [555](#); 2010, cc. [778](#), [825](#).

§16.1-345. Involuntary commitment; criteria.

After observing the minor and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the minor, (iii) any past mental health treatment of the minor, (iv) any qualified evaluator's report, (v) any medical records available, (vi) the preadmission screening report, and (vii) any other evidence that may have been admitted, the court shall order the involuntary commitment of the minor to a mental health facility for treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irreparable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;
2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and
3. If the court finds that inpatient treatment is not the least restrictive treatment, the court shall consider entering an order for mandatory outpatient treatment pursuant to § [16.1-345.2](#).

Upon the expiration of an order for involuntary commitment, the minor shall be released unless he is involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed 90 days from the date of the subsequent

court order, or the minor or his parent rescinds the objection to inpatient treatment and consents to admission pursuant to § [16.1-338](#) or subsection D of § [16.1-339](#) or the minor is ordered to mandatory outpatient treatment pursuant to § [16.1-345.2](#).

A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody. However, such a minor shall not be eligible for mandatory outpatient treatment.

In conducting an evaluation of a minor who has been properly detained, if the evaluator finds, irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary commitment in this section, the evaluator shall recommend that the minor meets the criteria for involuntary commitment.

If the parent or parents with whom the minor resides are not willing to approve the proposed commitment, the court shall order inpatient treatment only if it finds, in addition to the criteria specified in this section, that such treatment is necessary to protect the minor's life, health, safety, or normal development. If a special justice believes that issuance of a removal order or protective order may be in the child's best interest, the special justice shall report the matter to the local department of social services for the county or city where the minor resides.

Upon finding that the best interests of the minor so require, the court may enter an order directing either or both of the minor's parents to comply with reasonable conditions relating to the minor's treatment.

If the minor is committed to inpatient treatment, such placement shall be in a mental health facility for inpatient treatment designated by the community services board which serves the political subdivision in which the minor was evaluated pursuant to § [16.1-342](#). If the community services board does not provide a placement recommendation at the hearing, the minor shall be placed in a mental health facility designated by the Commissioner of Behavioral Health and Developmental Services.

When a minor has been involuntarily committed pursuant to this section, the judge shall determine, after consideration of information provided by the minor's treating mental health professional and any involved community services board staff

regarding the minor's dangerousness, whether transportation shall be provided by the sheriff or may be provided by an alternative transportation provider, including a parent, family member, or friend of the minor, a representative of the community services board, a representative of the facility at which the minor was detained pursuant to a temporary detention order, or other alternative transportation provider with personnel trained to provide transportation in a safe manner. If the judge determines that transportation may be provided by an alternative transportation provider, the judge may consult with the proposed alternative transportation provider either in person or via two-way electronic video and audio or telephone communication system to determine whether the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. If the judge finds that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the judge may order transportation by the proposed alternative transportation provider. In all other cases, the judge shall order transportation by the sheriff of the jurisdiction where the minor is a resident unless the sheriff's office of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction in which the minor is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the minor.

If the judge determines that the minor requires transportation by the sheriff, the sheriff, as specified in this section shall transport the minor to the proper facility. In no event shall transport commence later than six hours after notification to the sheriff or alternative transportation provider of the judge's order.

No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

1990, c. 975; 1992, c. 539; 2005, c. [346](#); 2009, cc. [112](#), [455](#), [555](#), [697](#), [813](#), [840](#); 2010, cc. [778](#), [825](#); 2015, cc. [297](#), [308](#).

§16.1-345.1. Use of electronic communication.

A. Petitions and orders for emergency custody, temporary detention, and involuntary commitment of minors pursuant to this article may be filed, issued, served, or

executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures.

B. Any judge may conduct proceedings pursuant to this article using any two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses. Any two-way electronic video and audio communication system used to conduct a proceeding shall meet the standards set forth in subsection B of § [19.2-3.1](#). When a witness whose testimony would be helpful to the conduct of the proceeding is not able to be physically present, his testimony may be received using a telephonic communication system.

2005, c. [51](#); 2007, cc. [500](#), [897](#); 2009, cc. [455](#), [555](#); 2010, cc. [778](#), [825](#).

§16.1-345.2. Mandatory outpatient treatment; criteria; orders.

A. After observing the minor and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the minor, (iii) any past mental health treatment of the minor, (iv) any evaluation of the minor, (v) any medical records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, the court shall order that the minor be admitted involuntarily to mandatory outpatient treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irreparable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusory thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;
2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment;
3. Less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are determined to be appropriate;

4. The minor, if 14 years of age or older, and his parents (i) have sufficient capacity to understand the stipulations of the minor's treatment, (ii) have expressed an interest in the minor's living in the community and have agreed to abide by the minor's treatment plan, and (iii) are deemed to have the capacity to comply with the treatment plan and understand and adhere to conditions and requirements of the treatment and services; and

5. The ordered treatment can be delivered on an outpatient basis by the community services board or a designated provider.

Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community and providers of the services have actually agreed to deliver the services.

B. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a hospital, or other appropriate course of treatment as may be necessary to meet the needs of the minor. The community services board serving the area in which the minor resides shall recommend a specific course of treatment and programs for the provision of mandatory outpatient treatment. Upon expiration of an order for mandatory outpatient treatment, the minor shall be released from the requirements of the order unless the order is continued in accordance with § [16.1-345.5](#).

C. Any order for mandatory outpatient treatment shall include an initial mandatory outpatient treatment plan developed by the community services board serving the area in which the minor resides. The plan shall, at a minimum, (i) identify the specific services to be provided, (ii) identify the provider who has agreed to provide each service, (iii) describe the arrangements made for the initial in-person appointment or contact with each service provider, and (iv) include any other relevant information that may be available regarding the mandatory outpatient treatment ordered. The order shall require the community services board to monitor the implementation of the mandatory outpatient treatment plan and report any material noncompliance to the court.

D. No later than five business days after an order for mandatory outpatient treatment has been entered pursuant to this section, the community services board that is responsible for monitoring compliance with the order shall file a comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment plan shall (i) identify the specific type, amount, duration, and frequency of each

service to be provided to the minor, (ii) identify the provider that has agreed to provide each service included in the plan, (iii) certify that the services are the most appropriate and least restrictive treatment available for the minor, (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department of Behavioral Health and Developmental Services' licensing regulations, (v) be developed with the fullest involvement and participation of the minor and his parents and reflect their preferences to the greatest extent possible to support the minor's recovery and self-determination, (vi) specify the particular conditions with which the minor shall be required to comply, and (vii) describe how the community services board shall monitor the minor's compliance with the plan and report any material noncompliance with the plan. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The community services board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with the court for review and attached to any order for mandatory outpatient treatment.

E. If the community services board responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the minor's mental illness are not available or cannot be provided to the minor in accordance with the order for mandatory outpatient treatment, it shall notify the court within five business days of the entry of the order for mandatory outpatient treatment. Within five business days of receiving such notice, the judge, after notice to the minor, the minor's attorney, and the community services board responsible for developing the comprehensive mandatory outpatient treatment plan, shall hold a hearing pursuant to § [16.1-345.4](#).

F. Upon entry of any order for mandatory outpatient treatment, the clerk of the court shall provide a copy of the order to the minor who is the subject of the order, his parents, his attorney, his guardian ad litem, and the community services board required to monitor his compliance with the plan. The community services board shall acknowledge receipt of the order to the clerk of the court on a form established by the Office

of the Executive Secretary of the Supreme Court and provided by the court for this purpose.

G. After entry of any order for mandatory outpatient treatment if the court that entered the order is not the juvenile and domestic relations district court for the jurisdiction in which the minor resides, it shall transfer jurisdiction of the case to the court where the minor resides.

2009, cc. [455](#), [555](#); 2010, cc. [778](#), [825](#).

§16.1-345.3. Monitoring mandatory outpatient treatment; motion for review.

A. The community services board where the minor resides shall monitor the minor's compliance with the mandatory outpatient treatment plan ordered by the court pursuant to § [16.1-345.2](#). Monitoring compliance shall include (i) contacting the service providers to determine if the minor is complying with the mandatory outpatient treatment order and (ii) notifying the court of the minor's material noncompliance with the mandatory outpatient treatment order. Providers of services identified in the plan shall report any material noncompliance to the community services board.

B. If the community services board determines that the minor materially failed to comply with the order, it shall file with the juvenile and domestic relations district court for the jurisdiction in which the minor resides a motion for review of the mandatory outpatient treatment order as provided in § [16.1-345.4](#). The community services board shall file the motion for review of the mandatory outpatient treatment order within three business days of making that determination, or within 24 hours if the minor is being detained under a temporary detention order, and shall recommend an appropriate disposition. Copies of the motion for review shall be sent to the minor, his parents, his attorney, and his guardian ad litem.

C. If the community services board determines that the minor is not materially complying with the mandatory outpatient treatment order or for any other reason, and that because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irreparable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control, it shall immediately request that the magistrate issue an emergency custody order pursuant to § [16.1-340](#) or a temporary detention order pursuant to § [16.1-340.1](#).

D. If the community services board determines at any time prior to the expiration of the mandatory outpatient treatment order that the minor has complied with the order and that continued mandatory outpatient treatment is no longer necessary, it shall file a motion to review the order with the juvenile and domestic relations district court for the jurisdiction in which the minor resides. The court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § [16.1-345.4](#).

2009, cc. [455](#), [555](#); 2010, cc. [778](#), [825](#).

§16.1-345.4. Court review of mandatory outpatient treatment plan.

A. The juvenile and domestic relations district court judge shall hold a hearing within 15 days after receiving the motion for review of the mandatory outpatient treatment plan; however, if the fifteenth day is a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the hearing shall be held on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. If the minor is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § [16.1-341](#). The clerk shall provide notice of the hearing to the minor, his parents, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order, and the original petitioner for the minor's involuntary treatment. If the minor is not represented by counsel, the judge shall appoint an attorney to represent the minor in this hearing and any subsequent hearings under § [16.1-345.5](#), giving consideration to appointing the attorney who represented the minor at the proceeding that resulted in the issuance of the mandatory outpatient treatment order. The judge shall also appoint a guardian ad litem for the minor. The community services board shall offer to arrange the minor's transportation to the hearing if the minor is not detained and has no other source of transportation.

B. If requested by the minor's parents, the community services board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan, or the original petitioner for the minor's involuntary treatment, the juvenile and domestic relations district court judge may order an evaluation and appoint a qualified evaluator in accordance with § [16.1-342](#) who shall personally examine the minor and certify to the court whether or not he has probable cause to believe that the minor meets the criteria for involuntary inpatient treatment or mandatory outpatient treatment as

specified in § [16.1-345](#) and subsection A of § [16.1-345.2](#). The evaluator's report may be admitted into evidence without the appearance of the evaluator at the hearing if not objected to by the minor or his attorney. If the minor is not detained in an inpatient facility, the community services board shall arrange for the minor to be examined at a convenient location and time. The community services board shall offer to arrange for the minor's transportation to the examination, if the minor has no other source of transportation. If the minor refuses or fails to appear, the community services board shall notify the court, and the court shall issue a mandatory examination order and a civil show cause summons. The return date for the civil show cause summons shall be set on a date prior to the review hearing scheduled pursuant to subsection A, and the examination of the minor shall be conducted immediately after the hearing thereon, but in no event shall the period for the examination exceed eight hours.

C. If the minor fails to appear for the hearing, the juvenile and domestic relations district court judge shall, after consideration of any evidence from the minor, from his parents, from the community services board, or from any treatment provider identified in the mandatory outpatient treatment plan regarding why the minor failed to appear at the hearing, either (i) reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order pursuant to § [16.1-340](#), or (iii) issue a temporary detention order pursuant to § [16.1-340.1](#).

D. After hearing the evidence regarding the minor's material noncompliance with the mandatory outpatient treatment order and the minor's current condition, and any other relevant information referenced in § [16.1-345](#) and subsection A of § [16.1-345.2](#), the juvenile and domestic relations district court judge may make one of the following dispositions:

1. Upon finding by clear and convincing evidence that the minor meets the criteria for involuntary admission and treatment specified in § [16.1-345](#), the judge shall order the minor's involuntary admission to a facility designated by the community services board for a period of treatment not to exceed 30 days;
2. Upon finding that the minor continues to meet the criteria for mandatory outpatient treatment specified in subsection A of § [16.1-345.2](#), and that a continued period of mandatory outpatient treatment appears warranted, the judge may renew the order for mandatory outpatient treatment, making any necessary modifications that are acceptable to the community services board or treatment provider

responsible for the minor's treatment. In determining the appropriateness of outpatient treatment, the court may consider the minor's material noncompliance with the previous mandatory treatment order; or

3. Upon finding that neither of the above dispositions is appropriate, the judge may rescind the order for mandatory outpatient treatment.

Upon entry of an order for involuntary inpatient admission, transportation shall be provided in accordance with § [16.1-345](#).

E. For the purposes of this section, "juvenile and domestic relations district court judge" shall not include a special justice as authorized by § [37.2-803](#).

2009, cc. [455](#), [555](#); 2010, cc. [778](#), [825](#); 2014, cc. [691](#), [761](#).

§16.1-345.5. Continuation of mandatory outpatient treatment order.

A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order, the community services board that is required to monitor the minor's compliance with the order may file with the juvenile and domestic relations district court for the jurisdiction in which the minor resides a motion for review to continue the order for a period not to exceed 90 days.

B. The court shall grant the motion for review and enter an appropriate order without further hearing if it is joined by (i) the minor's parents and the minor if he is 14 years of age or older, or (ii) the minor's parents if the minor is younger than 14 years of age. If the minor's parents and the minor, if necessary, do not join the motion, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § [16.1-345.4](#).

C. Upon receipt of the motion for review, the court shall appoint a qualified evaluator who shall personally examine the minor pursuant to § [16.1-342](#). The community services board required to monitor the minor's compliance with the mandatory outpatient treatment order shall provide a preadmission screening report as required in § [16.1-340.4](#).

D. After observing the minor, reviewing the preadmission screening report, and considering the appointed qualified evaluator's report and any other relevant evidence referenced in § [16.1-345](#) and subsection A of § [16.1-345.2](#), the court may make one of the dispositions specified in subsection D of § [16.1-345.4](#). If the court finds that a continued period of mandatory outpatient treatment is warranted, it may continue the order for a period not to exceed 90 days. Any order of mandatory outpatient

treatment that is in effect at the time a motion for review for the continuation of the order is filed shall remain in effect until the court enters a subsequent order in the case.

E. For the purposes of this section, the "court" shall not include a special justice as authorized in § [37.2-803](#).

2009, cc. [455](#), [555](#); 2010, cc. [778](#), [825](#).

§16.1-345.6. Appeal of final order.

A. The minor shall have the right to appeal any final order committing the minor or ordering the minor to mandatory outpatient treatment to the circuit court in the jurisdiction where the minor was committed, hospitalized pursuant to the commitment order, or ordered to mandatory outpatient treatment. Venue shall be in the circuit court having jurisdiction within the territory of the court that issued the final order. The circuit court may transfer the case upon a finding that another forum is more convenient. The appeal shall be heard de novo by the circuit court in accordance with the provisions set forth in this article. Any order of the circuit court shall not extend the period of commitment or mandatory outpatient treatment set forth in the order appealed from.

B. Notice of an appeal shall be filed within 10 days from the date of the order. The appeal shall be given priority over all other pending matters before the circuit court and heard as soon as possible, notwithstanding § [19.2-241](#) regarding the time within which the court shall set criminal cases for trial. A petition for or the pendency of an appeal shall not suspend any order unless so ordered by the court, however a minor may be released after a petition for or during the pendency of an appeal pursuant to subsection B of § [16.1-346](#). The clerk of the court from which the appeal is taken shall immediately transmit the record to the clerk of the appellate court. The clerk of the circuit court shall provide written notification of the appeal to the person who initiated the petition under this article in accordance with procedures set forth in § [16.1-112](#).

C. The juvenile and domestic relations district court shall appoint an attorney and a guardian ad litem to represent any minor desiring to appeal who is not already represented.

2010, cc. [778](#), [825](#).

§16.1-346. Treatment plans; periodic review of status.

A. Within 10 days of commitment ordered under § [16.1-345](#), the director of the facility to which the minor was committed shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and, if applicable, has been communicated to the parent. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured. A copy of the plan shall be provided to the minor, his parents, and, upon request, to his attorney and his guardian ad litem.

B. A minor committed to inpatient treatment shall be discharged from the facility when he no longer meets the commitment criteria as determined by appropriate hospital medical staff review.

1990, c. 975; 1991, c. 159; 2010, cc. [778](#), [825](#).

§16.1-346.1. Discharge plan.

Prior to discharge of any minor admitted to inpatient treatment, including a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, a discharge plan shall be formulated, provided and explained to the minor, and copies thereof shall be sent (i) to the minor's parents or (ii) if the minor is in the custody of the local department of social services, to the department's director or the director's designee or (iii) to the minor's parents and (a) if the juvenile is to be housed in a detention home upon discharge, to the court in which the petition has been filed and the facility superintendent, or (b) if the minor is in custody of the local department of social services, to the department. A copy of the plan shall also be provided, upon request, to the minor's attorney and guardian ad litem. If the minor was admitted to a state facility, the discharge plan shall be contained in a uniform discharge document developed by the Department of Behavioral Health and Developmental Services. The plan shall, at a minimum, (i) specify the services required by the released minor in the community to meet his needs for treatment, housing, nutrition, physical care, and safety; (ii) specify any income subsidies for which the minor is eligible; (iii) identify all local and state agencies which will be involved in providing treatment and support to the minor; and (iv) specify services which would be appropriate for the minor's treatment and support in the community

but which are currently unavailable. A minor in detention or shelter care prior to admission to inpatient treatment shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice within 24 hours by the sheriff serving the jurisdiction where the minor was detained upon release from the treating facility, unless the juvenile and domestic relations district court having jurisdiction over the case has provided written authorization for release of the minor, prior to the scheduled date of release.

1991, c. 159; 1995, c. [304](#); 2005, cc. [346](#), [716](#); 2010, cc. [778](#), [825](#).

§16.1-347. Fees and expenses for qualified evaluators.

Every qualified evaluator appointed by the court to conduct an evaluation pursuant to this article who is not regularly employed by the Commonwealth shall be compensated for fees and expenses as provided in § [37.2-804](#).

1990, c. 975; 2010, cc. [778](#), [825](#).

§16.1-348. Availability of judge.

The chief judge of every juvenile and domestic relations district court shall establish and require that a judge be available seven days a week, 24 hours a day, for the purpose of performing the duties established by this article. Such judge shall have the authority to perform the duties established by this article.

1990, c. 975; 2005, c. [716](#); 2007, cc. [500](#), [897](#).

§16.1-349. Definitions.

"Attending physician" means the physician who has primary responsibility for the treatment and care of a qualified parent.

"Designation" means a writing which (i) is voluntarily executed in conformance with the requirements of § [16.1-351](#) and signed by a parent and (ii) names a person to act as standby guardian.

"Determination of debilitation" means a written determination made by an attending physician that a qualified parent is chronically and substantially unable to care for a minor child as a result of a debilitating illness, disease or injury. Such a determination shall include the physician's medical opinion to a reasonable degree of medical certainty, regarding the nature, cause, extent and probable duration of the parent's debilitating condition.

"Determination of incompetence" means a written determination made by the attending physician that to a reasonable degree of medical certainty a qualified parent is chronically and substantially unable to understand the nature and consequences of decisions concerning the care of a minor child as a result of a mental or organic impairment and is consequently unable to care for the child. Such a determination shall include the physician's medical opinion, to a reasonable degree of medical certainty, regarding the nature, cause, extent and probable duration of the parent's incompetence.

"Parent" means a genetic or adoptive parent or parent determined in accordance with the standards set forth in § [20-49.1](#) or § [20-158](#), and includes a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

"Qualified parent" means a parent who has been diagnosed, as evidenced in writing, by a licensed physician to be afflicted with a progressive or chronic condition caused by injury, disease or illness from which, to a reasonable degree of medical probability, the patient cannot recover.

"Standby guardian" means a person who, in accordance with this article, is designated in writing or approved by the court to temporarily assume the duties of guardian of the person or guardian of the property, or both, of a minor child on behalf of or in conjunction with a qualified parent upon the occurrence of a triggering event. The term shall be so construed as to enable the parent to plan for the future care of a child, without terminating parental or legal rights, and to give the standby guardian the authority to act in a manner consistent with the known wishes of a qualified parent regarding the care, custody and support of the minor child.

"Triggering event" means the event upon the occurrence of which the standby guardian may be authorized to act. The triggering event shall be specified in the court order or written designation and shall be the earlier of a determination of incompetence or the death of the qualified parent. However, in the case of a standby guardian judicially approved pursuant to § [16.1-350](#), the triggering event may also be specified as the qualified parent's written consent to the commencement of the standby guardian's authority. In the case of a standby guardian designated pursuant to § [16.1-351](#), the triggering event may also be specified as (i) a determination of debilitation of the qualified parent and (ii) that parent's written consent to the commencement of the designated standby guardian's authority.

1998, c. [829](#).

§16.1-350. Petition for court approval of standby guardian.

A. Upon petition of any person, the juvenile court of the jurisdiction in which a child resides may approve a person as standby guardian for a child of a qualified parent upon the occurrence of a specified triggering event. If requested in the petition, the court may also approve an alternate standby guardian identified by the petitioner, to act in the event that at any time after approval pursuant to this section the standby guardian is unable or unwilling to assume the responsibilities of the standby guardianship.

B. The petition shall state:

1. The name and address of the petitioner and his relationship to the child and the name and address of the child's qualified parent, and the name and address of any other parent of the child whose identity and whereabouts are known to the petitioner or can reasonably be ascertained;
2. The name, address and birthdate of the child;
3. The nature of the proposed triggering event, including when a qualified parent's consent would be effective in those cases where such consent is chosen as the triggering event;
4. Whether a determination of incompetence or debilitation has been made and, if so, when and by whom;
5. Whether there is a significant risk that the qualified parent will imminently become physically or mentally incapable of caring for the child or die as the result of a progressive chronic condition or illness; however, a petitioner shall not be required to submit medical documentation of a parent's medical status with the petition;
6. The name and address of the person proposed as standby guardian and any alternate and whether the petition requests that such person be given authority as a guardian of the person or guardian of the property of the minor, or both;
7. A statement of any known reasons as to why the child's other parent is not assuming or should not assume the responsibilities of a standby guardian;
8. Whether there is any prior judicial history regarding custody of the child or any pending litigation regarding custody of the child; and
9. The name and address of the attending physician.

C. Upon the filing of a petition, notice of the filing shall promptly be given to each parent of the child whose identity and whereabouts are known to the petitioner. The court shall direct the issuance of summonses to the child, if the child is twelve or more years of age and the proposed standby guardian and alternate, if any, and such other persons as appear to the court to be proper or necessary parties to the proceedings including the child's parents, guardian, legal custodian or other person standing in loco parentis, if the identity and whereabouts of such persons are known. Service of the summons shall be made pursuant to § [16.1-264](#).

An order approving the standby guardian shall not be entered without a hearing if there is another known parent, stepparents, adult siblings, or other adult related to the child by blood, marriage, or adoption who requests a hearing within ten days of the date that notice of the filing was sent or if there is other litigation pending regarding custody of the child.

Prior to any hearing on the petition, the court may appoint a discreet and competent attorney at law as guardian ad litem to represent the child pursuant to § [16.1-266.1](#). In the case of a petition filed by anyone other than a parent of the child, the court shall appoint a guardian ad litem. The qualified parent shall not be required to appear in court if the parent is medically unable to appear, except upon motion for good cause shown.

1998, c. [829](#).

§16.1-351. Court order approving standby guardianship; authority; when effective.

Upon consideration of the factors set out in § [20-124.3](#) and finding that (i) the child's parent is a qualified parent and (ii) appointment of a standby guardian is in the best interest of the child, the court shall appoint a proper and suitable person as standby guardian and, if requested, a proper and suitable person as alternate standby guardian. However, when a petition is filed by a person other than a parent having custody of the child, the standby guardian shall be appointed only with the consent of the qualified parent unless the court finds that such consent cannot be given for medical reasons.

The order shall specify the triggering event and shall provide that the authority of the standby guardian is effective (i) upon receipt by the standby guardian of a determination of incompetence or a certificate of death or the earlier of either or (ii) if so requested in the petition, upon receipt by the standby guardian of a written consent

of the qualified parent and filing of the consent with the court. The written consent shall be executed after the entry of the court order and signed by the qualified parent, or by another in his presence and on his behalf.

As soon as practicable after entry of the order, a copy shall be served on the standby guardian.

A standby guardian shall have the powers and duties of a guardian of the person and a guardian of the property of a minor, unless otherwise specified in the order.

The standby guardian shall file with the court, as soon as practicable but in no event later than thirty days following a parent's death, determination of incompetence or consent, a copy of the certificate of death, determination of incompetence or consent of the qualified parent upon which his authority is based. Failure to file within the time specified shall be grounds for the court to rescind the authority of the standby guardian sua sponte or upon petition of any person but all acts undertaken by the standby guardian on behalf of and in the interests of the child shall be valid and enforceable.

1998, c. [829](#).

§16.1-352. Written designation of a standby guardian by a parent; commencement of authority; court approval required.

A. A parent may execute a written designation of a standby guardian at any time. The written designation shall state:

1. The name, address and birthdate of the child affected;
2. The triggering event; and
3. The name and address of the person designated as standby guardian or alternate.

The written designation shall be signed by the parent. Another adult may sign the written designation on behalf of the parent if the parent is physically unable to do so, provided the designation is signed at the express request of the parent and in the presence of the parent. The designated standby guardian or alternate may not sign on behalf of the parent. The signed designation shall be delivered to the standby guardian and any alternate named as soon as practicable.

B. Following such delivery of the designation, the authority of a standby guardian to act for a qualified parent shall commence upon the occurrence of the specified triggering event and receipt by him of (i) a determination of incompetence, (ii) a

certificate of death of the parent, or (iii) a determination of debilitation and the qualified parent's written consent to such commencement, signed by the parent or another on his behalf and at his direction as provided in subsection A for the designation.

C. A standby guardian under a designation shall have the authority of a guardian of the person and a guardian of the property of the child, unless otherwise specified in the designation.

D. A designated standby guardian or alternate shall file a petition for approval as standby guardian. The petition shall be filed as soon as practicable after the occurrence of the triggering event but in no event later than thirty days after the date of the commencement of his authority. The authority of the standby guardian shall cease upon his failure to so file, but shall recommence upon such filing. The petition shall be accompanied by a copy of the designation and any determinations of incapacity or debilitation or a certificate of death.

The provisions of § [16.1-350](#) C shall apply to a petition filed pursuant to this section. The court shall enter an order approving the designated guardian as standby guardian upon finding that:

1. The person was duly designated as standby guardian pursuant to this section and the designation has not been revoked;
2. A determination of incompetence was made; a determination of debilitation was made and the parent consented to commencement of the standby guardians authority; or the parent has died as evidenced by a death certificate;
3. The best interests of the child will be served by approval of the standby guardian; and
4. If the petition is by an alternate, that the designated standby guardian is unwilling or unable to serve.

1998, c. [829](#).

§16.1-353. Further proceedings to determine permanent guardianship, custody.

A. If the triggering event was death of the qualified parent, within ninety days following the occurrence of the triggering event or, if later, commencement of the standby guardian's authority, the standby guardian shall (i) petition for appointment of a guardian for the child as otherwise provided by law or (ii) initiate other

proceedings to determine custody of the child pursuant to Chapter 6.1 (§ [20-124.1](#) et seq.) of Title 20, or both.

B. In all other cases a standby guardian shall promptly after occurrence of the triggering event initiate such proceedings to determine permanent custody, absent objection by the qualified parent.

The petition shall be accompanied by:

1. The court order approving or written designation of a standby guardian; and
2. The attending physician's written determination of incompetence or debilitation or a verification of death.

1998, c. [829](#).

§16.1-354. Revocation, refusal, termination of standby guardianship.

A. The authority of a standby guardian approved by the court may be revoked by the qualified parent by his filing a notice of revocation with the court. The notice of revocation shall identify the standby guardian or alternate standby guardian to which the revocation will apply. A copy of the revocation shall also be delivered to the standby guardian whose authority is revoked and any alternate standby guardian who may then be authorized to act.

At any time following his approval by the court, a standby guardian approved by the court may decline to serve by filing a written statement of refusal with the court and having the statement personally served on the qualified parent and any alternate standby guardian who may then be authorized to act.

B. When a written designation has been executed, but is not yet effective because the triggering event has not yet occurred, the parent may revoke or the prospective standby guardian may refuse the designation by notifying the other party in writing.

A written designation may also be revoked by the execution of a subsequent inconsistent designation.

C. When a standby guardian's authority is effective upon debilitation or incompetence of the qualified parent, the standby guardian's authority to act on behalf of the parent continues even though the parent is restored to health unless the qualified parent notifies the guardian and, if appropriate, the court, in writing, that the standby guardian's authority is revoked upon such restoration or otherwise.

If at any time the court finds that the parent no longer meets the definition of "qualified parent," the court shall rescind its approval of the standby guardian.

1998, c. [829](#).

§16.1-355. Review of standby guardianship.

A child's parent, stepparent, adult sibling or any adult related to the child by blood, marriage or adoption may petition the court which approved the standby guardian at any time following such approval and prior to any termination of the standby guardianship for review of whether continuation of the standby guardianship is in the best interests of the child. Notice of the filing of a petition shall promptly be given to the standby guardian, the child, if the child is twelve or more years of age, and each parent of the child whose identity and whereabouts are known or could reasonably be ascertained.

1998, c. [829](#).

§16.1-356. Raising question of competency to stand trial; evaluation and determination of competency.

A. If, at any time after the attorney for the juvenile has been retained or appointed pursuant to a delinquency proceeding and before the end of trial, the court finds, sua sponte or upon hearing evidence or representations of counsel for the juvenile or the attorney for the Commonwealth, that there is probable cause to believe that the juvenile lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist, clinical psychologist, licensed professional counselor, licensed clinical social worker, or licensed marriage and family therapist, who is qualified by training and experience in the forensic evaluation of juveniles.

The Commissioner of Behavioral Health and Developmental Services shall approve the training and qualifications for individuals authorized to conduct juvenile competency evaluations and provide restoration services to juveniles pursuant to this article. The Commissioner shall also provide all juvenile courts with a list of guidelines for the court to use in the determination of qualifying individuals as experts in matters relating to juvenile competency and restoration.

B. The evaluation shall be performed on an outpatient basis at a community services board or behavioral health authority, juvenile detention home or juvenile justice

facility unless the court specifically finds that (i) the results of the outpatient competency evaluation indicate that hospitalization of the juvenile for evaluation of competency is necessary or (ii) the juvenile is currently hospitalized in a psychiatric hospital. If one of these findings is made, the court, under authority of this subsection, may order the juvenile sent to a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for the evaluation of juveniles against whom a delinquency petition has been filed.

C. The court shall require the attorney for the Commonwealth to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) a copy of the warrant or petition, (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the juvenile, and the judge ordering the evaluation; and (iii) information about the alleged offense. The court shall require the attorney for the juvenile to provide to the evaluator only the psychiatric records and other information that is deemed relevant to the evaluation of competency. The moving party shall provide the evaluator a summary of the reasons for the evaluation request. All information required by this subsection shall be provided to the evaluator within 96 hours of the issuance of the court order requiring the evaluation and when applicable, shall be submitted prior to admission to the facility providing the inpatient evaluation. If the 96-hour period expires on a Saturday, Sunday or other legal holiday, the 96 hours shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

D. If the juvenile is hospitalized under the provisions of subsection B, the juvenile shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the juvenile's competency, but not to exceed 10 days from the date of admission to the hospital. All evaluations shall be completed and the report filed with the court within 14 days of receipt by the evaluator of all information required under subsection C.

E. Upon completion of the evaluation, the evaluator shall promptly and in no event exceeding 14 days after receipt of all required information submit the report in writing to the court and the attorneys of record concerning (i) the juvenile's capacity to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for services in the event he is found incompetent, including a description of the suggested necessary services and least restrictive setting to assist the juvenile in

restoration to competency. No statements of the juvenile relating to the alleged offense shall be included in the report.

F. After receiving the report described in subsection E, the court shall promptly determine whether the juvenile is competent to stand trial for adjudication or disposition. A hearing on the juvenile's competency is not required unless one is requested by the attorney for the Commonwealth or the attorney for the juvenile or when required under § [16.1-357](#) B. If a hearing is held, the party alleging that the juvenile is incompetent shall bear the burden of proving by a preponderance of the evidence the juvenile's incompetency. The juvenile shall have the right to notice of the hearing and the right to personally participate in and introduce evidence at the hearing.

If the juvenile is otherwise able to understand the charges against him and assist in his defense, a finding of incompetency shall not be made based solely on any or all of the following: (i) the juvenile's age or developmental factors, (ii) the juvenile's claim to be unable to remember the time period surrounding the alleged offense, or (iii) the fact that the juvenile is under the influence of medication.

1999, cc. [958](#), [997](#); 2000, c. [337](#); 2005, c. [110](#); 2009, cc. [813](#), [840](#).

§16.1-357. Disposition when juvenile found incompetent.

A. Upon finding pursuant to subsection F of § [16.1-356](#) that the juvenile is incompetent, the court shall order that the juvenile receive services to restore his competency in either a nonsecure community setting or a secure facility as defined in § [16.1-228](#). A copy of the order shall be forwarded to the Commissioner of Behavioral Health and Developmental Services, who shall arrange for the provision of restoration services in a manner consistent with the order. Any report submitted pursuant to subsection E of § [16.1-356](#) shall be made available to the agent providing restoration.

B. If the court finds the juvenile incompetent but restorable to competency in the foreseeable future, it shall order restoration services for up to three months. At the end of three months from the date restoration is ordered under subsection A of this section, if the juvenile remains incompetent in the opinion of the agent providing restoration, the agent shall so notify the court and make recommendations concerning disposition of the juvenile. The court shall hold a hearing according to the procedures specified in subsection F of § [16.1-356](#) and, if it finds the juvenile unrestorably incompetent, shall order one of the dispositions pursuant to § [16.1-358](#). If the court finds the juvenile incompetent but restorable to competency, it may

order continued restoration services for additional three-month periods, provided a hearing pursuant to subsection F of § [16.1-356](#) is held at the completion of each such period and the juvenile continues to be incompetent but restorable to competency in the foreseeable future.

C. If, at any time after the juvenile is ordered to undergo services under subsection A of this section, the agent providing restoration believes the juvenile's competency is restored, the agent shall immediately send a report to the court as prescribed in subsection E of § [16.1-356](#). The court shall make a ruling on the juvenile's competency according to the procedures specified in subsection F of § [16.1-356](#).

1999, cc. [958](#), [997](#); 2009, cc. [813](#), [840](#).

§16.1-358. Disposition of the unrestorably incompetent juvenile.

If, at any time after the juvenile is ordered to undergo services pursuant to subsection A of § [16.1-357](#), the agent providing restoration concludes that the juvenile is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report shall also indicate whether, in the agent's opinion, the juvenile should be (i) committed pursuant to Article 16 (§ [16.1-335](#) et seq.) of this chapter or, if the juvenile has reached the age of eighteen years at the time of the competency determination, pursuant to Article 5 (§ [37.2-814](#) et seq.) of Chapter 8 of Title 37.2, (ii) certified pursuant to § [37.2-806](#), (iii) provided other services by the court, or (iv) released. Upon receipt of the report, the court shall make a competency determination according to the procedures specified in subsection F of § [16.1-356](#). If the court finds that the juvenile is incompetent and is likely to remain so for the foreseeable future, it shall order that the juvenile (i) be committed pursuant to Article 16 (§ [16.1-335](#) et seq.) of this chapter or, if the juvenile has reached the age of eighteen years at the time of the competency determination, pursuant to Article 5 (§ [37.2-814](#) et seq.) of Chapter 8 of Title 37.2, (ii) be certified pursuant to § [37.2-806](#), (iii) have a child in need of services petition filed on his behalf pursuant to § [16.1-260](#) D, or (iv) be released. If the court finds the juvenile incompetent but restorable to competency in the foreseeable future, it may order restoration services continued until three months have elapsed from the date of the provision of restoration ordered under subsection A of § [16.1-357](#).

If not dismissed without prejudice at an earlier time, charges against an unrestorably incompetent juvenile shall be dismissed in compliance with the time frames as follows: in the case of a charge which would be a misdemeanor, one year from the date

of the juvenile's arrest for such charge; and in the case of a charge which would be a felony, three years from the date of the juvenile's arrest for such charges.

1999, cc. [958](#), [997](#); 2000, c. [216](#).

§16.1-359. Litigating certain issues when the juvenile is incompetent.

A finding of incompetency does not preclude the adjudication, at any time before trial, of a motion objecting to the sufficiency of the petition, nor does it preclude the adjudication of similar legal objections which, in the court's opinion, may be undertaken without the personal participation of the juvenile.

1999, cc. [958](#), [997](#).

§16.1-360. Disclosure by juvenile during evaluation or restoration; use at guilt phase of trial adjudication or disposition hearing.

No statement or disclosure by the juvenile concerning the alleged offense made during a competency evaluation ordered pursuant to § [16.1-356](#), or services ordered pursuant to § [16.1-357](#) may be used against the juvenile at the adjudication or disposition hearings as evidence or as a basis for such evidence.

1999, cc. [958](#), [997](#).

§16.1-361. Compensation of experts.

Each psychiatrist, clinical psychologist, licensed clinical social worker, licensed professional counselor, licensed marriage and family therapist, or other expert appointed by the court to render professional service pursuant to § [16.1-356](#), shall receive a reasonable fee for such service. With the exception of services provided by state hospitals or training centers, the fee shall be determined in each instance by the court that appointed the expert, in accordance with guidelines established by the Supreme Court after consultation with the Department of Behavioral Health and Developmental Services. If any such expert is required to appear as a witness in any hearing held pursuant to § [16.1-356](#), he shall receive mileage and a fee of \$100 for each day during which he is required to serve. An itemized account of expenses, duly sworn to, must be presented to the court, and when allowed shall be certified to the Supreme Court for payment out of the state treasury, and be charged against the appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order of the court, duly certified to the Supreme Court for payment out of the appropriation to pay criminal charges.

1999, cc. [958](#), [997](#); 2000, c. [337](#); 2005, c. [110](#); 2009, cc. [813](#), [840](#); 2012, cc. [476](#), [507](#).

Juvenile Corrections Private Management Act

§66-25.3. Definitions.

As used in this chapter unless the context requires otherwise or it is otherwise provided:

"Correctional services" means the following functions, services and activities when provided within a juvenile correctional facility or otherwise:

1. Operation of facilities, including management, custody of juveniles and provision of security;
2. Food services, commissary, medical services, transportation, sanitation or other ancillary services;
3. Development and implementation assistance for classification, management information systems or other information systems or services;
4. Education, training and employment programs;
5. Recreational, religious and other activities; and
6. Counseling, special treatment programs, or other programs for special needs.

"Juvenile correction facility" or "center" or "facility" means any institution operated by or under the authority of the Department and shall include, whether obtained by purchase, lease, lease/purchase, construction, reconstruction, restoration, improvement, alteration, repair or other means, any physical betterment or improvement related to the housing of juveniles or any preliminary plans, studies or surveys relative thereto; land or rights to land; and any furnishings, machines, vehicles, apparatus, or equipment for use in connection with any juvenile correctional facility.

"Contractor" means any entity entering into or offering or proposing to enter into a contractual agreement to provide any juvenile correctional facility for or correctional services to juveniles under the custody of the Commonwealth.

1996, cc. [795](#), [942](#).

§66-25.4. State juvenile correctional facilities; private contracts.

The Director, subject to any applicable regulations which may be promulgated by the Board pursuant to § [66-10](#), is hereby authorized to enter into contracts for the financing, site selection, design, acquisition, construction, maintenance, leasing, leasing/purchasing, management or operation of juvenile correctional facilities or any combination of those services subject to the requirements and limitations set out below.

1. Contracts entered into under the terms of this chapter shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which meets all the requirements in the request for proposals. However, no contract for juvenile correctional facilities or correctional services may be entered into unless the private contractor demonstrates to the satisfaction of the Director that it has:

- a. The qualifications, experience and management personnel necessary to carry out the terms of this contract;
- b. The financial resources to provide indemnification for liability arising from the management of juvenile correctional projects;
- c. Evidence of past performance of similar contracts; and
- d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and local laws; court orders; and juvenile correctional standards.

2. Contracts awarded under the provisions of this chapter, including contracts for the provision of juvenile correctional services, the construction of juvenile correctional facilities, or for the lease, lease/purchase or use of public or private lands or buildings for use in the operation of facilities, may be entered into for a period of up to 30 years, subject to the requirements for annual appropriation of funds by the Commonwealth.

3. Contracts awarded under the provisions of this chapter shall, at a minimum, comply with the following:

- a. Provide for appropriate security to protect the public, employees and committed juveniles;
- b. Provide juveniles with work or training opportunities while incarcerated; however, the contractor shall not benefit financially from the labor of committed juveniles;

- c. Impose discipline on committed juveniles only in accordance with applicable regulations; and
 - d. Provide proper food, clothing, housing and medical care for juveniles.
4. No contract for juvenile correctional facilities or juvenile correctional services shall be entered into unless the following requirements are met:
- a. The contractor provides audited financial statements for the previous five years or for each of the years the contractor has been in operation, if fewer than five years, and provides other financial information as requested; and
 - b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims. The indemnification plan shall be adequate to protect the Commonwealth and public officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a contractor or the Commonwealth of the benefits of any law limiting exposure to liability or setting a limit on damages.
5. No contract for juvenile correctional facilities or correctional services shall be executed by the Director nor shall any funds be expended for the contract unless:
- a. The proposed contract complies with any applicable regulations which may be promulgated by the Board pursuant to § [66-10](#);
 - b. An appropriation for the facilities or the services to be provided under the contract has been expressly approved as is otherwise provided by law;
 - c. The juvenile correctional facilities or the correctional services proposed by the contract are of at least the same quality as those routinely provided by the Department to similar types of committed juveniles;
 - d. An evaluation of the proposed contract demonstrates a cost benefit to the Commonwealth when compared to alternative means of providing the facilities or the services through governmental agencies;
 - e. If a contract for acquiring facilities requires or otherwise contemplates that the Commonwealth, whether subject to appropriation or not, will make payments beyond the current biennium that are expected to pay debt service on any bonds or other obligations issued to finance such facilities, regardless of the issuer thereof, then (i) the Treasury Board shall approve the terms and structure of such bonds or other obligations and (ii) the appropriation for such facilities acknowledges that

payments for the acquisition of such facilities are expected to be made beyond the current biennium under a capital lease, lease/purchase, or similar arrangement. Any contract that is for two years or less, or is cancelable by the Commonwealth without cause after such a period, shall not be deemed a contract as described herein; and

f. Nothing herein shall be construed to constitute a waiver for the Department or contractor from complying with the provisions of subdivision 4 of § [66-3](#).

1996, cc. [795](#), [942](#); 2012, cc. [803](#), [835](#).

§66-25.5. Powers and duties not delegable to contractor.

No contract for juvenile correctional services shall authorize, allow, or imply a delegation of authority or responsibility of the Director to a contractor for any of the following:

1. Developing and implementing procedures for calculating release and parole eligibility dates for committed juveniles;
2. Approving juveniles for furlough and work release;
3. Approving the type of work juveniles may perform and the wages which may be given the juveniles engaging in such work;
4. Classifying a committed juvenile or placing a committed juvenile in less restrictive custody or more restrictive custody;
5. Transferring a committed juvenile; however, the contractor may make written recommendations regarding the transfer of a committed juvenile;
6. Formulating rules of behavior for committed juveniles, violations of which may subject committed juveniles to sanctions; however, the contractor may propose such rules to the Director for his review and adoption, rejection, or modification as otherwise provided by law or regulation; and
7. Disciplining committed juveniles in any manner which requires a discretionary application of rules of behavior for committed juveniles or a discretionary imposition of a sanction for violations of such rules.

1996, cc. [795](#), [942](#).

§66-25.6. Board shall promulgate regulations; local school board exemption.

A. The Board shall make, adopt and promulgate regulations governing the following aspects of private management and operation of juvenile correctional facilities:

1. Contingency plans for state operation of a contractor-operated facility in the event of a termination of the contract;
2. Use of physical force and mechanical restraint by the contractors' security personnel;
3. Methods of monitoring a contractor-operated facility by the Department or the Board;
4. Public access to a contractor-operated facility; and
5. Such other regulations as may be necessary to carry out the provisions of this chapter.

B. Nothing in this chapter shall be construed to require local school boards to provide educational services to juveniles while committed to a state juvenile correctional facility.

1996, cc. [795](#), [942](#).

§66-25.7. Fixed-price or not-to-exceed-price design-build-operate and related contracts authorized.

Notwithstanding any other provisions of law to the contrary, but in accordance with the procedures consistent with those described in the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) for procurement of nonprofessional services through competitive negotiation, the Director may enter into design-build-operate contracts for juvenile correctional facilities on a fixed-price or not-to-exceed-price basis, including related leases, lease/purchase contracts, agreements relating to the sale of securities to finance such facilities, and similar financing agreements and agreements for correctional services. For the purposes of this section, "design-build-operate contract" means a contract between the Commonwealth and another party in which the party contracting with the Commonwealth agrees to (i) design, build and operate the juvenile correctional facility or (ii) design and build the juvenile correctional facility where the facility is to be operated by a third party.

The Director shall maintain adequate records to allow post-project evaluation.

1996, cc. [795](#), [942](#).

Law-Enforcement Officers Procedural

Guarantee Act

§9.1-500. (Effective January 15, 2018) Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency" means the Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the Virginia Alcoholic Beverage Control Authority, the Department of Conservation and Recreation, or the Department of Motor Vehicles; or the political subdivision or the campus police department of any public institution of higher education of the Commonwealth employing the law-enforcement officer.

"Law-enforcement officer" means any person, other than a Chief of Police or the Superintendent of the Department of State Police, who, in his official capacity, is (i) authorized by law to make arrests and (ii) a nonprobationary officer of one of the following agencies:

- a. The Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the Virginia Alcoholic Beverage Control Authority, the Department of Motor Vehicles, or the Department of Conservation and Recreation;
- b. The police department, bureau or force of any political subdivision or the campus police department of any public institution of higher education of the Commonwealth where such department, bureau or force has 10 or more law-enforcement officers; or
- c. Any conservation police officer as defined in § [9.1-101](#).

For the purposes of this chapter, "law-enforcement officer" shall not include the sheriff's department of any city or county.

1978, c. 19, § 2.1-116.1; 1979, c. 592; 1983, c. 357; 1995, c. [730](#); 2001, c. [844](#); 2007, cc. [87](#), [364](#); 2015, cc. [38](#), [730](#).

§9.1-500. (Effective until January 15, 2018) Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency" means the Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department

of Game and Inland Fisheries, the Department of Alcoholic Beverage Control, the Department of Conservation and Recreation, or the Department of Motor Vehicles; or the political subdivision or the campus police department of any public institution of higher education of the Commonwealth employing the law-enforcement officer.

"Law-enforcement officer" means any person, other than a Chief of Police or the Superintendent of the Department of State Police, who, in his official capacity, is (i) authorized by law to make arrests and (ii) a nonprobationary officer of one of the following agencies:

a. The Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the Department of Alcoholic Beverage Control, the Department of Motor Vehicles, or the Department of Conservation and Recreation;

b. The police department, bureau or force of any political subdivision or the campus police department of any public institution of higher education of the Commonwealth where such department, bureau or force has 10 or more law-enforcement officers; or

c. Any conservation police officer as defined in § [9.1-101](#).

For the purposes of this chapter, "law-enforcement officer" shall not include the sheriff's department of any city or county.

1978, c. 19, § 2.1-116.1; 1979, c. 592; 1983, c. 357; 1995, c. [730](#); 2001, c. [844](#); 2007, cc. [87](#), [364](#).

§9.1-501. Conduct of investigation.

The provisions of this section shall apply whenever an investigation by an agency focuses on matters which could lead to the dismissal, demotion, suspension or transfer for punitive reasons of a law-enforcement officer:

1. Any questioning of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the command of the investigating officer or at the office of the local precinct or police unit of the officer being investigated, unless matters being investigated are of such a nature that immediate action is required.

2. Prior to the officer being questioned, he shall be informed of (i) the name and rank of the investigating officer and of any individual to be present during the questioning and (ii) the nature of the investigation.

3. When a blood or urine specimen is taken from a law-enforcement officer for the purpose of determining whether the officer has used drugs or alcohol, the specimen shall be divided and placed into two separate containers. One specimen shall be tested while the other is held in a proper manner to preserve the specimen by the facility collecting or testing the specimen. Should the first specimen test positive, the law-enforcement officer shall have the right to require the second specimen be sent to a laboratory of his choice for independent testing in accordance generally with the procedures set forth in §§ [18.2-268.1](#) through [18.2-268.12](#). The officer shall notify the chief of his agency in writing of his request within 10 days of being notified of positive specimen results. The laboratory chosen by the officer shall be accredited or certified by one or more of the following bodies: the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), the College of American Pathologists (CAP), the United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA), or the American Board of Forensic Toxicology (ABFT).

1978, c. 19, § 2.1-116.2; 1992, c. 221; 1993, c. 229; 2001, c. [844](#); 2005, cc. [868](#), [881](#).

§9.1-502. Notice of charges; response; election to proceed under grievance procedure of local governing body.

A. Before any dismissal, demotion, suspension without pay or transfer for punitive reasons may be imposed, the following rights shall be afforded:

1. The law-enforcement officer shall be notified in writing of all charges, the basis therefor, and the action which may be taken;

2. The law-enforcement officer shall be given an opportunity, within a reasonable time limit after the date of the written notice provided for above, to respond orally and in writing to the charges. The time limit shall be determined by the agency, but in no event shall it be less than five calendar days unless agreed to by the law-enforcement officer;

3. In making his response, the law-enforcement officer may be assisted by counsel at his own expense; and

4. The law-enforcement officer shall be given written notification of his right to initiate a grievance under the grievance procedure established by the local governing body pursuant to §§ [15.2-1506](#) and [15.2-1507](#). A copy of the local governing body's grievance procedure shall be provided to the law-enforcement officer upon his request.

B. A law-enforcement officer may proceed under either the local governing body's grievance procedure or the law-enforcement officer's procedural guarantees, but not both.

1978, c. 19, § 2.1-116.4; 1987, c. 461; 2001, c. [844](#).

§9.1-503. Personal assets of officers.

No law-enforcement officer shall be required or requested to disclose any item of his property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of his family or household, unless (i) such information is necessary in investigating a possible conflict of interest with respect to the performance of his official duties(ii) such disclosure is required by law, or (iii) such information is related to an investigation. Nothing in this section shall preclude an agency from requiring the law-enforcement officer to disclose any place of off-duty employment and where he may be contacted.

1978, c. 19, § 2.1-116.3; 2001, c. [844](#).

§9.1-504. Hearing; hearing panel recommendations.

A. Whenever a law-enforcement officer is dismissed, demoted, suspended or transferred for punitive reasons, he may, within a reasonable amount of time following such action, as set by the agency, request a hearing. If such request is timely made, a hearing shall be held within a reasonable amount of time set by the agency. However, the hearing shall not be set later than fourteen calendar days following the date of request unless a later date is agreed to by the law-enforcement officer. At the hearing, the law-enforcement officer and his agency shall be afforded the opportunity to present evidence, examine and cross-examine witnesses. The law-enforcement officer shall also be given the opportunity to be represented by counsel at the hearing unless the officer and agency are afforded, by regulation, the right to counsel in a subsequent de novo hearing.

B. The hearing shall be conducted by a panel consisting of one member from within the agency selected by the grievant, one member from within the agency of equal

rank of the grievant but no more than two ranks above appointed by the agency head, and a third member from within the agency to be selected by the other two members. In the event that such two members cannot agree upon their selection, the chief judge of the judicial circuit wherein the duty station of the grievant lies shall choose such third member. The hearing panel may, and on the request of either the law-enforcement officer or his agency shall, issue subpoenas requiring the testimony of witnesses who have refused or failed to appear at the hearing. The hearing panel shall rule on the admissibility of the evidence. A record shall be made of the hearing.

C. At the option of the agency, it may, in lieu of complying with the provisions of § [9.1-502](#), give the law-enforcement officer a statement, in writing, of the charges, the basis therefor, the action which may be taken, and provide a hearing as provided for in this section prior to dismissing, demoting, suspending or transferring for punitive reasons the law-enforcement officer.

D. The recommendations of the hearing panel, and the reasons therefor, shall be in writing and transmitted promptly to the law-enforcement officer or his attorney and to the chief executive officer of the law-enforcement agency. Such recommendations shall be advisory only, but shall be accorded significant weight.

1978, c. 19, §§ 2.1-116.5, 2.1-116.7; 1980, c. 191; 2001, c. [844](#).

§9.1-505. Immediate suspension.

Nothing in this chapter shall prevent the immediate suspension without pay of any law-enforcement officer whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of his agency or the public, nor shall anything in this chapter prevent the suspension of a law-enforcement officer for refusing to obey a direct order issued in conformance with the agency's written and disseminated regulations. In such a case, the law-enforcement officer shall, upon request, be afforded the rights provided for under this chapter within a reasonable amount of time set by the agency.

1978, c. 19, § 2.1-116.6; 2001, c. [844](#).

§9.1-506. Informal counseling not prohibited.

Nothing in this chapter shall be construed to prohibit the informal counseling of a law-enforcement officer by a supervisor in reference to a minor infraction of policy or procedure which does not result in disciplinary action being taken against the law-enforcement officer.

1978, c. 19, § 2.1-116.8; 2001, c. [844](#).

§9.1-507. Chapter accords minimum rights.

The rights accorded law-enforcement officers in this chapter are minimum rights and all agencies shall adopt grievance procedures that are consistent with this chapter. However, an agency may provide for additional rights of law-enforcement officers in its grievance procedure.

1978, c. 19, § 2.1-116.9; 2001, c. [844](#).

Legislative Program Review and Evaluation Act

§30-64. Reserved.

Reserved.

§30-65. Definitions.

As used in this chapter, the terms below shall be interpreted as follows:

1. The term "agency" means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth and includes any entity, public or private, with which any of the foregoing has entered into a contractual relationship to accomplish an agency program.
2. The term "functional area" means that grouping of state governmental activities, programs, and agencies which constitute a single budget function as identified and classified in the Virginia State Government Program Structure.
3. The term "discretionary selection" refers to the procedure set forth in § [30-67](#) whereby programs and agencies, contained wholly or in part within functional areas, are selected for legislative review and evaluation under the provisions of this chapter.

1978, c. 388.

§30-66. Functional areas; scheduling of study areas.

A. The functional areas of state government shall be scheduled for legislative review and evaluation by the Joint Legislative Audit and Review Commission as specified in subsection B, on a seven-year cycle, and beginning in the 1979-80 fiscal year.

B. From time to time as may be required, the Senate and House of Delegates shall by joint resolution establish a schedule for the review of the functional areas of state government. In the absence of a resolution, the Joint Legislative Audit and Review Commission shall select a functional area for review on an annual basis.

1978, c. 388; 1986, c. 302.

§30-67. Discretionary selection procedure; coordination with standing committees; expenses.

A. Prior to the year in which a functional area of government is designated to be scheduled for review, the Joint Legislative Audit and Review Commission may provide for the introduction of a joint resolution which shall identify to the extent feasible the agencies, programs or activities selected for review and evaluation from the functional area.

B. To ensure coordination of the review and evaluation activity with appropriate committees, the resolution specified in subsection A may identify each House and Senate standing committee to be invited to participate with the Commission in designing such studies as will be carried out from the scheduled functional areas.

C. The compensation and expenses of the members of cooperating committees or subcommittees necessary to accomplish the functions specified in subsection B shall be paid from funds appropriated to the Commission.

1978, c. 388; 1986, c. 302.

§30-68. Evaluation criteria; self-studies.

A. Each study carried out pursuant to this chapter shall consider, as required: that there is a valid public need for the program or agency; that legislative intent is being carried out; that program and agency performance has been in the public interest; that program objectives have been defined; that intended program outcomes are measurable and have been accomplished; that program and agency operations are managed efficiently, economically, and effectively; or such other specific criteria as the Commission or standing committees deem necessary and desirable.

B. Agency self-studies may be required in such form and manner as may be directed under the resolution provided for in § [30-67](#).

1978, c. 388.

§30-69. Access to information.

For the purpose of carrying out its duties under this chapter and notwithstanding any contrary provision of law, the Joint Legislative Audit and Review Commission shall have access to the records and facilities of every agency whose operations are financed in whole or in part by state funds to the extent that such records and facilities are related to the expenditure of such funds. All such agencies shall cooperate with the Commission and, when requested, shall provide specific information in the form requested.

1978, c. 388.

§30-70. Reporting; hearings.

A. The Joint Legislative Audit and Review Commission shall publish and submit its reports with appropriate findings and recommendations to the Governor and members of the General Assembly, and shall transmit them to the House and Senate standing committees identified by resolution in § [30-67](#).

B. The standing committees may hold a public hearing on reports prepared pursuant to this chapter at their earliest convenience after the date of transmittal. Hearings may be held jointly or singly by the committees.

C. The standing committees shall hear testimony from the Commission, agency and program representatives, the public in general, and such others as may be deemed appropriate.

1978, c. 388; 1986, c. 302.

§30-71. Hearing criteria.

At each hearing which may be held pursuant to § [30-70](#), the standing committee conducting such hearing and the agencies testifying shall respond to, but not be limited to consideration of, the following questions:

1. What are the problems, needs, or missions that the program is intended to address and what has been accomplished?
2. What is the effect of the program on the economy including but not limited to: competition, unemployment, economic stability, attraction of new business, productivity, and price inflation to consumers?
3. Would the absence of any regulatory activity significantly harm or endanger the public health, safety, or welfare?

4. Has the program or agency carried out its mission in an efficient, economic, and effective manner?
5. What services could be provided and what level of performance could be achieved if the program were funded at a level less than the existing level?
6. What other state programs have similar, duplicate, or conflicting objectives?
7. What federal activities have similar, duplicate, or conflicting objectives?
8. How does the agency ensure that it responds promptly and effectively to complaints concerning persons affected by the agency?
9. To what extent have the agency's operations been impeded by existing statutes, procedures, or practices of the Commonwealth of Virginia, or of other state agencies?
10. What action plans have been or are being proposed to improve agency operations where the need for improvements has been identified in previous executive or legislative oversight studies and reports?

1978, c. 388; 1986, c. 302.

§30-72. Operation and construction of chapter; subcommittees.

- A. The operation of this chapter shall not restrict the power of the General Assembly to study or act on any matter at any time.
- B. The operation of this chapter shall not imply or require the termination of any state agency or program.
- C. Nothing in this chapter shall be construed to restrict the Joint Legislative Audit and Review Commission or the standing committees from holding hearings on any subject as may be required nor shall operation of this chapter limit the Commission or committees from such other activities as may be authorized by law or custom.
- D. The standing committees may carry out the functions assigned by this chapter through subcommittees.

1978, c. 388.

§30-73. Repealed.

Repealed by Acts 1986, c. 302.

Line of Duty Act

§9.1-400. Title of chapter; definitions.

A. This chapter shall be known and designated as the Line of Duty Act.

B. As used in this chapter, unless the context requires a different meaning:

"Beneficiary" means the spouse of a deceased person and such persons as are entitled to take under the will of a deceased person if testate, or as his heirs at law if intestate.

(Effective until January 15, 2018)"Deceased person" means any individual whose death occurs on or after April 8, 1972, in the line of duty as the direct or proximate result of the performance of his duty, including the presumptions under §§ [27-40.1](#), [27-40.2](#), [51.1-813](#), [65.2-402](#), and [65.2-402.1](#) if his position is covered by the applicable statute, as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § [53.1-1](#); a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or emergency medical services agency that has been recognized by an ordinance or a resolution of the governing body of any county, city, or town of the Commonwealth as an integral part of the official safety program of such county, city, or town, including a person with a recognized membership status with such fire company or department who is enrolled in a Fire Service Training course offered by the Virginia Department of Fire Programs or any fire company or department training required in pursuit of qualification to become a certified firefighter; a member of any fire company providing fire protection services for facilities of the Virginia National Guard or the Virginia Air National Guard; a member of the Virginia National Guard or the Virginia Defense Force while such member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board; any regular or special conservation police officer who receives compensation from a county, city, or town or from the Commonwealth appointed pursuant to the provisions of § [29.1-200](#); any commissioned forest warden appointed under the provisions of § [10.1-1135](#); any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § [28.2-900](#); any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency,

as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#); any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#) or a local emergency, as defined in § [44-146.16](#), declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#); or any full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#).

(Effective January 15, 2018)"Deceased person" means any individual whose death occurs on or after April 8, 1972, in the line of duty as the direct or proximate result of the performance of his duty, including the presumptions under §§ [27-40.1](#), [27-40.2](#), [51.1-813](#), [65.2-402](#), and [65.2-402.1](#) if his position is covered by the applicable statute, as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § [53.1-1](#); a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or emergency medical services agency that has been recognized by an ordinance or a resolution of the governing body of any county, city, or town of the Commonwealth as an integral part of the official safety program of such county, city, or town, including a person with a recognized membership status with such fire company or department who is enrolled in a Fire Service Training course offered by the Virginia Department of Fire Programs or any fire company or department training required in pursuit of qualification to become a certified firefighter; a member of any fire company providing fire protection services for facilities of the Virginia National Guard or the Virginia Air National Guard; a member of the Virginia National Guard or the Virginia Defense Force while such member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Authority; any regular or special conservation police officer who receives compensation from a county, city, or town or from the Commonwealth appointed pursuant to the provisions of § [29.1-200](#); any commissioned forest warden appointed

under the provisions of § [10.1-1135](#); any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § [28.2-900](#); any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#); any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#) or a local emergency, as defined in § [44-146.16](#), declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#); or any full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#).

"Disabled person" means any individual who has been determined to be mentally or physically incapacitated so as to prevent the further performance of his duties at the time of his disability where such incapacity is likely to be permanent, and whose incapacity occurs in the line of duty as the direct or proximate result of the performance of his duty, including the presumptions under §§ [27-40.1](#), [27-40.2](#), [51.1-813](#), [65.2-402](#), and [65.2-402.1](#) if his position is covered by the applicable statute, in any position listed in the definition of deceased person in this section. "Disabled person" does not include any individual who has been determined to be no longer disabled pursuant to subdivision A 2 of § [9.1-404](#). "Disabled person" includes any state employee included in the definition of a deceased person who was disabled on or after January 1, 1966.

"Eligible dependent" for purposes of continued health insurance pursuant to § [9.1-401](#) means the natural or adopted child or children of a deceased person or disabled person or of a deceased or disabled person's eligible spouse, provided that any such natural child is born as the result of a pregnancy that occurred prior to the time of the employee's death or disability and that any such adopted child is (i) adopted prior to the time of the employee's death or disability or (ii) adopted after the employee's death or disability if the adoption is pursuant to a preadoptive agreement entered

into prior to the death or disability. Eligibility will continue until the end of the year in which the eligible dependent reaches age 26 or when the eligible dependent ceases to be eligible based on the Virginia Administrative Code or administrative guidance as determined by the Department of Human Resource Management.

"Eligible spouse" for purposes of continued health insurance pursuant to § [9.1-401](#) means the spouse of a deceased person or a disabled person at the time of the death or disability. Eligibility will continue until the eligible spouse dies, ceases to be married to a disabled person, or in the case of the spouse of a deceased person, dies, remarries on or after July 1, 2017, or otherwise ceases to be eligible based on the Virginia Administrative Code or administrative guidance as determined by the Department of Human Resource Management.

"Employee" means any person who would be covered or whose spouse, dependents, or beneficiaries would be covered under the benefits of this chapter if the person became a disabled person or a deceased person.

"Employer" means (i) the employer of a person who is a covered employee or (ii) in the case of a volunteer who is a member of any fire company or department or rescue squad described in the definition of "deceased person," the county, city, or town that by ordinance or resolution recognized such fire company or department or rescue squad as an integral part of the official safety program of such locality.

"Fund" means the Line of Duty Death and Health Benefits Trust Fund established pursuant to § [9.1-400.1](#).

"Line of duty" means any action the deceased or disabled person was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.

"LODA Health Benefit Plans" means the separate health benefits plans established pursuant to § [9.1-401](#).

"Nonparticipating employer" means any employer that is a political subdivision of the Commonwealth that elected to directly fund the cost of benefits provided under this chapter and not participate in the Fund.

"Participating employer" means any employer that is a state agency or is a political subdivision of the Commonwealth that did not make an election to become a non-participating employer.

"VRS" means the Virginia Retirement System.

1995, cc. [112](#), [156](#), [597](#), §§ 2.1-133.5, [2.1-133.6](#); 1996, cc. [66](#), [174](#); 1998, c. [712](#); 2001, cc. [678](#), [844](#); 2003, cc. [37](#), [41](#), [1005](#); 2004, c. [30](#); 2005, cc. [907](#), [910](#); 2006, c. [824](#); 2007, c. [87](#); 2011, cc. [572](#), [586](#); 2012, cc. [374](#), [458](#), [573](#); 2015, cc. [38](#), [502](#), [503](#), [730](#); 2016, c. [677](#); 2017, cc. [439](#), [627](#).

§9.1-400.1. Line of Duty Death and Health Benefits Trust Fund.

A. There is hereby established a permanent and perpetual fund to be known as the Line of Duty Death and Health Benefits Trust Fund, consisting of such moneys as may be appropriated by the General Assembly, contributions or reimbursements from participating and nonparticipating employers, gifts, bequests, endowments, or grants from the United States government or its agencies or instrumentalities, net income from the investment of moneys held in the Fund, and any other available sources of funds, public and private. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest and income earned from the investment of such moneys shall remain in the Fund and be credited to it. The moneys in the Fund shall be (i) deemed separate and independent trust funds, (ii) segregated and accounted for separately from all other funds of the Commonwealth, and (iii) administered solely in the interests of the persons who are covered under the benefits provided pursuant to this chapter. Deposits to and assets of the Fund shall not be subject to the claims of creditors.

B. The Virginia Retirement System shall invest, reinvest, and manage the assets of the Fund as provided in § [51.1-124.39](#) and shall be reimbursed from the Fund for such activities as provided in that section.

C. The Fund shall be used to provide the benefits under this chapter related to disabled persons, deceased persons, eligible dependents, and eligible spouses on behalf of participating employers and to pay related administrative costs.

D. Each participating employer shall make annual contributions to the Fund and provide information as determined by VRS. The amount of the contribution for each participating employer shall be determined on a current disbursement basis in accordance with the provisions of this section. For purposes of establishing contribution amounts for participating employers, a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any locality of the Commonwealth as an integral part of the official safety program of such locality shall be considered part of the locality served by the company, department, or rescue squad. If a company, department, or rescue squad

serves more than one locality, the affected localities shall determine the basis and apportionment of the required covered payroll and contributions for each company, department, or rescue squad.

If any participating employer fails to remit contributions or other fees or costs associated with the Fund, VRS shall inform the State Comptroller and the affected participating employer of the delinquent amount. In calculating the delinquent amount, VRS may impose an interest rate of one percent per month of delinquency. The State Comptroller shall forthwith transfer such delinquent amount, plus interest, from any moneys otherwise distributable to such participating employer.

2016, c. [677](#); 2017, c. [439](#).

§9.1-401. Continued health insurance coverage for disabled persons, eligible spouses, and eligible dependents.

A. Disabled persons, eligible spouses, and eligible dependents shall be afforded continued health insurance coverage as provided in this section, the cost of which shall be paid by the nonparticipating employer to the Department of Human Resource Management or from the Fund on behalf of a participating employer, as applicable. If any disabled person or eligible spouse is receiving the benefits described in this section and would otherwise qualify for the health insurance credit described in Chapter 14 (§ [51.1-1400](#) et seq.) of Title 51.1, the amount of such credit shall be deposited into the Line of Duty Death and Health Benefits Trust Fund or paid to the nonparticipating employer, as applicable, from the health insurance credit trust fund, in a manner prescribed by VRS.

B.1. The continued health insurance coverage provided by this section for all disabled persons, eligible spouses, and eligible dependents shall be through separate plans, referred to as the LODA Health Benefits Plans (the Plans), administered by the Department of Human Resource Management. The Plans shall comply with all applicable federal and state laws and shall be modeled upon state employee health benefits program plans. Funding of the Plans' reserves and contingency shall be provided through a line of credit, the amount of which shall be based on an actuarially determined estimate of liabilities. The Department of Human Resource Management shall be reimbursed for health insurance premiums and all reasonable costs incurred and associated, directly and indirectly, in performing the duties pursuant to this section (i) from the Line of Duty Death and Health Benefits Trust Fund for costs related to disabled persons, deceased persons, eligible dependents, and eligible spouses on behalf

of participating employers and (ii) from a nonparticipating employer for premiums and costs related to disabled persons, deceased persons, eligible dependents, and eligible spouses for which the nonparticipating employer is responsible. If any nonparticipating employer fails to remit such premiums and costs, the Department of Human Resource Management shall inform the State Comptroller and the affected nonparticipating employer of the delinquent amount. In calculating the delinquent amount, the Department of Human Resource Management may impose an interest rate of one percent per month of delinquency. The State Comptroller shall forthwith transfer such delinquent amount, plus interest, from any moneys otherwise distributable to such nonparticipating employer.

2. In the event that temporary health care insurance coverage is needed for disabled persons, eligible spouses, and eligible dependents during the period of transition into the LODA Health Benefits Plans, the Department of Human Resource Management is authorized to acquire and provide temporary transitional health insurance coverage. The type and source of the transitional health plans shall be within the sole discretion of the Department of Human Resource Management. Transitional coverage for eligible dependents shall comply with the eligibility criteria of the transitional plans until enrollment in the LODA Health Benefits Plan can be completed.

C. 1. a. Except as provided in subdivision 2 and any other law, continued health insurance coverage in any LODA Health Benefits Plans shall not be provided to any person (i) whose coverage under the Plan is based on a deceased person's death or a disabled person's disability occurring on or after July 1, 2017 and (ii) who is eligible for Medicare due to age.

b. Coverage in the LODA Health Benefits Plans shall also cease for any person upon his death.

2. The provisions of subdivision 1 a shall not apply to any disabled person who is eligible for Medicare due to disability under Social Security Disability Insurance or a Railroad Retirement Board Disability Annuity. The Department of Human Resource Management may provide such disabled person coverage under a LODA Health Benefits Plan that is separate from the plan for other persons.

3. Continued health insurance under this section shall also terminate upon the disabled person's return to full duty in any position listed in the definition of deceased person in § [9.1-400](#). Such disabled person shall promptly notify the participating or

nonparticipating employer, VRS, and the Department of Human Resource Management upon his return to work.

4. Such continued health insurance shall be suspended for the Plan year following a calendar year in which the disabled person whose coverage under the Plan is based on a disability occurring on or after July 1, 2017, has earned income in an amount equal to or greater than the salary of the position held by the disabled person at the time of disability, indexed annually based upon the annual increases in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor. Such suspension shall cease the Plan year following a calendar year in which the disabled person has not earned such amount of income. The disabled person shall notify the participating or nonparticipating employer, VRS, and the Department of Human Resource Management no later than March 1 of the year following any year in which he earns income of such amount, and notify the participating or nonparticipating employer, VRS, and the Department of Human Resource Management when he no longer is earning such amount. Upon request, a disabled person shall provide VRS and the Department of Human Resource Management with documentation of earned income.

1998, c. [712](#), § 2.1-133.7:1; 2000, c. [616](#); 2001, c. [844](#); 2016, c. [677](#); 2017, c. [439](#).

§9.1-401.1. Supplemental short-term disability benefit for state police officers.

A state police officer who is a participating employee, as defined in § [51.1-1100](#), and who incurs a work-related injury in the line of duty, shall receive supplemental short-term disability coverage, pursuant to § [51.1-1121](#), that provides income replacement for 100 percent of the officer's creditable compensation for the first six months and, pursuant to a certification by the Superintendent of State Police, based on a medical evaluation, that the officer is likely to return to service within another six months, up to one calendar year, that the officer is disabled, without regard to the officer's number of months of state service. Except as provided in this section with regard to the rate of income replacement and the duration of supplemental short-term disability coverage, such state police officers shall be eligible for work-related, supplemental short-term disability benefits upon the same terms and conditions that apply to other participating employees pursuant to Article 4 (§ [51.1-1119](#) et seq.) of Chapter 11 of Title 51.1. Upon the expiration of the one-calendar-year period, such

state police officers shall be eligible for supplemental long-term disability benefits as provided in § [51.1-1123](#).

2010, c. [654](#).

§9.1-402. Payments to beneficiaries of certain deceased law-enforcement officers, firefighters, etc., and retirees.

A. The beneficiary of a deceased person whose death occurred on or before December 31, 2005, while in the line of duty as the direct or proximate result of the performance of his duty shall be entitled to receive the sum of \$75,000, which shall be paid by the nonparticipating employer or from the Fund on behalf of a participating employer, as applicable, in gratitude for and in recognition of his sacrifice on behalf of the people of the Commonwealth.

B. The beneficiary of a deceased person whose death occurred on or after January 1, 2006, while in the line of duty as the direct or proximate result of the performance of his duty shall be entitled to receive the sum of \$100,000, which shall be paid by the nonparticipating employer or from the Fund on behalf of a participating employer, as applicable, in gratitude for and in recognition of his sacrifice on behalf of the people of the Commonwealth.

C. Subject to the provisions of § [27-40.1](#), [27-40.2](#), [51.1-813](#), or [65.2-402](#), if the deceased person's death (i) arose out of and in the course of his employment or (ii) was within five years from his date of retirement, his beneficiary shall be entitled to receive the sum of \$25,000, which shall be paid by the nonparticipating employer or from the Fund on behalf of a participating employer, as applicable.

1995, cc. [156](#), [597](#), § 2.1-133.7; 2000, c. [314](#); 2001, c. [844](#); 2006, c. [878](#); 2016, c. [677](#).

§9.1-402.1. Payments for burial expenses.

It is the intent of the General Assembly that expeditious payments for burial expenses be made for deceased persons whose death is determined to be a direct and proximate result of their performance in the line of duty as defined by the Line of Duty Act. Upon the approval of VRS, at the request of the family of a person who may be subject to the line of duty death benefits, payments shall be made to a funeral service provider for burial and transportation costs by the nonparticipating employer or from the Fund on behalf of a participating employer, as applicable. These payments would be advanced from the death benefit that would be due to the beneficiary of the

deceased person if it is determined that the person qualifies for line of duty coverage. Expenses advanced under this provision shall not exceed the coverage amounts outlined in § [65.2-512](#). In the event a determination is made that the death is not subject to the line of duty benefits, VRS or other Virginia governmental retirement fund of which the deceased is a member will deduct from benefit payments otherwise due to be paid to the beneficiaries of the deceased payments previously paid for burial and related transportation expenses and return such funds to the nonparticipating employer or to the Fund on behalf of a participating employer, as applicable. The Virginia Retirement System shall have the right to file a claim with the Virginia Workers' Compensation Commission against any employer to recover burial and related transportation expenses advanced under this provision.

2012, cc. [90](#), [576](#); 2016, c. [677](#).

§9.1-403. Claim for payment; costs.

A. Every beneficiary, disabled person or his spouse, or dependent of a deceased or disabled person shall present his claim to the chief officer, or his designee, of the employer for which the disabled or deceased person last worked on forms to be provided by VRS. Upon receipt of a claim, the chief officer or his designee shall forward the claim to VRS within seven days. The Virginia Retirement System shall determine eligibility for benefits under this chapter. The Virginia Retirement System may request assistance in obtaining information necessary to make an eligibility determination from the Department of State Police. The Department of State Police shall take action to conduct the investigation as expeditiously as possible. The Department of State Police shall be reimbursed from the Fund or the nonparticipating employer, as applicable, for the cost of searching for and obtaining information requested by VRS. The Virginia Retirement System shall be reimbursed for the reasonable costs incurred for making eligibility determinations by nonparticipating employers or from the Fund on behalf of participating employers, as applicable. If any nonparticipating employer fails to reimburse VRS for reasonable costs incurred in making an eligibility determination, VRS shall inform the State Comptroller and the affected nonparticipating employer of the delinquent amount. In calculating the delinquent amount, VRS may impose an interest rate of one percent per month of delinquency. The State Comptroller shall forthwith transfer such delinquent amount, plus interest, from any moneys otherwise distributable to such nonparticipating employer.

B.1. Within 10 business days of being notified by an employee, or an employee's representative, that such employee is permanently and totally disabled due to a work-related injury suffered in the line of duty, the agency or department employing the employee shall provide him with information about the continued health insurance coverage provided under this chapter and the process for initiating a claim. The employer shall assist in filing a claim, unless such assistance is waived by the employee or the employee's representative.

2. Within 10 business days of having knowledge that a deceased person's surviving spouse, dependents, or beneficiaries may be entitled to benefits under this chapter, the employer for which the deceased person last worked shall provide the surviving spouse, dependents, or beneficiaries, as applicable, with information about the benefits provided under this chapter and the process for initiating a claim. The employer shall assist in filing a claim, unless such assistance is waived by the surviving spouse, dependents, or beneficiaries.

C. Within 30 days of receiving a claim pursuant to subsection A, an employer may submit to VRS any evidence that could assist in determining the eligibility of a claim. However, when the claim involves a presumption under § [65.2-402](#) or [65.2-402.1](#), VRS shall provide an employer additional time to submit evidence as is necessary not to exceed nine months from the date the employer received a claim pursuant to subsection A. Any such evidence submitted by the employer shall be included in the agency record for the claim.

1995, c. [156](#), § 2.1-133.8; 1998, c. [712](#); 2001, cc. [427](#), [844](#); 2007, c. [90](#); 2009, cc. [393](#), [580](#); 2016, c. [677](#).

§9.1-404. Order of the Virginia Retirement System.

A.1. The Virginia Retirement System shall make an eligibility determination within 45 days of receiving all necessary information for determining eligibility for a claim filed under § [9.1-403](#). The Virginia Retirement System may use a medical board pursuant to § [51.1-124.23](#) in determining eligibility. If benefits under this chapter are due, VRS shall notify the nonparticipating employer, which shall provide the benefits within 15 days of such notice, or VRS shall pay the benefits from the Fund on behalf of the participating employer within 15 days of the determination, as applicable. The payments shall be retroactive to the first date that the disabled person was no longer eligible for health insurance coverage subsidized by his employer.

2. Two years after an individual has been determined to be a disabled person, VRS may require the disabled person to renew the determination through a process established by VRS. If a disabled person refuses to submit to the determination renewal process described in this subdivision, then benefits under this chapter shall cease for the individual, any eligible dependents, and an eligible spouse until the individual complies. If such individual does not comply within six months from the date of the initial request for a renewed determination, then benefits under this chapter shall permanently cease for the individual, any eligible dependents, and an eligible spouse. If VRS issues a renewed determination that an individual is no longer a disabled person, then benefits under this chapter shall permanently cease for the individual, any eligible dependents, and an eligible spouse. If VRS issues a renewed determination that an individual remains a disabled person, then VRS may require the disabled person to renew the determination five years after such renewed determination through a process established by VRS. The Virginia Retirement System may require the disabled person to renew the determination at any time if VRS has information indicating that the person may no longer be disabled.

B. The Virginia Retirement System shall be reimbursed for all reasonable costs incurred and associated, directly and indirectly, in performing the duties pursuant to this chapter (i) from the Line of Duty Death and Health Benefits Trust Fund for costs related to disabled persons, deceased persons, eligible dependents, and eligible spouses on behalf of participating employers and (ii) from a nonparticipating employer for premiums and costs related to disabled persons, deceased persons, eligible dependents, and eligible spouses for which the nonparticipating employer is responsible.

C. The Virginia Retirement System may develop policies and procedures necessary to carry out the provisions of this chapter.

1995, cc. [156](#), [597](#), § 2.1-133.9; 1998, c. [712](#); 2001, c. [844](#); 2016, c. [677](#); 2017, c. [439](#).

§9.1-405. Appeal from decision of Virginia Retirement System.

Any beneficiary, disabled person or eligible spouse or eligible dependent of a deceased or disabled person aggrieved by the decision of VRS may appeal the decision through a process established by VRS. Any such process may utilize a medical board as described in § [51.1-124.23](#). An employer may submit information related to the claim and may participate in any informal fact-finding proceeding that

is included in such process established by VRS. Upon completion of the appeal process, the final determination issued by VRS shall constitute a case decision as defined in § [2.2-4001](#). Any beneficiary, disabled person, or eligible spouse or eligible dependent of a deceased or disabled person aggrieved by, and claiming the unlawfulness of, such case decision shall have a right to seek judicial review thereof in accordance with Article 5 (§ [2.2-4025](#) et seq.) of the Administrative Process Act. The employer shall not have a right to seek such judicial review.

1995, cc. [156](#), [597](#), § 2.1-133.10; 1998, c. [712](#); 2001, c. [844](#); 2016, c. [677](#).

§9.1-406. Repealed.

Repealed by Acts 2016, c. 677, cl. 2, effective July 1, 2017.

§9.1-407. Training.

Any employee entitled to benefits under this chapter shall receive training within 30 days of his employment, and again every two years thereafter, concerning the benefits available to himself or his beneficiary in case of disability or death in the line of duty. The Virginia Retirement System and the Department of Human Resource Management, in consultation with the Secretary of Public Safety and Homeland Security, shall develop training information to be distributed to employers. The employer shall be responsible for providing the training. Such training shall not count toward in-service training requirements for law-enforcement officers pursuant to § [9.1-102](#) and shall include, but not be limited to, the general rules for intestate succession described in § [64.2-200](#) that may be applicable to the distribution of benefits provided under § [9.1-402](#).

2006, c. [535](#); 2014, cc. [115](#), [490](#); 2016, c. [677](#); 2017, c. [439](#).

§9.1-408. Records of investigation confidential.

A. Evidence and documents obtained by or created by, and the report of investigation prepared by, the Department of State Police, the Virginia Retirement System, or the Department of Human Resource Management in carrying out the provisions of this chapter shall (i) be deemed confidential, (ii) be exempt from disclosure under the Freedom of Information Act (§ [2.2-3700](#) et seq.), and (iii) not be released in whole or in part by any person to any person except as provided in this chapter. Notwithstanding the provisions of this section, VRS may release to necessary parties such information, documents, and reports for purposes of administering appeals under this chapter.

B. Notwithstanding subsection A, the Department of State Police and the Department of Accounts shall, upon request, share with the Virginia Retirement System and the Department of Human Resource Management any information, evidence, documents, and reports of investigation related to existing and past claims for benefits provided under this Chapter. Such information, evidence, documents, and reports of investigation shall be exempt from disclosure under the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

2010, c. [568](#); 2017, c. [439](#).

Local Agricultural and Forestal Districts Act

§15.2-4400. Short title.

This chapter shall be known and may be cited as the "Local Agricultural and Forestal Districts Act."

1982, c. 374, § 15.1-1513.1; 1997, c. 587.

§15.2-4401. Declaration of policy findings and purpose.

It is state policy to encourage localities of the Commonwealth to conserve and protect and to encourage the development and improvement of their agricultural and forestal lands for the production of food and other agricultural and forestal products. It is also state policy to encourage localities of the Commonwealth to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, aesthetic quality and other environmental purposes. It is the purpose of this chapter to provide a means by which localities may protect and enhance agricultural and forestal lands of local significance as a viable segment of the local economy and as an important economic and environmental resource.

1982, c. 374, § 15.1-1513.2; 1997, c. 587.

§15.2-4402. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advisory committee" means the agricultural and forestal advisory committee.

"Agricultural products" means crops, livestock and livestock products, including but not limited to field crops, fruits, vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

"Agricultural production" means the production for commercial purposes of crops, livestock and livestock products, but not processing or retail merchandising of crops, livestock or livestock products.

"Agriculturally and forestally significant land" means land that has historically produced agricultural and forestal products, or land that an advisory committee considers good agricultural and forestal land based upon such factors as soil quality, topography, climate, markets, farm improvements, agricultural and forestry economics and technology, and other relevant factors.

"Clerk" means the clerk of the local circuit court or the clerk of the local governing body.

"Forestal products" includes, but is not limited to, lumber, pulpwood, posts, firewood, Christmas trees and other wood products for sale or for farm use.

"Landowner" or "owner of land" means any person holding a fee simple interest in property but does not mean the holder of an easement.

"Participating locality" means the Counties of Albemarle, Augusta, Fairfax, Hanover, James City, Loudoun, Prince William, Roanoke, and Rockingham.

1982, c. 374, § 15.1-1513.3; 1991, c. 67; 1992, c. 344; 1997, c. 587; 2007, c. [813](#); 2012, c. [419](#).

§15.2-4403. Power of participating localities to enact ordinances; application form and fees.

A. Participating localities shall have the authority to enact ordinances and to promulgate forms to effectuate this chapter. The participating locality may charge a reasonable fee for all applications submitted pursuant to this chapter; such fee shall not to exceed fifty dollars or the costs of processing and reviewing an application, whichever is less.

B. The participating locality shall prescribe application forms for agricultural and forestal districts that include but are not limited to the following information:

1. The general location and boundaries of the district;

2. A summary of the acreage in the district including (i) estimated total acreage in the district and (ii) acreage owned by persons proposing the district;
3. The name, address, total acreage owned within the proposed district and signature of each landowner proposing the district; and
4. The date of application, date of final county action and whether approved, modified or rejected.

C. The application form shall be accompanied by maps or aerial photographs, or both, prescribed by the participating locality which clearly show the boundaries of the proposed district, boundaries of properties within the proposed district owned by each applicant, and any other features as prescribed by the participating locality.

1982, c. 374, § 15.1-1513.4; 1997, c. 587.

§15.2-4404. Agricultural and forestal districts advisory committee.

Upon receipt of the first agricultural and forestal district application submitted as permitted under an ordinance adopted pursuant to this chapter, the local governing body shall establish an advisory committee as prescribed in § [15.2-4304](#), which section shall apply mutatis mutandis. If an advisory committee has already been established pursuant to § [15.2-4304](#), it shall carry out the duties prescribed in Chapter 43 (§ [15.2-4300](#) et seq.) as well as in this chapter.

1982, c. 374, § 15.1-1513.5; 1997, c. 587.

§15.2-4405. Creation of districts of local significance.

A. A participating locality shall have the authority to create agricultural, forestal, or agricultural and forestal districts of local significance by the adoption of a general ordinance establishing a local districts program according to the provisions of this chapter.

B. In participating localities where such an ordinance has been adopted by the local governing body, any owner or owners of land may submit an application pursuant to § [15.2-4403](#) to the locality for the creation of an agricultural, forestal, or an agricultural and forestal district of local significance within such locality. Each individual district of local significance shall have a core of no less than the minimum acreage specified in the general ordinance, which minimum acreage in no case shall be less than 20 acres in one parcel or contiguous parcels, provided that (i) any noncontiguous parcel that is not part of the core may be included in a district of local significance if the nearest boundary of such noncontiguous parcel is within one-quarter

of a mile of the core and (ii) such noncontiguous parcel had previously been included in a district of local significance. No owner of land shall be included in any agricultural, forestal, or agricultural and forestal district of local significance without the owner's written approval. A separate application may be made by any owner or owners of land for additional contiguous qualifying lands, or noncontiguous lands that meet the conditions of clauses (i) and (ii), to be included in an already created district at any time following such creation.

C. Upon receipt of a proposal for a district of local significance, the local governing body shall refer the proposal to the planning commission which shall:

1. Provide notice of the proposal by publishing a notice in a newspaper having general circulation within the proposed district and by posting such notice in three conspicuous places within the jurisdiction in which the proposed district is located. The notice shall state that an application for an agricultural, forestal, or agricultural and forestal district of local significance has been submitted to the local governing body, that a copy of the application is on file open to public inspection in the office of the clerk, that any proposals for modifications of the district shall be filed within 30 days, that any owner included in the proposal may withdraw his land, in whole or in part, at any time until the local governing body makes a final decision as to the constitution of the district pursuant to subsection D, and that hearing dates of the planning commission and local governing body shall be published and posted within 30 days.

2. Refer such proposal and modifications to the advisory committee.

D. Within one year of the date of filing of the application for such original proposal, the proposal: shall be reviewed by (i) the advisory committee, which shall report to the local planning commission its recommendations concerning the proposal and proposed modifications; (ii) the planning commission, which, after receiving the report of the advisory committee, shall hold a public hearing as prescribed in subsection E, and shall report its recommendations concerning the proposal and proposed modifications to the local governing body; and (iii) the local governing body, which, after receiving the report of the local planning commission and the advisory committee, shall hold a public hearing as prescribed below, and may create the district or any modification of the district by the adoption of a district ordinance as described in subsection E, or reject the creation of a district as it deems appropriate. All districts shall

meet the minimum requirements set forth in the participating locality's general ordinance for the creation of districts of local significance.

E. Public hearings required to be held by the planning commission and local governing body shall be conducted in the following manner:

1. The hearing as prescribed by law shall be held where the local governing body usually meets or at a place otherwise readily accessible to the proposed district;
2. The notice of the public hearing as prescribed by law shall contain a description of the proposed district, any proposed modifications and any recommendations of the local planning commission or the advisory committee; and
3. The notice shall be published in a newspaper having a general circulation within the proposed district and shall be given in writing complete with proposed modifications to those municipalities whose territory encompasses or is part of the proposed district.

F. The general ordinance establishing the program to create agricultural, forestal, or agricultural and forestal districts of local significance shall state the criteria which shall be considered by the advisory committee and the local planning commission in advising the local governing body and by the local governing body in making its decision on whether or not to create a district. These criteria shall be based on and consistent with the following factors:

1. The agricultural and forestal significance within the proposed district and in areas adjacent thereto;
2. The presence of any significant agricultural lands or significant forestal lands within the proposed district and adjacent thereto that are not now in active farming or production;
3. The nature and extent of land uses other than active farming or forestry within the proposed district and adjacent thereto;
4. Local developmental patterns and needs including zoning and the comprehensive plan;
5. The scenic and historic features of land uses within the proposed district and adjacent thereto;
6. The environmental benefits of preserving the lands in the district in their existing use; and

7. Any other matter which may be relevant.

In judging significance, any relevant agricultural and forest maps may be considered as well as soil, climate, topography, quality of tree cover, other natural factors, markets for farm and forest products, the extent and nature of farm and forest improvements, evidence of commitment to long-term farm and forest use, anticipated trends in agricultural and forest economic conditions and technology, and such other factors as may be relevant. Criteria for judging the significance of lands in local agricultural and forestal districts to be created pursuant to this chapter may differ from those for judging the significance of lands in statewide districts to be created pursuant to Chapter 43 (§ [15.2-4300](#) et seq.).

1982, c. 374, § 15.1-1513.6; 1994, c. [431](#); 1997, c. 587; 2010, c. [653](#).

§15.2-4406. Provisions of district ordinances for districts of local significance.

Any district ordinance adopted by the local governing body in order to create or renew an agricultural, forestal, or agricultural and forestal district shall include the following provisions:

1. That no parcel included within the district shall be developed to a more intensive use than its existing use at the time of adoption of the ordinance creating the district for eight years from the date of adoption of such ordinance;
2. That no parcel added to an already created district shall be developed to a more intensive use than its existing use at the time of addition to the district for eight years from the date of adoption of the original district ordinance;
3. That land used in agricultural and forestal production within the agricultural and forestal district of local significance shall automatically qualify for an agricultural or forestal value assessment on such land pursuant to Article 4 (§ [58.1-3229](#) et seq.) of Chapter 32 of Title 58.1, if the requirements for such assessment contained therein are satisfied, whether or not a local land-use plan or local ordinance pursuant to § [58.1-3231](#) has been adopted;
4. That the district shall be reviewed by the local governing body at the end of the eight-year period and that it may by ordinance renew the district or modification thereof for another eight-year period; and
5. Any other provisions to the mutual agreement of the landowner and the local governing body that further the purposes of this chapter.

1982, c. 374, § 15.1-1513.7; 1997, c. 587.

§15.2-4407. Withdrawal of land from district of local significance.

A. At any time after the creation of an agricultural, forestal, or an agricultural and forestal district of local significance within Fairfax County, any owner of land lying in such district may file a written notice of withdrawal with the local governing body which created the district, and upon the filing of such notice, the withdrawal shall be effective. In no way shall this section affect the ability of an owner to withdraw his land from a proposed district as is authorized by subsection C of § [15.2-4405](#).

B. Any person withdrawing land from a district located in the Counties of Albemarle, Augusta, Hanover, James City, Loudoun, Prince William, Roanoke, and Rockingham shall follow the withdrawal procedures required by § [15.2-4314](#).

C. Upon withdrawal of land from a district, the real estate previously included in such district shall be subject to roll-back taxes, as are provided in § [58.1-3237](#), and also a penalty in the amount equal to two times the taxes determined in the year following the withdrawal from the district on all land previously within the district.

D. Upon withdrawal of land from a district no provisions of the ordinance which created the district shall any longer apply to the lands previously in the district which were withdrawn.

E. The withdrawal of land from a district shall not itself serve to terminate the existence of the district. Such district shall continue in effect and be subject to review as to whether it should be terminated, modified or continued pursuant to § [15.2-4405](#).

1982, c. 374, § 15.1-1513.8; 1983, c. 558; 1991, c. 67, § 15.1-1513.9; 1994, c. [193](#); 1997, c. 587; 2007, c. [813](#); 2012, c. [419](#).

Local Government Investment Pool Act

§2.2-4600. Short title; definitions.

This chapter may be cited as the "Local Government Investment Pool Act."

1980, c. 538, §§ 2.1-234.1, 2.1-234.3; 1996, c. [77](#); 2001, c. [844](#).

§2.2-4601. Findings and purpose.

A. The General Assembly finds that the public interest is served by maximum and prudent investment of public funds so that the need for taxes and other public revenues is decreased commensurately with the earnings on such investments. In

selecting among avenues of investment, the highest rate of return, consistent with safety and liquidity, shall be the objective.

B. The purpose of this chapter is to secure the maximum public benefit from the investment of public funds, and, in furtherance of such purposes to:

1. Establish and maintain a continuing statewide policy for the deposit and investment of public funds;
2. Establish a state-administered pool for the investment of local government funds; and
3. Authorize treasurers or any other person collecting, disbursing, or otherwise handling public funds to invest such public funds either in accordance with Chapter 45 (§ [2.2-4500](#) et seq.) of this title or through the local government investment pool created by the chapter.

C. The General Assembly finds that the objectives of this chapter will best be obtained through improved money management, emphasizing the primary requirements of safety and liquidity and recognizing the different investment objectives of operating and permanent funds.

1980, c. 538, § 2.1-234.2; 2001, c. [844](#).

§2.2-4602. Local government investment pool created.

A. A local government investment pool is created, consisting of the aggregate of all funds from local officials handling public funds that are placed in the custody of the State Treasurer for investment and reinvestment as provided in this chapter.

B. The Treasury Board or its designee shall administer the local government investment pool on behalf of the participating local officials subject to regulations and guidelines adopted by the Treasury Board.

C. The Treasury Board or its designee shall invest moneys in the local government investment pool with the degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. Specifically, the types of authorized investments for local government investment pool assets shall be limited to those set forth for local officials in Chapter 45 (§ [2.2-4500](#) et seq.) of this title.

D. A separate account for each participant in the fund shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report showing the changes in investments made during the preceding month shall be furnished to each participant having a beneficial interest in the local government investment pool. Details of any investment transaction shall be furnished to any participant upon request.

E. The Treasury Board or its designee shall administer and handle the accounts in the same manner as bond and sinking fund trust accounts.

F. The principal and accrued income, and any part thereof, of each and every account maintained for a participant in the local government investment pool shall be subject to payment at any time from the local government investment pool upon request, subject to applicable regulations and guidelines. Accumulated income shall be remitted or credited to each participant at least quarterly.

G. Except as provided in this section, all instruments of title of all investments of the local government investment pool shall remain in the custody of the State Treasurer. The State Treasurer may deposit with one or more fiscal agents or banks, those instruments of title he considers advisable, to be held in safekeeping by the agents or banks for collection of the principal and interest or other income, or of the proceeds of sale. The State Treasurer shall collect the principal and interest or other income from investments of the investment pool, the instruments of title to which are in his custody, when due and payable.

1980, c. 538, § 2.1-234.8; 1984, c. 320; 1988, c. 834; 2001, c. [844](#).

§2.2-4603. Investment authority.

Subject to the procedures set forth in this chapter, any local official handling public funds may invest and reinvest any money subject to his control and jurisdiction in the local government investment pool established by § [2.2-4602](#).

1980, c. 538, § 2.1-234.4; 1988, c. 834; 2001, c. [844](#).

§2.2-4604. Interfund pooling for investment purposes.

Local officials handling public funds may effect temporary transfers among separate funds for the purpose of pooling amounts available for investment. This pooling may be accomplished through interfund advances and other appropriate means consistent with recognized principles of governmental accounting provided that (i) moneys are available for the investment period required; (ii) the investment fund can repay the

advance by the time needed; (iii) the transactions are fully and promptly recorded; and (iv) the interest earned is credited to the loaning or advancing jurisdiction.

1980, c. 538, § 2.1-234.6; 1981, c. 583; 2001, c. [844](#).

§2.2-4605. Powers of Treasury Board relating to the administration of local government investment pool.

A. The Treasury Board shall have power to:

1. Make and adopt regulations necessary and proper for the efficient administration of the local government investment pool hereinafter created, including but not limited to:

a. Specification of minimum amounts that may be deposited in the local government investment pool and minimum periods of time for which deposits shall be retained in such pool;

b. Creation of a reserve for losses;

c. Payment of administrative expenses from the earnings of such pool;

d. Distribution of the earnings in excess of such expenses, or allocation of losses, to the several participants in a manner that equitably reflects the differing amounts of their respective investments and the differing periods of time for which such amounts were in the custody of the pool; and

e. Procedures for the deposit and withdrawal of funds.

2. Develop guidelines for the protection of the local government investment pool in the event of default in the payment of principal or interest or other income of any investment of such pool, such guidelines to include the following procedures:

a. Instituting the proper proceedings to collect the matured principal or interest or other income;

b. Accepting for exchange purposes refunding bonds or other evidences of indebtedness at appropriate interest rates;

c. Making compromises, adjustments, or disposition of matured principal or interest or other income as considered advisable for the purpose of protecting the moneys invested;

d. Making compromises or adjustments as to future payments of principal or interest or other income considered advisable for the purpose of protecting the moneys invested.

3. Formulate policies for the investment and reinvestment of funds in the local government investment pool and the acquisition, retention, management, and disposition of investments of the investment pool.

B. The Treasury Board may delegate the administrative aspects of operating under this chapter to the State Treasurer, subject to the regulations and guidelines adopted by the Treasury Board.

C. Such regulations and guidelines may be adopted without complying with the Administrative Process Act (§ [2.2-4000](#) et seq.) provided that input is solicited from local officials handling public funds. Such input requires only that notice and an opportunity to submit written comments be given.

1980, c. 538, § 2.1-234.7; 2001, c. [844](#).

§2.2-4606. Chapter controlling over inconsistent laws; powers supplemental.

Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

1980, c. 538, § 2.1-234.9; 2001, c. [844](#).

Manufactured Home Lot Rental Act

§55-248.41. Definitions.

For the purposes of this chapter, unless expressly stated otherwise:

"Abandoned manufactured home" means a manufactured home occupying a manufactured home lot pursuant to a written agreement under which the tenant has defaulted in rent or if the landlord has the right to terminate the lease pursuant to § [55-248.33](#);

"Landlord" means the manufactured home park owner, lessor or sublessor, or a manager who fails to disclose the name of such owner, lessor or sublessor as provided in § [55-248.12](#);

"Manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein;

"Manufactured home lot" means a parcel of land within the boundaries of a manufactured home park provided for the placement of a single manufactured home and the exclusive use of its occupants;

"Manufactured home park" means a parcel of land under single or common ownership upon which ten or more manufactured homes are located on a continual, non-recreational basis together with any structure, equipment, road or facility intended for use incidental to the occupancy of the manufactured homes, but shall not include premises used solely for storage or display of uninhabited manufactured homes, or premises occupied solely by a landowner and members of his family;

"Owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to the property, or (ii) all or part of the beneficial ownership and right to present use and enjoyment of the premises, and the term includes a mortgagee in possession;

"Rent" means payments made by the tenant to the landlord for use of a manufactured home lot and other facilities or services provided by the landlord;

"Rental agreement" means any agreement, written or oral, and valid rules and regulations adopted in conformance with § [55-248.17](#) embodying the terms and conditions concerning the use and occupancy of a manufactured home lot and premises and other facilities or services provided by the landlord; and

"Tenant" means a person entitled as under a rental agreement to occupy a manufactured home lot to the exclusion of others.

1975, c. 535; 1983, c. 386; 1991, c. 500; 1992, c. 709 .

§55-248.42. Written agreement required.

A. All terms governing the rental and occupancy of a manufactured home lot shall be contained in a written agreement which shall be dated and signed by all parties thereto prior to commencement of tenancy. A copy of the signed and dated written agreement and a copy of the Manufactured Home Lot Rental Act (§ [55-248.41](#) et seq.)

or a clear and simple description of the obligations of landlords and tenants under the Manufactured Home Lot Rental Act shall be given by the landlord to the tenant within seven days after the tenant signs the written agreement. A copy of this chapter, including the full text of those sections of the Virginia Residential Landlord and Tenant Act (§ [55-248.2](#) et seq.) referenced in § [55-248.48](#), shall be posted in the manufactured home park. The written agreement shall not contain any provisions contrary to the provisions of this chapter and shall not contain a provision prohibiting the tenant from selling his manufactured home. A notice of any change by a landlord in any terms or provisions of the rental agreement shall constitute a notice to vacate the premises, and such notice shall be given in accordance with the terms of the rental agreement or as otherwise required by law. The agreement shall not provide that the tenant pay any recurring charges except fixed rent, utility charges or reasonable incidental charges for services or facilities supplied by the landlord.

B. In the event any party has a secured interest in the manufactured home, the written agreement or rental application shall contain the name and address of any such party as well as the name and address of the dealer from whom the manufactured home was purchased. In addition, the written agreement shall require the tenant to notify the landlord within ten days of any new security interest, change of existing security interest, or settlement of security interest.

1975, c. 535; 1986, c. 586; 1991, c. 500; 1992, c. 709 .

§55-248.42:1. Term of rental agreement; renewal; security deposits.

A. A park owner shall offer all current and prospective year-round residents a rental agreement with a rental period of not less than one year. Such offer shall contain the same terms and conditions as are offered with shorter term leases, except that rental discounts may be offered by a park owner to residents who enter into a rental agreement for a period of not less than one year.

B. Upon the expiration of a rental agreement, such agreement shall be automatically renewed for a term of one year with the same terms unless the park operator provides written notice to the tenant of any change in the terms of the agreement at least sixty days prior to the termination date. In the event of an automatic renewal of a rental agreement involving a year-round resident, the security deposit initially furnished by the tenant shall not be increased by the park owner nor shall an additional security deposit be required.

C. Except as limited by subsection B of this section, the provisions of § [55-248.15:1](#) shall govern the terms and conditions of security deposits for rental agreements under this chapter.

1992, c. 709; 1999, c. [513](#); 2000, c. [41](#).

§55-248.43. Landlord's obligations.

The landlord shall:

1. Comply with applicable laws governing health, zoning, safety and other matters pertaining to manufactured home parks;
2. Make all repairs and do whatever is necessary to put and keep the manufactured home park in a fit and habitable condition, including, but not limited to, maintaining in a clean and safe condition all facilities and common areas provided by him for the use of tenants of two or more manufactured home lots;
3. Maintain in good and working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances supplied or required to be supplied by him;
4. Provide and maintain appropriate receptacles as a manufactured home park facility, except when door to door garbage and waste pickup is available within the manufactured home park for the collection and storage of garbage and other waste incidental to the occupancy of the manufactured home park, and arrange for the removal of same; and
5. Provide reasonable access to electric, water and sewage disposal connections for each manufactured home lot. In the event of a planned disruption by the landlord in electric, water or sewage disposal services, the landlord shall give written notice to tenants no less than forty-eight hours prior to the planned disruption in service.

1975, c. 535; 1992, c. 709; 2001, c. [44](#).

§55-248.44. Tenant's obligations.

In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with applicable laws affecting manufactured home owners and lessors;
2. Keep and maintain the exterior of his manufactured home and his manufactured home lot as clean and safe as conditions permit;

3. Place all garbage and other waste in the appropriate receptacles, which shall be provided by the tenant when door to door garbage and waste pickup is provided;
4. Use in a reasonable and orderly manner all facilities and appliances in the manufactured home park, and require other persons on the premises with his consent to do so;
5. Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;
6. Abide by all reasonable rules and regulations imposed by the landlord; and
7. In the absence of express written agreement to the contrary, occupy his manufactured home only as a dwelling unit.

1975, c. 535; 1992, c. 709 .

§55-248.44:1. Rent; liability of secured party taking possession of an abandoned manufactured home.

A. A secured party shall have no liability for rent or other charges to a landlord except as provided in this section.

B. In the event a manufactured home subject to a security interest becomes an abandoned manufactured home, notice of abandonment shall be sent by the landlord to the owner, the secured party and the dealer as provided for in § [55-248.6](#), at the addresses shown in the lease or rental application. The notice of abandonment shall state the amount of rent and the amount and nature of any reasonable charges in addition to rent that the secured party will become liable for payment to the landlord. The notice shall include any rental agreement previously signed by the tenant and the landlord.

C. A secured party who has a security interest in an abandoned manufactured home, and who has a right to possession of the manufactured home under § [8.9A-609](#) or under the applicable security agreement, shall be liable to the landlord under the same terms as the tenant was paying prior to the accrual of the right of possession, and any other reasonable charges in addition to rent incurred, for the period which begins fifteen days from receipt of the notice of abandonment by the secured party and ends upon the earlier to occur of the removal of the abandoned manufactured home from the manufactured home park or disposition of the abandoned manufactured home under § [8.9A-610](#) et seq. or under the applicable security agreement.

D. This section shall not affect the availability of the landlord's lien as provided in § [55-230](#) et seq. of Chapter 13 of Title 55, nor shall this section impact the priority of the secured party's lien as provided in § [46.2-640](#).

E. As used in this section, "security interest" shall have the same meaning as the term is defined in § [8.1A-201](#), and "secured party" shall have the same meaning as the term is defined in § [8.9A-102](#).

F. For purposes of this section, "reasonable charges in addition to rent" means any routine maintenance and utility charges for which the tenant is liable under the rental agreement.

G. Any rent or reasonable charges in addition to rent owed by the secured party to the landlord pursuant to this section shall also be paid to the landlord prior to the removal of the manufactured home from the manufactured home park.

H. If a secured party who has a secured interest in an abandoned manufactured home becomes liable to the landlord pursuant to this section, then the relationship between the secured party and the landlord shall be governed by the rental agreement previously signed by the tenant and the landlord unless otherwise agreed, except that the term of the rental agreement shall convert to a month-to-month tenancy. No waiver is required to convert the rental agreement to a month-to-month tenancy. Either the landlord or the secured party may terminate the month-to-month tenancy upon giving written notice of thirty days or more. The secured party and the landlord are not required to execute a new rental agreement. Nothing in this section shall be construed to be a waiver of any rights by the tenant.

1991, c. 500; 1992, c. 709 .

§55-248.45. Demands and charges prohibited; access by tenant's invitees; purchases by manufactured home owner not restricted; exception; conditions of occupancy.

A. A landlord shall not demand or collect:

1. An entrance fee for the privilege of leasing or occupying a manufactured home lot;
2. A commission on the sale of a manufactured home located in the manufactured home park unless the tenant expressly employs him to perform a service in connection with such sale but no such employment of the landlord by the tenant shall be a condition or term of the initial sale or rental;

3. A fee for improvements or installations on the interior of a manufactured home, unless the tenant expressly employs him to perform a service in connection with such entrance, installation, improvement or sale;
4. A fee, charge or other thing of value from any provider of cable television service, cable modem service, satellite master antenna television service, direct broadcast satellite television service, subscription television service or service of any other television programming system in exchange for granting a television service provider mere access to the landlord's tenants or giving the tenants of such landlord mere access to such service. A landlord may enter into a service agreement with a television service provider to provide marketing and other services to the television service provider, designed to facilitate the television service provider's delivery of its services. Under such a service agreement, the television service provider may compensate the landlord for the reasonable value of the services provided, and for the reasonable value of the landlord's property used by the television service provider.

No landlord shall demand or accept any such payment from any tenants in exchange therefor unless the landlord is itself the provider of the service. Nor shall any landlord discriminate in rental charges between tenants who receive any such service and those who do not. Nothing contained herein shall prohibit a landlord from requiring that the provider of such service and the tenant bear the entire cost of the installation, operation or removal of the facilities incident thereto, or prohibit a landlord from demanding or accepting reasonable indemnity or security for any damages caused by such installation, operation or removal; or

5. An exit fee for moving a manufactured home from a manufactured home park.

B. An invitee of the tenant shall have free access to the tenant's manufactured home site without charge or registration.

C. A manufactured home owner shall not be restricted in his choice of vendors from whom he may purchase his (i) manufactured home, except in connection with the initial leasing or renting of a newly constructed lot not previously leased or rented to any other person, or (ii) goods and services. However, nothing in this chapter shall prohibit a landlord from prescribing reasonable requirements governing, as a condition of occupancy, the style, size or quality of the manufactured home, or other structures placed on the manufactured home lot.

1975, c. 535; 1987, c. 513; 1989, c. 87; 1992, c. 709; 2008, c. [329](#).

§55-248.45:1. Charge for utility service.

Notwithstanding the provisions of § [56-245.3](#), a park owner who purchases from a publicly regulated utility any electricity, gas, or other utility service, including water and sewer services, for resale or pass-through to a resident may not charge for the resale or pass-through of such service an amount that exceeds the amount permitted under the provisions of § [55-226.2](#).

1992, c. 709; 2006, c. [303](#).

§55-248.46. Termination of tenancy.

A. Either party may terminate a rental agreement which is for a term of 60 days or more by giving written notice to the other at least 60 days prior to the termination date; however, the rental agreement may require a longer period of notice. Notwithstanding the provisions of this section, where a landlord and seller of a manufactured home have in common (i) one or more owners, (ii) immediate family members, or (iii) officers or directors, the rental agreement shall be renewed except for reasons that would justify a termination of the rental agreement or eviction by the landlord as authorized by this chapter. A landlord may not cause the eviction of a tenant by willfully interrupting gas, electricity, water or any other essential service, or by removal of the manufactured home from the manufactured home lot, or by any other willful self-help measure.

B. If the termination is due to rehabilitation or a change in the use of all or any part of a manufactured home park by the landlord, a 180-day written notice is required to terminate a rental agreement. Changes shall include, but not be limited to, conversion to hotel, motel, or other commercial use; planned unit development; rehabilitation; demolition; or sale to a contract purchaser. This 180-day notice requirement shall not be waived; however, a period of less than 180 days may be agreed upon by both the landlord and tenant in a written agreement separate from the rental agreement or lease executed after such notice is given and applicable only to the 180-day notice period.

1975, c. 535; 1991, c. 185; 1992, c. 709; 2001, c. [47](#); 2005, c. [416](#).

§55-248.46:1. Waiver of landlord's right to terminate.

Unless the landlord accepts the rent with reservation, and gives a written notice to the tenant of such acceptance within five business days of receipt of the rent, acceptance of periodic rent payments with knowledge in fact of a material noncompliance by the tenant shall constitute a waiver of the landlord's right to terminate the rental

agreement. Except as provided in § [55-243](#), if the landlord has given the tenant written notice that the rent payments have been accepted with reservation, the landlord may accept full payment of all rent payments and still be entitled to receive an order of possession terminating the rental agreement.

2001, c. [47](#).

§55-248.47. Sale or lease of manufactured home by owner.

The landlord shall not unreasonably refuse or restrict the sale or rental of a manufactured home located in his manufactured home park by a tenant. The landlord shall not prohibit the manufactured home owner from placing a "for sale" sign on or in his home except that the size, placement, and character of all signs are subject to the rules and regulations of the park. Prior to selling or leasing the manufactured home the tenant shall give notice to the landlord, including, but not limited to, the name of the prospective vendee or lessee if the prospective vendee or lessee intends to occupy the manufactured home in that manufactured home park. The landlord shall have the burden of proving that his refusal or restriction regarding the sale or rental of a manufactured home was reasonable. The refusal or restriction of the sale or rental of a manufactured home based exclusively or predominantly on the age of the home shall be considered unreasonable. Any refusal or restriction because of race, color, religion, national origin, familial status, elderliness, handicap, or sex shall be conclusively presumed to be unreasonable.

1975, c. 535; 1986, c. 586; 1992, c. 709 .

§55-248.48. Other provisions of law applicable.

Sections [55-248.6](#), [55-248.8](#), [55-248.9](#), [55-248.12](#), [55-248.14](#), [55-248.15:1](#), [55-248.17](#), [55-248.21](#) through [55-248.33](#), [55-248.35](#), [55-248.36](#), and [55-248.40](#) of the Virginia Residential Landlord and Tenant Act shall, insofar as they are not inconsistent with this chapter, apply, mutatis mutandis, to the rental and occupancy of a manufactured home lot.

1975, c. 535; 1992, c. 709; 2000, c. [760](#); 2001, c. [47](#).

§55-248.49. Power of local governments over manufactured home parks.

The governing body of every county, city and town may adopt ordinances to enforce the obligations imposed on landlords by § [55-248.43](#).

1984, c. 460; 1999, c. [77](#).

§55-248.49:1. Notice of uncorrected violations.

If a landlord does not remedy a violation of an ordinance that pertains to the health and safety of tenants in a manufactured home park within seven days of receiving notice from the locality of such violation, the locality shall notify tenants of the manufactured home park who are affected by the violation. Such notification may consist of posting the notice of violation in a conspicuous place in the manufactured home park or mailing copies of the notice to affected tenants.

2017, c. [734](#).

§55-248.50. Retaliatory conduct prohibited.

A. Except as provided in this section, or as otherwise provided by law, a landlord shall not retaliate by selectively increasing rent or decreasing services or by bringing or threatening to bring an action for possession after he has knowledge that: (i) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health or safety; (ii) the tenant has made a complaint to or filed a suit against the landlord for a violation of any provision of this chapter; (iii) the tenant has organized or become a member of a tenants' organization; or (iv) the tenant has testified in a court proceeding against the landlord.

B. The landlord shall be deemed to have knowledge of a fact if he has actual knowledge of it; he has received a notice or notification of it; or, from all the facts and circumstances known to him at the time in question, he has reason to know that it exists.

C. Notwithstanding the provisions of subsections A and B of this section, a landlord may terminate the rental agreement pursuant to subsection A of § [55-248.46](#) and bring an action for possession if:

1. Violation of the applicable building and housing code was caused by lack of reasonable care by the tenant or a member of his household or a person on the premises with his consent;
2. The tenant is in default in rent; or
3. The tenant is in default of a provision of the rental agreement materially affecting the health and safety of himself or others.

1986, c. 586; 1991, c. 185; 1992, c. 709 .

§55-248.50:1. Eviction of resident.

A manufactured home park owner or operator may only evict a resident for:

1. Nonpayment of rent;
2. Violation of the applicable building and housing code caused by a lack of reasonable care by the tenant or a member of his household or a person on the premises with his consent;
3. Violation of a federal, state or local law or ordinance that is detrimental to the health, safety and welfare of other residents in the park;
4. Violation of any rule or provisions of the rental agreement materially affecting the health, safety and welfare of himself or others; or
5. Two or more violations of any rule or provision of the rental agreement occurring within a six-month period.

1992, c. 709 .

§55-248.50:2. Right to sell home upon eviction.

A resident who has been evicted from a manufactured home park shall have ninety days after judgment has been entered in which to sell the home or remove the home from the park. Such resident shall be responsible for paying the rental amount and for regular maintenance of the home lot during the period between the date of eviction and the sale of the home or the removal of the home from the park. Such right to keep the manufactured home in the park shall be conditioned upon the payment of all rent accrued prior to the date of judgment and prospective monthly rent as it becomes due. During such term, a secured party shall be liable for such charges as provided in § [55-248.44:1](#). The park shall have a lien on the home to the extent such rental payments are not made. Any sale of the home shall be subject to the rights of any secured party having a security interest in the home, and the lien granted to the park under this section shall be subject to any such security interest.

1992, c. 709 .

§55-248.51. Penalties for violation of chapter.

If the landlord acts in willful violation of §§ [55-248.43](#), [55-248.45](#), [55-248.47](#) or § [55-248.50](#) or if the landlord fails to provide a written, dated lease, the tenant is entitled to recover from the landlord an amount equal to the greater of either the tenant's monthly rental payment at the time of the violation, or actual damages and reasonable attorney's fees.

1986, c. 586.

§55-248.52. Injunctive relief.

The attorney for any county, city or town may file an action for injunctive relief for violations of this chapter.

1987, c. 111.

Manufactured Housing Construction and Safety Standards Law

§36-85.2. Short title.

The short title of the law embraced in this chapter is the Virginia Manufactured Housing Construction and Safety Standards Law.

1986, c. 37.

§36-85.3. Definitions.

As used in this chapter, unless a different meaning or construction is clearly required by the context:

"Administrator" means the Director of the Department of Housing and Community Development or his designee.

"Any person" shall, in addition to referring to a natural person, include any partnership, corporation, joint stock company or any association whether incorporated or unincorporated.

"Board" means the Board of Housing and Community Development.

"Dealer" means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

"Defect" means a failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part of the home unfit for the ordinary use for which it was intended, but does not result in an imminent risk of death or severe personal injury to occupants of the affected home.

"Department" means the Department of Housing and Community Development.

"Distributor" means any person engaged in the sale and distribution of manufactured homes for resale.

"Federal Act" means the National Manufactured Housing Construction and Safety Standards Act of 1974 as amended (42 U.S.C. § 5401 et seq.).

"Federal Regulations" means the Federal Manufactured Home Procedural and Enforcement Regulations.

"Federal Standards" means the Federal Manufactured Home Construction and Safety Standards.

"HUD" means the United States Department of Housing and Urban Development.

"Imminent safety hazard" means a hazard that presents an imminent risk of death or severe personal injury.

"Manufactured home" means a structure subject to federal regulation, which is transportable in one or more sections; is eight body feet or more in width and forty body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

"Manufactured home construction" means all activities relating to the assembly and manufacture of a manufactured home including but not limited to those relating to durability, quality, and safety.

"Manufactured home safety" means the performance of a manufactured home in such a manner that the public is protected against unreasonable risk of the occurrence of accidents due to the design or construction of the home, or any unreasonable risk of death or injury to the user if such accidents do occur.

"Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes.

"Purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale.

"Secretary" means the Secretary of the United States Department of Housing and Urban Development.

"Skirting" means a weather-resistant material used to enclose the space from the bottom of the manufactured home to grade.

"State Administrative Agency" or "SAA" means the Department of Housing and Community Development which is responsible for the administration and enforcement of this law throughout Virginia and of the plan authorized by § [36-85.5](#).

"The law" or "this law" means the Virginia Manufactured Housing Construction and Safety Standards Law as embraced in this chapter.

1986, c. 37; 1990, c. 593 .

§36-85.4. Purpose and application [Not set out].

Not set out. (1986, c. 37.)

§36-85.5. Enforcement.

The Department of Housing and Community Development is designated as the agency of this State Administrative Agency plan approved by HUD. The Administrator is authorized to perform the following functions:

1. Enforce the Federal Standards with respect to all manufactured homes manufactured in Virginia;
2. Assure that no state or local standard conflicts with those Federal Standards governing manufactured housing construction and performance;
3. Enter and inspect factories, warehouses, or establishments in which manufactured homes are manufactured, stored, or offered for sale as may be required;
4. Seek enforcement of the civil and criminal penalties established by § [36-85.12](#) of this law;
5. Carry out the notification and correction procedures specified in the Federal Regulations, including holding such hearings and making such determinations as may be necessary and requiring manufacturers in the Commonwealth to provide such notifications and corrections as may be required by the Federal Regulations;
6. Employ such qualified personnel as may be necessary to carry out the approved plan for enforcement and otherwise administer this law;
7. Require manufacturers, distributors, and dealers in the Commonwealth to make reports to the Secretary in the same manner and to the same extent as if such plan were not in effect;

8. Participate, advise, assist, and cooperate with other state, federal, public, and private agencies in carrying out the approved plan for enforcement;
9. Provide for participation by the SAA in any interstate monitoring activities which may be carried out on behalf of HUD;
10. Receive consumer complaints and take such actions on the complaints as may be required by the Federal Regulations;
11. Give satisfactory assurance to HUD that the SAA has and will have the legal authority necessary for enforcement of the Federal Standards;
12. Take such other actions as may be necessary to comply with Federal Regulations and Standards referenced in this law.

1986, c. 37.

§36-85.6. Federal Standards and Regulations.

The Federal Standards shall be the sole standard applicable regarding design, construction, or safety of any manufactured home as defined by this law. The Administrator shall accept manufactured home plan approvals from state or private agencies authorized by HUD to conduct plan reviews and approvals. The Administrator shall accept certifications of compliance with the Federal Standards for homes manufactured in other states when such certifications are made according to Federal Regulations.

1986, c. 37.

§36-85.7. Authority of Board to adopt rules and regulations.

The Board shall from time to time adopt, amend, or repeal such rules and regulations as are necessary to implement this law in compliance with the Federal Act and the Federal Standards and Regulations enacted by HUD.

1986, c. 37.

§36-85.8. Notice and hearing on rules and regulations.

The Board shall comply with all applicable requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) when adopting, amending, or repealing any rules and regulations under this law.

1986, c. 37.

§36-85.9. Printing and distribution of rules and regulations.

The Administrator shall have printed and keep in pamphlet form all rules and regulations prescribing the implementation and enforcement of this law. Such pamphlets shall be furnished to members of the public upon request.

1986, c. 37.

§36-85.10. Rules and regulations to be kept in office of Department.

A true copy of all rules and regulations adopted and in force shall be kept in the office of the Department, accessible to the public.

1986, c. 37.

§36-85.11. Application of local ordinances; enforcement of chapter by local authorities.

Manufactured homes displaying the certification label as prescribed by the Federal Standards shall be accepted in all localities as meeting the requirements of this law, which shall supersede the building codes of the counties, municipalities and state agencies. Local zoning ordinances and other land use controls that do not affect the manner of construction or installation of manufactured homes shall remain in full force and effect. Site preparation, utility connections, skirting installation, and maintenance of the manufactured home shall meet the requirements of the Uniform Statewide Building Code (§ [36-97](#) et seq.).

Notwithstanding the above, structures meeting the definition of "manufactured home" set forth in § [36-85.3](#) shall be defined in local zoning ordinances as "manufactured homes." The term "manufactured home" shall be defined in local zoning ordinances solely as it is defined in § [36-85.3](#).

All local building officials are authorized to and shall enforce the regulations adopted by the Board in accordance with this law.

1986, c. 37; 1988, c. 410; 1990, c. 593 .

§36-85.12. Violation; civil and criminal penalties.

It shall be unlawful for any person, firm or corporation, to violate any provisions of this law, the rules and regulations enacted under authority of this law, or the Federal Law and Regulations. Any person, firm or corporation violating any provision of said laws, rules and regulations, or any final order issued thereunder, shall be liable for civil penalty not to exceed \$1,000 for each violation. Each violation shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or to perform an act required by the legislation or

regulations. The maximum civil penalty may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

An individual or a director, officer, or agent of a corporation who knowingly and willfully violates Section 610 of the National Manufactured Housing Construction and Safety Standards Act in a manner which threatens the health or safety of any purchaser shall be deemed guilty of a Class 1 misdemeanor and upon conviction fined not more than \$1,000 or imprisoned not more than one year, or both.

1986, c. 37.

§36-85.13. Staff, equipment or supplies.

The Administrator may employ permanent or temporary technical, clerical and other assistants as is necessary or advisable for the proper administration of this law. The Administrator may purchase equipment and supplies deemed necessary for the staff.

1986, c. 37.

§36-85.14. Fees.

The Board may establish inspection fees to be paid by manufacturers to cover the costs of monitoring inspections. Such fees shall be in the amount and manner as set out in the Federal Regulations. The SAA shall participate in the fee distribution program established by HUD and is authorized to enter into and execute a Cooperative Agreement with HUD for such participation.

1986, c. 37.

§36-85.15. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

Middle Peninsula Chesapeake Bay Public Access Authority Act

§15.2-6600. Title.

This act shall be known and may be cited as the Middle Peninsula Chesapeake Bay Public Access Authority Act.

2002, c. [766](#).

§15.2-6601. Creation; public purpose.

If any of the governing bodies of the Counties of Essex, Gloucester, King William, King and Queen, Mathews, Middlesex, and the Towns of West Point, Tappahannock and Urbanna by resolution declare that there is a need for a public access authority to be created and an operating agreement is developed for the purpose of establishing or operating a public access authority for any such participating political subdivisions and that they should unite in the formation of an authority to be known as the Middle Peninsula Chesapeake Bay Public Access Authority (hereinafter the "Authority"), which shall thereupon exist for such participating counties and town and shall exercise its powers and functions as prescribed herein. The region for which such Authority shall exist shall be coterminous with the boundaries of the participating political subdivisions. The Authority shall be charged with the following duties:

1. Identify land, either owned by the Commonwealth or private holdings that can be secured for use by the general public as a public access site;
2. Research and determine ownership of all identified sites;
3. Determine appropriate public use levels of identified access sites;
4. Develop appropriate mechanisms for transferring title of Commonwealth or private holdings to the Authority;
5. Develop appropriate acquisition and site management plans for public access usage;
6. Determine which holdings should be sold to advance the mission of the Authority;
7. Receive and expend public funds and private donations in order to restore or create tidal wetlands within the region for which the Authority exists; provided that any tidal mitigation credits resulting from such restoration or creation projects shall be held by the Authority for the benefit and use of participating political subdivisions and shall not be sold or conveyed to any private party by the Authority or any participating political subdivision; and
8. Perform other duties required to fulfill the mission of the Middle Peninsula Chesapeake Bay Public Access Authority.

In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the Middle Peninsula Chesapeake Bay Public Access Authority, the Authority shall be deemed to have been created as a body corporate and to have been

established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution as aforesaid by the participating political subdivisions declaring that there is a need for such Authority. A copy of such resolution duly certified by the clerks of the counties and towns by which it is adopted shall be admissible as evidence in any suit, action, or proceeding. Any political subdivision of the Commonwealth is authorized to join such Authority pursuant to the terms and conditions of this act.

The ownership and operation by the Authority of any public access sites and related facilities and the exercise of powers conferred by this act are proper and essential governmental functions and public purposes and matters of public necessity for which public moneys may be spent and private property acquired. The Authority is a regional entity of government by or on behalf of which debt may be contracted by or on behalf of any county or town pursuant to Section 10 (a) of Article VII of the Constitution of Virginia.

2002, c. [766](#); 2009, c. [429](#).

§15.2-6602. Definitions.

As used in this act the following words and terms have the following meanings unless a different meaning clearly appears from the context:

"Act" means the Middle Peninsula Chesapeake Bay Public Access Authority Act.

"Authority" means the Middle Peninsula Chesapeake Bay Public Access Authority created by this act.

"Board of Directors" means the governing body of the Authority.

"Bonds" means any bonds, notes, debentures, or other evidence of financial indebtedness issued by this Authority pursuant to this act.

"Commonwealth" means the Commonwealth of Virginia.

"Participating political subdivision" means any of the counties of the Middle Peninsula Planning District Commission or any other subdivision that may join the Authority pursuant to the act.

"Political subdivision" means a county, municipality or other public body of the Commonwealth.

"Site" means any land holding that can improve public access to waters of the Commonwealth.

2002, c. [766](#).

§15.2-6603. Participating political subdivision.

No pecuniary liability of any kind shall be imposed upon any participating political subdivision because of any act, omission, agreement, contract, tort, malfeasance, misfeasance, or nonfeasance by or on the part of the Authority or any member thereof, or its agents, servants, or employees, except as otherwise provided in this act with respect to contracts and agreements between the Authority and any other political subdivision.

2002, c. [766](#).

§15.2-6604. Appointment of a board of directors.

The powers of the Authority shall be vested in the directors of the Authority. The governing body of each participating political subdivision shall appoint either one or two directors, one of whom shall be a member of the appointing governing body or its chief operating officer. In the event there are two or fewer participating jurisdictions in the Authority, each participating jurisdiction shall appoint two directors.

The governing body of each political subdivision shall be empowered to remove at any time, without cause, any director appointed by it and appoint a successor director to fill the unexpired portion of the removed director's term.

If financial funds are available, each director may be reimbursed by the Authority for the amount of actual expenses incurred by him in the performance of his duties.

2002, c. [766](#).

§15.2-6605. Organization.

A simple majority of the directors in office shall constitute a quorum. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

The Authority shall hold regular meetings at such times and places as may be established by its bylaws duly adopted and published at the organizational meeting of that body.

The board of directors shall annually elect a chairman and a vice-chairman from their membership, a secretary and a treasurer or a secretary-treasurer from their membership or not as they deem appropriate, and such other officers as they may deem appropriate.

The board of directors may make and from time to time amend and repeal bylaws, not inconsistent with this act, governing the manner in which the Authority's business may be transacted and in which the power granted to it may be enjoyed. The board of directors may appoint such committees as they may deem advisable and fix the duties and responsibilities of such committees.

2002, c. [766](#).

§15.2-6606. Powers.

The Authority is hereby granted all powers necessary or appropriate to carry out the purposes of this act, including the following, to:

1. Adopt bylaws for the regulation of its affairs and the conduct of its business;
2. Sue and be sued in its own name;
3. Have perpetual succession;
4. Adopt a corporate seal and alter the same at its pleasure;
5. Maintain offices at such places as it may designate;
6. Acquire, establish, construct, enlarge, improve, maintain, equip, operate and regulate public access sites that are owned or managed by the authority within the territorial limits of the participating political subdivisions;
7. Construct, install, maintain, and operate facilities for managing access sites;
8. Determine fees, rates, and charges for the use of its facilities;
9. Apply for and accept gifts, or grants of money or gifts, grants or loans of other property or other financial assistance from the United States of America and agencies and instrumentalities thereof, the Commonwealth of Virginia, or any other person or entity, for or in aid of the construction, acquisition, ownership, operation, maintenance or repair of the public access sites or for the payment of principal of any indebtedness of the Authority, interest thereon or other cost incident thereto, and to this end the Authority shall have the power to render such services, comply with such conditions and execute such agreements, and legal instruments, as may be necessary, convenient or desirable or imposed as a condition to such financial aid;
10. Appoint, employ or engage such officers, employees, architects, engineers, attorneys, accountants, financial advisors, investment bankers, and other advisors, con-

sultants, and agents as may be necessary or appropriate, and to fix their duties and compensation;

11. Contract with any participating political subdivision for such subdivision to provide legal services, engineering services, depository and investment services contemplated by § [15.2-6612](#) hereof, accounting services, including the annual independent audit required by § [15.2-6609](#) hereof, procurement of goods and services, and to act as fiscal agent for the Authority;

12. Establish personnel rules;

13. Own, purchase, lease, obtain options upon, acquire by gift, grant, or bequest or otherwise acquire any property, real or personal, or any interest therein, and in connection therewith to assume or take subject to any indebtedness secured by such property;

14. Make, assume, and enter into all contracts, leases, and arrangements necessary or incidental to the exercise of its powers, including contracts for the management or operation of all or any part of its facilities;

15. Borrow money, as hereinafter provided, and to borrow money for the purpose of meeting casual deficits in its revenues;

16. Adopt, amend, and repeal rules and regulations for the use, maintenance, and operation of its facilities and governing the conduct of persons and organizations using its facilities and to enforce such rules and regulations and all other rules, regulations, ordinances, and statutes relating to its facilities, all as hereinafter provided;

17. Purchase and maintain insurance or provide indemnification on behalf of any person who is or was a director, officer, employee or agent of the Authority against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such;

18. Request and accept legal advice and assistance from the Office of the Attorney General;

19. Do all things necessary or convenient to the purposes of this act. To that end, the Authority may acquire, own, or convey property; enter into contracts; seek financial assistance and incur debt; and adopt rules and regulations; and

20. Whenever it shall appear to the Authority, or to a simple majority of participating political subdivisions, that the need for the Authority no longer exists, the Authority,

or in the proper case, any such subdivision, may petition the circuit court of a participating political subdivision for the dissolution of the Authority. If the court shall determine that the need for the Authority as set forth in this act no longer exists and that all debts and pecuniary obligations of the Authority have been fully paid or provided for, it may enter an order dissolving the Authority.

Upon dissolution, the court shall order any real or tangible personal property contributed to the Authority by a participating political subdivision, together with any improvements thereon, returned to such participating political subdivisions. The remaining assets of the Authority shall be distributed to the participating political subdivisions in proportion to their respective contributions theretofore made to the Authority.

Each participating political subdivision and all holders of the Authority's bonds shall be made parties to any such proceeding and shall be given notice as provided by law. Any party defendant may reply to such petition at any time within six months after the filing of the petition. From the final judgment of the court, an appeal shall lie to the Supreme Court of Virginia.

2002, c. [766](#); 2016, c. [395](#).

§15.2-6607. Name of authority.

The name of the Authority shall be the Middle Peninsula Chesapeake Bay Public Access Authority. The name of this authority may be changed upon approval of a simple majority of the directors of the Authority.

2002, c. [766](#).

§15.2-6608. Rules, regulations, and minimum standards.

The Authority shall have the power to adopt, amend, and repeal rules, regulations, and minimum standards, for the use, maintenance, and operation of its facilities and governing the conduct of persons and organizations using its facilities.

Unless the Authority shall by unanimous vote of the board of directors determine that an emergency exists, the Authority shall, prior to the adoption of any rule or regulation or alteration, amendment or modification thereof:

1. Make such rule, regulation, alteration, amendment or modification in convenient form available for public inspection in the office of the Authority for at least ten days; and

2. Post in a public place a notice declaring the board of directors' intention to consider adopting such rule, regulation, alteration, amendment or modification and informing the public that the Authority will at a public meeting consider the adoption of such rule or regulation or such alteration, amendment, or modification, on a day and at a time to be specified in the notice, after the expiration of at least ten days from the first day of the posting of the notice thereof. The Authority's rules and regulations shall be available for public inspection in the Authority's principal office.

The Authority's rules and regulations relating to: (i) traffic, including but not limited to motor vehicle speed limits and the location of and charges for public parking; (ii) access to Authority facilities, including but not limited to solicitation, handbilling, and picketing; and (iii) site management and maintenance shall have the force of law, as shall any other rule or regulation of the Authority, which shall contain a determination by the Authority that it is necessary to accord the same force and effect of law in the interest of the public safety. However, with respect to motor vehicle traffic rules and regulations, the Authority shall obtain the approval of the appropriate official of the political subdivision in which such rules or regulations are to be enforced. The violation of any rule or regulation of the Authority relating to motor vehicle traffic shall be tried and punished in the same manner as if it had been committed on the public roads of the participating political subdivision in which such violation occurred. All other violations of the rules and regulations having the force of law shall be punishable as misdemeanors.

2002, c. [766](#).

§15.2-6609. Reports.

The Authority shall keep minutes of its proceedings, which minutes shall be open to public inspection during normal business hours. It shall keep suitable records of all its financial transactions and shall arrange to have the same audited annually by an independent certified public accountant. Copies of each such audit shall be furnished to each participating political subdivision and shall be open to public inspection.

2002, c. [766](#).

§15.2-6610. Procurement.

All contracts that the Authority may let for professional services, nonprofessional services, or materials shall be subject to the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.).

2002, c. [766](#).

§15.2-6611. Deposit and investment of funds.

Except as provided by contract with a participating political subdivision, all moneys received pursuant to the authority of this act, whether as proceeds from the sale of bonds or as revenues or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in this act. All moneys of the Authority shall be deposited as soon as practicable in a separate account or accounts in one or more banks or trust companies organized under the laws of the Commonwealth or national banking associations having their principal offices in the Commonwealth. Such deposits shall be continuously secured in accordance with the Virginia Security for Public Deposits Act (§ [2.2-4400](#) et seq.).

Funds of the Authority not needed for immediate use or disbursement may, subject to the provisions of any contract between the Authority and the holders of its bonds, be invested in securities that are considered lawful investments for fiduciaries.

2002, c. [766](#).

§15.2-6612. Authority to issue bonds.

The Authority shall have the power to issue bonds from time to time in its discretion, for any of its purposes, including the payment of all or any part of the cost of Authority facilities and including the payment or retirement of bonds previously issued by it. The Authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds payable, both as to principal and interest: (i) from its revenues and receipts generally and (ii) exclusively from the revenues and receipts of certain designated facilities or loans whether or not they are financed in whole or in part from the proceeds of such bonds. Any such bonds may be additionally secured by a pledge of any grant or contribution from a participating political subdivision, the Commonwealth or any political subdivision, agency or instrumentality thereof, any federal agency or any unit, private corporation, co-partnership, association, or individual, as such participating political subdivision, or other entities, may be authorized to make under general law or by pledge of any income or revenues of the Authority or by mortgage or encumbrance of any property or facilities of the Authority. Unless otherwise provided in the proceeding authorizing the issuance of the bonds, or in the trust indenture securing the same, all bonds shall be payable solely and exclusively from the revenues and receipts of a particular facility or loan. Bonds may be executed and delivered by the Authority at any time and from time to time may be in such form and denominations

and of such terms and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding 40 years from the date thereof, may be payable at such place or places whether within or without the Commonwealth, may bear interest at such rate or rates, may be payable at such time or times and at such places, may be evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided and specified by the board of directors in authorizing each particular bond issue.

If deemed advisable by the board of directors, there may be retained in the proceedings under which any bonds of the Authority are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and as may be briefly recited on the face of the bonds, but nothing herein contained shall be construed to confer on the Authority any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued. Any bonds of the Authority may be sold at public or private sale in such manner and from time to time as may be determined by the board of directors of the Authority to be most advantageous, and the Authority may pay all costs, premiums, and commissions that its board of directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the Authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same facility or any other facility, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the Authority at any time outstanding may from time to time be refunded by the Authority by the issuance of its refunding bonds in such amount as the board of directors may deem necessary, but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any costs, premiums, or commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby, with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in

connection with the same facilities or separate facilities, and regardless of whether or not the bonds proposed to be refunded shall be payable on the same date or on different dates or shall be due serially or otherwise.

All bonds shall be signed by the chairman or vice-chairman of the Authority or shall bear his facsimile signature, and the corporate seal of the Authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the signature of the secretary (or the secretary-treasurer) or the assistant secretary (or assistant secretary-treasurer) of the Authority or shall bear his facsimile signature, and any coupons attached thereto shall bear the facsimile signature of said chairman. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be an officer before delivery of such bonds, such signature, or such facsimile, shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. When the signatures of both the chairman or the vice-chairman and the secretary (or the secretary-treasurer) or the assistant secretary (or the assistant secretary-treasurer) are facsimiles, the bonds must be authenticated by a corporate trustee or other authenticating agent approved by the Authority.

If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, shall be less than the cost of the Authority facilities for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements, or enlargements of the Authority facilities for which such bonds shall have been issued.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds that shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this act without obtaining the consent of any department, division,

commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions, or things that are specifically required by this act; provided, however, that nothing contained in this act shall be construed as affecting the powers and duties now conferred by law upon the State Corporation Commission.

All bonds issued under the provisions of this act shall have and are hereby declared to have all the qualities and incidents of and shall be and are hereby made negotiable instruments under the Uniform Commercial Code of Virginia (§ [8.1A-101](#) et seq.), subject only to provisions respecting registration of the bonds.

In addition to all other powers granted to the Authority by this act, the Authority is authorized to provide for the issuance, from time to time of notes or other obligations of the Authority for any of its authorized purposes. All of the provisions of this act that relate to bonds or revenue bonds shall apply to such notes or other obligations insofar as such provisions may be appropriate.

2002, c. [766](#); 2003, c. [353](#).

§15.2-6613. Fees, rents, and charges.

The Authority is hereby authorized to and shall fix, revise, charge, and collect fees, rents, and other charges for the use and services of any facilities or access site. Such fees, rents, and other charges shall be so fixed and adjusted as to provide a fund sufficient with other revenues to pay the cost of maintaining, repairing, and operating the facilities and the principal and any interest on its bonds as the same shall become due and payable, including reserves therefor. Such fees, rents, and charges shall not be subject to supervision or regulation by any commission, board, bureau, or agency of the Commonwealth or any participating political subdivision. The fees, rents, and other charges received by the Authority, except such part thereof as may be necessary to pay the cost of maintenance, repair, and operation and to provide such reserves therefor as may be provided for in any resolution authorizing the issuance of such bonds or in any trust indenture or agreement securing the same, shall to the extent necessary be set aside at such regular intervals as may be provided in any such resolution or trust indenture or agreement in a sinking fund or sinking funds pledged to, and charged with, the payment and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of such bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. So long as any of its bonds are outstanding, the fees,

rents, and charges so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority irrespective of whether such parties have notice thereof. Neither the resolution nor any trust indenture by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of any such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust indenture or agreement.

2002, c. [766](#).

§15.2-6614. Credit of Commonwealth and political subdivisions not pledged.

Bonds issued pursuant to the provisions of this act shall not be deemed to constitute a debt of the Commonwealth, or any political subdivision thereof other than the Authority, but such bonds shall be payable solely from the funds provided therefor as herein authorized. All such bonds shall contain on the face thereof a statement to the effect that neither the Commonwealth, nor any political subdivision thereof, nor the Authority, shall be obligated to pay the same or the interest thereon or other costs incident thereto except from the revenues and money pledged therefor and that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of such bonds or the interest thereon or other costs incident thereto.

All expenses incurred in carrying out the provisions of this act shall be payable solely from the funds of the Authority and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall be available to the Authority.

Bonds issued pursuant to the provisions of this act shall not constitute an indebtedness within the meaning of any debt limitation or restriction.

2002, c. [766](#).

§15.2-6615. Directors and persons executing bonds not liable thereon.

Neither the board of directors nor any person executing the bonds shall be liable personally for the Authority's bonds by reasons of the issuance thereof.

2002, c. [766](#).

§15.2-6616. Security for payment of bonds; default.

The principal of and interest on any bonds issued by the Authority shall be secured by a pledge of the revenues and receipts out of which the same shall be made payable, and may be secured by a trust indenture covering all or any part of the Authority facilities from which revenues or receipts so pledged may be derived, including any enlargements of any additions to any such projects thereafter made. The resolution under which the bonds are authorized to be issued and any such trust indenture may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents for any portions thereof leased by the Authority to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the board of directors shall deem advisable not in conflict with the provisions hereof. Each pledge, agreement, and trust indenture made for the benefit or security of any of the bonds of the Authority shall continue effective until the principal of and interest on the bonds for the benefit of which the same were made shall have been fully paid. In the event of default in such payment or in any agreements of the Authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any trust indenture executed as security therefor, may be enforced by mandamus, suit, action, or proceeding at law or in equity to compel the Authority and the directors, officers, agents, or employees thereof to perform each and every term, provision and covenant contained in any trust indenture of the Authority, the appointment of a receiver in equity, or by foreclosure of any such trust indenture, or any one or more of said remedies.

2002, c. [766](#).

§15.2-6617. Taxation.

The exercise of the powers granted by this act shall in all respects be presumed to be for the benefit of the inhabitants of the Commonwealth, for the increase of their commerce, and for the promotion of their health, safety, welfare, convenience and prosperity, and as the operation and maintenance of any project that the Authority is authorized to undertake will constitute the performance of an essential governmental function, the Authority shall not be required to pay any taxes or assessments upon any facilities acquired and constructed by it under the provisions of this act and the bonds issued under the provisions of this act, their transfer and the income therefrom including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any political subdivision thereof.

Persons, firms, partnerships, associations, corporations, and organizations leasing property of the Authority or doing business on property of the Authority shall be subject to and liable for payment of all applicable taxes of the political subdivision in which such leased property lies or in which business is conducted including, but not limited to, any leasehold tax on real property and taxes on hotel and motel rooms, taxes on the sale of tobacco products, taxes on the sale of meals and beverages, privilege taxes and local general retail sales and use taxes, taxes to be paid on licenses in respect to any business, profession, vocation or calling, and taxes upon consumers of gas, electricity, telephone, and other public utility services.

2002, c. [766](#).

§15.2-6618. Bonds as legal investments.

Bonds issued by the Authority under the provisions of this act are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds are hereby made securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.

2002, c. [766](#).

§15.2-6619. Appropriation by political subdivision.

Any participating political subdivision, or other political subdivision of the Commonwealth, is authorized to provide services, to donate real or personal property and to make appropriations to the Authority for the acquisition, construction, maintenance, and operation of the Authority's facilities. Any such political subdivision is hereby authorized to issue its bonds, including general obligation bonds, in the manner provided in the Public Finance Act (§ [15.2-2600](#) et seq.) or in any applicable municipal charter for the purpose of providing funds to be appropriated to the Authority, and such political subdivisions may enter into contracts obligating such bond proceeds to the Authority.

The Authority may agree to assume, or reimburse a participating political subdivision for any indebtedness incurred by, such participating political subdivision with respect to facilities conveyed by it to the Authority.

2002, c. [766](#).

§15.2-6620. Contracts with political subdivisions.

The Authority is authorized to enter into contracts with any one or more political subdivisions.

2002, c. [766](#).

§15.2-6621. Agreement with Commonwealth and participating political subdivisions.

The Commonwealth and, by participating in the Authority, each participating political subdivision, pledge to and agree with the holders of any bonds issued by the Authority that neither the Commonwealth nor any participating political subdivision will limit or alter the rights hereunder vested in the Authority to fulfill the terms of any agreements made with said holders or in any way impair the rights and remedies of said holders until such bonds are fully met and discharged. The Authority is authorized to include this pledge and agreement in any contract with the holders of the Authority's bonds.

2002, c. [766](#).

§15.2-6622. Liberal construction.

Neither this act nor anything contained herein is or shall be construed as a restriction or limitation upon any powers that the Authority might otherwise have under any laws of the Commonwealth, and this act is cumulative to any such powers. This act does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws.

2002, c. [766](#); 2015, c. [709](#).

§15.2-6623. Application of local ordinances, service charges, and taxes upon leaseholds.

Nothing herein contained shall be construed to exempt the Authority's property from any applicable zoning, subdivision, erosion and sediment control, and fire prevention codes or from building regulations of a political subdivision in which such property is located. Nor shall anything herein contained exempt the property of the Authority from any service charge authorized by the General Assembly pursuant to Article X, Section 6 (g) of the Constitution of Virginia, or exempt any lessee of any of

the Authority's property from any tax imposed upon his leasehold interest in such property or upon the receipts derived therefrom.

2002, c. [766](#).

§15.2-6624. Existing contracts, leases, franchises, etc., not impaired.

No provisions of this act shall relieve, impair, or affect any right, duty, liability, or obligation arising out of any contract, concession, lease, or franchise now in existence except to the extent that such contract, concession, lease, or franchise may permit. Notwithstanding the foregoing provisions of this section, the Authority may renegotiate, renew, extend the term of, or otherwise modify at any time any contract, concession, lease, or franchise now in existence in such manner and on such terms and conditions as it may deem appropriate, provided that the operator of or under any said contract, concession, lease, or franchise consents to said renegotiation, renewal, extension, or modification.

2002, c. [766](#).

§15.2-6625. Withdrawal of membership.

Any member jurisdiction may withdraw from membership in the Authority by resolution or ordinance of its governing body. However, no member jurisdiction shall be permitted to withdraw from the Authority after any obligation has been incurred except by unanimous vote of all member jurisdictions.

2002, c. [766](#).

Mineral Mine Safety Act

§45.1-161.292:1. Short title.

This chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) of this title shall be known as the "Mineral Mine Safety Act."

1997, c. [390](#).

§45.1-161.292:2. Definitions.

As used in this chapter and in Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) and in regulations promulgated under such chapters, unless the context requires a different meaning:

"Abandoned area" means the inaccessible area of an underground mine that is sealed or ventilated and in which further mining is not intended.

"Accident" means (i) a death of an individual at a mine; (ii) a serious personal injury; (iii) an entrapment of an individual for more than 30 minutes; (iv) an unplanned inundation of a mine by liquid or gas; (v) an unplanned ignition or explosion of gas or dust; (vi) an unplanned mine fire not extinguished within 30 minutes of discovery; (vii) an unplanned ignition or explosion of a blasting agent or an explosive; (viii) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage; (ix) a rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour; (x) an unstable condition at an impoundment or refuse pile which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, or refuse pile; (xi) damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than 30 minutes; and (xii) an event at a mine which causes death or bodily injury to an individual not at a mine at the time the event occurs.

"Active areas" means all places in a mine that are ventilated, if underground, and examined regularly.

"Active workings" means any place in a mine where miners are normally required to work or travel.

"Agent" means any person charged by the operator with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

"Approved" means a device, apparatus, equipment, condition, method, course or practice approved in writing by the Director.

"Approved competent person" means a person designated by the Department as having the authority to function as a mine foreman even though the person has less than five years' experience but more than two years' experience. If an approved competent person has met all the criteria for a mine foreman certification other than the experience criteria, he may perform the duties of a mine foreman except the pre-shift examination.

"Armored cable" means a cable provided with a wrapping of metal, plastic or other approved material.

"Authorized person" means a person assigned by the operator or agent to perform a specific type of duty or duties or to be at a specific location or locations in the mine who is task trained in accordance with requirements of the federal mine safety law.

"Blower fan" means a fan with tubing used to direct part of a particular circuit of air to a working place.

"Booster fan" means an underground fan installed in conjunction with a main fan to increase the volume of air in one or more circuits.

"Cable" means a stranded conductor (single-conductor cable) or a combination of conductors insulated from one another (multiple-conductor cable).

"Certified person" means a person holding a valid certificate from the Department authorizing him to perform the task to which he is assigned.

"Circuit" means a conducting part or a system of conducting parts through which an electric current is intended to flow.

"Circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

"Competent person" means a person having abilities and experience that fully qualify him to perform the duty to which he is assigned.

"Cross entry" means any entry or set of entries, turned from main entries, from which room entries are turned.

"Department" means the Department of Mines, Minerals and Energy.

"Experienced surface miner" means a person with more than six months of experience working at a surface mine or the surface area of an underground mine.

"Experienced underground miner" means a person with more than six months of underground mining experience.

"Federal mine safety law" means the Federal Mine Safety and Health Act of 1977 (P.L. 95-164), and regulations promulgated thereunder.

"Fuse" means an overcurrent protective device with a circuit-opening fusible member directly heated and destroyed by the passage of overcurrent through it.

"Ground" means a conducting connection between an electric circuit or equipment and earth or to some conducting body which serves in place of earth.

"Grounded" means connected to earth or to some connecting body which serves in place of the earth.

"Hazardous condition" means conditions that are likely to cause death or serious personal injury to persons exposed to such conditions.

"Imminent danger" means the existence of any condition or practice in a mine which could reasonably be expected to cause death or serious personal injury before such condition or practice can be abated.

"Inactive mine" means a mine (i) at which coal or minerals have not been excavated or processed, or work, other than examinations by a certified person or emergency work to preserve the mine, has not been performed at an underground mine for a period of 30 days, or at a surface mine for a period of 60 days, (ii) for which a valid license is in effect, and (iii) at which reclamation activities have not been completed.

"Independent contractor" means any person that contracts to perform services or construction at a mine.

"Intake air" means air that has not passed through the last active working place of the split or by the unsealed entrances to abandoned areas and by analysis contains not less than 19.5 percent oxygen nor more than 0.5 percent of carbon dioxide, nor any hazardous quantities of flammable gas nor any harmful amounts of poisonous gas.

"Interested persons" means members of the Mine Safety Committee and other duly authorized representatives of the employees at a mine; federal Mine Safety and Health Administration employees; mine inspectors; and, to the extent required by this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.), any other person.

"Licensed operator" means the operator who has obtained the license for a particular mine under § [45.1-161.292:30](#).

"Main entry" means the principal entry or set of entries driven through the coal bed or mineral deposit from which cross entries, room entries, or rooms are turned.

"Mine" means any underground mineral mine or surface mineral mine. Mines that are adjacent to each other and under the same management and which are administered as distinct units shall be considered as separate mines. A site shall not be a mine unless the mineral extracted or excavated therefrom is offered for sale or exchange, or used for any other commercial purposes.

"Mine fire" means an unplanned fire not extinguished within 30 minutes of discovery.

"Mine foreman" means a person holding a valid certificate of qualification as a foreman issued by the Department.

"Mine inspector" means a public employee assigned by the Director to make mine inspections as required by this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.), and other applicable laws.

"Miner" means any individual working in a mineral mine.

"Mineral" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

"Mineral mine" means a surface mineral mine or an underground mineral mine.

"Mineral Mine Safety Act" or "Act" shall mean this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.), and shall include any regulations promulgated thereunder, where applicable.

"Operator" means any person who operates, controls or supervises a mine or any independent contractor performing services or construction at such mine.

"Panel entry" means a room entry.

"Permissible" means a device, process, or equipment or method heretofore or hereafter classified by such term by the Mine Safety and Health Administration, when such classification is adopted by the Director, and includes, unless otherwise herein expressly stated, all requirements, restrictions, exceptions, limitations, and conditions attached to such classification by the Administration.

"Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned or worked-out areas. Area within a panel shall not be deemed abandoned until inaccessible or sealed.

"Room entry" means any entry or set of entries from which rooms are turned.

"Serious personal injury" means any injury which has a reasonable potential to cause death or any injury other than a sprain or strain which requires an admission to a hospital for 24 hours or more for medical treatment.

"Substation" means an electrical installation containing generating or power-conversion equipment and associated electric equipment and parts, such as switchboards, switches, wiring, fuses, circuit breakers, compensators and transformers.

"Surface mineral mine" means (i) the pit and other active and inactive areas of surface extraction of minerals; (ii) on-site mills, shops, loadout facilities, and related structures appurtenant to the excavation and processing of minerals; (iii) impoundments, retention dams, tailing ponds, and other areas appurtenant to the extraction of minerals from the site; (iv) on-site surface areas for the transportation and storage of minerals excavated at the site; (v) equipment, machinery, tools and other property used in, or to be used in, the work of extracting minerals from the site; (vi) private ways and roads appurtenant to such area; and (vii) the areas used for surface-disturbing exploration (other than by drilling or seismic testing) or preparation of a site for surface mineral extraction activities. A site shall commence being a surface mineral mine upon the beginning of any surface-disturbing exploration activities other than exploratory drilling or seismic testing, and shall cease to be a surface mineral mine upon completion of initial reclamation activities. The surface extraction of a mineral shall not constitute surface mineral mining unless (a) the mineral is extracted for its unique or intrinsic characteristics, or (b) the mineral requires processing prior to its intended use.

"Travel way" means a passage, walk or way regularly used and designated for persons to go from one place to another.

"Underground mineral mine" means (i) the working face and other active and inactive areas of underground excavation of minerals; (ii) underground travel ways, shafts, slopes, drifts, inclines and tunnels connected to such areas; (iii) on-site mills, loadout areas, shops, and related facilities appurtenant to the excavation and processing of minerals; (iv) on-site surface areas for the transportation and storage of minerals excavated at the site; (v) impoundments, retention dams, tailing ponds and waste areas appurtenant to the excavation of minerals from the site; (vi) equipment, machinery, tools, and other property, on the surface or underground, used in, or to be used in, the excavation of minerals from the site; (vii) private ways and roads appurtenant to such area; and (viii) the areas used to prepare a site for underground mineral excavation activities. A site shall commence being an underground mineral mine upon the beginning of any site preparation activity other than exploratory

drilling or other exploration activity, and shall cease to be an underground mineral mine upon completion of initial reclamation activities.

"Work area," as used in Chapter 14.4 (§ [45.1-161.253](#) et seq.), means those areas of a mine in production or being prepared for production and those areas of the mine which may pose a danger to miners at such areas.

"Working face" means any place in a mine in which work of extracting minerals from their natural deposit in the earth is performed during the mining cycle.

"Working place" means the area of an underground mine in by the last open crosscut.

"Working section" means all areas from the loading point of a section to and including the working faces.

1997, c. [390](#); 1998, c. [695](#); 2012, cc. [803](#), [835](#).

§45.1-161.292:3. Safety and health.

In safety and health, all mineral miners are to be governed by this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) and Chapter 18.1 (§ [45.1-225.1](#) et seq.) of this title, and any other sections of the Code relating to safety and health of miners and rules and regulations promulgated by the Department.

1997, c. [390](#).

§45.1-161.292:4. Special safety rules.

The operator of every mine shall have the right to adopt special safety rules for the safety and operation of his mine or mines, covering the work pertaining thereto inside and outside of the same, which, however, shall not be in conflict with the provisions of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.). Such rules, when established, shall be posted at some conspicuous place about the mines, where the rules may be seen by all miners subject to such rules, or in lieu thereof the operator shall furnish a printed copy of such rules to each miner subject to such rules.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:5. Persons not permitted to work in mines.

A. No person under eighteen years of age shall be permitted to work in or around any mine, and in all cases of doubt, the operator, agent or mine foreman shall obtain a

birth certificate or other documentary evidence, from the Registrar of Vital Statistics, or other authentic sources as to the age of such person.

B. No operator, agent or mine foreman shall make a false statement as to the age of any person under eighteen years of age applying for work in or around any mine.

1997, c. [390](#).

§45.1-161.292:6. Prohibited acts by miners or other persons; miners to comply with law.

A. No miner or other person shall (i) knowingly damage any shaft, lamp, instrument, air course, or brattice or obstruct airways; (ii) carry in a mine any intoxicating liquors or controlled drugs without the prescription of a licensed physician; (iii) disturb any part of the machinery or appliances in a mine; (iv) open a door used for directing ventilation and fail to close it again; (v) enter any part of a mine against caution; or (vi) disobey any order issued pursuant to the provisions of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.).

B. Each miner at any mine shall comply fully with the provisions of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) and other mining laws of this Commonwealth that pertain to his duties.

1997, c. [390](#).

§45.1-161.292:7. Safety materials and supplies.

It shall be the duty of every operator or agent to keep on hand, at or within convenient distance of each mine, at all times a sufficient quantity of all materials and supplies required to preserve the safety of the miners working in those areas in which the operator is responsible for their health and safety, as required by this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.). If for any reason, the operator or agent cannot procure the necessary materials or supplies, he shall cause the miners to withdraw from the mine, or the portion thereof affected, until such material or supplies are received.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:8. Notifying miners of violations; compliance with Act.

A. The operator and his agent shall cooperate with the mine foreman, competent person and other officials in the discharge of their duties as required by this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.), and shall direct that all miners comply with all provisions of this chapter and Chapters 14.5 (§

[45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.), especially when his attention is called to any violation of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) by the Director or a mine inspector.

B. The operator of any mine or his agent shall operate in full conformity with this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) and any other mining law of the Commonwealth at all times. This requirement shall not relieve any other person subject to the provisions of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) from his duty to comply with the requirements of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.).

C. Nothing in this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) shall be construed to relieve an operator or his agent from the duty imposed at common law to secure the reasonable safety of his employees.

D. No operator, agent, competent person, or certified person shall knowingly permit any person to work in any part of a mine in violation of written instructions issued by a mine inspector pursuant to this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.).

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:9. Affiliations of Department personnel with labor union, mining company, etc.; interest in mine; inspections of mines where inspector previously employed.

A. In addition to compliance with the provisions of the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.), neither the Director nor any other officer or employee of the Department shall, upon taking office or being employed, or at any other time during the term of his office or employment, have any affiliation with any operating company, operators' association, or labor union. Neither the Director nor any other officer while in office shall be directly or indirectly interested as owner, partner, proprietor, lessor, operator, superintendent, or engineer of any mine, nor shall the Director, or any other officer while in office, own any stock in a corporation owning a mine either directly or through a subsidiary.

B. Neither the Director nor any mine inspector shall perform an inspection at any mine site at which that individual was last employed for a period of two years following termination of his employment.

1997, c. [390](#).

§45.1-161.292:10. Appointment of mine inspectors.

Mine inspectors shall be appointed by the Director.

1997, c. [390](#).

§45.1-161.292:11. Qualifications of mine inspectors generally.

Each mine inspector shall (i) be not less than 25 years of age; (ii) be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman; and (iv) hold a certificate as a mine inspector issued prior to July 1, 2012, by the Board of Mineral Mining Examiners or on or after July 1, 2012, by the Department.

1997, c. [390](#); 2012, cc. [803](#), [835](#).

§45.1-161.292:12. Qualifications of inspectors of mines.

Each mine inspector conducting inspections of mineral mines shall have a thorough knowledge of the various systems of working and ventilating underground mineral mines and working surface mineral mines; the control of mine roof and ground control; methods of rescue and recovery in mining operations; application of electricity and mechanical loading in mining operations; equipment and explosives used in mining; and mine haulage.

1997, c. [390](#).

§45.1-161.292:13. Duties of Director.

A. The Director shall supervise execution and enforcement of all laws pertaining to the safety and health of persons employed within or at mineral mines within the Commonwealth, and the protection of property used in connection therewith, and to perform all other duties required pursuant to this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.).

B. The Director shall keep a record of all inspections of mineral mines made by him or his authorized representatives. He shall also keep a permanent record thereof, properly indexed, which record shall at all times be open to inspection by any citizen of the Commonwealth.

1997, c. [390](#).

§45.1-161.292:14. Technical specialists.

The Director may appoint technical specialists in the areas of roof control, electricity, ventilation and other mine specialties. Technical specialists shall have all the

qualifications of a mine inspector plus such specialized knowledge in their field as may be required. Technical specialists shall advise the Director and mine operators in the areas of their specialty. Technical specialists shall have the power of an inspector to issue a closure order only in cases of imminent danger.

1997, c. [390](#).

§45.1-161.292:15. Repealed.

Repealed by Acts 2012, cc. [803](#), [835](#), cl. 49.

§45.1-161.292:17. Records of Board of Mineral Mining Examiners.

The Director of the Division of Mineral Mining shall preserve in his office a record of the meetings and transactions of the Board of Mineral Mining Examiners and of all certificates issued by the Board.

1997, c. [390](#).

§45.1-161.292:18. Repealed.

Repealed by Acts 2012, cc. [803](#), [835](#), cl. 49.

§45.1-161.292:19. Certification of certain persons employed in mineral mines; powers of the Department.

A. The Department may require certification of persons who work in mineral mines and persons whose duties and responsibilities in relation to mineral mining require competency, skill or knowledge in order to perform consistently with the health and safety of persons and property. The following certifications shall be issued by the Department, and a person holding such a certification shall be authorized to perform the tasks which this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) or any regulation promulgated by the Department requires be performed by such a certified person:

1. Surface foreman;
2. Surface foreman open pit;
3. Underground foreman;
4. Surface blaster;
5. Electrical repairman;
6. Underground mining blaster;
7. General mineral miner; and

8. Mine inspector.

B. Certification shall also be required for such additional tasks as the Department may require by regulation.

C. The Department shall have the power to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be promulgated in accordance with the provisions of Article 2 (§ [2.2-4007](#) et seq.) of the Administrative Process Act.

1997, c. [390](#); 2012, cc. [803](#), [835](#).

§45.1-161.292:20. Examinations required for Mineral Mining Certifications.

A. The Department may require examination of applicants for certification; however, the Department shall require examination of applicants for a mine inspector certification. The Department may require such other information from applicants as may be necessary to ascertain competency and qualifications for each task. Except as provided by this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) for general mineral miner and surface foreman certifications, the Department shall prescribe the qualifications for any certification. The examinations shall be conducted under such rules, conditions and regulations as the Department shall promulgate. Such rules, when promulgated, shall be made a part of the permanent record of the Department, shall periodically be published, and shall be of uniform application to all applicants.

B. Any certificate issued by the Department, except the general mineral miner certification, shall be valid from the date of issuance for a period of five years, unless renewed, or unless revoked pursuant to § [45.1-161.292:26](#). The general mineral miner certification shall be valid from the date of issuance until it may be revoked pursuant to § [45.1-161.292:26](#).

1997, c. [390](#); 2012, cc. [803](#), [835](#).

§45.1-161.292:21. Performance of certain tasks by uncertified persons; penalty.

It is unlawful for any person to perform any task requiring certification by the Department until he has been certified. It is unlawful for an operator or his agent to permit any uncertified person to perform such tasks. A violation of this section shall constitute a Class 1 misdemeanor. Each day of operation without a required certification shall constitute a separate offense. A certificate issued by the Board of Mineral Min-

ing Examiners prior to July 1, 2012, shall be acceptable as a certificate issued by the Department until the Department shall provide otherwise by appropriate regulations.

1997, c. [390](#); 2012, cc. [803](#), [835](#).

§45.1-161.292:22. Examination fees; Mineral Mining Examiners' Fund.

A fee of \$10 shall be paid to the Director by each person examined. All fees shall be paid before the commencement of the examination. All such fees collected, together with moneys collected pursuant to § [45.1-161.292:25](#), shall be retained by the Department and shall be promptly paid by the Director into the state treasury and shall constitute the Mineral Mining Examiners' Fund. The fund shall be administered by the Director for the payment of the cost of printing certificates and other necessary forms and the incidental expenses incurred by the Department in conducting examinations, reviewing examination papers, and conducting its other duties pursuant to this article. The Director shall keep accounts and records concerning the receipts and expenditures of the fund as required by the Auditor of Public Accounts.

1997, c. [390](#); 2012, cc. [803](#), [835](#).

§45.1-161.292:23. Repealed.

Repealed by Acts 2012, cc. [803](#) and [835](#), cl. 49.

§45.1-161.292:24. Reciprocal acceptance of other certifications.

In lieu of an examination prescribed by law or regulation, the Department may issue to any person holding a certificate issued by another state a certificate permitting him to perform similar tasks in this Commonwealth, provided that (i) the Department finds that the requirements for certification in such other state are substantially equivalent to those of Virginia and (ii) holders of certificates issued by the Department are permitted to perform similar tasks in such state, and obtain similar certification from such state if required, upon presentation of the certificate issued by the Department and without additional testing, training, or other requirements not directly related to program administration.

1997, c. [390](#); 2012, cc. [803](#), [835](#).

§45.1-161.292:25. Renewal of certificates.

The holder of any certificate issued by the Board of Mineral Mining Examiners or the Department, other than a general mineral miner certificate, may renew the certificate by successfully completing the examination for the renewal of such certificate. The Department shall establish requirements for renewal of a certificate in accordance

with the procedure set forth in subsection A of § [45.1-161.292:20](#). The Department shall notify a certificate holder at least 180 days prior to the expiration of the certificate. Any certificate requiring renewal which is not renewed by the fifth anniversary of its issuance, or previous renewal, shall be invalid. As a condition to renewal, the holder shall provide the Department with such administrative information as is reasonably required and shall pay the examination fee as provided in § [45.1-161.292:22](#).

1997, c. [390](#); 2012, cc. [803](#), [835](#).

§45.1-161.292:26. Revocation of certificates.

A. The Department may revoke any certificate upon finding that the holder has (i) been intoxicated while in duty status; (ii) neglected his duties; (iii) violated any provision of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) or any other mineral mining law of the Commonwealth; (iv) used any controlled substance without the prescription of a licensed physician; or (v) other sufficient cause.

B. The Department may act to revoke any certificate upon the presentation of written charges by (i) the Director of the Division of Mineral Mining or any other employee of the Department; (ii) the operator of a mine at which such person is employed; (iii) an independent contractor working at such mine; or (iv) 10 persons working at the mine at which such person is employed, or, if less than 10 persons are working at the mine, a majority of the workers at the mine.

C. Prior to revoking a certificate, the Department shall give due notice to the holder of the certificate and conduct a hearing. Any hearing shall be conducted in accordance with § [2.2-4020](#) unless the parties agree to informal proceedings. The hearing shall be conducted by a hearing officer as provided in § [2.2-4024](#).

D. Any person who has been aggrieved by a decision of the Department shall be entitled to judicial review of such decision. Appeals from such decisions shall be in accordance with Article 4 (§ [2.2-4025](#) et seq.) of the Administrative Process Act.

1997, c. [390](#); 1998, c. [695](#); 2012, cc. [803](#), [835](#).

§45.1-161.292:27. Reexamination.

The holder of a certificate revoked pursuant to § [45.1-161.292:26](#) shall be entitled to examination by the Department after three months has elapsed from the date of

revocation of the certificate if he can prove to the satisfaction of the Department that the cause for revocation of his certificate has ceased to exist.

1997, c. [390](#); 2012, cc. [803](#), [835](#).

§45.1-161.292:28. General mineral miner certification.

A. Every person commencing work in a mineral mine subsequent to January 1, 1997, shall hold a general mineral miner certificate issued by the Board of Mineral Mining Examiners or the Department. Any person who has worked in a mineral mine in Virginia prior to that date may, but shall not be required to, hold a general mineral miner certificate.

B. Each applicant for a general mineral miner certificate shall prove to the Department that he has knowledge of first aid practices and has a general working knowledge of the provisions of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) and applicable regulations pertaining to mineral mining health and safety.

1997, c. [390](#); 2012, cc. [803](#), [835](#).

§45.1-161.292:29. Foreman certification.

A. At any mineral mine where three or more persons work during any part of a 24-hour period, the licensed operator or independent contractor engaged in the extraction or processing of minerals shall employ a mine foreman. Only persons holding a foreman certificate in accordance with § [45.1-161.292:19](#) shall be employed as mine foremen. The holder of such a certificate shall present the certificate, or a photostatic copy thereof, to the operator where he is employed, who shall file the certificate or its copy in the office at the mine, and the operator shall make it available for inspection by interested persons.

B. Applicants for a foreman certificate shall have had at least five years of experience at mineral mining or other experience deemed appropriate by the Department and demonstrate to the Department a thorough knowledge of the theory and practice of mineral mining by making 85 percent or more on the written examination. In addition, each applicant shall pass an examination in first aid approved by the Department.

C. The certified mine foreman shall examine all active workings at the beginning of each shift. Any hazard or unsafe condition shall be corrected prior to miners starting work in the affected area.

D. Independent contractors working in a mineral mine who are engaged in activities other than the extraction or processing of minerals and working in a clearly demarcated area where (i) no mining-associated hazards exist and (ii) no other miners travel or work while engaged in extraction or processing activities, shall employ a competent person who shall examine the work area of the contractor at the beginning of each shift. Any hazard or unsafe condition shall be corrected prior to personnel starting work in the affected area.

1997, c. [390](#); 1998, c. [695](#); 2012, cc. [803](#), [835](#).

§45.1-161.292:30. License required for operation of mineral mines; term.

A. No person shall engage in the operation of any mineral mine within this Commonwealth without first obtaining a license from the Department. A license shall be required prior to commencement of the operation of a mine. A separate license shall be secured for each mine operated. Licenses shall be in such form as the Director may prescribe. The license shall be posted in a conspicuous place near the main entrance to the mine. The Director may transfer a license to a successor operator, provided that the successor operator has complied with the requirements of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.). Every change in ownership of a mine shall be reported to the Department as provided in subsection D of § [45.1-161.292:35](#).

B. Licenses shall be valid for a period of one year following the date of issuance and shall be renewed on their anniversary date.

C. Within thirty days after the occurrence of any change in the information required by subsection A, the licensed operator shall notify the Department, in writing, of such change.

1997, c. [390](#); 1998, c. [695](#); 2000, c. [974](#).

§45.1-161.292:31. Fee to accompany application for license; fund; disposition of fees.

Each application for a mineral mine license or a renewal or transfer of a license shall be submitted to the Department, accompanied by a fee, payable to the State Treasurer, in the amount of \$180. However, any person engaged in mining sand or gravel on an area of five acres or less shall be required to pay a fee of \$48. All such fees collected shall be retained by the Department and paid into the state treasury and shall constitute a fund under the control of the Director. Expenditures from this fund may

be made by the Department for safety equipment, safety training, safety education or for any expenditure to further the safety program in the mineral mining industry. All expenditures from this fund must be approved by the Director.

1997, c. [390](#); 2003, cc. [542](#), [550](#).

§45.1-161.292:32. Application for license.

A. An application for a license shall be submitted by the person who will be the licensed operator of the mine. No application for a license or a renewal thereof shall be complete unless it contains the following:

1. Identity regarding the applicant. If the applicant is a sole proprietorship, the applicant shall state: (i) his full name and address; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the sole proprietor has a twenty percent or greater ownership interest; and (vi) the trade name, if any, and the full name, address of record and telephone number of the proprietorship. If the applicant is a partnership, the applicant shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the partnership has a twenty percent or greater ownership interest; (v) the full name and address of all partners; (vi) the trade name, if any, and the full name and address of record and telephone number of the partnership; and (vii) the federal mine identification numbers of all other mines in which any partner has a twenty percent or greater ownership interest. If the applicant is a corporation, the applicant shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the corporation has a twenty percent or greater ownership interest; (v) the full name, address of record and telephone number of the corporation and the state of incorporation; (vi) the full name and address of each officer and director of the corporation; (vii) if the corporation is a subsidiary

corporation, the applicant shall state the full name, address, and state of incorporation of the parent corporation; and (viii) the federal mine identification numbers of all other mines in which any corporate officer has a twenty percent or greater ownership interest. If the applicant is any organization other than a sole proprietorship, partnership, or corporation, the applicant shall state: (i) the nature and type, or legal identity of the organization; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the organization has a twenty percent or greater ownership interest; (vi) the full name, address of record and telephone number of the organization; (vii) the name and address of each individual who has an ownership interest in the organization; (viii) the name and address of the principal organization officials or members; and (ix) the federal mine identification numbers of all other mines in which any official or member has a twenty percent or greater ownership interest;

2. The names and addresses of any agent of the applicant with responsibility for the business operation of the mine, and any person with an ownership or leasehold interest in the minerals to be mined;

3. Information about each independent contractor working at the mine: (i) the independent contractor's trade name, business address and business telephone number; (ii) a description of the nature of the work to be performed by the independent contractor and where at the mine the work is to be performed; (iii) the independent contractor's MSHA identification number, if any; (iv) the independent contractor's address of record for service of citations and other documents; (v) the names and addresses of persons with overall responsibility for operating decisions; and (vi) the names and addresses of persons with overall responsibility for the health and safety of employees;

4. The names and addresses of persons to be contacted in the event of an accident or other emergency at the mine;

5. Such information required by the Department that is relevant to an assessment of the safety and health risks likely to be associated with the operation of the mine; and

6. For any license renewal, the annual report required pursuant to § [45.1-161.292:35](#).

B. The application shall be certified as being complete and accurate by the applicant, if an individual; by the agent of a corporate applicant; or by a general partner of an applicant that is a partnership. The application shall be submitted on forms furnished or approved by the Department.

C. Within thirty days after the occurrence of any change in the information required by subsection A, the licensed operator shall notify the Department, in writing, of such change.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:33. Denial or revocation of license.

A. The Director may deny an application for, or revoke a license for, the operation of a mineral mine, upon determining that the applicant, the licensed operator, or his agent has committed violations of the mine safety laws of the Commonwealth which demonstrate a pattern of willful violations resulting in an imminent danger to miners.

B. The Director may revoke every license issued to any person for the operation of a mineral mine and may deny every application by a person for the issuance of a license for the operation of a mineral mine, who has been convicted of knowingly permitting a miner to work in an underground coal mine where a methane monitor or other device capable of detecting the presence of explosive gases was impaired, disturbed, disconnected, bypassed, or otherwise tampered with in violation of § [45.1-161.233](#).

C. The Director may revoke every license issued to any person for the operation of a mineral mine and may deny every application by a person for the issuance of a license for the operation of a mineral mine, who has been convicted of violating subsection A of § [45.1-161.177](#) or § [45.1-161.178](#).

D. Any person whose license is denied or revoked pursuant to subsection A, B, or C may bring a civil action in the circuit court of the city or county in which the mine is located for review of the decision. The commencement of such a proceeding shall not, unless specifically ordered by the court, operate as a stay of the decision. The court shall promptly hear and determine the matters raised by the aggrieved party. In any such action the court shall receive the records of the Department with respect to the determination, and shall receive additional evidence at the request of any party. The

court, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:34. Operating without license; penalty.

A. In addition to any other power conferred by law, the Director, or his designated representative, shall have the authority to issue an order closing any mineral mine which is operating without a license. The procedure for issuing a closure order shall be as provided in § [45.1-161.292:64](#).

B. Any person operating an unlicensed mineral mine shall, upon conviction, be guilty of a Class 3 misdemeanor. Each day any person operates an unlicensed mineral mine shall constitute a separate offense.

1997, c. [390](#).

§45.1-161.292:35. Annual reports; condition to issuance of license following transfer of ownership.

A. The licensed operator of every mine or his agent shall annually, by February 15, mail or deliver to the Department a report for the preceding twelve months, ending with December 31. Such report shall state: (i) the names of the licensed operator, any agent, and their officers of the mine; (ii) the quantity of minerals mined; (iii) any changes in the information required to be part of the license application by subsection A of § [45.1-161.292:32](#); and (iv) such other information, not of a private nature, as may from time to time be required by the Department on blank forms furnished or approved by the Department.

B. Each independent contractor working or who has worked at a mine during the preceding twelve months shall annually, by February 15, mail or deliver to the Department a report for the preceding twelve months, ending with December 31. Such report shall state: (i) the independent contractor's name and Department identification number; (ii) the number of the independent contractor's employees who worked at each mine, listed by mine name and license number; (iii) the number of the independent contractor's employee hours worked at each mine, listed by mine name and license number; and (iv) the lump sum amount of wages paid by the independent contractor at each mine, if such amount is above \$1,000, listed by mine name and license number.

C. For purposes of subsection B, independent contractor shall mean any (i) extraction and processing contractors, including, but not limited to, drillers, blasters, portable crushers, and stripping and land clearing contractors; (ii) maintenance and repair contractors for mobile and stationary extraction and processing equipment, including, but not limited to, welders, mechanics, painters and electricians; and (iii) construction contractors involved in mine site construction maintenance or repair, including, but not limited to, plant construction contractors, concrete fabricators and equipment erectors.

D. Whenever the owner of a mine shall transfer the ownership of such mine to another person, the person transferring such ownership shall submit a report to the Department of such change and a statement of the tons of minerals produced since the January 1 previous to the date of such sale or transfer of such mine. A license shall not be issued covering such transfer of ownership until the report is furnished.

E. All wage information contained in any report filed with the Department pursuant to this section shall be exempt from the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.) and shall not be published or open to public inspection in any manner revealing the employing unit's identity, except that such information may be disclosed to the Director or his authorized representative concerned with carrying out any provisions of this title. Wage data aggregated in such a manner that it does not reveal the employing unit's identity shall not be considered confidential.

1997, c. [390](#); 1998, c. [695](#); 2000, c. [974](#).

§45.1-161.292:36. Notices to Department; resumption of mining following discontinuance.

A. The licensed operator or his agent shall send notice of intent to abandon or discontinue the working of an underground mine for a period of thirty days or a surface mine for a period of sixty days to the Department at least ten days prior to discontinuing the working of a mine with such intent, or at any time a mine becomes an inactive mine.

B. The licensed operator, or his agent, shall send to the Department ten days' prior notice of intent to resume the working of an inactive mine. Except for a surface mineral mine which is inspected by the Mine Safety and Health Administration, the working of such mine shall not resume until a mine inspector has inspected the mine and approved it.

C. Emergency actions necessary to preserve a mine may be undertaken without the prior notice of intent and advance inspection required by subsection B. In such event, a mine foreman shall examine a mine for hazardous conditions immediately before miners are permitted to work. The licensed operator, or his agent, shall notify the Department as soon as possible after commencing emergency action necessary to preserve the mine.

D. The licensed operator, or his agent, shall send to the Department ten days' prior notice of any change in the name of a mine or in the name of the operation of a mine.

E. The licensed operator, or his agent, shall send to the Department ten days' prior notice of the opening of a new mine.

F. Any notice required by this section shall be in writing and shall include the name of the mine, the location of the mine, the name of the licensed operator, and the licensed operator's mailing address.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:37. Maps of mines required to be made; contents; extension and preservation; use by Department; release; posting of map.

A. Prior to commencing mining activity, the licensed operator of a mineral mine, or his agent, shall make, or cause to be made, unless already made and filed, an accurate map of such mine, on a scale to be stated thereon of 100 to 400 feet to the inch. Such map shall show the openings or excavations, the shafts, slopes, entries and airways, with darts or arrows showing direction of air currents, headings, rooms, pillars, permanent explosive magazines, permanent fuel storage facilities, and such portions of such mine or mines as may have been abandoned, and so much of the property lines and the outcrop of the mineral of the tract of land on which the mine is located, as may be within 1,000 feet of any part of the workings of such mine, and for underground mines only, the general inclination of the mineral strata. The licensed operator shall annually, beginning on the anniversary date of the mine permit issued pursuant to Chapter 16 (§ [45.1-180](#) et seq.), while the mine is in operation, cause the map thereof to be extended so as to accurately show the progress of the workings, and the property lines and outcrop as described above, and shall forward the same to the Department to be kept on record, subject to the conditions stated in subsection C. If there are no changes in the information required by this section, an updated map shall not be required to be submitted to the Department.

B. The licensed operator of any surface mineral mine, or his agent, shall not be required to submit a map of such mine to the Department unless the mine may intersect (i) underground workings or (ii) workings from auger, thin seam, or highwall mining operations. The map shall be filed and preserved among the records of the Department and made available at a reasonable cost to all persons owning, leasing, or residing on or having an equitable interest in surface areas or coal or mineral interests within 1,000 feet of such mining operation upon written proof satisfactory to the Director and upon sworn affidavit that such person requesting a map has a proper legal or equitable interest; however, the Director shall provide to the person requesting a map only that portion of the map which abuts or is contiguous to the property in which such requesting party has a legal or equitable interest. In no case shall any copy of the same be made for any other person without the consent of the licensed operator or his agent. The Director shall promptly deliver notice of such request to the licensed operator of such mining operation.

C. The original map, or a true copy thereof, shall be kept by such licensed operator at the active mine, open at all reasonable times for the examination and use of the mine inspector.

D. Copies of such maps shall be made available at a reasonable cost to the governing body of any county, city or town in which the mine is located upon written request; however, such copies shall be provided on the condition that they not be released to any person who does not have a legal or equitable interest in surface areas or mineral interests within 1,000 feet of the mining operation without the written consent of the licensed operator or his agent. The governing body shall promptly deliver notice of any request for a copy of such a map to the licensed operator or his agent.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:38. When the Director may cause maps to be made; payment of expense.

If the licensed operator, or his agent, of any mine shall neglect or fail to furnish to the Director a copy of any map or extension thereof, as provided in § [45.1-161.292:37](#), the Director is authorized to cause a correct survey and map of said mine, or extension thereof, to be made at the expense of the licensed operator of such mine, the cost of which shall be recovered from the licensed operator as other debts are recoverable by a civil action at law. If at any time the Director has reason to believe that such map, or extensions thereof, furnished pursuant to § [45.1-](#)

[161.292:37](#) is substantially incorrect, or will not serve the purpose for which it is intended, he may have a survey and map or extension thereof made, or corrected. The expense of making such survey and map or extension thereof shall be paid by the licensed operator. The expense shall be recovered from the licensed operator as other debts are recoverable by a civil action at law. However, if the map filed by the licensed operator is found to be substantially correct, the expense shall be paid by the Commonwealth.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:39. Making false statements; penalty.

A. It shall be unlawful for any person charged with the making of maps or other data to be furnished as provided in this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) to fail to correctly show, within the limits of error, the data required.

B. It shall be unlawful for any person charged with the making of maps or other data to be furnished as provided in this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) to knowingly make any false statement or return in connection therewith.

C. A violation of this section is a misdemeanor, and a person convicted of violating this section shall be fined not less than \$50 nor more than \$200.

1997, c. [390](#).

§45.1-161.292:40. Mine rescue and first aid stations.

The Director is hereby authorized to purchase, equip and operate for the use of the Department, such mine rescue and first aid stations as he may determine necessary for the adequate provision of mine rescue and recovery services at all mines in the Commonwealth.

1997, c. [390](#).

§45.1-161.292:41. Mine rescue crews.

The Director is hereby authorized to have trained and employed at the mine rescue and first aid stations operated by the Department within the Commonwealth mine rescue crews as he may determine necessary. Each member of a mine rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work. Members shall receive compensation for services at a rate set by the Director, to be determined annually based on prevailing wage rates

within the industry. For the purposes of workers' compensation coverage during training periods, such crew members shall be deemed to be within the scope of their regular employment. The Director shall certify to the Comptroller of the Commonwealth that such crew members have performed the required service. Upon such certification the Comptroller shall issue a warrant upon the state treasury for their compensation. The Director may remove any crew member at any time.

1997, c. [390](#).

§45.1-161.292:42. Duty to train crew.

It shall be the duty and responsibility of the Department to see that all crews be properly trained by a qualified instructor of the Department or such other persons who have a certificate of training from the Department or the Mine Safety and Health Administration.

1997, c. [390](#).

§45.1-161.292:43. Qualification for crew membership; direction of crews.

A. To qualify for membership in mine rescue crews, an applicant shall (i) be an experienced miner, (ii) be not more than 50 years of age, and (iii) pass a physical examination by a licensed physician, licensed physician assistant, or licensed nurse practitioner at least annually. A record that such examination was taken shall be kept on file by the operator who employs the crew members and a copy shall be furnished to the Director.

B. All rescue or recovery work performed by these crews shall be under the jurisdiction of the Department. The Department shall consult with company officials, representatives of the Mine Safety and Health Administration and representatives of the miners, and all should be in agreement as far as possible on the proper procedure for rescue and recovery; however, the Director in his discretion may take full responsibility in directing such work. In all instances, procedures shall be guided by the mine rescue apparatus and auxiliary equipment manuals.

1997, c. [390](#); 2004, c. [855](#); 2006, c. [396](#).

§45.1-161.292:44. Crew members to be considered employees of the mine where emergency exists; compensation; workers' compensation.

When engaged in rescue or recovery work during an emergency at a mine, all crew members assigned to the work shall be considered, during the period of their work, employees of the mine where the emergency exists and shall be compensated by the

licensed operator at the rate established in the area for such work. In no event shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, all crew members shall be deemed to be within the employment of the licensed operator of the mine for the purpose of workers' compensation coverage.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:45. Requirements of recovery work.

A. During recovery work and prior to entering any mine, all mine rescue crews conducting recovery work shall be properly informed of existing conditions by the operator or his agent in charge.

B. Each mine rescue crew performing rescue or recovery work with breathing apparatus shall be provided with a backup crew of equal strength, stationed at each fresh air base.

C. For every two crews performing work underground, one six-member crew shall be stationed at the mine portal.

D. Two-way communication, life lines or their equivalent shall be provided by the fresh air base to all crews and no crew member shall be permitted to advance beyond such communication system.

E. A mine rescue crew shall immediately return to the fresh air base should any crew member's breathing apparatus malfunction or the atmospheric pressure of any apparatus deplete to sixty atmospheres.

F. The Director may also assign rescue and recovery work to inspectors, instructors or other qualified employees of the Department as the Director may determine desirable.

1997, c. [390](#).

§45.1-161.292:46. State-designated mine rescue teams.

The Director may, upon the request of a licensed operator or agent who employs a mine rescue team, designate two or more mine rescue teams as "state-designated mine rescue teams." Any team which is certified as a mine rescue team by the Mine Safety and Health Administration under 30 CFR Part 49 shall be eligible to be a state-designated team. Following the designation of any such teams, the Director shall, upon the payment to the Department of an annual fee, set by the Director based on current costs for maintaining mine rescue stations and personnel, assign

two or more state-designated teams to the licensed operator. A licensed operator who has paid the rescue fee shall be entitled to the rescue services of a state-designated rescue team at no additional charge.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:47. Mine Rescue Fund.

The Mine Rescue Fund is created as a special fund in the office of the State Treasurer. All moneys collected from licensed operators pursuant to the provisions of § [45.1-161.292:46](#) shall be paid into the Mine Rescue Fund. On July 1 of each year, or as soon thereafter as sufficient moneys are in the Mine Rescue Fund as are needed for this purpose, ten percent of the fund shall be transferred from the fund to the Department for purposes of administering the state-designated mine rescue team program. On an annual basis, funds in excess of the sum which is transferred for administrative purposes shall be divided equally among all state-designated mine rescue teams. No moneys in the Mine Rescue Fund shall revert to the general fund.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:48. Inspections; Mine Rescue Coordinator.

A. The Director shall (i) inspect, or cause to be inspected, the rescue station of each state-designated mine rescue team four times a year, (ii) ensure that all rescue stations are adequately equipped, and (iii) ensure that all team members are adequately trained.

B. The Director shall designate an employee of the Department as the Mine Rescue Coordinator, who shall perform the duties assigned to him by the Director.

1997, c. [390](#).

§45.1-161.292:49. Workers' compensation; liability.

A. For the purpose of workers' compensation coverage during any mine disaster to which a state-designated mine rescue team responds under the provisions of this article, members of the state-designated team shall be deemed to be within the employment of the licensed operator of the mine at which the disaster occurred.

B. Any member of a state-designated team engaging in rescue work at a mine shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue work unless the act or omission was the result of gross negligence or willful misconduct.

C. Any operator providing personnel to a state-designated mine rescue team to engage in rescue work at a mine not owned or operated by the operator shall not be liable for any civil damages for acts or omissions resulting from the rendering of such rescue work.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:50. Reports of explosions and mine fires; procedure.

A. If an explosion or mine fire occurs in a mine, the operator shall notify the Department by the quickest available means. Independent contractors shall notify the licensed operator of such incidents. All facilities of the mine shall be made available for rescue and recovery operations and fire fighting.

B. No work other than rescue and recovery work and fire fighting may be attempted or started until and unless it is authorized by the Department.

C. If an explosion occurs in an underground mine, the fan shall not be reversed except by authority of the officials in charge of rescue and recovery work, and then only after a study of the effect of reversing the fan on any persons who may have survived the explosion and are still underground.

D. The Department shall make available all the facilities at its disposal in effecting rescue and recovery work. The Director shall act as consultant, or take personal charge, where in his opinion the circumstances of any mine explosion, fire or other accident warrant.

E. The orders of the official in charge of rescue and recovery work shall be respected and obeyed by all persons engaged in rescue and recovery work.

F. The Director shall maintain an up-to-date rescue and recovery plan for prompt and adequate employment at any mineral mine in the Commonwealth. All employees of the Department shall be kept fully informed and trained in their respective duties in executing rescue and recovery plans. The Department's plans shall be published annually and furnished to all licensed operators of mineral mines. Changes in the plan shall be published promptly when made and furnished to all licensed operators of mines.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:51. Operators' reports of accidents; investigations; reports by Department.

A. Each operator shall report promptly to the Department the occurrence at any mine of any accident involving serious personal injury or death to any person or persons, whether employed in the mine or not. The scene of the accident shall not be disturbed pending an investigation, except to prevent suspension of use of a slope, entry or facility vital to the operation of a section or a mine. In cases where reasonable doubt exists as to whether to leave the scene unchanged, the operator shall secure prior approval from the Department before any changes are made.

B. The Director will go personally or dispatch one or more mine inspectors to the scene of such a mineral mine accident, investigate causes, and issue such orders as may be needed to ensure the safety of other persons.

C. Representatives of the operator will render such assistance as may be needed and act in a consulting capacity in the investigation. An employee if so designated by the employees of the mine will be notified, and as many as three employees if so designated as representatives of the employees may be present at the investigation in a consulting capacity.

D. The Department will render a complete report of circumstances and causes of each accident investigated and make recommendations for the prevention of similar accidents. The Department will furnish one copy of the report to the licensed operator, one copy to any other operator whose employees were exposed to hazards as a result of the accident, and one copy to the employee representative when he has been present at the investigation. The Director will maintain a complete file of all accident reports for mineral mines. Further publicity may be ordered by the Director in an effort to prevent mine accidents.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:52. Reports of other accidents and injuries.

A. Each miner employed at a mine shall promptly notify his supervisor of any injury received during the course of his employment.

B. Each operator shall keep on file a report of each accident including any accident which does not result in a lost-time injury. Copies of such report shall be given to the person injured or to his designated representative to review the accident report and verify its accuracy prior to filing such report for the review of state or federal mine inspectors.

1997, c. [390](#).

§45.1-161.292:53. Duties of mine inspectors.

Each mine inspector shall:

1. Report immediately, and by the quickest available means, any mine fire, mine explosion, and any accident involving serious personal injury or death to his supervisor;
2. Proceed immediately to the scene of any accident at any mine under his jurisdiction that results in loss of life or serious personal injury, and to the scene of any mine fire or explosion regardless of whether there is loss of life or personal injury. He shall make such investigation and suggestions and render such assistance as he deems necessary for the future safety of the employees, and make a complete report to his supervisor as soon as practicable. He shall have the power to compel the attendance of witnesses, and to administer oaths or affirmations; and
3. Take charge of mine rescue and recovery operations whenever a mine fire, mine explosion, or other serious accident occurs, and shall supervise the reopening of all mines or sections thereof that have been sealed or abandoned on account of fire or any other cause.

1997, c. [390](#).

§45.1-161.292:54. Frequency of mine inspections.

A. The Director shall conduct a complete inspection of every underground mineral mine not less frequently than every 180 days, and of those surface mineral mines which are not inspected by the Mine Safety and Health Administration not less frequently than once per year. Additional inspections of such mineral mines shall be made when deemed appropriate by the Director based on an evaluation of risks at the mines, or if requested by miners employed at a mine or the licensed operator of a mine.

B. The Director shall not conduct inspections of surface mineral mines which are inspected by the Mine Safety and Health Administration; however, mine inspectors and other employees of the Department may enter such mines in order to (i) respond to complaints of violations of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.), (ii) respond to and investigate any serious personal injury or fatality, and (iii) with the consent of the licensed operator, conduct training programs.

C. The Director shall determine whether a surface mineral mine is inspected by the Mine Safety and Health Administration. The Director shall make such determination based on information provided by the Mine Safety and Health Administration and Department records. The Director shall request representatives of the Mine Safety and Health Administration to serve with Department personnel on a joint committee of cooperation. The committee shall include the Director of the Division of Mineral Mining and such additional Division employees as the Director shall designate. The committee shall meet not less than twice annually at the call of the Director for the purpose of facilitating communication and resolving discrepancies regarding the inspection responsibilities of the state and federal agencies with respect to surface mineral mines in the Commonwealth.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:55. Evaluation of risks at mines.

A. For the purpose of allocating the resources of the Department to be used for conducting additional inspections, the Department shall develop a procedural policy of scheduling such inspections based on an assessment, to be made not less frequently than annually, of the comparative risks at each underground mineral mine and those surface mineral mines which are not inspected by the Mine Safety and Health Administration. The Department's procedural policy shall be prepared with the assistance of working groups consisting of persons knowledgeable in mine safety issues. The issuance of the procedural policy shall be exempt from Article 2 (§ [2.2-4006](#) et seq.) of the Administrative Process Act. Variables to be included in the risk assessment measures shall include, but not be limited to: (i) fatality and serious accident rates at the mine; (ii) the rates of issuance of closure orders and notices of violations of the mine safety laws of the Commonwealth at the mine; and (iii) the frequency rates for non-serious accidents or nonfatal days lost. Risk assessments shall be developed for both independent contractors and individual mine sites.

B. The Director shall schedule additional inspections at underground mineral mines, and at surface mineral mines which are not inspected by the Mine Safety and Health Administration, based on the rating assigned to a mine reflecting the assessment of its risks compared to other such mines in the Commonwealth.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:56. Review of inspection reports and records.

Prior to completing an inspection of an underground mineral mine, a mine inspector shall review the most recent available report of inspection by the Mine Safety and Health Administration. Prior to completing any inspection of a mine, a mine inspector shall comprehensively review the records of pre-shift examinations, on-shift exams, daily inspections, weekly examinations, and other records relating to safety and health conditions in the mine which are required to be maintained pursuant to this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.), for the thirty-day period preceding the inspection. The mine inspector may, but shall not be required to, review the records for such additional period as he may deem prudent.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:57. Advance notice of inspections; confidentiality of trade secrets.

A. No person shall give advance notice of any mine inspection conducted under the provisions of this title without authorization from the Director.

B. All information reported to or otherwise obtained by the Director or his authorized representative in connection with any inspection or proceeding under this title which contains or might reveal a trade secret referred to in § 1905 of Title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to the Director or his authorized representative concerned with carrying out any provisions of this title or any proceeding hereunder. In any such proceeding, the court or the Director shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

1997, c. [390](#).

§45.1-161.292:58. Scheduling of mine inspections.

A. The Director shall schedule the inspections of mines under this article, to the extent deemed reasonable and prudent, in order to reduce their chronological proximity to inspections conducted by the Mine Safety and Health Administration. To this end, the Director shall endeavor to coordinate the timing of inspections with Mine Safety and Health Administration personnel.

B. The Director and mine inspectors, to the extent deemed reasonable and prudent, shall schedule mine inspections to commence at a variety of hours of the day and days of the week, including evening and night shifts, weekends, and holidays.

1997, c. [390](#).

§45.1-161.292:59. Denial of entry.

No person shall deny the Director or any mine inspector entry upon or through a mine for the purpose of conducting an inspection or any office at the site where maps or records relating to the mine are located, pursuant to this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.).

1997, c. [390](#).

§45.1-161.292:60. Duties of operator.

A. The operator, or his agent, of every mine shall furnish the Director and mine inspectors proper facilities for entering such mine and making examinations or obtaining information and shall furnish any data or information not of a confidential nature requested by such inspector.

B. The operator of an underground mine, or his agent, shall provide a mine inspector adequate means for transportation to the active working areas of the mine within a reasonable time following the mine inspector's arrival at the mine.

C. The operator or his agent shall, when ordered to do so by a mine inspector during the course of his inspection, promptly clear the mine or section thereof of all persons.

1997, c. [390](#).

§45.1-161.292:61. Duties of inspectors.

A. During a complete inspection of a mine, other than an inactive mine, the mine inspector shall inspect, where applicable, the surface plant; all active workings; all active travel ways; entrances to abandoned areas; accessible worked-out areas; at least one entry of each intake and return airway in its entirety; escapeways and other places where miners work or travel or where hazardous conditions may exist; electric installations and equipment; haulage facilities; first-aid equipment; ventilation facilities; communication installations; roof and rib conditions; roof-support practices; blasting practices; haulage practices and equipment; and any other condition, practice or equipment pertaining to the health and safety of the miners. The mine inspector shall make tests for the quantity of air flows, and for gas and oxygen deficiency, in each place which he is required to inspect in an underground mine. In mines operating more than one shift in a twenty-four-hour period, the mine inspector shall devote sufficient time on the second and third shifts to determine

conditions and practices relating to the health and safety of the miners. For an inactive mine, the mine inspector shall inspect all areas of the mine where persons may work or travel during the period the mine is an inactive mine.

B. The inspector shall make a personal examination of the interior of the mine, and of the outside of the mine where any danger may exist to the miners.

1997, c. [390](#).

§45.1-161.292:62. Certificates of inspection.

A. Upon completing a mine inspection, a mine inspector shall complete a certificate regarding such inspections. The certificate of inspection shall show the date of inspection, the condition in which the mine is found, a statement regarding any violations of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) discovered during the inspection, the progress made in the improvement of the mine as such progress relates to health and safety, the number of accidents and injuries occurring in and about the mine since the previous inspection, and all other facts and information of public interest concerning the condition of the mine as may be useful and proper.

B. The mine inspector shall deliver one copy of the certificate of inspection to the licensed operator, agent or mine foreman, and one copy to the employees' safety committee where applicable, and shall post copies at a prominent place or places on the premises where it can be read conveniently by the miners.

C. With respect to underground mineral mines, the Department shall provide access to certificates of inspection to the Mine Safety and Health Administration.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:63. Notices of violations.

A. If the Director or a mine inspector has reasonable cause to believe that a violation of the Act has occurred, he shall with reasonable promptness issue a notice of violation to the person who is responsible for the violation. Each notice of violation shall be in writing and shall describe with particularity the nature of the violation or violations, including a reference to the provisions of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) or the appropriate regulations violated, and shall include an order of abatement and fix a reasonable time for abatement of the violation.

B. A copy of the notice of violation shall be delivered to the licensed operator, his agent, or mine foreman and any independent contractor whose employees were exposed to hazards related to the violation.

C. Upon a finding by the mine inspector of completion of the action required to abate the violation, the Director or the mine inspector shall issue a notice of correction, a copy of which shall be delivered as provided in subsection B.

D. The notice of violation shall be deemed to be the final order of the Department and not subject to review by any court or agency unless, within twenty days following its issuance, the person to whom the notice of violation has been issued appeals its issuance by notifying the Department in writing that he intends to contest its issuance. The Department shall conduct informal conference or consultation proceedings, presided over by the Director, pursuant to § [2.2-4019](#), unless the person and the Department agree to waive such a conference or proceeding to go directly to a formal hearing. If such a conference or proceeding has been waived, or if it has failed to dispose of the case by consent, the Department shall conduct a formal hearing pursuant to § [2.2-4020](#). The formal hearing shall be presided over by a hearing officer pursuant to § [2.2-4024](#), who shall recommend findings and an initial decision, which shall be subject to review and approval by the Director. Any party aggrieved by and claiming unlawfulness of the decision shall be entitled to judicial review pursuant to Article 5 (§ [2.2-4025](#) et seq.) of the Administrative Process Act.

E. If it shall be finally determined that a notice of violation was not issued in accordance with the provisions of this section, the notice of violation shall be vacated, and the improperly issued notice of violation shall not be used to the detriment of the person or the operator to whom it was issued.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:64. Closure orders.

A. The Director or a mine inspector shall issue a closure order requiring any mine or section thereof cleared of all persons, or equipment removed from use, and refusing further entry into the mine of all persons except those necessary to correct or eliminate a hazardous condition, when (i) a violation of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) has occurred, which creates an imminent danger to the life or health of persons in the mine; (ii) a mine fire, mine explosion, or other serious accident has occurred at the mine, as may be necessary to preserve the scene of such accident during the investigation of the accident; (iii) a

mine is operating without a license, as provided by § [45.1-161.292:30](#); or (iv) an operator to whom a notice of violation was issued has failed to abate the violation cited therein within the time period provided in such notice for its abatement; however, a closure order shall not be issued for failure to abate a violation during the pendency of an administrative appeal of the issuance of the notice of violation as provided in subsection D of § [45.1-161.292:63](#). In addition, a technical specialist may issue a closure order upon discovering a violation creating an imminent danger.

B. One copy of the closure order shall be delivered to the licensed operator of the mine or his agent or the mine foreman and any independent contractor working in the area of the mine affected by the closure order.

C. Upon a finding by the mine inspector of abatement of the violation creating the hazardous condition pursuant to which a closure order has been issued as provided in clause (i) of subsection A, or cessation of the need to preserve an accident scene as provided in clause (ii) of subsection A, or the issuance of a license for the mine if the closure order was issued as provided in clause (iii) of subsection A, or abatement of the violation for which the notice of violation was issued as provided in clause (iv) of subsection A, the Director or mine inspector shall issue a notice of correction, copies of which shall be delivered as provided in subsection B.

D. The issuance of a closure order shall constitute a final order of the Department, and the owner, licensed operator and independent contractor shall not be entitled to administrative review of such decision. The owner, licensed operator or independent contractor to whom a closure order has been issued may, within ten days following the issuance of the order, bring a civil action in the circuit court of the city or county in which the mine, or the greater portion thereof, is located for review of the decision. The commencement of such a proceeding shall not, unless specifically ordered by the court, operate as a stay of the closure order. The court shall promptly hear and determine the matters raised by the owner or operator. In any such action the court shall receive the records of the Department with respect to the issuance of the order, and shall receive additional evidence at the request of any party. In any proceeding under this section, the Attorney General or the attorney for the Commonwealth for the jurisdiction where the mine is located, upon the request of the Director, shall represent the Department. The court shall vacate the closure order if the preponderance of the evidence establishes that the order was not issued in accordance with the provisions of this section.

E. If it shall be finally determined that a closure order was not issued in accordance with the provisions of this section, the closure order shall be vacated, and the improperly issued closure order shall not be used to the detriment of the owner or operator to whom it was issued.

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:65. Tolling of time for abating violations.

The period of time specified in a notice of violation for the abatement of the violation shall not begin to run until the final decision of the Department is issued, if an administrative appeal of its issuance is pursued, or until the final order of the circuit court is rendered, if an appeal of its issuance is taken to circuit court, provided that the appeal was undertaken in good faith and not solely for delay or avoidance of penalties.

1997, c. [390](#).

§45.1-161.292:66. Injunctive relief.

A. Any person violating or failing, neglecting or refusing to obey any closure order may be compelled in a proceeding instituted by the Director in any appropriate circuit court to obey same and to comply therewith by injunction or other appropriate relief.

B. Any person failing to abate any violation of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) which has been cited in a notice of violation within the time period provided in such notice for its abatement may be compelled in a proceeding instituted by the Director in any appropriate circuit court to abate such violation as provided in such notice, and to cease the operation of the mine at which such violation exists until the violation has been abated, by injunction or other appropriate remedy.

C. The Director may file a bill of complaint with any appropriate circuit court asking the court to temporarily or permanently enjoin a person from operating a mine or mines in the Commonwealth or contracting for work at a mine in the Commonwealth, to be granted upon finding by a preponderance of the evidence that (i) a history of noncompliance by the person demonstrates that he is not able or willing to operate in compliance with the provisions of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) or (ii) a history of the issuance of closure orders to the person demonstrates that he is not able or willing to operate

in compliance with the provisions of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.).

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:67. Violations; penalties.

Any person convicted of willfully violating any provisions of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) or any regulation promulgated pursuant to this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.), unless otherwise specified in this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.), shall be guilty of a Class 1 misdemeanor.

1997, c. [390](#).

§45.1-161.292:68. Prosecution of violations.

A. It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized representative has reported any violation of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) or on his own initiative to cause proceedings to be prosecuted in such cases.

B. If the attorney for the Commonwealth declines to cause proceedings to be prosecuted in such cases, the Director may request the Attorney General to institute proceedings for any violation of the Act on behalf of the Commonwealth; however, such action shall not preclude the Director from pursuing other applicable statutory procedures. Upon receiving such a request from the Director, the Attorney General shall have the authority to institute actions and proceedings for violations described in the request.

1997, c. [390](#).

§45.1-161.292:69. Fees and costs.

No fees or costs shall be charged the Commonwealth by a court or any officer for or in connection with the filing of any pleading or other papers in any action authorized by this article.

1997, c. [390](#).

§45.1-161.292:70. Reports of violations.

A. Any person aware of a violation of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) may report the violation to a mine

inspector or to any other employee of the Department, in person, in writing, or by telephone call, at the mine, at an office of the Department or at the mine inspector's residence.

B. Each operator, or his agent, shall deliver a copy of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) to every miner in his employ upon the commencement of the miner's work at a mine, unless the miner is already in possession of a copy.

C. The licensed operator of every mine, or his agent, shall display on a sign placed at the mine office, at the bath house, and on a bulletin board at a prominent place at the mine site where it can be read conveniently by the miners, a notice containing the office and home telephone numbers of mine inspectors and other Department personnel, and office addresses, which may be used to report any violation of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.).

D. The Department shall keep a record, on a form prepared for such purpose, of every alleged violation of this chapter and Chapters 14.5 (§ [45.1-161.293](#) et seq.) and 14.6 (§ [45.1-161.304](#) et seq.) which is reported and the results of any investigation. The Department shall give a copy of the complaint form, with the identity of the person making the report being omitted or deleted, to the licensed operator of the mine or his agent and to any independent contractor who is alleged to have committed the violation. The Department shall not disclose the identity of any person who reports an alleged violation to the owner or operator of the mine or his agent, or to any other person or entity. Information regarding the identity of the person reporting the violation shall be excluded from access under the provisions of the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

1997, c. [390](#); 1998, c. [695](#).

§45.1-161.292:71. Training programs.

A. The Department may administer training programs for the purpose of (i) assisting with the provision of selected requirements of the federal mine safety law and (ii) preparing miners for examinations administered by the Department. The Director shall establish the curriculum and teaching materials for the training programs, which shall be consistent with the requirements of the federal mine safety law where feasible.

B. The Department is authorized to charge persons attending the training programs reasonable fees to cover the costs of administering such programs. The Director may

exempt certain persons from any required fees for refresher training programs, based on the person's employment status or such other criteria as the Director deems appropriate. The Director shall not be required to allocate more of the Department's resources to training programs than are appropriated or otherwise made available for such purpose, or are collected from fees charged to attendees.

C. No miner, operator, or other person shall be required to participate in any training program established under this section. Nothing contained herein shall prevent an operator or any other person from administering a state-approved training program.

1997, c. [390](#); 1998, c. [695](#); 2012, cc. [803](#), [835](#).

§45.1-161.292:72. Mineral mining safety training.

The Director is authorized to implement a program of voluntary safety talks for mineral miners. Safety training may include topical training and talks conducted by inspectors or other Department personnel either on site or in a classroom provided for such purpose.

1997, c. [390](#).

§45.1-161.292:73. Mineral mining safety training program.

A. Each operator shall have a plan containing the following programs: training for new miners, training for newly-employed experienced miners, training for miners for new tasks, annual refresher training, and hazard training. For the purpose of this section, the definition of miner does not include scientific workers; delivery workers; customers, including commercial over-the-road truck drivers; vendors; or visitors.

B. The plan shall be available to the Director for review upon request.

1998, c. [695](#); 2003, c. [401](#).

Miscellaneous Taxes

§58.1-1700. Title.

This article shall be known and may be cited as the "Virginia Soft Drink Excise Tax Act."

Code 1950, § 58-404.02; 1977, c. 616; 1979, c. 134; 1984, c. 675.

§58.1-1701. Definition.

As used in this article, unless the context clearly shows otherwise, "wholesaler or distributor" means any person, firm or corporation who manufactures or sells at wholesale carbonated soft drinks to retail dealers for the purpose of resale only or who sells at wholesale to institutional, commercial or industrial users or who distributes such drinks to chain stores.

Code 1950, § 58-404.02; 1977, c. 616; 1979, c. 134; 1984, c. 675.

§58.1-1702. Tax levied.

There is hereby levied, in addition to all other taxes now imposed by law, a state excise tax on every wholesaler or distributor of carbonated soft drinks. The tax shall be based upon the gross receipts of each wholesaler or distributor from the sale of such soft drinks and shall be determined according to the following schedule:

1. The tax shall be \$50 if gross receipts do not exceed \$100,000;
2. The tax shall be \$100 if gross receipts exceed \$100,000 but do not exceed \$250,000;
3. The tax shall be \$250 if gross receipts exceed \$250,000 but do not exceed \$500,000;
4. The tax shall be \$750 if gross receipts exceed \$500,000 but do not exceed \$1,000,000;
5. The tax shall be \$1,500 if gross receipts exceed \$1,000,000 but do not exceed \$3,000,000;
6. The tax shall be \$3,000 if gross receipts exceed \$3,000,000 but do not exceed \$5,000,000;
7. The tax shall be \$4,500 if gross receipts exceed \$5,000,000 but do not exceed \$10,000,000;
8. The tax shall be \$7,200 if gross receipts exceed \$10,000,000 but do not exceed \$25,000,000;
9. The tax shall be \$18,000 if gross receipts exceed \$25,000,000 but do not exceed \$50,000,000; and
10. The tax shall be \$33,000 if the gross receipts exceed \$50,000,000.

Code 1950, § 58-404.02; 1977, c. 616; 1979, c. 134; 1984, c. 675; 2002, c. [15](#).

§58.1-1703. Collection.

The excise tax levied by this article shall be collected annually by the Department of Taxation in the same manner as the income tax imposed under Chapter 3 (§ [58.1-300](#) et seq.) of this title, as provided by rules and regulations promulgated by the Tax Commissioner.

Code 1950, § 58-404.02; 1977, c. 616; 1979, c. 134; 1984, c. 675.

§58.1-1704. Tax segregated for state taxation.

The excise tax levied by this article is hereby segregated for state taxation only and no county, city, town or political subdivision of this Commonwealth shall impose a tax on such wholesalers or distributors measured by gross receipts, except as provided in Chapter 37 (§ [58.1-3700](#) et seq.) of this title.

Code 1950, § 58-404.02; 1977, c. 616; 1979, c. 134; 1984, c. 675.

§58.1-1705. Disposition of proceeds.

All moneys collected pursuant to this article, minus the necessary expenses of the Department of Taxation for the administration of this tax, as certified by the Commissioner, shall be deposited into the Litter Control and Recycling Fund established pursuant to § [10.1-1422.01](#).

1995, c. [417](#).

§58.1-1706. Title.

This article shall be known and may be cited as the "Virginia Litter Tax Act."

Code 1950, § 10-201.1; 1976, c. 757; 1977, c. 616; 1981, c. 173; 1984, c. 675.

§58.1-1707. Tax levied.

A. There is hereby levied and imposed upon every person in the Commonwealth engaged in business as a manufacturer, wholesaler, distributor or retailer of products enumerated in § [58.1-1708](#) an annual litter tax of \$10 for each establishment from which such business is conducted. However, the tax under this subsection shall not be imposed on an individual who raises and sells agricultural produce, as defined in § [3.2-4738](#), and an individual who sells eggs, as described in § [3.2-5305](#), in local farmers markets or at roadside stands provided that his annual income from such sales does not exceed \$1,000, and that any container he provides to hold purchased items has been previously used.

B. In addition to the tax levied in subsection A, each person engaged in business as a manufacturer, wholesaler, distributor or retailer of products enumerated in category

2, 4 or 5 of § [58.1-1708](#) shall pay an additional annual litter tax of \$15 for each establishment from which such business is conducted. However, the tax under this subsection shall not be imposed on an individual who raises and sells agricultural produce, as defined in § [3.2-4738](#), and an individual who sells eggs, as described in § [3.2-5305](#), in local farmers markets or at roadside stands provided that his annual income from such sales does not exceed \$1,000, and that any container he provides to hold purchased items has been previously used.

C. For purposes of the tax levied in this section, a vending machine shall not be deemed a separate establishment. Any person engaged in the business of selling goods, wares and merchandise through the use of coin-operated vending machines shall pay an annual litter tax only with respect to each establishment from which goods, wares or merchandise are stored, kept or assembled for purposes of supplying such vending machines.

Code 1950, § 10-201.1; 1976, c. 757; 1977, c. 616; 1981, c. 173; 1984, c. 675; 2011, c. [466](#).

§58.1-1708. Products.

Manufacturers, wholesalers, distributors or retailers of the following products shall be subject to the tax imposed in § [58.1-1707](#) :

1. Food for human or pet consumption;
2. Groceries;
3. Cigarettes and tobacco products;
4. Soft drinks and carbonated waters;
5. Beer and other malt beverages;
6. Wine;
7. Newspapers and magazines;
8. Paper products and household paper;
9. Glass containers;
10. Metal containers;
11. Plastic or fiber containers made of synthetic material;
12. Cleaning agents and toiletries;

13. Nondrug drugstore sundry products;

14. Distilled spirits; and

15. Motor vehicle parts.

Code 1950, § 10-201; 1976, c. 757; 1977, c. 609; 1978, c. 571; 1984, c. 675.

§58.1-1709. Penalty.

A penalty of an amount equal to the taxes due, including all delinquent taxes due under this article, and the amount that the Department of Taxation has expended in collecting these delinquent taxes, shall be added to the tax levied in § [58.1-1707](#) for failure to pay the tax within the time limits established by regulations.

Code 1950, § 10-201.1; 1976, c. 757; 1977, c. 616; 1981, c. 173; 1984, c. 675; 2006, c. [6](#).

§58.1-1710. Disposition of proceeds.

All moneys collected pursuant to this article, minus the necessary expenses of the Department of Taxation for the administration of this tax, as certified by the Commissioner, shall be deposited into the Litter Control and Recycling Fund established pursuant to § [10.1-1422.01](#).

1985, c. 221; 1995, c. [417](#).

§58.1-1711. Title.

This article shall be known and may be cited as the "Virginia Tax on Wills and Administrations Act".

1984, c. 675.

§58.1-1712. Levy; rate of tax.

A tax is hereby imposed on the probate of every will or grant of administration not exempt by law. The tax shall be based on the value of the estate as determined in § [58.1-1713](#). For every \$100 of value, or fraction of \$100, a tax of 10 cent(s) is imposed. However, the tax imposed by this section shall not apply to decedents' estates of \$15,000 or less in value.

Code 1950, § 58-66; 1973, c. 282; 1984, c. 675; 1985, c. 474; 1988, c. 292; 1989, c. 387; 1998, c. [117](#); 2003, c. [195](#).

§58.1-1713. Value of the estate; time of valuation.

A. The tax imposed by this article shall be based upon the value of all property, real and personal, within the jurisdiction of the Commonwealth, which shall pass from the decedent to each beneficiary by will or intestacy. The value of all real estate shall be included although the real estate does not come into the control or possession of the personal representative for intestate administration purposes and whether or not the personal representative under a will is charged with any duty with respect to such real estate. However, in no event shall the value of real estate owned by the decedent and situated outside of the Commonwealth be considered in computing the value of the estate.

B. The value of the estate shall be determined at the time of death of the decedent, or if an alternate time of valuation has been chosen under § 2032 of the Internal Revenue Code for purposes of federal taxation, at such time.

Code 1950, §§ 58-66, 58-67; 1973, c. 282; 1984, c. 675.

§58.1-1714. Filing of return.

When the value of an estate exceeds \$15,000, a return shall be made and filed with the clerk of court at the time the will is offered for probate or the grant of administration is sought in such court. Such return shall state, to the best of the knowledge and belief of the persons submitting the will for probate or requesting the grant of administration, (i) the value of the decedent's real estate as set forth in § [58.1-1713](#) based on the actual value, if known, or if actual value is not known, the appraised value of such property for local real estate tax purposes, and (ii) the estimated value of the decedent's personal property as of the date of the decedent's death. Such return shall be subject to the provisions of § [58.1-11](#), and the information set forth therein shall be entitled to the privilege accorded by § [58.1-3](#). For the purpose of § [58.1-3](#), the information set forth in such return shall not be deemed to be required by law to be entered on any public assessment roll or book.

Code 1950, § 58-66.1; 1974, c. 593; 1976, c. 439; 1984, c. 675; 1989, c. 387; 1998, c. [117](#); 2003, c. [195](#).

§58.1-1715. Payment of tax prerequisite to qualification.

No one shall be permitted to qualify and act as executor or administrator until the tax imposed by § [58.1-1712](#) has been paid.

Code 1950, § 58-68; 1984, c. 675.

§58.1-1716. Estates committed to court-appointed administrator.

When an estate is committed by order of the appropriate circuit court, or clerk thereof, to any person on the motion of a creditor or other person pursuant to § [64.2-610](#), the tax due under this article for such administration shall be paid by the party upon whose motion the estate was committed. The amount of tax paid by such creditor or other person shall be repaid to him by the administrator so appointed out of the first funds received by him from the sale of such estate. If an estate is committed to a person without motion the person shall be required to pay such tax as soon as assets of the estate, sufficient to cover the tax due, have come into his hands.

Code 1950, § 58-69; 1971, Ex. Sess., c. 155; 1984, c. 675.

§58.1-1717. Undervaluation of estate; collection of additional tax; minimum additional tax or refund payable.

The clerk of the court wherein the probate or administration tax has been paid by an estate shall thereafter compare the total value of the probate estate as shown on the probate tax return with the total value shown on the inventory of such estate to determine whether the estate has been undervalued for tax purposes. If such clerk finds that such estate has been undervalued, he shall thereupon collect such additional tax as may be due. In the event of an overpayment of such tax, the personal representative may apply to the Department of Taxation and, if a local probate tax was paid, to the treasurer of the city or county for a refund. No additional tax shall be payable or no refund made if the payment or refund due would be less than twenty-five dollars.

Code 1950, § 58-70; 1973, c. 446; 1978, c. 838; 1983, c. 140; 1984, c. 675; 1989, c. 223 .

§58.1-1717.1. Tax in lieu of probate tax.

A \$25 fee is hereby charged on the recordation of a list of heirs pursuant to § [64.2-509](#) or an affidavit pursuant to § [64.2-510](#) unless a will has been probated for the decedent or there has been a grant of administration on the decedent's estate.

2010, c. [266](#).

§58.1-1718. City or county probate tax.

In addition to the state tax and fee imposed by §§ [58.1-1712](#) and [58.1-1717.1](#), the governing body of any county and the council of any city may, as provided in § [58.1-3805](#), (i) impose a county or city tax in an amount equal to one-third of the amount of the state tax on the probate of a will or grant of administration on the probate of

every such will or grant of administration and (ii) charge a \$25 fee for the recordation of a list of heirs pursuant to § [64.2-509](#) or an affidavit pursuant to § [64.2-510](#), as provided in § [58.1-1717.1](#).

Code 1950, § 58-67.1; 1960, c. 60; 1984, c. 675; 2010, c. [266](#).

§58.1-1718.1. Repealed.

Repealed by Acts 2012, cc. [217](#) and [225](#), cl. 2, effective July 1, 2013.

§58.1-1721. Repealed.

Repealed by Acts 2009, c. [532](#), cl. 2, effective January 1, 2010.

§58.1-1722. Repealed.

Repealed by Acts 2012, cc. [217](#) and [225](#), cl. 2, effective July 1, 2013.

§58.1-1723. Repealed.

Repealed by Acts 2009, c. [532](#), cl. 2, effective January 1, 2010.

§58.1-1724. Repealed.

Repealed by Acts 2012, cc. [217](#) and [225](#), cl. 2, effective July 1, 2013.

§58.1-1724.2. Repealed.

Repealed by Acts 2012, cc. [217](#) and [225](#), cl. 2, effective July 1, 2013.

§58.1-1724.3. Repealed.

Repealed by Acts 2009, cc. [864](#) and [871](#), cl. 5.

§58.1-1724.4. Repealed.

Repealed by Acts 2012, cc. [217](#) and [225](#), cl. 2, effective July 1, 2013.

§58.1-1724.5. Repealed.

Repealed by Acts 2009, cc. [864](#) and [871](#), cl. 5.

§58.1-1725. Levy of tax.

When the seal of the Commonwealth is affixed to any paper, except in the cases exempted by law, the tax shall be two dollars, which shall be paid to the Secretary of the Commonwealth or his successor.

Code 1950, § 58-52; 1984, c. 675.

§58.1-1726. When no tax on a seal to be charged.

No tax shall be charged when a seal is annexed to any paper or document to be used in obtaining the benefit of a pension, revolutionary claim, money due on account of

military services or land bounty, under any act of Congress, or under a law of this or any other state.

Code 1950, § 58-53; 1984, c. 675.

§58.1-1727. Taxes on suits or writ taxes generally.

A tax of \$5 is hereby imposed upon (i) the commencement of every civil action in a court of record, whether commenced by petition or notice, ejectment or attachment, other than a summons to answer a suggestion; (ii) the removal or appeal of a cause of action from a district court to a court of record; (iii) the appeal from the decision of the governing body of a county, city or town to a court of record, including the appeal of any decision of a board of zoning appeals; (iv) an attachment returnable to a court of record; and (v) a writ of mandamus sued out of any court, except the Supreme Court of Virginia. However, when the debt or demand for damages exceeds \$49,999 but does not exceed \$100,000, the tax shall be \$15; and when the debt or demand for damages exceeds \$100,000, the tax shall be \$25.

This section shall not be applicable to any original jurisdiction proceeding filed in the Supreme Court of Virginia.

Code 1950, §§ 58-71 to 58-73, 58.1-3809; 1956, c. 599; 1970, c. 364; 1977, c. 449; 1984, c. 675; 1985, c. 221; 2005, c. [681](#); 2014, cc. [360](#), [589](#).

§58.1-1728. Payment of tax.

The taxes on suits or other judicial proceedings shall be paid to the clerk of court wherein the suit or other judicial proceeding is commenced.

Code 1950, § 58-75, 58.1-3810; 1984, c. 675; 1985, c. 221.

§58.1-1729. Payment prerequisite to issue of writ, etc.; effect of failure to collect.

No clerk shall issue any writ, or docket any removed or appealed warrant, or any notice mentioned in this article until the tax imposed under this article has been paid; however, his failure to collect the tax shall not invalidate the proceeding.

Code 1950, §§ 58-76, 58.1-3811; 1964, c. 290; 1984, c. 675; 1985, c. 221.

§58.1-1730. Tax for enhanced 911 service; definitions.

A. As used in this section, unless the context requires a different meaning:

"Access lines" are defined to include residence and business telephone lines and other switched (packet or circuit) lines connecting the customer premises to the

public switched telephone network for the transmission of outgoing voice-grade-capable telecommunications services. Centrex, PBX or other multistation telecommunications services will incur an E-911 tax charge on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the public switched telephone network. ISDN Primary Rate Interface services will be charged five E-911 tax charges for every ISDN Primary Rate Interface network facility established by the customer. Other channelized services in which each voice-grade channel is controlled by the telecommunications provider shall be charged one tax for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network. Access lines do not include local, state, and federal government lines; access lines used to provide service to users as part of the Virginia Universal Service Plan; interstate and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines internally provided and used by providers of telecommunications services for administrative, testing, intercept, coin, and verification purposes; and commercial mobile radio service.

"Automatic location identification" or "ALI" means a telephone network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireline 9-1-1 call.

"Automatic number identification" or "ANI" means a telephone network capability that enables the automatic display of the telephone number used to place a wireline 9-1-1 call.

"Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

"Communications services provider" means the same as provided in § [58.1-647](#).

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated, and provides the capability for ANI and ALI features.

"ISDN Primary Rate Interface" means 24 bearer channels, each of which is a full 64,000 bits per second. One of the channels is generally used to carry signaling information for the 23 other channels.

"Network Access Register" means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.

"PBX" means public branch exchange and is telephone switching equipment owned by the customer and located on the customer's premises.

"PBX trunk" means a connection of the customer's PBX switch to the central office.

"Public safety answering point" or "PSAP" means a communications facility equipped and staffed on a 24-hour basis to receive and process 911 calls.

B. There is hereby imposed a monthly tax of \$0.75 on the end user of each access line of the telephone service or services provided by a communications services provider. However, no such tax shall be imposed on federal, state, and local government agencies or on consumers of CMRS, as that term is defined in § [56-484.12](#). The revenues shall be collected and remitted monthly by the communications services provider to the Department and deposited into the Communications Sales and Use Tax Trust Fund. This tax shall be subject to the notification and jurisdictional provisions of subsection C.

C. If a customer believes that an amount of tax or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications services provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use or taxing jurisdiction, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the communications services provider reasonably requires to process the request. Within 15 days of receiving a notice under this section, the communications services provider shall review its records within an additional 15 days to determine the customer's taxing jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications services provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this

review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the communications services provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by the communications services provider, and no cause of action based upon a dispute arising from such taxes shall accrue until a customer has reasonably exercised the rights and procedures set forth in this subsection.

For the purposes of this subsection, the terms "customer" and "place of primary use" shall have the same meanings provided in § [58.1-647](#).

D. For the purpose of compensating a communications services provider for accounting for and remitting the tax levied by this section, each communications services provider shall be allowed 3% of the amount of tax revenues due and accounted for in the form of a deduction in submitting the return and remitting the amount due.

2006, c. [780](#).

§58.1-1731. Fee for digital media purchase or rental.

There is hereby imposed a fee equal to 10 percent of the price of all in-room purchases or rentals of digital media in hotels, motels, bed and breakfast establishments, inns, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 90 consecutive days. As used in this section, "digital media" means any audio-visual work received through the in-room television for a separate charge, including, but not limited to, any motion picture, television or audio programming, or game, regardless if it is transmitted in an analog or digital format. "Digital media" shall not include Internet access or telephone service.

2009, c. [531](#).

§58.1-1732. Collection.

The fee imposed by this article shall be collected monthly by the Department of Taxation in the same manner as the sales and use tax imposed under Chapter 6 (§ [58.1-600](#) et seq.), as provided by rules and regulations promulgated by the Tax Commissioner.

2009, c. [531](#).

§58.1-1733. Disposition of proceeds.

After the administrative costs for collecting the fees are recovered by the Department of Taxation, the remaining revenues shall be divided as follows:

1. Fifty percent shall be deposited into the state's general fund; and
2. Fifty percent shall be deposited into the Governor's Motion Picture Opportunity Fund established under § [2.2-2320](#). All revenues deposited to the Fund shall be used for film incentive programs established by the Virginia Film Office.

2009, c. [531](#).

§58.1-1734. Title.

This article shall be known and may be cited as the "Virginia Motor Vehicle Rental Tax Act."

2011, cc. [405](#), [639](#).

§58.1-1735. Definitions.

As used in this article, unless the context requires a different meaning:

"Daily rental vehicle" means a motor vehicle, except a motorcycle or a manufactured home as defined in § [46.2-100](#), used for rental as defined in this section and for the transportation of persons or property, whether on its own structure or by drawing another vehicle or vehicles.

"Gross proceeds" means the charges made or voluntary contributions received for the rental of a motor vehicle where the rental or lease agreement is for a period of less than 12 months. The term "gross proceeds" shall not include:

1. Cash discounts allowed and actually taken on a rental contract;
2. Finance charges, carrying charges, service charges, or interest from credit given on a rental contract;
3. Charges for motor fuels;
4. Charges for optional accidental death insurance;
5. Taxes or fees levied or imposed pursuant to Chapter 24 (§ [58.1-2400](#) et seq.);
6. Any violations, citations, or fines and related penalties and fees;
7. Delivery charges, pickup charges, recovery charges, or drop charges;
8. Pass-through charges;
9. Transportation charges;

10. Third-party service charges; or

11. Refueling surcharges.

"Mobile office" means an industrialized building unit not subject to federal regulation, which may be constructed on a chassis for the purpose of towing to the point of use and designed to be used with or without a permanent foundation, for commercial use and not for residential use; or two or more such units separately towable but designed to be joined together at the point of use to form a single commercial structure, and which may be designed for removal to, and installation or erection on, other sites.

"Motor vehicle" means every vehicle, except for a mobile office as herein defined, that is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, including manufactured homes as defined in § [46.2-100](#) and every device in, upon, and by which any person or property is, or can be, transported or drawn upon a highway, but excepting devices moved by human or animal power, devices used exclusively upon stationary rails or tracks, and vehicles, other than manufactured homes, used in the Commonwealth but not required to be licensed by the Commonwealth.

"Rental" means the transfer of the possession or use of a motor vehicle, whether or not the motor vehicle is required to be licensed by the Commonwealth, by a person for a consideration, without the transfer of the ownership of such motor vehicle, for a period of less than 12 months. Any fee arrangement between the holder of a permit issued by the Department of Motor Vehicles for taxicab services and the driver or drivers of such taxicabs shall not be deemed a rental under this section. Any fee arrangement between a licensed driver training school and a student in that school, whereby the student may use a vehicle owned or leased by the school to perform a road skills test administered by the Department of Motor Vehicles, shall not be deemed a rental under this section.

"Rental in the Commonwealth" means any rental where a person received delivery of a motor vehicle within the Commonwealth. The term "Commonwealth" shall include all land or interest in land within the Commonwealth owned by or conveyed to the United States of America.

"Rentor" means a person engaged in the rental of motor vehicles for consideration as defined in this section.

2011, cc. [405](#), [639](#); 2013, c. [84](#).

§58.1-1736. Levy.

A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the rental of a motor vehicle in Virginia, without regard to whether such vehicle is required to be licensed by the Commonwealth. However, such tax shall not be levied upon a rental to a person for re-rental as an established business or part of an established business, or incidental or germane to such business.

The amount of the tax to be collected shall be determined by the Tax Commissioner by the application of the following rates against the gross proceeds:

1. Four percent of the gross proceeds from the rental in Virginia of any motor vehicle, except those with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more.

2. In addition to the tax levied pursuant to subdivision A 1, a tax of four percent of the gross proceeds shall be levied on the rental in Virginia of any daily rental vehicle, whether or not such vehicle is required to be licensed in the Commonwealth.

3. In addition to all other applicable taxes and fees, a fee of two percent of the gross proceeds shall be imposed on the rental in Virginia of any daily rental vehicle, whether or not such vehicle is required to be licensed in the Commonwealth. For purposes of this article, the rental fee shall be implemented, enforced, and collected in the same manner that rental taxes are implemented, enforced, and collected.

B. A motor vehicle subject to the tax imposed under subdivision A 1 of this section shall be subject to the tax under subdivision A 1 or A 2 of § [58.1-2402](#) when it ceases to be used for rental as an established business or part of an established business, or incidental or germane to such business.

C. Any motor vehicle, trailer, or semitrailer exempt from this tax under subdivision 1 or 2 of § [58.1-1737](#) shall be subject to the tax when such vehicle is no longer rented by the United States government or any governmental agency thereof, or the Commonwealth of Virginia or any political subdivision thereof, unless at such time the vehicle is sold or its ownership is otherwise transferred, in which case the tax imposed by § [58.1-2402](#) shall apply, subject to the exemptions provided for in § [58.1-2403](#).

2011, cc. [405](#), [639](#).

§58.1-1737. Exemptions.

No tax shall be imposed as provided in § [58.1-1736](#) if the vehicle is:

1. Rented by the United States government or any governmental agency thereof;
2. Rented by the Commonwealth of Virginia or any political subdivision thereof;
3. A self-contained mobile computerized axial tomography scanner rented by a non-profit hospital or a cooperative hospital service organization as described in § 501(e) of the Internal Revenue Code;
4. A self-contained mobile unit designed exclusively for human diagnostic or therapeutic service, rented to a nonprofit hospital or a cooperative hospital service organization as described in § 501(e) of the Internal Revenue Code, or a nonprofit corporation as defined in § 501(c)(3) of the Internal Revenue Code, established for research in, diagnosis of, or therapy for human ailments; or
5. A truck, tractor truck, trailer, or semitrailer, as severally defined in § [46.2-100](#), except trailers and semitrailers not designed or used to carry property and vehicles registered under § [46.2-700](#), with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more, in which case no tax shall be imposed pursuant to subdivision A 1 of § [58.1-1736](#).

2011, cc. [405](#), [639](#).

§58.1-1738. Administration of the tax.

The tax on the rental of a motor vehicle shall be paid by the person renting such motor vehicle, collected by the rentor of such motor vehicle, and remitted to the Tax Commissioner on or before the twentieth day of the month following the month in which the gross proceeds from such rental were due. All of the responsibilities imposed on dealers in Chapter 6 (§ [58.1-600](#) et seq.) of this title shall apply to rentors for purposes of this article. The tax on rental transactions in the Commonwealth shall apply regardless of the state for which a certificate of title is required.

The provisions of Chapter 6 (§ [58.1-600](#) et seq.) of this title shall apply to this article, mutatis mutandis, except as herein provided.

2011, cc. [405](#), [639](#).

§58.1-1739. Forwarding of tax information to law-enforcement officials.

The Tax Commissioner may, in his discretion, upon request duly received from the official charged with the duty of enforcement of motor vehicle tax laws of any other state, forward to such official any information that he may have in his possession relative to the registration and payment of any tax collected pursuant to this article.

2011, cc. [405](#), [639](#).

§58.1-1740. Credits against tax.

Credit shall be granted any rentor subject to the additional tax on the rental of a daily rental passenger car for a portion of the tangible personal property tax assessed by a Virginia locality on such car for a tax year ending after June 30, 1981. The amount of such credit shall be equal to the ratio of the number of months in such tax year after June 30 to the total number of months in the tax year. Any such credit may be carried over from month to month for a period of up to six months or until fully absorbed, whichever occurs first. To the extent any credit is claimed hereunder as to any tangible personal property tax properly assessed and not actually paid when due, such credit shall be subject to collection as an underpayment of the additional tax imposed under subdivision A 2 of § [58.1-1736](#) as of the date the credit was claimed, with penalties and interest as provided in § [58.1-2411](#), mutatis mutandis.

2011, cc. [405](#), [639](#).

§58.1-1741. (Contingent expiration date, see note) Disposition of revenues.

A. After the direct costs of administering this article are recovered by the Department of Taxation, the remaining revenues collected hereunder by the Tax Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this article, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction, and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected from the additional tax imposed by subdivision A 2 of § [58.1-1736](#) on the rental of daily rental vehicles shall be distributed quarterly to the county, city, or town wherein such vehicle was delivered to the rentee; (ii) except as provided in clause (iii), an amount equivalent to the net additional revenues from the motor vehicle rental tax generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended

§§ [46.2-694](#), [46.2-697](#), and by §§ [58.1-1735](#), [58.1-1736](#) and this section, shall be distributed to and paid into the Transportation Trust Fund established pursuant to § [33.2-1524](#), a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; (iii) all moneys collected from the tax on the gross proceeds from the rental in Virginia of any motor vehicle pursuant to subdivision A 1 of § [58.1-1736](#) at the tax rate in effect on December 31, 1986, shall be paid by the Tax Commissioner into the state treasury and two-thirds of which shall be paid into the Rail Enhancement Fund established by § [33.2-1601](#) and one-third of which shall be deposited into the Transportation Trust Fund established pursuant to § [33.2-1524](#) and set aside for state of good repair purposes pursuant to § [33.2-369](#); and (iv) all additional revenues resulting from the fee imposed under subdivision A 3 of § [58.1-1736](#) shall be used to pay the debt service on the bonds issued by the Virginia Public Building Authority for the Statewide Agencies Radio System (STARS) for the Department of State Police pursuant to the authority granted by the 2004 Session of the General Assembly.

B. As provided in subsection A of § [58.1-638](#), of the funds becoming part of the Transportation Trust Fund pursuant to clause (ii) of subsection A, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund.

2011, cc. [405](#), [639](#); 2015, c. [684](#).

§58.1-1741. (For contingent effective date, see note) Disposition of revenues.

A. After the direct costs of administering this article are recovered by the Department of Taxation, the remaining revenues collected hereunder by the Tax Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this article, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction, and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected from the additional tax imposed by subdivision A 2 of § [58.1-1736](#) on the rental of daily rental vehicles shall be distributed quarterly to the county, city, or town wherein such vehicle was

delivered to the rentee; (ii) except as provided in clause (iii) of this sentence, an amount equivalent to the net additional revenues from the motor vehicle rental tax generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ [46.2-694](#), [46.2-697](#), and by §§ [58.1-1735](#), [58.1-1736](#) and this section, shall be distributed to and paid into the Transportation Trust Fund established pursuant to § [33.2-1524](#), a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; (iii) all moneys collected from the tax on the gross proceeds from the rental in Virginia of any motor vehicle pursuant to subdivision A 1 of § [58.1-1736](#) at the tax rate in effect on December 31, 1986, shall be paid by the Tax Commissioner into the state treasury and shall be paid into the Rail Enhancement Fund established by § [33.2-1601](#); and (iv) all additional revenues resulting from the fee imposed under subdivision A 3 of § [58.1-1736](#) shall be used to pay the debt service on the bonds issued by the Virginia Public Building Authority for the Statewide Agencies Radio System (STARS) for the Department of State Police pursuant to the authority granted by the 2004 Session of the General Assembly.

B. As provided in subsection A of § [58.1-638](#), of the funds becoming part of the Transportation Trust Fund pursuant to clause (ii) of subsection A of this section, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund.

2011, cc. [405](#), [639](#).

§58.1-1742. (Contingent expiration date -- see note) Regional transient occupancy tax.

In addition all other fees and taxes imposed under law, there is hereby imposed an additional transient occupancy tax at the rate of two percent of the amount of the charge for the occupancy of any room or space occupied in any county or city located in a Planning District established pursuant to Chapter 42 (§ [15.2-4200](#) et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of two million or more, as shown by the most recent United States Census, has not less than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less than 50 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set

forth in clause (i). In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.

The tax imposed under this section shall be imposed only for the occupancy of any room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.

The tax imposed under this section shall be administered by the locality in which the room or space is located in the same manner as it administers the tax authorized by § [58.1-3819](#) or [58.1-3840](#), mutatis mutandis, except as herein provided. The revenue generated and collected from the tax shall be deposited by the local treasurer into the state treasury pursuant to § [2.2-806](#) and transferred by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § [33.2-2509](#). For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

2013, c. [766](#).

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any sub-fund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

Motor Vehicle Manufacturers' Warranty

Adjustment Act

§59.1-207.34. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Adjustment program" means any extended policy program under which a manufacturer undertakes to pay for all or any part of the cost of repairing, or to reimburse purchasers for all or any part of the cost of repairing, any condition that may substantially affect vehicle durability, reliability or performance, other than service provided under a safety or emission-related recall program. This term shall not include ad hoc adjustments made by a manufacturer on a case-by-case basis.

"Consumer" means the purchaser, other than for purposes of resale, or the lessee of a motor vehicle and shall also include any person to whom such motor vehicle is transferred and any other person entitled by the terms of adjustment program to enforce its obligations.

"Dealer" means any motor vehicle dealer as defined in § [46.2-1500](#).

"Division" means the Division of Consumer Counsel in the Department of Law.

"Manufacturer" means any person, whether resident or nonresident, who manufactures, assembles, or imports motor vehicles for sale or distribution in this Commonwealth.

"Motor vehicle" means any motor vehicle as defined in § [46.2-100](#), but shall not include any motorcycle or motor home.

1991, c. 300; 2012, cc. [803](#), [835](#).

§59.1-207.35. Requirements of manufacturers.

Every manufacturer shall:

1. Inform a consumer of any adjustment program applicable to his motor vehicle and, upon request, furnish the consumer with any document issued by a manufacturer pertaining to any adjustment program or to any condition that may substantially affect vehicle durability, reliability or performance;
2. Notify, by first-class mail, all owners of motor vehicles eligible under any adjustment program of the condition giving rise to and the principal terms and conditions of such program within ninety days of the adoption of the program; and

3. Notify its dealers, in writing, of all the terms and conditions of any adjustment program within thirty days of its adoption.

1991, c. 300 .

§59.1-207.36. Required disclosures.

A. Every manufacturer or distributor, either directly or through its authorized agent, shall cause a notice to be given to the consumer which outlines the provisions of this chapter and the rights and remedies thereunder. The written notice shall state at minimum: "Sometimes (insert manufacturer's name) offers a special adjustment program to pay all or part of the cost of certain repairs beyond the terms of the warranty. Check with your dealer to determine whether any adjustment program is applicable to your motor vehicle."

B. Every dealer shall disclose to a consumer seeking repairs for a particular condition, the principal terms and conditions of any manufacturer's adjustment program covering such condition provided the dealer has been notified of the adjustment program pursuant to § [59.1-207.35](#).

1991, c. 300 .

§59.1-207.37. Adjustment program reimbursement.

A. Every manufacturer who establishes any adjustment program shall implement and follow procedures to ensure reimbursement for each consumer eligible under any such program who incurred expenses for repair of the condition subject to the program prior to acquiring knowledge thereof. Such reimbursement shall be consistent with the terms and conditions of the adjustment program.

B. Any claim for reimbursement pursuant to this section shall be made in writing to the manufacturer within two years of the date of the consumer's payment of repairs for the condition. The manufacturer shall notify the consumer in writing within twenty-one business days of receiving a claim for reimbursement whether the claim will be allowed or denied. If the claim is denied, the specific reasons for such denial shall be stated in writing.

1991, c. 300 .

§59.1-207.38. Enforcement; penalties.

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § [59.1-200](#) and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ [59.1-196](#) et seq.)

of this title. Notwithstanding any other provision to the contrary, it shall not be a violation of this chapter if the manufacturer within thirty days after the conclusion of the notice period required by subdivision 2 of § [59.1-207.35](#), upon notice from a consumer of the consumer's eligibility under an adjustment program, repairs or causes to be repaired the consumer's motor vehicle in accordance with the terms and conditions of the adjustment program.

1991, c. 300; 1996, c. [63](#).

§59.1-207.39. Regulations.

The Division is authorized to promulgate reasonable regulations in order to implement the provisions of this chapter. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.).

1991, c. 300; 2012, cc. [803](#), [835](#).

Motor Vehicle Warranty Enforcement Act

§59.1-207.9. Short title.

This chapter may be cited as the Virginia Motor Vehicle Warranty Enforcement Act.

1984, c. 773.

§59.1-207.10. Intent.

The General Assembly recognizes that a motor vehicle is a major consumer purchase, and there is no doubt that a defective motor vehicle creates a hardship for the consumer. It is the intent of the General Assembly that a good faith motor vehicle warranty complaint by a consumer should be resolved by the manufacturer, or its agent, within a specified period of time. It is further the intent of the General Assembly to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the express warranty issued by the manufacturer. However, nothing in this chapter shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

1984, c. 773.

§59.1-207.11. Definitions.

As used in this chapter, the following terms shall have the following meanings:

"Collateral charges" means any sales-related or lease-related charges including but not limited to sales tax, license fees, registration fees, title fees, finance charges and interest, transportation charges, dealer preparation charges or any other charges for service contracts, undercoating, rust proofing or installed options, not recoverable from a third party. If a refund involves a lease, "collateral charges" means, in addition to any of the above, capitalized cost reductions, credits and allowances for any trade-in vehicles, fees to another to obtain the lease, and insurance or other costs expended by the lessor for the benefit of the lessee.

"Comparable motor vehicle" means a motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of purchase or lease with an offset from this value for a reasonable allowance for its use.

"Consumer" means the purchaser, other than for purposes of resale, or the lessee, of a motor vehicle used in substantial part for personal, family, or household purposes, and any person to whom such motor vehicle is transferred for the same purposes during the duration of any warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

"Incidental damages" shall have the same meaning as provided in § [8.2-715](#).

"Lemon law rights period" means the period ending eighteen months after the date of the original delivery to the consumer of a new motor vehicle. This shall be the period during which the consumer can report any nonconformity to the manufacturer and pursue any rights provided for under this chapter.

"Lien" means a security interest in a motor vehicle.

"Lienholder" means a person, partnership, association, corporation or entity with a security interest in a motor vehicle pursuant to a lien.

"Manufacturer" means a person, partnership, association, corporation or entity engaged in the business of manufacturing or assembling motor vehicles, or of distributing motor vehicles to motor vehicle dealers.

"Manufacturer's express warranty" means the written warranty, so labeled, of the manufacturer of a new automobile, including any terms or conditions precedent to the enforcement of obligations under that warranty.

"Motor vehicle" means only passenger cars, pickup or panel trucks, motorcycles, self-propelled motorized chassis of motor homes and mopeds as those terms are defined in § [46.2-100](#) and demonstrators or leased vehicles with which a warranty was issued.

"Motor vehicle dealer" shall have the same meaning as provided in § [46.2-1500](#).

"Nonconformity" means a failure to conform with a warranty, a defect or a condition, including those that do not affect the driveability of the vehicle, which significantly impairs the use, market value, or safety of a motor vehicle.

"Notify" or "notification" means that the manufacturer shall be deemed to have been notified under this chapter if a written complaint of the defect or defects has been mailed to it or it has responded to the consumer in writing regarding a complaint, or a factory representative has either inspected the vehicle or met with the consumer or an authorized dealer regarding the nonconformity.

"Reasonable allowance for use" shall not exceed one-half of the amount allowed per mile by the Internal Revenue Service, as provided by regulation, revenue procedure, or revenue ruling promulgated pursuant to § 162 of the Internal Revenue Code, for use of a personal vehicle for business purposes, plus an amount to account for any loss to the fair market value of the vehicle resulting from damage beyond normal wear and tear, unless the damage resulted from nonconformity to any warranty.

"Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the new motor vehicle for ordinary use or reasonable intended purposes or creates a risk of fire or explosion.

"Significant impairment" means to render the new motor vehicle unfit, unreliable or unsafe for ordinary use or reasonable intended purposes.

"Warranty" means any implied warranty or any written warranty of the manufacturer, or any affirmations of fact or promise made by the manufacturer in connection with the sale or lease of a motor vehicle that become part of the basis of the bargain. The term "warranty" pertains to the obligations of the manufacturer in relation to materials, workmanship, and fitness of a motor vehicle for ordinary use or reasonable intended purposes throughout the duration of the lemon law rights period as defined under this section.

1984, c. 773; 1988, c. 603; 1990, c. 772; 1998, c. [671](#).

§59.1-207.12. Conformity to all warranties.

If a new motor vehicle does not conform to all warranties, and the consumer reports the nonconformity to the manufacturer, its agents, or its authorized dealer during the manufacturer's warranty period, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such warranties, notwithstanding the fact that such repairs are made after the expiration of such manufacturer's warranty period.

1984, c. 773; 1988, c. 603.

§59.1-207.13. Nonconformity of motor vehicles.

A. If the manufacturer, its agents or authorized dealers do not conform the motor vehicle to any applicable warranty by repairing or correcting any defect or condition, including those that do not affect the driveability of the vehicle, which significantly impairs the use, market value, or safety of the motor vehicle to the consumer after a reasonable number of attempts during the lemon law rights period, the manufacturer shall:

1. Replace the motor vehicle with a comparable motor vehicle acceptable to the consumer, or
2. Accept return of the motor vehicle and refund to the consumer, lessor, and any lienholder as their interest may appear the full contract price, including all collateral charges, incidental damages, less a reasonable allowance for the consumer's use of the vehicle up to the date of the first notice of nonconformity that is given to the manufacturer, its agents or authorized dealer. Refunds or replacements shall be made to the consumer, lessor or lienholder, if any, as their interests may appear. The consumer shall have the unconditional right to choose a refund rather than a replacement vehicle and to drive the motor vehicle until he receives either the replacement vehicle or the refund. The subtraction of a reasonable allowance for use shall apply to either a replacement or refund of the motor vehicle. Mileage, expenses, and reasonable loss of use necessitated by attempts to conform such motor vehicle to the express warranty may be recovered by the consumer.

A1. In the case of a replacement of or refund for a leased vehicle, in addition to any other damages provided in this chapter, the motor vehicle shall be returned to the manufacturer and the consumer's written lease shall be terminated by the lessor without penalty to the consumer. The lessor shall transfer title to the manufacturer as necessary to effectuate the consumer's rights pursuant to this chapter, whether the consumer chooses vehicle replacement or a refund.

B. It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to any warranty and that the motor vehicle is significantly impaired if during the period of eighteen months following the date of original delivery of the motor vehicle to the consumer either:

1. The same nonconformity has been subject to repair three or more times by the manufacturer, its agents or its authorized dealers and the same nonconformity continues to exist;
2. The nonconformity is a serious safety defect and has been subject to repair one or more times by the manufacturer, its agent or its authorized dealer and the same nonconformity continues to exist; or
3. The motor vehicle is out of service due to repair for a cumulative total of thirty calendar days, unless such repairs could not be performed because of conditions beyond the control of the manufacturer, its agents or authorized dealers, including war, invasion, strike, fire, flood or other natural disasters.

C. The lemon law rights period shall be extended if the manufacturer has been notified but the nonconformity has not been effectively repaired by the manufacturer, or its agent, by the expiration of the lemon law rights period.

D. The manufacturer shall clearly and conspicuously disclose to the consumer, in the warranty or owner's manual, that written notification of the nonconformity to the manufacturer is required before the consumer may be eligible for a refund or replacement of the vehicle under this chapter. The manufacturer shall include with the warranty or owner's manual the name and address to which the consumer shall send such written notification.

E. It shall be the responsibility of the consumer, or his representative, prior to availing himself of the provisions of this section, to notify the manufacturer of the need for the correction or repair of the nonconformity, unless the manufacturer has been notified as defined in § [59.1-207.11](#). If the manufacturer or factory representative has not been notified of the conditions set forth in subsection B of this section and any of the conditions set forth in subsection B of this section already exists, the manufacturer shall be given an additional opportunity, not to exceed fifteen days, to correct or repair the nonconformity. If notification shall be mailed to an authorized dealer, the authorized dealer shall upon receipt forward such notification to the manufacturer.

F. Nothing in this chapter shall be construed to limit or impair the rights and remedies of a consumer under any other law.

G. It is an affirmative defense to any claim under this chapter that:

1. An alleged nonconformity does not significantly impair the use, market value, or safety of the motor vehicle; or
2. A nonconformity is the result of abuse, neglect or unauthorized modification or alteration of a motor vehicle by a consumer.

1984, c. 773; 1987, c. 607; 1988, c. 603; 1990, c. 772; 1998, c. [671](#).

§59.1-207.14. Action to enforce provisions of chapter.

Any consumer who suffers loss by reason of a violation of any provision of this chapter may bring a civil action to enforce such provision. Any consumer who is successful in such an action or any defendant in any frivolous action brought by a consumer shall recover reasonable attorney's fees, expert witness fees and court costs incurred by bringing such actions.

1984, c. 773; 1988, c. 603.

§59.1-207.15. Informal dispute settlement procedure.

A. If a manufacturer provides an informal dispute settlement procedure, it shall be the consumer's choice whether or not to use it prior to availing himself of his rights under this chapter.

B. If a dispute settlement procedure is resorted to by the consumer and the decision is for a refund or a comparable motor vehicle, the manufacturer shall have forty days from its receipt of the consumer's acceptance of the decision or from the date of a court order to comply with the terms of the decision.

C. In any action brought because of the manufacturer's failure to comply with the decision, within the scope of the procedure's authority, rendered as a result of a dispute resolution proceeding or a court order, the court may triple the value of the award stipulated in the decision as provided for in this chapter, plus award other equitable relief the court deems appropriate, including additional attorney's fees.

1988, c. 603; 1990, c. 772 .

§59.1-207.16. Action to be brought within certain time.

Any action brought under this chapter shall be commenced within eighteen months following the date of original delivery of the motor vehicle to the consumer.

However, any consumer whose good faith attempts to settle the dispute pursuant to the informal dispute settlement provisions of § [59.1-207.15](#) have not resulted in the satisfactory resolution of the matter shall have (i) twelve months from the date of the final action taken by the manufacturer in its dispute settlement procedure, if such procedure was resorted to within eighteen months of delivery, or (ii) the original eighteen-month period, whichever is longer, to file an action in the proper court.

1988, c. 603; 1990, c. 772; 1999, c. [387](#).

§59.1-207.16:1. Disclosure of returned vehicles; penalty.

A. If a motor vehicle that is returned to the manufacturer or distributor either under this chapter or by judgment, decree, or arbitration award in this or any other state and is then transferred by a manufacturer or distributor to a dealer, licensed under Chapter 15 (§ [46.2-1500](#) et seq.) of Title 46.2, in Virginia, the manufacturer or distributor shall disclose this information to the Virginia dealer.

B. If the returned vehicle is then made available for resale or for another lease, the manufacturer shall, prior to sale or lease, disclose in writing in a clear and conspicuous manner, on a separate piece of paper in ten-point capital type, to the Virginia dealer that this motor vehicle was returned to the manufacturer, distributor or factory branch, the nature of the defect which resulted in the return, and the condition of the motor vehicle at the time of transfer to the Virginia dealer. It shall be the responsibility of the dealer that receives this disclosure to give notice of its contents to any prospective purchaser or lessee prior to sale or lease, and to transfer the disclosure, or a copy thereof, to the next purchaser or lessee. A dealer's responsibility under this section shall cease upon the sale or lease of the affected motor vehicle to the first purchaser or lessee not for resale or lease.

C. Any manufacturer or distributor who violates this section of the Motor Vehicle Warranty Enforcement Act shall be guilty of a Class 3 misdemeanor.

1994, c. [578](#); 1998, c. [671](#).

Multiple Claimant Litigation Act

§8.01-267.1. Standards governing consolidation, etc., and transfer.

On motion of any party, a circuit court may enter an order joining, coordinating, consolidating or transferring civil actions as provided in this chapter upon finding that:

1. Separate civil actions brought by six or more plaintiffs involve common questions of law or fact and arise out of the same transaction, occurrence or series of transactions or occurrences;
2. The common questions of law or fact predominate and are significant to the actions; and
3. The order (i) will promote the ends of justice and the just and efficient conduct and disposition of the actions, and (ii) is consistent with each party's right to due process of law, and (iii) does not prejudice each individual party's right to a fair and impartial resolution of each action.

Factors to be considered by the court include, but are not limited to, (i) the nature of the common questions of law or fact; (ii) the convenience of the parties, witnesses and counsel; (iii) the relative stages of the actions and the work of counsel; (iv) the efficient utilization of judicial facilities and personnel; (v) the calendar of the courts; (vi) the likelihood and disadvantages of duplicative and inconsistent rulings, orders or judgments; (vii) the likelihood of prompt settlement of the actions without the entry of the order; and (viii) as to joint trials by jury, the likelihood of prejudice or confusion.

The court may organize and manage the combined litigation and enter further orders consistent with the right of each party to a fair trial as may be appropriate to avoid unnecessary costs, duplicative litigation or delay and to assure fair and efficient conduct and resolution of the litigation, including but not limited to orders which organize the parties into groups with like interest; appoint counsel to have lead responsibility for certain matters; allocate costs and fees to separate issues into common questions that require treatment on a consolidated basis and individual cases that do not; and to stay discovery on the issues that are not consolidated.

1995, c. [555](#).

§8.01-267.2. When actions pending in same court.

For purposes of this chapter, actions shall be considered pending in the same circuit court when they have been (i) filed in that court, regardless of whether the defendant has been served with process, or (ii) properly transferred to that court.

1995, c. [555](#).

§8.01-267.3. Consolidation and other combined proceedings.

On motion of any party, a circuit court in which separate civil actions are pending which were brought by six or more plaintiffs may enter an order coordinating, consolidating or joining any or all of the proceedings in the actions upon making the findings required by § [8.01-267.1](#). The order may provide for any or all of the following:

1. Coordinated or consolidated pretrial proceedings;
2. A joint hearing or, if requested by any party, trial by jury with respect to any or all common questions at issue in the actions; or
3. Consolidation of the actions.

1995, c. [555](#).

§8.01-267.4. Transfer.

A. Whenever there are pending in different circuit courts of the Commonwealth civil actions brought by six or more plaintiffs which involve common issues of law or fact and arise out of the same transaction, occurrence or the same series of transactions or occurrences, any party may apply to a panel of circuit court judges designated by the Supreme Court for an order of transfer. Upon such application and upon making the findings required by § [8.01-267.1](#), the panel may order some or all of the actions transferred to a circuit court in which one or more of the actions are pending for purposes of coordinated or consolidated pretrial proceedings. The circuit court to which actions are transferred may enter further orders as provided in § [8.01-267.3](#). Any subsequent application for further transfer shall be made to the circuit court to which the actions were transferred. Upon completion of pretrial proceedings and any joint hearings or trials, the circuit court may remand the actions to the circuit courts in which they were originally filed or may retain them for final disposition.

B. Any party who files an application for transfer shall at the same time give notice of such application to all parties and to the clerk of each circuit court in which an action that is the subject of the application is pending. Upon receipt of the notice, a circuit court shall not enter any further orders under § [8.01-267.3](#) until after the panel has entered an order granting or denying an application for transfer pursuant to subsection A.

1995, c. [555](#).

§8.01-267.5. Joinder and severance.

Six or more parties may be joined initially as plaintiffs in a single action if their claims involve common issues of fact and arise out of the same transaction or occurrence or the same series of transactions or occurrences. On motion of a defendant, the actions so joined shall be severed unless the court finds that the claims of the plaintiffs were ones which, if they had been filed separately, would have met the standards of § [8.01-267.1](#) and would have been consolidated under § [8.01-267.3](#). If the court orders severance, the claims may proceed separately upon payment of any appropriate filing fees due in the separate circuit courts within sixty days of entry of the order. The date of the original filing shall be the date of filing for each of the severed actions for purposes of applying the statutes of limitations.

1995, c. [555](#).

§8.01-267.6. Separate trials; special interrogatories.

In any combined action under this chapter, the court, on motion of any party, may order separate or bifurcated trials of any one or more claims, cross-claims, counterclaims, third-party claims, or separate issues, always preserving the right of trial by jury.

Additionally, the court may submit special interrogatories to the jury to resolve specific issues of fact.

1995, c. [555](#).

§8.01-267.7. Later-filed actions.

Later-filed actions may be joined with ongoing litigation in accordance with the procedures of § [8.01-267.3](#) or § [8.01-267.4](#) and the standards of § [8.01-267.1](#). Parties in later-filed actions joined with on-going multiple claimant litigation may, in the discretion of the court, be bound to prior proceedings but only to the extent permitted by law and only to the extent that the court finds that the interests of such parties were adequately and fairly represented. Consistent with the language of this section and the standards of § [8.01-267.1](#), the parties may utilize all prior discovery taken by any party in on-going multiple party litigation as if the parties in the later-filed actions had been parties at the time the discovery was taken. On motion of any party or by the person from whom discovery is sought, the court may limit or prohibit discovery by parties in later-filed actions if the court finds that the matters on which the discovery is sought have been covered adequately by prior discovery.

1995, c. [555](#).

§8.01-267.8. Interlocutory appeal.

A. The Supreme Court or the Court of Appeals, in its discretion, may permit an appeal to be taken from an order of a circuit court although the order is not a final order where the circuit court has ordered a consolidated trial of claims joined or consolidated pursuant to this chapter.

B. The Supreme Court or the Court of Appeals, in its discretion, may permit an appeal to be taken from any other order of a circuit court in an action combined pursuant to this chapter although the order is not a final order provided the written order of the circuit court states that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

C. Application for an appeal pursuant to this section shall be made within ten days after the entry of the order and shall not stay proceedings in the circuit court unless the circuit court or the appellate court shall so order.

1995, c. [555](#).

§8.01-267.9. Effect on other law.

The procedures set out in this chapter are in addition to procedures otherwise available by statute, rule or common law and do not limit in any way the availability of such procedures, but shall not apply to any action against a manufacturer or supplier of asbestos or product for industrial use that contains asbestos to which the provisions of § [8.01-374.1](#) may apply.

1995, c. [555](#).

Overhead High Voltage Line Safety Act

§59.1-406. Scope.

This chapter (§ [59.1-406](#) et seq.) is enacted to promote the safety and protection of persons engaged in work or activity in the vicinity of overhead high voltage lines. The chapter defines the conditions under which work may be carried on safely and provides for the safety arrangements to be taken when any person engages in work or other activity in proximity to overhead high voltage lines.

1989, c. 341 .

§59.1-407. Definitions.

As used in this chapter:

"Covered equipment" means any mechanical equipment or hoisting equipment, any part of which is capable of vertical, lateral or swinging motion that could cause the equipment to be operated within ten feet of an overhead high voltage line, including but not limited to cranes, derricks, power shovels, drilling rigs, excavating equipment, hay loaders, hay stackers, combines, grain augers and mechanical cotton pickers.

"Notice" means actual notification in the manner prescribed in § [59.1-411](#).

"Overhead high voltage line" means all above ground bare or insulated electrical conductors of voltage in excess of 600 volts measured between conductors or measured between a conductor and the ground, except those conductors that are de-energized and grounded or that are enclosed in rigid metallic conduit or flexible armored conduit.

"Person" means natural person, firm, business association, company, partnership, corporation or other legal entity.

"Person responsible for the work" means the person performing or controlling the work.

"Warning sign" means a weather-resistant sign of not less than five inches by seven inches with a yellow background and black lettering reading as follows: "WARNING - UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN 10 FEET OF OVERHEAD HIGH VOLTAGE LINES" or such other equally effective warning signs as may be approved for use by the Virginia Safety and Health Codes Board or the Commissioner of Labor and Industry.

"Work" means the physical act of performing or preparing to perform any activity under, over, by, or near overhead high voltage lines, including, but not limited to, the operation, erection, handling, storage, or transportation of any tools, machinery, ladders, antennas, equipment, covered equipment, supplies, materials, or apparatus, or the moving of any house or other structure, whenever such activity is done by a person or entity in pursuit of his trade or business.

"Working day" means every day except Saturdays, Sundays, and legal state and federal holidays.

1989, c. 341; 2003, c. [364](#).

§59.1-408. Prohibited activities.

Unless danger of contact with overhead high voltage lines has been guarded against as provided by § [59.1-410](#) :

1. No person shall, individually or through an agent or employee, perform, or require any other person to perform, any work, as defined in § [59.1-407](#), that will cause any person or tools, machinery, ladders, antennas, equipment, covered equipment, supplies, materials, or apparatus to be placed within 10 feet (3.1 meters) of any overhead high voltage line.
2. A clearance greater than 10 feet (3.1 meters) may be required under the circumstances by the occupational safety and health regulations adopted by the Safety and Health Codes Board pursuant to Chapter 3 (§ [40.1-22](#) et seq.) of Title 40.1 and enforced by the Commissioner of Labor and Industry.
3. The prohibited activities as described in this section shall not apply to covered equipment as defined herein when lawfully driven or transported on public streets and highways in compliance with the height restriction imposed by § [46.2-1110](#), nor shall they apply to covered equipment, when used in agricultural or silvicultural activities, that is in compliance with the height restrictions imposed by § [46.2-1110](#) when driven or transported on land used for agricultural or silvicultural activities.

1989, c. 341; 1995, c. [298](#); 2003, c. [364](#).

§59.1-409. Warning signs.

A. No person shall, individually or through an agent or employee, or as an agent or employee, operate any covered equipment in the proximity of an overhead high voltage line unless there is posted and maintained a warning sign placed as follows:

1. Within the equipment and readily visible and legible to the operator of such equipment when at the controls of such equipment; and
2. On the outside of equipment in such numbers and locations as to be readily visible and legible at 12 feet to other persons engaged in the work operations.

B. It shall be the duty and responsibility of the owner, lessee, or employer of any covered equipment to acquaint themselves, and their employees who will be operating the equipment or will be engaged in work, with the provisions of this chapter and the regulations prescribed and promulgated pursuant to it.

1989, c. 341; 2003, c. [364](#).

§59.1-410. Temporary safety arrangements.

A. When any person desires to carry on any work in closer proximity to any overhead high voltage line than permitted by this chapter, the person responsible for the work shall promptly notify the owner or operator of the high voltage line on a working day, or in emergency situations as soon as possible under the circumstances, in the manner prescribed in § [59.1-411](#). The work shall be performed only after satisfactory mutual arrangements have been negotiated between the owner or the operator of the lines or both and the person responsible for the work. The negotiations shall proceed promptly and in good faith with the goal of accommodating the requested work consistent with the owner's or operator's service needs and the duty to protect the public from the danger of overhead high voltage lines. The owner or operator of the lines shall initiate the agreed upon safety arrangements within five working days from the date of the request of the person responsible for the work. The owner and operator of the lines shall complete the work promptly and without interruption, consistent with the owner's or operator's service needs. Arrangements may include (i) placement of temporary mechanical barriers separating and preventing contact between material, equipment, or persons and overhead high voltage lines, (ii) temporary de-energization and grounding, (iii) temporary relocation or raising of the lines, or (iv) other such measures found to be appropriate in the judgment of the owner or operator of the lines. The person responsible for the work shall ensure that the temporary safety arrangements described in this subsection are completed prior to the commencement of any such work.

B. The actual expense incurred by any owner or operator of overhead high voltage lines in taking precautionary measures as set out in subsection A of this section, including the wages of its workers involved in making safety arrangements, shall be paid by the person responsible for the work or a person subject to the following exceptions:

1. In the case of property used for residential purposes, such actual expenses shall be limited to those in excess of \$1,000;
2. Whenever any owner or operator of an overhead high voltage line has located its facilities within a public highway or street right-of-way and the work is performed by or for the Department of Transportation or a city, county or town, the actual expenses shall be the responsibility of the owner or operator of the overhead high

voltage lines, unless the owner or operator can provide evidence of prior rights or there is a prior written agreement specifying cost responsibility; and

3. Whenever it is determined by the Department of Transportation or a city, county or town that the temporary safety arrangements are for the sole convenience of its contractor, the actual expense shall be the responsibility of the contractor.

C. When requested by a person, an owner or operator of a high voltage line shall provide within a reasonable period of time an estimate of the scope and cost of any required safety arrangements.

1989, c. 341; 1993, c. 284; 1995, c. [298](#); 1996, c. [267](#); 2003, c. [364](#).

§59.1-411. Notification.

A. Every notice served by any person on an owner or operator of an overhead high voltage line pursuant to § [59.1-410](#) shall contain the following information:

1. The name of the individual serving such notice;
2. The location or address of the tract or parcel of land upon which the work is to take place with sufficient particularity to enable the owner or operator of the overhead high voltage lines to ascertain the precise tract or parcel of land involved;
3. The name, address and work day telephone number of the person responsible for the work;
4. The field telephone number at the site of such work, if one is available;
5. The type and extent of the proposed work;
6. The name of the person for whom the proposed work is being performed;
7. The time and date of the notice; and
8. The dates upon which the work is scheduled to commence and be completed.

B. If the notification required by this chapter is made by telephone, a record of such notification shall be maintained by the owner or operator notified and the person giving the notice to document compliance with the requirements of this chapter.

C. To facilitate notification required by this chapter, every operator of overhead high voltage lines shall publish a phone number or numbers that, when called, will serve to provide initial notification of the need to arrange for the temporary safety arrangements pursuant to this chapter.

D. If, after the arrangements required by § [59.1-410](#) are made, a delay in commencing the work is encountered, then the person responsible for the work shall be required to give a new notice as specified in this section.

E. The provisions of this section shall not apply to the owner or leaseholder of real estate devoted to agricultural or silvicultural activities beneath a high voltage line, unless otherwise required by state or federal law.

1989, c. 341; 1995, c. [298](#); 1996, c. [267](#); 2003, c. [364](#).

§59.1-412. Enforcement of chapter.

The provisions of this chapter shall be considered as safety and health standards of the Commonwealth and enforced as to employers pursuant to § [40.1-49.4](#) by the Commissioner of Labor and Industry.

In the case of violations of this chapter over which the Commissioner of Labor and Industry does not have enforcement powers pursuant to § [40.1-49.4](#), a civil penalty of up to \$1,000 may be imposed at the discretion of the general district court for the jurisdiction in which the offense occurred.

1989, c. 341 .

§59.1-413. Exemptions.

This chapter shall not apply to the construction, reconstruction, operation, and maintenance of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment of (i) rail transportation systems, (ii) electrical generating, transmission or distribution systems, (iii) communication systems, including cable television, or (iv) any other publicly or privately owned system provided that such work on any of the foregoing systems is performed by the employees of the owner or operator of the systems or independent contractors engaged on behalf of the owner or operator of the system to perform the work.

This chapter also shall not apply to electrical or communications circuits or conductors on the premises of coal or other mines which are subject to the provisions of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. § 801 et seq.) and regulations adopted pursuant to that Act by the Mine Safety and Health Administration.

1989, c. 341 .

§59.1-414. Application.

A. The owner or operator of overhead high voltage lines shall not be liable for damage or loss to any person or property caused by work within 10 feet of overhead high voltage lines, unless notice has been given as required by § [59.1-411](#) and the owner or operator of the overhead high voltage line has failed to comply with the provisions of § [59.1-410](#).

B. Any person responsible for the work who violates the requirements of § [59.1-408](#) and whose subsequent activities within the vicinity of overhead high voltage lines cause damage to utility facilities or cause injury or damage to any person or property shall indemnify the owner or operator of such overhead high voltage lines against all claims arising from personal injury or death, property damage, or service interruptions, together with attorneys' fees and other costs incurred in defending any such claims directly resulting from work in violation of § [59.1-408](#).

C. Except as provided in subsection A, nothing in this chapter shall be construed or applied so as to alter the duty or degree of care applicable to owners or operators of overhead high voltage lines with respect to damage to property, personal injury or death.

D. Except for the rights provided to the owner or operator of the overhead high voltage line in subsection B, nothing contained in this chapter shall be construed to alter, amend, restrict, or limit the exclusive remedy provisions of § [65.2-307](#).

1989, c. 341; 2003, c. [364](#).

Park Authorities Act

§15.2-5700. Short title; application.

This chapter shall be known and may be cited as the "Park Authorities Act." The chapter shall apply to all localities of the Commonwealth.

Code 1950, § 15-714.1; 1950, p. 1244; 1952, c. 401; 1962, c. 623, § 15.1-1228; 1997, c. 587.

§15.2-5701. Definitions.

As used in this chapter, the following words and terms shall mean unless the context shall indicate otherwise:

"Authority" means an authority created under the provisions of § [15.2-5702](#) or, if any such authority shall be abolished, the entity succeeding to the principal functions thereof.

"Federal agency" means the United States of America and any department or bureau thereof, and any other agency or instrumentality of the United States of America heretofore established or which may be established hereafter.

"Park" means public parks and recreation areas as the terms are generally used.

Code 1950, § 15-714.2; 1950, p. 1244; 1952, c. 401; 1962, c. 623, § 15.1-1229; 1997, c. 587.

§15.2-5702. Creation of authorities.

A. A locality may by ordinance or resolution, or two or more localities may by concurrent ordinances or resolutions, signify their intention to create a park authority, under an appropriate name and title, containing the word "authority" which shall be a body politic and corporate.

Whenever an authority has been incorporated by two or more localities, any one or more of the localities may withdraw therefrom, but no locality shall be permitted to withdraw from any authority that has outstanding obligations unless United States securities have been deposited for their payment or without unanimous consent of all holders of the outstanding obligations.

Other localities may join the authority as provided in the ordinances or resolutions.

B. Each ordinance or resolution shall include articles of incorporation setting forth:

1. The name of the authority and the address of its principal office.
2. The name of each incorporating locality, together with the names, addresses and terms of office of the first members of the board of the authority.
3. The purpose or purposes for which the authority is created.

C. Each participating locality shall cause to be published at least one time in a newspaper of general circulation in its locality, a copy of the ordinance or resolution together with a notice stating that on a day certain, not less than ten days after publication of the notice, a public hearing will be held on such ordinance or resolution. If at the hearing substantial opposition to the proposed park authority is heard, the members of the participating localities' governing bodies may in their discretion call for a referendum on the question of establishing such an authority. The request for a

referendum shall be initiated by resolution of the governing body and filed with the clerk of the circuit court for the locality. The court shall order the referendum as provided for in § [24.2-681](#) et seq. Where two or more localities are participating in the formation of an authority the referendum, if any be ordered, shall be held on the same date in all such localities so participating. In any event if ten percent of the registered voters in such locality file a petition with the governing body at the hearing calling for a referendum such governing body shall request a referendum as herein provided.

D. Having specified the initial plan of organization of the authority, and having initiated the program, the localities organizing such authority may, from time to time, by subsequent ordinance or resolution, after public hearing, and with or without referendum, specify further parks to be acquired and maintained by the authority, and no other parks shall be acquired or maintained by the authority than those so specified. However, if the governing bodies of the localities fail to specify any project or projects to be undertaken, and if the governing bodies do not disapprove any project or projects proposed by the authority, then the authority shall be deemed to have all the powers granted by this chapter.

Code 1950, § 15-714.3; 1950, p. 1244; 1952, c. 401; 1962, c. 623, § 15.1-1230; 1975, c. 517; 1997, c. 587.

§15.2-5703. Members of authority; appointment, terms, compensation, etc.; officers, quorum.

Each authority created hereunder, whether created by single or multiple localities, shall be governed by a board of not less than six members, but always an even number, appointed by the governing body of the locality. The board members shall be appointed for staggered four-year terms. Members of the governing body may be appointed to the board but shall not comprise a majority thereon.

When an authority is created by participating localities, each shall appoint at least two members, one of whom may be a member of the governing body. One-half of the members first appointed by each governing body shall serve for two years and one-half shall serve for four years. After the first appointment, the term of office of all members shall be four years. When one or more additional localities join an existing authority, each of such participating localities shall have not less than two members on the authority's board. The first members shall be appointed immediately upon the

admission of the locality into the authority in the same manner as were the first members of the authority.

The members of the board of the authority shall elect one of their number chairman and shall elect a secretary and a treasurer who need not be members of the board of the authority. The offices of secretary and treasurer may be combined. A majority of the members of the authority shall constitute a quorum and the vote of a majority of such quorum shall be necessary for any action taken by the authority. No vacancy in the membership of the board of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

Localities which created or thereafter joined the authority, by ordinance or resolution or concurrent ordinances or resolutions, may provide for the payment of compensation to the members of the authority; provided no compensation shall be paid for meetings not attended and for the reimbursement to each member of the authority the amount of his actual expenses necessarily incurred in the performance of that member's duties.

Code 1950, § 15-714.4; 1950, p. 1246; 1952, c. 401; 1962, c. 623, § 15.1-1231; 1978, cc. 37, 717; 1984, cc. 142, 255; 1995, c. [626](#); 1997, c. 587.

§15.2-5704. Powers of authority.

Each authority shall be deemed to be performing essential governmental functions providing for the public health and welfare, and is authorized and empowered:

1. To have existence for such term of years as specified by the participating localities;
2. To adopt bylaws for the regulation of its affairs and the conduct of its business;
3. To adopt an official seal and alter the same at pleasure;
4. To maintain an office at such place or places as it may designate;
5. To sue and be sued;
6. To acquire, purchase, lease as lessee, construct, reconstruct, improve, extend, operate and maintain parks within, or partly within and partly outside, one or more of the participating localities; to acquire by gift, purchase or the exercise of the right of eminent domain lands or rights in land or water rights in connection therewith; and to sell, lease as lessor, transfer or dispose of any property or interest therein acquired by it; however, the power of eminent domain shall not extend beyond the geographical limits of the localities composing the authority;

7. To regulate the uses of all lands and facilities under control of the authority;
8. To issue revenue bonds and revenue refunding bonds of the authority, such bonds to be payable solely from revenues derived from the use of the facilities or the furnishing of park services;
9. To accept grants and gifts from the localities forming or thereafter joining the authority, the Commonwealth, the federal government or any other governmental bodies or political subdivisions, and from any other person;
10. To enter into contracts with the federal government, the Commonwealth, any political subdivision, or any agency or instrumentality thereof, or with any other person providing for or relating to the furnishing of park services or facilities;
11. To contract with any municipality, county, person or any public authority or political subdivision of this or any adjoining state, on such terms as the authority shall deem proper, for the construction, operation and maintenance of any park which is partly in this Commonwealth and partly in such adjoining state;
12. To exercise the same rights for acquiring property for the construction or improvement, maintenance or operation of a park as the locality or localities by which such authority is created may exercise. The governing body of any participating locality, notwithstanding any contrary provision of law, general or special, is authorized and empowered to transfer jurisdiction over, to lease, lend, grant or convey to the authority, upon the request of the authority, upon such terms and conditions as the governing body of such locality may agree with the authority as reasonable and fair, real or personal property as may be necessary or desirable in connection with the acquisition, construction, improvement, operation or maintenance of a park, including public roads and other property already devoted to public use. Agreements may be entered into by the authority with the Commonwealth, or any agency acting on behalf of the Commonwealth, for the acquisition of any lands or property, owned or controlled by the Commonwealth, for the purposes of construction or improvement, maintenance or operation of a park;
13. In the event of annexation by a municipality not a member of the authority of lands, areas, or territory served by the authority, then such authority may continue to do business, exercise its jurisdiction over properties and facilities in and upon or over such lands, areas or territory as long as any bonds or indebtedness remain outstanding or unpaid, or any contracts or other obligations remain in force;

14. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including a trust agreement or trust agreements securing any revenue bonds or revenue refunding bonds issued hereunder;

15. To do all acts and things necessary or convenient to carry out the powers granted by this chapter;

16. To borrow, at such rates of interest as the law authorizes, from the federal government or any agency thereof, individuals, partnerships, or private or municipal corporations, for the purpose of acquiring parklands and improvements thereon; to issue its notes, bonds or other obligations; to secure such obligations by mortgage or pledge of the property and improvements being acquired and the income derived therefrom; and to use any revenues and other income of the authority for payment of interest and retirement of principal of such obligations provided that prior approval of the governing body of the locality shall be obtained by an authority that was created by a single locality. Any locality which has formed or joined an authority may lend money to the authority. The power to borrow set forth in this subdivision shall be in addition to the power to issue revenue bonds and revenue refunding bonds set forth in subdivision 8 of this section and § [15.2-5712](#). Notes, bonds or other obligations issued under this subdivision shall not be deemed to constitute a debt of the Commonwealth or of any political subdivision of the Commonwealth or a pledge of the faith and credit of the Commonwealth or of any political subdivision of the Commonwealth; and

17. To adopt such rules and regulations from time to time, not in conflict with the laws of this Commonwealth, concerning the use of properties under its control as will tend to the protection of such property and the public thereon. No such rule or regulation shall be adopted until after descriptive notice of an intention to propose such rule or regulation for passage has been published in accordance with the procedures required for the adoption of general county ordinances and emergency county ordinances as set forth in § [15.2-1427](#), *mutatis mutandis*. The full text of any proposed rule or regulation shall be available for public inspection and copying during regular office hours of the authority at a place designated in the published notice.

Code 1950, § 15-714.5; 1950, p. 1246; 1952, c. 401; 1956, c. 472; 1962, c. 623, § 15.1-1232; 1968, c. 613; 1976, c. 483; 1977, c. 381; 1981, c. 182; 1996, c. [279](#); 1997, c. 587.

§15.2-5705. Violation of rules and regulations.

Any violation of any such rule and regulation adopted pursuant to subdivision 17 of § [15.2-5704](#) shall constitute a Class 4 misdemeanor.

1977, c. 381, § 15.1-1232.1; 1997, c. 587.

§15.2-5706. Appointment of special conservators of the peace.

The chairman of the board of any authority created pursuant to the provisions of this chapter may apply to the circuit court for any locality for the appointment of one or more special conservators of the peace under procedures specified by § [19.2-13](#). Any such special conservator of the peace shall have, within the lands and facilities controlled by such authority, the powers, functions, duties, responsibilities and authority of any other conservator of the peace.

1977, c. 381, § 15.1-1232.2; 1997, c. 587.

§15.2-5707. Recordation of conveyances of real estate to park authorities.

No deed purporting to convey real estate to a park authority shall be recorded unless accepted by a person authorized to act on behalf of the park authority, which acceptance shall appear on the face thereof.

1983, c. 52, § 15.1-1232.3; 1997, c. 587.

§15.2-5708. Exemption from taxation.

No authority shall be required to pay any taxes or assessments upon any park acquired and constructed by it under the provisions of this chapter.

Code 1950, § 15-714.6; 1950, p. 1248; 1962, c. 623, § 15.1-1233; 1997, c. 587.

§15.2-5709. Rates and charges.

The authority is hereby authorized to fix and revise from time to time rates, fees and other charges for the use of and for the services furnished or to be furnished by any park.

Code 1950, § 15-714.7; 1950, p. 1248; 1962, c. 623, § 15.1-1234; 1997, c. 587.

§15.2-5710. Funds.

All moneys received pursuant to the powers granted in this chapter shall be held and applied solely as provided in this chapter. The authority shall provide that any officer or other fiscal agent to which such moneys shall be paid shall hold and apply the same for the purposes hereof, subject to such regulations as the authority may provide.

Code 1950, § 15-714.8; 1950, p. 1248; 1962, c. 623, § 15.1-1235; 1997, c. 587.

§15.2-5711. Conveyance or lease of park to authority; contract for park services; when referendum required before certain contracts made.

Each locality and other public body is hereby authorized and empowered:

1. To convey or lease to any authority created hereunder, with or without consideration, any park upon such terms and conditions as the governing body thereof shall determine to be for the best interests of such locality or other public body; and
2. To contract with any authority created hereunder for park services; provided, that no locality shall enter into any contract with an authority involving payments by such locality to such authority for park services which requires the locality to incur an indebtedness extending beyond one fiscal year, unless the question of entering into such contract shall first be submitted to the voters of the locality for approval or rejection by a majority vote. Nothing herein shall prevent any locality from making a voluntary contribution to any authority.

In the event that a locality shall desire to contract with an authority under this subdivision, such governing body shall adopt a resolution stating in brief and general terms the substance of the proposed contract for park services and requesting the circuit court for the locality to order an election upon the question of entering into such contract. A copy of such resolution, certified by the clerk of the governing body, shall be filed with the judge of the circuit court who shall thereupon enter an order in accordance with § [24.2-681](#) et seq. Notice of such election entered and paid for by the locality shall be published at least once in a newspaper of general circulation in the locality at least ten days before the election.

The question to be submitted to the voters for determination shall include the names of the locality and the authority between whom the contract is proposed and the nature, duration and cost of such contract.

Code 1950, § 15-714.9; 1950, p. 1248; 1956, c. 474; 1962, c. 623, § 15.1-1236; 1997, c. 587.

§15.2-5712. Revenue bonds.

Each authority is authorized to issue, at one time or from time to time, revenue bonds of the authority for the purpose of acquiring, purchasing, constructing, reconstructing, improving or extending parks and acquiring necessary land or equipment therefor, and revenue refunding bonds of the authority for the purpose of refunding

any revenue bonds outstanding. The bonds of each issue shall be dated, shall mature at such time or times not exceeding forty years from their date or dates and shall bear interest at such rate or rates as authorized by law, as may be determined by the authority. Bonds may be made redeemable before maturity, at the option of the authority at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or outside the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this chapter or any recitals in any bonds issued under the provisions of this chapter, all such bonds shall be deemed to be negotiable instruments under the laws of this Commonwealth. The bonds may be issued in coupon or registered form or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The authority may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the authority.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the authority may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Bonds may be issued under the provisions of this chapter without obtaining the consent of any commission, board, bureau or agency of the Commonwealth of Virginia or of any political subdivision, and without any other proceedings or the happening of other conditions or things than those proceedings, conditions or things which are specifically required by this chapter.

Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth or of any political subdivision of the Commonwealth or a pledge of the faith and credit of the Commonwealth or of any political subdivision of the Commonwealth, but such bonds shall be payable solely from revenues of the authority as provided herein.

Code 1950, § 15-714.10; 1956, c. 472; 1958, c. 484; 1962, c. 623, § 15.1-1237; 1997, c. 587.

§15.2-5713. Same; for water or sewer systems, etc.

An authority created under the provisions of this chapter is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of revenue bonds of the authority for the purpose of paying the whole or any part of the cost of any water system, sewer system, sewage disposal system, or garbage and refuse collection and disposal system, or any combination of any thereof and for improvement and maintenance of any such system. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates as may be authorized by law, shall mature at such time or times not exceeding twenty years from their date or dates, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds.

Revenue bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth or of any incorporating or participating locality, or a pledge of the faith and credit of the Commonwealth or of any incorporating or participating locality.

Code 1950, § 15-714.11; 1954, c. 540; 1962, c. 623, § 15.1-1238; 1997, c. 587.

§15.2-5714. Bonds mutilated, lost or destroyed.

Should any bond issued under this chapter become mutilated or be lost or destroyed, the authority may cause a new bond of like date, number and tenor to be executed and delivered in exchange and substitution for, and upon cancellation of, such mutilated bond and its coupons, or in lieu of and in substitution for such lost or destroyed bond and its unmatured coupons. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost or destroyed bond (i) has paid the reasonable expense and charges in connection therewith; (ii) in the case of a lost or

destroyed bond, has filed with the authority and its treasurer satisfactory evidence that such bond was lost or destroyed and that the holder was the owner thereof; and (iii) has furnished indemnity satisfactory to its treasurer.

Code 1950, § 15-714.12; 1962, c. 203, § 15.1-1238.1; 1997, c. 587.

Pay Telephone Registration Act

§56-508.15. Registration required for intrastate pay telephone service; pay telephone instruments disconnected upon suspension or revocation of registration.

A. No person shall sell or resell intrastate telephone service through pay telephone instruments without either being registered pursuant to this chapter with the State Corporation Commission or holding a certificate of public convenience and necessity pursuant to Chapter 10.1 (§ [56-265.1](#) et seq.) of this title. Upon suspension or revocation of any registration, certificated carriers shall disconnect pay telephone instruments of the registrant as directed by order of the Commission.

B. All persons engaged in the sale or resale of intrastate telephone service through pay telephone instruments as of July 1, 1993, shall, within the following 180 days, either acquire Commission registration or demonstrate to the Commission possession of a certificate of public convenience and necessity pursuant to Chapter 10.1 of this title.

C. As used in this chapter, "intrastate telephone service" means telephone calls that originate and terminate within the Commonwealth.

1993, c. 140 .

§56-508.16. Commission authorized to promulgate regulations.

A. The State Corporation Commission may promulgate regulations necessary to implement the provisions of this chapter.

B. Without limiting the Commission's authority to promulgate other necessary regulations, the Commission's regulations implementing this chapter may, among other things, authorize the Commission:

1. To levy and collect reasonable registration or other fees;
2. To establish service and rate criteria for registered or certificated persons; and

3. To suspend or revoke registration, or to levy fines or impose other sanctions, for failure to comply with such regulations.

1993, c. 140 .

Pay-Per-Call Services Act

§59.1-429. Definitions.

As used in this chapter:

"Division" means the Division of Consumer Counsel in the Department of Law.

"Information provider" means any person providing pay-per-call services.

"Long distance carrier" means any interexchange telephone company providing services within the Commonwealth.

"Pay-per-call service" means any passive, interactive, polling, conference, or other similar audiotext service that is accessed by telephone, through a 900 number exchange or otherwise, and generates a service-related fee billed to a telephone customer.

"Telephone company" means a certificated local exchange telephone company which owns, manages, or controls any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages, either directly or indirectly.

1991, cc. 608, 630; 2012, cc. [803](#), [835](#).

§59.1-430. Required disclosures.

A. Every pay-per-call service advertisement or solicitation shall disclose (i) that a fee in excess of applicable telephone company or long distance carrier charges, if any, is charged for calls to the telephone number provided; (ii) the per-minute or flat-rate charges for the calls; (iii) the average length of call, measured in minutes, required to receive the service; (iv) whether additional calls to other pay-per-call services are required to obtain the full benefit of the service; and (v) the information provider's name, business address, and business telephone number.

In television advertisements, the price disclosure shall be preceded by a dollar sign, stated in arabic numerals, positioned in the lower portion of the television screen in letters large enough to be easily read by viewers and displayed during the entire time

the telephone number is displayed. In written materials, the cost of the call shall be printed in ten-point bold-faced type immediately adjacent to the pay-per-call service telephone number.

B. The disclosures required by subsection A of this section shall be conspicuously displayed in a manner reasonably intended to furnish advance notice of the pay-per-call service's total cost.

C. Every information provider shall disclose to the customer at the beginning of each call for which pay-per-call charges are incurred the per-minute or flat-rate charges for the pay-per-call service if (i) the per-minute rate charged is two dollars or more; (ii) the flat-rate charge is five dollars or more; or (iii) the pay-per-call service is intended for children under the age of twelve, regardless of the amount charged. In addition, pay-per-call services intended for children under the age of twelve shall also include an introductory statement that children should obtain prior parental approval before calling the service. The information provider shall also provide a delayed timing of information charges.

D. Every information provider shall provide a period of a minimum of twelve seconds for a delayed timing of information charges and price disclosure message. If the delayed timing period is exceeded, a consumer shall be billed from the time of the initial connection, and transport charges shall be billed to the information provider from the time of the initial connection. If the consumer disconnects the call within the delayed timing period, no information charge shall be billed to the caller.

During the delayed timing period, the information provider shall inform the consumer of any information required by subsection C of this section and of all of the following: (i) the name of the programs; (ii) the date the information was recorded, if the information is a recorded message; and (iii) that if the caller disconnects the call within the delayed timing period, the consumer will not be charged for the call.

1991, cc. 608, 630; 1992, c. 284 .

§59.1-431. Telephone company and long distance carrier duties.

Every telephone company and long distance carrier shall furnish the following information on any telephone customer's bill that contains charges for pay-per-call services: (i) the pay-per-call number called; (ii) the date, time, and length of the call; and (iii) the amount charged.

1991, cc. 608, 630 .

§59.1-432. Regulations.

The Division is authorized to prescribe reasonable regulations in order to implement provisions in this chapter relating to pay-per-call service advertising or solicitation.

These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.).

1991, cc. 608, 630; 2012, cc. [803](#), [835](#).

§59.1-433. Investigations.

A. The Division may, with respect to pay-per-call service advertising or solicitation:

1. Make necessary public and private investigations within or without this Commonwealth to determine whether any person has violated the provisions of this chapter, or any rule, regulation, or order issued pursuant to this chapter;
2. Require or permit any person to file a statement in writing, under oath or otherwise as the Division determines, as to all facts and circumstances concerning the matter under investigation; and
3. Administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the Division pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

C. If any person fails to obey a subpoena or to answer questions propounded by the Division and upon reasonable notice to all persons affected thereby, the Division may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

1991, cc. 608, 630 .

§59.1-434. Enforcement; penalties.

Any violation of this chapter shall constitute a prohibited practice under the provisions of § [59.1-200](#) and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ [59.1-196](#) et seq.) of this title.

1991, cc. 608, 630 .

Personal Information Privacy Act

§59.1-442. Sale of purchaser information; notice required.

A. No merchant, without giving notice to the purchaser, shall sell to any third person information which concerns the purchaser and which is gathered in connection with the sale, rental or exchange of tangible personal property to the purchaser at the merchant's place of business. Notice required by this section may be by the posting of a sign or any other reasonable method. If requested by a purchaser not to sell such information, the merchant shall not do so. No merchant shall sell any information gathered solely as the result of any customer payment by personal check, credit card, or where the merchant records the customer's driver's license number. This subsection shall not be construed as authorizing a merchant to sell to a third person any information concerning a purchaser if the sale or dissemination of the information is prohibited pursuant to § [59.1-443.3](#).

B. For the purposes of this section and § [59.1-443.3](#), "merchant" means any person or entity engaged in the sale of goods from a fixed retail location in Virginia.

1992, c. 807; 2014, cc. [789](#), [795](#).

§59.1-443. Exceptions.

Section [59.1-442](#) shall not apply to: (i) information gathered for purposes of extending credit or the recording and sale, rental, exchange or disclosure to others of information obtained from any public body as defined in the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.); (ii) the sale of information concerning a check or credit card transaction when it is incidental to the sale or other disposition of accounts receivable; (iii) the furnishing by a merchant of information on check writing activity of its customers in conjunction with check validation transactions; or (iv) information sold in connection with any sale by a business of the business's retail operations at one or more locations, provided that the information is sold only to the purchasers thereof.

1992, c. 807; 1993, c. 453; 2004, c. [241](#).

§59.1-443.1. Recording date of birth as condition of accepting checks prohibited.

A. As used in this section:

"Check" shall have the same meaning as defined in § [8.3A-104](#).

B. Except as provided in subsection C, no person who accepts checks for the transaction of business shall, as a condition of accepting the check, record, or request or require a person to record, his or her date of birth upon the check or otherwise.

C. This section does not require a person to accept checks for the transaction of business. Nothing in this section shall apply to (i) the collection or use of a date of birth that is unrelated to accepting payment by check or (ii) a requirement that the person paying by check provide the year of his birth.

2004, c. [241](#); 2005, c. [839](#).

§59.1-443.2. Restricted use of social security numbers.

A. Except as otherwise specifically provided by law, a person shall not:

1. Intentionally communicate another individual's social security number to the general public;
2. Print an individual's social security number on any card required for the individual to access or receive products or services provided by the person;
3. Require an individual to use his social security number to access an Internet website, unless a password, unique personal identification number or other authentication device is also required to access the site; or
4. Send or cause to be sent or delivered any letter, envelope, or package that displays a social security number on the face of the mailing envelope or package, or from which a social security number is visible, whether on the outside or inside of the mailing envelope or package.

B. This section does not prohibit the collection, use, or release of a social security number as permitted by the laws of the Commonwealth or the United States, or the use of a social security number for internal verification or administrative purposes unless such use is prohibited by a state or federal statute, rule, or regulation.

C. In the case of any (i) health care provider as defined in § [8.01-581.1](#), (ii) manager of a pharmacy benefit plan, (iii) insurer as defined in § [38.2-100](#), (iv) corporation providing a health services plan, (v) health maintenance organization providing a health care plan for health care services, or (vi) contractor of any such person, the prohibition contained in subdivision 2 of subsection A shall become effective on January 1, 2006.

D. This section shall not apply to public bodies as defined in § [2.2-3701](#).

E. No person shall embed an encrypted or unencrypted social security number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, or other technology, in place of removing the social security number as required by this section.

2005, c. [640](#); 2008, cc. [562](#), [820](#).

§59.1-443.3. Scanning information from driver's license or identification card; retention, sale, or dissemination of information.

A. No merchant may scan the machine-readable zone of a Department of Motor Vehicles-issued identification card or driver's license, except for the following purposes:

1. To verify authenticity of the identification card or driver's license or to verify the identity of the individual if the individual pays for goods or services with a method other than cash, returns an item, or requests a refund or an exchange;
2. To verify the individual's age when providing age-restricted goods or services to the individual if there is a reasonable doubt of the individual having reached 18 years of age or older;
3. To prevent fraud or other criminal activity if the individual returns an item or requests a refund or an exchange and the merchant uses a fraud prevention service company or system. Information collected by scanning an individual's identification card or driver's license pursuant to this subdivision shall be limited to the individual's name, address, date of birth, and driver's license number or identification card number;
4. To comply with a requirement imposed on the merchant by state or federal law;
5. To provide to a check services company regulated by the federal Fair Credit Reporting Act, (15 U.S.C. § 1681 et seq.), that receives information obtained from an

individual's identification card or driver's license to administer or enforce a transaction or to prevent fraud or other criminal activity; or

6. To complete a transaction permitted under the Gramm-Leach-Bliley Act, (15 U.S.C. § 6801 et seq.), or the federal Fair Credit Reporting Act, (15 U.S.C. § 1681 et seq.).

B. No merchant shall retain any information obtained from a scan of the machine-readable zone of an individual's identification card or driver's license except as permitted in subdivision A 3, 4, 5, or 6.

C. No merchant shall sell or disseminate to a third party any information obtained from a scan of the machine-readable zone of an individual's identification card or driver's license for any marketing, advertising, or promotional purpose. This subsection shall not prohibit a merchant from disseminating to a third party any such information for a purpose described in subdivision A 3, 4, 5, or 6.

D. Any waiver of a provision of this section is contrary to public policy and is void and unenforceable.

2014, cc. [789](#), [795](#).

§59.1-444. Damages.

A person aggrieved by a violation of any provision of this chapter, except § [59.1-443.2](#), shall be entitled to institute an action to recover damages in the amount of \$100 per violation. In addition, if the aggrieved party prevails, he may be awarded reasonable attorney's fees and court costs. Actions under this section shall be brought in the general district court for the city or county in which the transaction or other violation that gave rise to the action occurred. A violation of the provisions of § [59.1-443.2](#) is a prohibited practice under the Virginia Consumer Protection Act (§ [59.1-196](#) et seq.).

1992, c. 807; 1993, c. 453; 2004, c. [241](#); 2005, c. [640](#).

Personal Property Tax Relief

§58.1-3523. Definitions.

As used in this chapter:

"Commissioner of the revenue" means the same as that set forth in § [58.1-3100](#). For purposes of this chapter, in a county or city which does not have an elected

commissioner of the revenue, "commissioner of the revenue" means the officer who is primarily responsible for assessing motor vehicles for the purposes of tangible personal property taxation.

"Department" means the Department of Motor Vehicles.

"Effective tax rate" means the tax rate imposed by a locality on tangible personal property multiplied by any assessment ratio in effect.

"Leased" means leased by a natural person as lessee and used for nonbusiness purposes.

"Privately owned" means owned by a natural person and used for nonbusiness purposes.

"Qualifying vehicle" means any passenger car, motorcycle, autocycle, and pickup or panel truck, as those terms are defined in § [46.2-100](#), that is determined by the commissioner of the revenue of the county or city in which the vehicle has situs as provided by § [58.1-3511](#) to be (i) privately owned; (ii) leased pursuant to a contract requiring the lessee to pay the tangible personal property tax on such vehicle; or (iii) held in a private trust for nonbusiness purposes. In determining whether a vehicle is a qualifying vehicle, the commissioner of revenue must rely on the registration of such vehicle with the Department pursuant to Chapter 6 (§ [46.2-600](#) et seq.) of Title 46.2 or, for leased vehicles, the information of the Department pursuant to subsections B and C of § [46.2-623](#), unless the commissioner of the revenue has information that the Department's information is incorrect, or to the extent that the Department's information is incomplete. For purposes of this chapter, all-terrain vehicles and off-road motorcycles titled with the Department of Motor Vehicles and mopeds shall not be deemed qualifying vehicles.

"Tangible personal property tax" means the tax levied pursuant to Article 1 (§ [58.1-3500](#) et seq.) of Chapter 35 of Title 58.1.

"Tax year" means the 12-month period beginning in the calendar year for which tangible personal property taxes are imposed.

"Treasurer" means the same as that set forth in § [58.1-3123](#), when used herein with respect to a county or city. When used herein with respect to a town, "treasurer" means the officer who is primarily responsible for the billing and collection of tangible personal property taxes levied upon motor vehicles by such town, and means

the treasurer of the county or counties in which such town is located if such functions are performed for the town by the county treasurer or treasurers.

"Used for nonbusiness purposes" means the preponderance of use is for other than business purposes. The preponderance of use for other than business purposes shall be deemed not to be satisfied if: (i) the motor vehicle is expensed on the taxpayer's federal income tax return pursuant to Internal Revenue Code § 179; (ii) more than 50 percent of the basis for depreciation of the motor vehicle is depreciated for federal income tax purposes; or (iii) the allowable expense of total annual mileage in excess of 50 percent is deductible for federal income tax purposes or reimbursed pursuant to an arrangement between an employer and employee.

"Value" means the fair market value determined by the method prescribed in § [58.1-3503](#) and used by the locality in valuing the qualifying vehicle.

1998, Sp. Sess. I, c. [2](#); 1999, c. [189](#); 2004, Sp. Sess. I, c. [1](#); 2006, c. [896](#); 2007, cc. [314](#), [815](#); 2010, c. [499](#); 2013, c. [783](#); 2015, cc. [96](#), [152](#).

§58.1-3524. Tangible personal property tax relief; local tax rates on vehicles qualifying for tangible personal property tax relief.

A. For tax year 2006 and all tax years thereafter, counties, cities, and towns shall be reimbursed by the Commonwealth for providing the required tangible personal property tax relief as set forth herein.

B. For tax year 2006 and all tax years thereafter, the Commonwealth shall pay a total of \$950 million for each such tax year in reimbursements to localities for providing the required tangible personal property tax relief on qualifying vehicles in subsection C. No other amount shall be paid to counties, cities, and towns for providing tangible personal property tax relief on qualifying vehicles. Each county's, city's, or town's share of the \$950 million for each such tax year shall be determined pro rata based upon the actual payments to such county, city, or town pursuant to this chapter for tax year 2005 as compared to the actual payments to all counties, cities, and towns pursuant to this chapter for tax year 2005, as certified in writing by the Auditor of Public Accounts no later than March 1, 2006, to the Governor and to the chairmen of the Senate Committee on Finance and the House Committee on Appropriations. The amount reimbursed to a particular county, city, or town for tax year 2006 for providing tangible personal property tax relief shall be the same amount reimbursed to such county, city, or town for each subsequent tax year.

The reimbursement to each county, city, or town for tax year 2006 shall be paid by the Commonwealth over the 12-month period beginning with the month of July 2006 and ending with the month of June 2007, as provided in the general appropriation act. For all tax years subsequent to tax year 2006, reimbursements shall be paid over the same 12-month period. All reimbursement payments shall be made by check issued by the State Treasurer to the respective treasurer of the county, city, or town on warrant of the Comptroller.

C. For tax year 2006 and all tax years thereafter, each county, city, or town that will receive a reimbursement from the Commonwealth pursuant to subsection B shall provide tangible personal property tax relief on qualifying vehicles by reducing its local tax rate on qualifying vehicles as follows:

1. The local governing body of each county, city, or town shall fix or establish its tangible personal property tax rate for its general class of tangible personal property, which rate shall also be applied to that portion of the value of each qualifying vehicle that is in excess of \$20,000.

2. After fixing or establishing its tangible personal property tax rate for its general class of tangible personal property, the local governing body of the county, city, or town shall fix or establish one or more reduced tax rates (lower than the rate applied to the general class of tangible personal property) that shall be applied solely to that portion of the value of each qualifying vehicle that is not in excess of \$20,000. No other tangible personal property tax rate shall be applied to that portion of the value of each qualifying vehicle that is not in excess of \$20,000. Such reduced tax rate or rates shall be set at an effective tax rate or rates such that (i) the revenue to be received from such reduced tax rate or rates on that portion of the value of qualifying vehicles not in excess of \$20,000 plus (ii) the revenue to be received on that portion of the value of qualifying vehicles in excess of \$20,000 plus (iii) the Commonwealth's reimbursement is approximately equal to the total revenue that would have been received by the county, city, or town from its tangible personal property tax had the tax rate for its general class of tangible personal property been applied to 100 percent of the value of all qualifying vehicles.

3. Notwithstanding the provisions of subdivisions 1 and 2, beginning with tax year 2016, each county, city, and town that receives reimbursement shall ensure that the reimbursement pays for all of the tax attributable to the first \$20,000 of value on each qualifying vehicle leased by an active duty member of the United States military,

his spouse, or both, pursuant to a contract requiring him, his spouse, or both to pay the tangible personal property tax on such vehicle. The provisions of this subdivision apply only to a vehicle that would not be taxed in Virginia if the vehicle were owned by such military member, his spouse, or both.

D. On or before the date the certified personal property tax book is required by § [58.1-3118](#) to be provided to the treasurer, the commissioner of the revenue shall identify each qualifying vehicle and its value to the treasurer of the locality.

E. The provisions of this section are mandatory for any county, city, or town that will receive a reimbursement pursuant to subsection B.

1998, Sp. Sess. I, c. [2](#); 2004, Sp. Sess. I, c. [1](#); 2015, c. [266](#).

§58.1-3525. Repealed.

Repealed by Acts 2004, Sp. Sess. I, c. [1](#), cl. 6, effective January 1, 2006.

§58.1-3534. Department to furnish information to commissioners of revenue.

A. The Department shall provide to the commissioners of revenue such data or information it has available which is needed for the commissioners of revenue to comply with the provisions of this chapter. Such data or information shall be made available in a manner which will allow for compliance with the provisions of this chapter.

B. The Department shall include in the information furnished to commissioners of the revenue pursuant to subsection A regarding vehicles qualifying for personal property tax relief, whether the vehicle is held in a private trust for nonbusiness purposes by an individual beneficiary.

1998, Sp. Sess. I, c. [2](#); 2011, c. [13](#).

§58.1-3535. Commissioner of the revenue to furnish information to the treasurer.

The commissioner of the revenue shall timely provide to the treasurer such data or information as may be required for the treasurer to comply with the provisions of this chapter.

1998, Sp. Sess. I, c. [2](#).

§58.1-3536. Repealed.

Repealed by Acts 2004, Sp. Sess. I, c. [1](#), cl. 6, effective January 1, 2006.

Potomac River Riparian Rights Act

§62.1-44.113. Short title.

This chapter shall be known as the "Potomac River Riparian Rights Act."

1979, c. 307.

§62.1-44.114. Use of Potomac River; riparian rights.

The Commonwealth and its citizens shall have the right to such use of the Potomac River as may be necessary to the full enjoyment of their riparian ownership as provided at common law and in the Compact of 1785 with Maryland, and confirmed by the Black-Jenkins Determination of 1877 and Article VII, § 1 of § [28.2-1001](#), cited as the Potomac River Compact of 1958.

1979, c. 307; 2005, c. [839](#).

§62.1-44.115. Review of uses by Water Control Board; report.

The State Water Control Board shall annually review the uses and development of the waters of the Potomac River, and make such report thereon as it deems advisable to the Governor and to the General Assembly, together with such recommendations as the Board feels are necessary for the protection and full enjoyment of Virginia's riparian rights in such river.

1979, c. 307.

§62.1-44.116. Assistance by Board in riparian disputes.

In the event non-Virginia claimants question or seek to abridge the riparian use of the waters of the Potomac River by Virginia riparian owners, the State Water Control Board shall advise and assist such riparian owners in the proper exercise and protection of their rights, giving due consideration to the rights of others and to the wise use of the water, and the Board shall assist in the resolution of conflicts concerning such rights.

1979, c. 307.

Practitioner Self-Referral Act

§54.1-2410. Definitions.

As used in this chapter or when referring to the Board of Health Professions regulatory authority therefor, unless the context requires a different meaning:

"Board" means the Board of Health Professions.

"Community" means a city or a county.

"Demonstrated need" means (i) there is no facility in the community providing similar services and (ii) alternative financing is not available for the facility, or (iii) such other conditions as may be established by Board regulation.

"Entity" means any person, partnership, firm, corporation, or other business, including assisted living facilities as defined in § [63.2-100](#), that delivers health services.

"Group practice" means two or more health care practitioners who are members of the same legally organized partnership, professional corporation, not-for-profit corporation, faculty practice or similar association in which (i) each member provides substantially the full range of services within his licensed or certified scope of practice at the same location as the other members through the use of the organization's office space, facilities, equipment, or personnel; (ii) payments for services received from a member are treated as receipts of the organization; and (iii) the overhead expenses and income from the practice are distributed according to methods previously determined by the members.

"Health services" means any procedures or services related to prevention, diagnosis, treatment, and care rendered by a health care worker, regardless of whether the worker is regulated by the Commonwealth.

"Immediate family member" means the individual's spouse, child, child's spouse, stepchild, stepchild's spouse, grandchild, grandchild's spouse, parent, stepparent, parent-in-law, or sibling.

"Investment interest" means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments, except investment interests in a hospital licensed pursuant to Article 1 (§ [32.1-123](#) et seq.) of Chapter 5 of Title 32.1.

"Investor" means an individual or entity directly or indirectly possessing a legal or beneficial ownership interest, including an investment interest.

"Office practice" means the facility or facilities at which a practitioner, on an ongoing basis, provides or supervises the provision of health services to consumers.

"Practitioner" means any individual certified or licensed by any of the health regulatory boards within the Department of Health Professions, except individuals

regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Referral" means to send or direct a patient for health services to another health care practitioner or entity outside the referring practitioner's group practice or office practice or to establish a plan of care which requires the provision of any health services outside the referring practitioner's group practice or office practice.

1993, c. 869; 2000, c. [201](#).

§54.1-2411. Prohibited referrals and payments; exceptions.

A. Unless the practitioner directly provides health services within the entity and will be personally involved with the provision of care to the referred patient, or has been granted an exception by the Board or satisfies the provisions of subsections D or E of this section or of subsections D or E of § [54.1-2413](#), a practitioner shall not refer a patient for health services to an entity outside the practitioner's office or group practice if the practitioner or any of the practitioner's immediate family members is an investor in such entity.

B. The Board may grant an exception to the prohibitions in this chapter, and may permit a practitioner to invest in and refer to an entity, regardless of whether the practitioner provides direct services within such entity, if there is a demonstrated need in the community for the entity and all of the following conditions are met:

1. Individuals other than practitioners are afforded a bona fide opportunity to invest in the entity on the same and equal terms as those offered to any referring practitioner;
2. No investor-practitioner is required or encouraged to refer patients to the entity or otherwise generate business as a condition of becoming or remaining an investor;
3. The services of the entity are marketed and furnished to practitioner-investors and other investors on the same and equal terms;
4. The entity does not issue loans or guarantee any loans for practitioners who are in a position to refer patients to such entity;
5. The income on the practitioner's investment is based on the practitioner's equity interest in the entity and is not tied to referral volumes; and

6. The investment contract between the entity and the practitioner does not include any covenant or clause limiting or preventing the practitioner's investment in other entities.

Unless the Board, the practitioner, or entity requests a hearing, the Board shall determine whether to grant or deny an exception within 90 days of the receipt of a written request from the practitioner or entity, stating the facts of the particular circumstances and certifying compliance with the conditions required by this subsection. The Board's decision shall be a final administrative decision and shall be subject to judicial review pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.).

C. When an exception is granted pursuant to subsection B:

1. The practitioner shall disclose his investment interest in the entity to the patient at the time of referral. If alternative entities are reasonably available, the practitioner shall provide the patient with a list of such alternative entities and shall inform the patient of the option to use an alternative entity. The practitioner shall also inform the patient that choosing another entity will not affect his treatment or care;

2. Information on the practitioner's investment shall be provided if requested by any third party payor;

3. The entity shall establish and utilize an internal utilization review program to ensure that practitioner-investors are engaging in appropriate and necessary utilization; and

4. In the event of a conflict of interests between the practitioner's ownership interests and the best interests of any patient, the practitioner shall not make a referral to such entity, but shall make alternative arrangements for the referral.

D. Further, a practitioner may refer patients for health services to a publicly traded entity in which such practitioner has an investment interest, without applying for or receiving an exception from the Board, if all of the following conditions are met:

1. The entity's stock is listed for trading on the New York Stock Exchange or the American Stock Exchange or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers;

2. The entity had, at the end of the corporation's most recent fiscal year, total net assets of at least \$50,000,000 related to the furnishing of health services;
3. The entity markets and furnishes its services to practitioner-investors and other practitioners on the same and equal terms;
4. All stock of the entity, including the stock of any predecessor privately held company, is one class without preferential treatment as to status or remuneration;
5. The entity does not issue loans or guarantee any loans for practitioners who are in a position to refer patients to such entity;
6. The income on the practitioner's investment is not tied to referral volumes and is based on the practitioner's equity interest in the entity; and
7. The practitioner's investment interest does not exceed one half of one percent of the entity's total equity.

E. In addition, a practitioner may refer a patient to such practitioner's immediate family member or such immediate family member's office or group practice for health services if all of the following conditions are met:

1. The health services to be received by the patient referred by the practitioner are within the scope of practice of the practitioner's immediate family member or the treating practitioner within such immediate family member's office or group practice;
2. The practitioner's immediate family member or the treating practitioner within such immediate family member's office or group practice is qualified and duly licensed to provide the health services to be received by the patient referred to the practitioner;
3. The primary purpose of any such referral is to obtain the appropriate professional health services for the patient being referred, which are to be rendered by the referring practitioner's immediate family member or by the treating practitioner within such immediate family member's office or group practice who is qualified and licensed to provide such professional health services; and
4. The primary purpose of the referral shall not be for the provision of designated health services as defined in 42 U.S.C. § 1395nn and the regulations promulgated thereunder.

1993, c. 869; 2005, c. [402](#).

§54.1-2412. Board to administer; powers and duties of Board; penalties for violation.

A. In addition to its other powers and duties, the Board of Health Professions shall administer the provisions of this chapter.

B. The Board shall promulgate, pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.), regulations to:

1. Establish standards, procedures, and criteria which are reasonable and necessary for the effective administration of this chapter;
2. Establish standards, procedures, and criteria for determining compliance with, exceptions to, and violations of the provisions of § [54.1-2411](#);
3. Establish standards, procedures, and criteria for advising practitioners and entities of the applicability of this chapter to activities and investments;
4. Levy and collect fees for processing requests for exceptions from the prohibitions set forth in this chapter and for authorization to make referrals pursuant to subsection B of § [54.1-2411](#);
5. Establish standards, procedures, and criteria for review and referral to the appropriate health regulatory board of all reports of investigations of alleged violations of this chapter by practitioners and for investigations and determinations of violations of this chapter by entities;
6. Establish standards, procedures, and criteria for granting exceptions from the prohibitions set forth in this chapter; and
7. Establish such other regulations as may reasonably be needed to administer this chapter.

C. Upon a determination of a violation by the Board, pursuant to the Administrative Process Act, any entity, other than a practitioner, that presents or causes to be presented a bill or claim for services that the entity knows or has reason to know is prohibited by § [54.1-2411](#) shall be subject to a monetary penalty of no more than \$20,000 per referral, bill, or claim. The monetary penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund.

D. Any violation of this chapter by a practitioner shall constitute grounds for disciplinary action as unprofessional conduct by the appropriate health regulatory board

within the Department of Health Professions. Sanctions for violation of this chapter may include, but are not limited to, the monetary penalty authorized in § [54.1-2401](#). 1993, c. 869 .

§54.1-2413. Additional conditions related to practitioner-investors.

A. No hospital licensed in the Commonwealth shall discriminate against or otherwise penalize any practitioner for compliance with the provisions of this chapter.

B. No practitioner, other health care worker, or entity shall enter into any agreement, arrangement, or scheme intended to evade the provisions of this chapter by inducing patient referrals in a manner which would be prohibited by this chapter if the practitioner made the referrals directly.

C. No group practice shall be formed for the purpose of facilitating referrals that would otherwise be prohibited by this chapter.

D. Notwithstanding the provisions of this chapter, a practitioner may refer a patient who is a member of a health maintenance organization to an entity in which the practitioner is an investor if the referral is made pursuant to a contract with the health maintenance organization.

E. Notwithstanding the provisions of this chapter, a referral to an entity in which the referring practitioner or his immediate family member is an investor shall not be in violation of this chapter if (i) the health service to be provided is a designated health service as defined in 42 U.S.C. § 1395nn (h)(6), as amended, and an exception authorized by 42 U.S.C. § 1395nn, as amended, or any regulations adopted pursuant thereto, applies, or (ii) the health service to be provided is not a designated health service as defined in 42 U.S.C. § 1395nn (h)(6), as amended, but would qualify for an exception authorized by 42 U.S.C. § 1395nn, as amended, or any regulations adopted pursuant thereto, if the health service were a designated health service.

1993, c. 869; 2005, c. [402](#); 2010, c. [743](#).

§54.1-2414. Applicability of chapter; grace period for compliance.

This chapter shall apply, in the case of any investment interest acquired after February 1, 1993, to referrals for health services made by a practitioner on or after July 1, 1993. However, in the case of any investment interest acquired prior to February 1, 1993, compliance with the provisions of this chapter is required by July 1, 1996.

1993, c. 869 .

Premarital Agreement Act

§20-147. Application.

This chapter shall apply to any premarital agreement executed on or after July 1, 1986.

1985, c. 434; 1986, c. 201.

§20-148. Definitions.

As used in this chapter:

"Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

"Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

1985, c. 434; 1986, c. 201.

§20-149. Formalities of premarital agreement.

A premarital agreement shall be in writing and signed by both parties. Such agreement shall be enforceable without consideration and shall become effective upon marriage.

1985, c. 434; 1986, c. 201.

§20-150. Content of agreement.

Parties to a premarital agreement may contract with respect to:

1. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
2. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
3. The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
4. Spousal support;
5. The making of a will, trust, or other arrangement to carry out the provisions of the agreement;

6. The ownership rights in and disposition of the death benefit from a life insurance policy;
7. The choice of law governing the construction of the agreement; and
8. Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

1985, c. 434; 1986, c. 201.

§20-151. Enforcement; void marriage.

A. A premarital agreement is not enforceable if the person against whom enforcement is sought proves that:

1. That person did not execute the agreement voluntarily; or
2. The agreement was unconscionable when it was executed and, before execution of the agreement, that person (i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; and (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.

B. Any issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law. Recitations in the agreement shall create a prima facie presumption that they are factually correct.

C. If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement shall be enforceable only to the extent necessary to avoid an inequitable result.

1985, c. 434; 1986, c. 201.

§20-152. Limitation of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

1985, c. 434; 1986, c. 201.

§20-153. Amendment or revocation of agreement.

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

1985, c. 434; 1986, c. 201.

§20-154. Prior agreements.

All written agreements entered into prior to the enactment of this chapter between prospective spouses for the purpose affecting any of the subjects specified in § [20-150](#) shall be valid and enforceable if otherwise valid as contracts.

1985, c. 434; 1986, c. 201.

§20-155. Marital agreements.

Married persons may enter into agreements with each other for the purpose of settling the rights and obligations of either or both of them, to the same extent, with the same effect, and subject to the same conditions, as provided in §§ [20-147](#) through [20-154](#) for agreements between prospective spouses, except that such marital agreements shall become effective immediately upon their execution. If the terms of such agreement are (i) contained in a court order endorsed by counsel or the parties or (ii) recorded and transcribed by a court reporter and affirmed by the parties on the record personally, the agreement is not required to be in writing and is considered to be executed. A reconciliation of the parties after the signing of a separation or property settlement agreement shall abrogate such agreement unless otherwise expressly set forth in the agreement.

1987, c. 41; 1998, c. [638](#); 2003, cc. [662](#), [669](#).

Prizes and Gifts Act

§59.1-415. Definitions.

As used in this chapter, which shall be known and may be cited as the "Prizes and Gifts Act":

"Anything of value," "item of value" or "item" means any item or service with monetary value.

"Handling charge" means any charge, fee or sum of money which is paid by a consumer to receive a prize, gift or any item of value including, but not limited to, promotional fees, redemption fees, registration fees or delivery costs.

"Pay-per-call service" means any passive, interactive, polling, conference, or other similar audiotext service that is accessed through a 900 number exchange or otherwise, and generates a service-related fee billed to a telephone customer.

"Person" means any natural person, corporation, trust, partnership, association and any other legal entity.

1989, c. 689; 1991, c. 154 .

§59.1-416. Representation of having won a prize, gift or any item of value.

A. No person shall, in connection with the sale or lease or solicitation for the sale or lease of goods, property, or service, represent that another person has won anything of value or is the winner of a contest, unless all of the following conditions are met:

1. The recipient of the prize, gift or item of value shall be given the prize, gift or item of value without obligation; and
2. The prize, gift or item of value shall be delivered to the recipient at no expense to him, within ten days of the representation.

B. The use of language that may lead a reasonable person to believe he has won a contest or anything of value, including, but not limited to, "Congratulations," or "You have won," or "You are the winner of," shall be considered a representation of the type governed by this section.

1989, c. 689 .

§59.1-417. Representation of eligibility to win or to receive a prize, gift or item of value.

A. No person shall, in connection with the sale or lease or solicitation for sale or lease of goods, property or service, represent that another person has a chance to win or to receive a prize, gift or item of value without clearly and conspicuously disclosing on whose behalf the contest or promotion is conducted, as well as all material conditions which a participant must satisfy. In an oral solicitation all material conditions shall be disclosed prior to requesting the consumer to enter into the sale or lease. Additionally, in any written material covered by this section, each of the following shall be clearly and prominently disclosed (i) immediately adjacent to the first

identification of the prize, gift or item of value to which it relates or (ii) in a separate section entitled "Consumer Disclosure" which title shall be printed in no less than ten-point bold face type and which section shall contain only a description of the prize, gift or item of value and the disclosures outlined in subdivisions 1, 2 and 3 of this subsection:

1. The actual retail value of each item or prize, which for purposes of this section shall be (i) the price at which substantial sales of the item were made in the area in which the offer was received within the last ninety days or (ii) the actual cost of the item of value, gift or prize to the person on whose behalf the contest or promotion is conducted plus no more than 700 percent, but in no case shall it exceed such person's good faith estimate of the appraised retail value;

2. The actual number of each item, gift or prize to be awarded; and

3. The odds of receiving each item, gift or prize.

B. All disclosures required by this chapter to be in writing shall comply with the following:

1. All dollar values shall be stated in arabic numerals and be preceded by a dollar sign (\$).

2. The number of each item, gift or prize to be awarded and the odds of receiving each item, gift or prize shall be stated in arabic numerals and shall be written in a manner which is clear and understandable.

C. It shall be unlawful to notify a person that he will receive a gift, prize or item of value that has as a condition of receiving the gift, prize or item of value the requirement that he pay any money, or purchase, lease or rent any goods or services, unless there shall have been clearly and conspicuously disclosed the nature of the charges to be incurred, including, but not limited to, any shipping charge and handling charges. Such disclosure shall be given (i) on the face of any written materials or (ii) prior to requesting or inviting the person to enter into the sale or lease in any oral notification.

D. The provisions of this section shall not apply where to be eligible:

1. Participants are asked only to complete and mail, or deposit at a local retail commercial establishment, an entry blank obtainable locally or by mail, or to call in their entry by telephone; or

2. Participants are never required to listen to a sales presentation and never requested or required to pay any sum of money for any merchandise, service or item of value.

E. Nothing in this section shall create any liability for acts by the publisher, owner, agent or employee of a newspaper, periodical, radio station, television station, cable-television system or other advertising medium arising out of the publication or dissemination of any advertisement or promotion governed by this section, when the publisher, owner, agent or employee did not know that the advertisement or promotion violated the requirements of this section.

F. Every solicitation that seeks to induce its recipient to call a pay-per-call service telephone number to receive any information about a prize, gift, or item of value shall (i) conform to the provisions of this section, and (ii) disclose the total cost of the pay-per-call service immediately adjacent to the pay-per-call service telephone number. In written materials, this disclosure shall be in ten-point bold-faced type. All solicitations delivered through the electronic media shall contain the disclosures in such size, duration, or volume so as to be clearly readable or audible to the recipient.

1989, c. 689; 1991, c. 154 .

§59.1-418. Representation of being specially selected.

A. No person shall represent that another person has been specially selected in connection with the sale or lease or solicitation for sale or lease of goods, property, or service, unless the selection process is designed to reach a particular type or types of persons.

B. The use of any language that may lead a reasonable person to believe he has been specially selected, including but not limited to "carefully selected," or "You have been selected to receive," or "You have been chosen," shall be considered a representation of the type governed by this section.

1989, c. 689 .

§59.1-419. Simulation of checks and invoices.

In connection with a consumer transaction, no person shall issue any writing which simulates or resembles (i) a check unless the writing clearly and conspicuously discloses its true value and purpose, and the writing would not mislead a reasonable per-

son or (ii) an invoice unless the intended recipient of the invoice has actually contracted for goods, property, or services for which the issuer seeks proper payment.

1989, c. 689 .

§59.1-420. Conditions for handling charges and shipping charges.

A. It shall be unlawful to notify a person that he will receive a gift, prize or item of value and that as a condition of receiving the gift, prize or item of value he will be required to pay any money, or purchase or lease (including rent) any goods or services, if any one or more of the following conditions exist:

1. The shipping charge exceeds:

a. The cost of postage or the charge of a delivery service in the business of delivering goods of like size, weight, and kind for shipping the gift, prize or item of value from the geographic area in which the gift, prize or item of value is being distributed; or

b. The exact amount for shipping paid to an independent fulfillment house or an independent supplier, either of which is in the business of shipping goods for shippers other than the offeror of the gift, prize or item of value; or

2. The handling charge exceeds the lesser of five dollars or the actual cost of handling.

B. This section shall apply to all offers of prizes, gifts or items of value covered by this chapter.

1989, c. 689 .

§59.1-421. Action to enforce the provisions of chapter.

Any consumer who suffers loss by reason of a violation of any provision of this chapter may bring a civil action to enforce such provisions. Any consumer who is successful in such an action shall recover reasonable attorney's fees, and court costs incurred by bringing such action.

1989, c. 689 .

§59.1-422. Enforcement; penalties.

Any violation of this chapter shall constitute a prohibited practice under the provisions of § [59.1-200](#) and shall be subject to any of the enforcement provisions of Chapter 17 (§ [59.1-196](#) et seq.) of this title.

1989, c. 689 .

§59.1-423. Exemptions.

The provisions of §§ [59.1-417](#) through [59.1-420](#) shall not apply to the sale or purchase, or solicitation or representation in connection therewith, of goods from a catalog or of books, recordings, videocassettes, periodicals and similar goods through a membership group or club which is regulated by the Federal Trade Commission trade regulation rule concerning use of negative option plans by sellers in commerce or through a contractual plan or arrangement such as a continuity plan, subscription arrangement, or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive such goods and the recipient of such goods is given the opportunity, after examination of the goods, to receive a full refund of charges for the goods, or unused portion thereof, upon return of the goods, or unused portion thereof, undamaged.

1989, c. 689 .

Property Owners' Association Act

§55-508. Applicability.

A. This chapter shall apply to developments subject to a declaration, as defined herein, initially recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all subdivisions created under the former Subdivided Land Sales Act (§ [55-336](#) et seq.). For the purposes of this chapter, as used in the former Subdivided Land Sales Act, the terms:

"Covenants," "deed restrictions," or "other recorded instruments" for the management, regulation and control of a development shall be deemed to correspond with the term "declaration";

"Developer" shall be deemed to correspond with the term "declarant";

"Lot" shall be deemed to correspond with the term "lot"; and

"Subdivision" shall be deemed to correspond with the term "development."

This chapter shall be deemed to supersede the former Subdivided Land Sales Act (§ [55-336](#) et seq.), and no development shall be established under the latter on or after July 1, 1998. This chapter shall not be construed to affect the validity of any provision of any declaration recorded prior to July 1, 1998; however, any development

established prior to the enactment of the former Subdivided Land Sales Act may specifically provide for the applicability of the provisions of this chapter.

This chapter shall not be construed to affect the validity of any provision of any prior declaration; however, to the extent the declaration is silent, the provisions of this chapter shall apply. If any one lot in a development is subject to the provisions of this chapter, all lots in the development shall be subject to the provisions of this chapter notwithstanding the fact that such lots would otherwise be excluded from the provisions of this chapter. Notwithstanding any provisions of this chapter, a declaration may specifically provide for the applicability of the provisions of this chapter. The granting of rights in this chapter shall not be construed to imply that such rights did not exist with respect to any development created in the Commonwealth before July 1, 1989.

B. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of any association governing, or (iii) relationship of a member to any association governing condominiums created pursuant to the Condominium Act (§ [55-79.39](#) et seq.), cooperatives created pursuant to the Virginia Real Estate Cooperative Act (§ [55-424](#) et seq.), time-shares created pursuant to the Virginia Real Estate Time-Share Act (§ [55-360](#) et seq.), or membership campgrounds created pursuant to the Virginia Membership Camping Act (§ [59.1-311](#) et seq.). This chapter shall not apply to any non-stock, nonprofit, taxable corporation with nonmandatory membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public.

1989, c. 679; 1991, c. 667; 1992, c. 677; 1998, cc. [32](#), [623](#); 2003, c. [422](#); 2005, c. [668](#); 2008, cc. [851](#), [871](#).

§55-509. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Act" means the Virginia Property Owners' Association Act.

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association, or a committee which is exercising the power of the executive body by resolution or bylaw.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement or restoration and for which the board of directors determines funding is necessary.

"Common area" means property within a development which is owned, leased or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as common area in the declaration.

"Common interest community" means the same as that term is defined in § [55-528](#).

"Common interest community manager" means the same as that term is defined in § [54.1-2345](#).

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance and/or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

"Development" means real property located within this Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through A 9 of § [55-509.5](#). The update shall include a copy of the original disclosure packet.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through A 7 of § [55-509.5](#).

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative if the condominium or cooperative is a part of a development.

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located. "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

"Meeting" or "meetings" means the formal gathering of the board of directors where the business of the association is discussed or transacted.

"Professionally managed" means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Settlement agent" means the same as that term is defined in § [55-525.16](#).

1989, c. 679; 1991, c. 667; 1996, c. [618](#); 1998, c. [623](#); 2001, c. [715](#); 2002, c. [459](#); 2003, c. [422](#); 2008, cc. [851](#), [871](#); 2011, c. [334](#); 2015, cc. [93](#), [410](#).

§55-509.1. Developer to pay real estate taxes attributable to the common area upon transfer to association.

Upon the transfer of the common area to the association, the developer shall pay all real estate taxes attributable to the open or common space as defined in § [58.1-3284.1](#) through the date of the transfer to the association.

1993, c. 956 .

§55-509.1:1. Limitation on certain contracts and leases by declarant.

A. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, no contract or lease entered into with the declarant

or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group shall be entered into for a period in excess of five years. Any such contract or agreement may be terminated without penalty by the association or its board of directors upon not less than 90 days' written notice to the other party given no later than 60 days after the expiration of the period of declarant control contemplated by the declaration.

B. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group may be renewed for periods not in excess of five years; however, at the end of any five-year period, the association or its board of directors may terminate any further renewals or extensions thereof.

C. If entered into at any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract, lease, or agreement, other than those subject to the provisions of subsection A or B, may be entered into by or on behalf of the association, its board of directors, or the lot owners as a group if such contract, lease, or agreement is bona fide and is commercially reasonable to the association at the time entered into under the circumstances.

D. This section shall be strictly construed to protect the rights of the lot owners.

2012, c. [671](#).

§55-509.2. Documents to be provided by declarant upon transfer of control.

Unless previously provided to the board of directors of the association, once the majority of the members of the board of directors other than the declarant are owners of improved lots in the association and the declarant no longer holds a majority of the votes in the association, the declarant shall provide to the board of directors or its designated agent the following: (i) all association books and records held by or controlled by the declarant, including without limitation, minute books and rules and regulations and all amendments thereto which may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the association documents to the end of the regular accounting period immediately succeeding the first election of the board of directors by the home owners, not to exceed 60 days after the date of the election, such statement being prepared in an accurate

and complete manner, utilizing the accrual method of accounting; (iii) the number of lots subject to the declaration; (iv) the number of lots that may be subject to the declaration upon completion of development; (v) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (vi) all association insurance policies which are currently in force; (vii) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements; (viii) any contracts in which the association is a contracting party; (ix) a list of manufacturers of paints, roofing materials and other similar materials if specified for use on the association property; and (x) the number of members of the board of directors and number of such directors appointed by the declarant together with names and contact information of members of the board of directors.

If the association is managed by a common interest community manager in which the declarant, or its principals, has no pecuniary interest or management role, then such common interest community manager shall have the responsibility to provide the documents and information required by clauses (i), (ii), (vi), and (viii).

1996, c. [618](#); 2008, cc. [851](#), [871](#); 2012, c. [671](#).

§55-509.3. Association charges.

Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association may (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in § [55-509.6](#) or [55-509.7](#) that is not expressly authorized in those sections. Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § [55-509.6](#) or [55-509.7](#). The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) association pursuant to § [54.1-2351](#) or (b) common interest community manager pursuant to § [54.1-2349](#), and may issue a cease and desist order against the violator pursuant to § [54.1-2349](#) or [54.1-2352](#), as applicable.

2008, cc. [851](#), [871](#); 2011, c. [334](#); 2014, c. [216](#); 2015, c. [277](#).

§55-509.3.1. Rental of lots.

A. Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no association shall:

1. Condition or prohibit the rental to a tenant of a lot by a lot owner or make an assessment or impose a charge except as provided in § [55-509.3](#);
2. Charge a rental fee, application fee, or other processing fee of any kind in excess of \$50 during the term of any lease;
3. Charge an annual or monthly rental fee or any other fee not expressly authorized in § [55-509.3](#);
4. Require the lot owner to use a lease or an addendum to the lease prepared by the association;
5. Charge any deposit from the lot owner or the tenant of the lot owner; or
6. Have the authority to evict a tenant of any lot owner or to require any lot owner to execute a power of attorney authorizing the association to so evict. However, if the lot owner designates a person licensed under the provisions of § [54.1-2106.1](#) as the lot owner's authorized representative with respect to any lease, the association shall recognize such representation without a formal power of attorney, provided that the association is given a written authorization signed by the lot owner designating such representative. Notwithstanding the foregoing, the requirements of § [55-515](#) and the declaration shall be satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

B. The association may require the lot owner to provide the association with the names and contact information of the tenants and authorized occupants under such lease and any authorized agent of the lot owner, and vehicle information for such tenants or authorized occupants. The association may require the lot owner to provide the association with the tenant's acknowledgement of and consent to any rules and regulations of the association.

C. The provisions of this section shall not apply to lots owned by the association.

2015, c. [277](#); 2016, c. [471](#).

§55-509.3:2. Statement of lot owner rights.

Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the association according to and subject to the provisions of § [55-510](#), including records of all financial transactions;

2. The right to cast a vote on any matter requiring a vote by the association's membership in proportion to the lot owner's ownership interest, except to the extent that the declaration provides otherwise;
3. The right to have notice of any meeting of the board of directors, to make a record of such meetings by audio or visual means, and to participate in such meeting in accordance with the provisions of subsection F of § [55-510](#) and § [55-510.1](#);
4. The right to have (i) notice of any proceeding conducted by the board of directors or other tribunal specified in the declaration against the lot owner to enforce any rule or regulation of the association and (ii) the opportunity to be heard and represented by counsel at the proceeding, as provided in § [55-513](#), and the right of due process in the conduct of that hearing; and
5. The right to serve on the board of directors if duly elected and a member in good standing of the association, except to the extent the declaration provides otherwise.

The rights enumerated in this section shall be enforceable by any such lot owner pursuant to the provisions of § [55-515](#).

2015, c. [286](#).

§55-509.4. Contract disclosure statement; right of cancellation; use of for sale sign in connection with resale; designation of authorized representative.

A. Subject to the provisions of subsection A of § [55-509.10](#), an owner selling a lot shall disclose in the contract that (i) the lot is located within a development that is subject to the Virginia Property Owners' Association Act (§ [55-508](#) et seq.); (ii) the Act requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance with subsection H of § [55-509.6](#) or subsection C of § [55-509.7](#), as appropriate; and (v) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if (a) a current annual report has not been filed by the association with either the State Corporation Commission pursuant to § [13.1-936](#) or with the

Common Interest Community Board pursuant to § [55-516.1](#), (b) the seller has made a written request to the association that the packet be provided and no such packet has been received within 14 days in accordance with subsection A of § [55-509.5](#), or (c) written notice has been provided by the association that a packet is not available.

B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole remedy is to cancel the contract prior to settlement.

C. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet prepared in accordance with this section; however, a disclosure packet update or financial update may be requested in accordance with subsection G of § [55-509.6](#) or subsection C of § [55-509.7](#), as appropriate. The purchaser may cancel the contract: (i) within three days after the date of the contract, if on or before the date that the purchaser signs the contract, the purchaser receives the association disclosure packet or is notified that the association disclosure packet will not be available; (ii) within three days after receiving the association disclosure packet if the association disclosure packet or notice that the association disclosure packet will not be available is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained; or (iii) within six days after the postmark date if the association disclosure packet or notice that the association disclosure packet will not be available is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the association disclosure packet will not be available and the association disclosure packet is not delivered to the purchaser.

Notice of cancellation shall be provided to the lot owner or his agent by one of the following methods:

1. Hand delivery;
2. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;
3. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or

4. Overnight delivery using a commercial service or the United States Postal Service.

In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the seller shall cause any deposit to be returned promptly to the purchaser.

D. Whenever any contract is canceled based on a failure to comply with subsection A or C or pursuant to subsection B, any deposit or escrowed funds shall be returned within 30 days of the cancellation, unless the parties to the contract specify in writing a shorter period.

E. Any rights of the purchaser to cancel the contract provided by this chapter are waived conclusively if not exercised prior to settlement.

F. Except as expressly provided in this chapter, the provisions of this section and § [55-509.5](#) may not be varied by agreement, and the rights conferred by this section and § [55-509.5](#) may not be waived.

G. For purposes of this chapter:

"Delivery" means that the disclosure packet is delivered to the purchaser or purchaser's authorized agent by one of the methods specified in this section.

"Purchaser's authorized agent" means any person designated by such purchaser in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

"Receives, received, or receiving" the disclosure packet means that the purchaser or purchaser's authorized agent has received the disclosure packet by one of the methods specified in this section.

"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

H. Unless otherwise provided in the ratified real estate contract or other writing, delivery to the purchaser's authorized agent shall require delivery to such agent and not to a person other than such agent. Delivery of the disclosure packet may be made by the lot owner or the lot owner's authorized agent.

I. If the lot is governed by more than one association, the purchaser's right of cancellation may be exercised within the required time frames following delivery of the last disclosure packet or resale certificate.

J. Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no property owners' association shall:

1. Require the use of any for sale sign that is (i) an association sign or (ii) a real estate sign that does not comply with the requirements of the Real Estate Board. An association may, however, prohibit the placement of signs in the common area and establish reasonable rules and regulations that regulate (a) the number of real estate signs to be located on real property upon which the owner has a separate ownership interest or a right of exclusive possession so long as at least one real estate sign is permitted; (b) the geographical location of real estate signs on real property in which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real estate signs complies with the requirements of the Real Estate Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period of time after settlement when the real estate signs on such real property shall be removed; or

2. Require any lot owner to execute a formal power of attorney if the lot owner designates a person licensed under the provisions of § [54.1-2106.1](#) as the lot owner's authorized representative, and the association shall recognize such representation without a formal power of attorney, provided that the association is given a written authorization signed by the lot owner designating such representative. Notwithstanding the foregoing, the requirements of § [13.1-849](#) of the Virginia Nonstock Corporation Act (§ [13.1-801](#) et seq.) and the association's declaration, bylaws, and articles of incorporation shall be satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

2008, cc. [851](#), [871](#); 2010, c. [165](#); 2014, c. [216](#); 2016, c. [471](#); 2017, cc. [387](#), [405](#).

§55-509.5. Contents of association disclosure packet; delivery of packet.

A. The association shall deliver, within 14 days after receipt of a written request and instructions by a seller or the seller's authorized agent, an association disclosure packet as directed in the written request. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request is deemed received on the date of delivery. If sent by United States mail, the request is deemed received six days after the postmark date. An association disclosure packet shall contain the following:

1. The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in Virginia;
2. A statement of any expenditure of funds approved by the association or the board of directors that shall require an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year;
3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association, together with any post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition, and maintenance of the lot and to the right of use of common areas, and the status of the account;
4. A statement of whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;
5. The current reserve study report or summary thereof, a statement of the status and amount of any reserve or replacement fund, and any portion of the fund allocated by the board of directors for a specified project;
6. A copy of the association's current budget or a summary thereof prepared by the association, and a copy of its statement of income and expenses or statement of its financial position (balance sheet) for the last fiscal year for which such statement is available, including a statement of the balance due of any outstanding loans of the association;
7. A statement of the nature and status of any pending suit or unpaid judgment to which the association is a party and that either could or would have a material impact on the association or its members or that relates to the lot being purchased;
8. A statement setting forth what insurance coverage is provided for all lot owners by the association, including the fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;
9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto are or are not in violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association;
10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to place a sign on the owner's lot advertising the lot for sale;

11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot, including but not limited to reasonable restrictions as to the size, place, and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;
12. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to install or use solar energy collection devices on the owner's property;
13. A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association;
14. A copy of any approved minutes of the board of directors and association meetings for the six calendar months preceding the request for the disclosure packet;
15. A copy of the notice given to the lot owner by the association of any current or pending rule or architectural violation;
16. A copy of the fully completed one-page cover sheet developed by the Common Interest Community Board pursuant to § [54.1-2350](#);
17. Certification that the association has filed with the Common Interest Community Board the annual report required by § [55-516.1](#), which certification shall indicate the filing number assigned by the Common Interest Community Board, and the expiration date of such filing; and
18. A statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies.

B. Failure to receive copies of an association disclosure packet shall not excuse any failure to comply with the provisions of the declaration, articles of incorporation, bylaws, or rules or regulations.

C. The disclosure packet shall be delivered in accordance with the written request and instructions of the seller or the seller's authorized agent, including whether the disclosure packet shall be delivered electronically or in hard copy and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered. The disclosure packet required by this section, shall not, in and of itself, be deemed a security within the meaning of § [13.1-501](#).

D. The seller or the seller's authorized agent may request that the disclosure packet be provided in hard copy or in electronic form. An association or common interest community manager may provide the disclosure packet electronically; however, the seller or the seller's authorized agent shall have the right to request that the association disclosure packet be provided in hard copy. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the disclosure packet in person at the principal place of business of the association. If the seller or the seller's authorized agent requests that the disclosure packet be provided in electronic format, neither the association nor its common interest community manager may require the seller or the seller's authorized agent to pay any fees to use the provider's electronic network or system. The disclosure packet shall not be delivered in hard copy if the requester has requested delivery of such disclosure packet electronically. If the disclosure packet is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee for a financial update or for an inspection as provided in § [55-509.6](#). If the seller or the seller's authorized agent asks that the disclosure packet be provided in electronic format, the seller or the seller's authorized agent may request that an electronic copy be provided to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. If so requested, the property owners' association or its common interest community manager may require the seller or the seller's authorized agent to pay the fee specified in § [55-509.6](#). Regardless of whether the disclosure packet is delivered in paper form or electronically, the preparer of the disclosure packet shall provide such disclosure packet directly to the persons designated by the requester to the addresses or, if applicable, the email addresses provided by the requester.

2008, cc. [851](#), [871](#); 2013, cc. [357](#), [492](#); 2015, c. [277](#); 2016, c. [471](#).

§55-509.6. Fees for disclosure packet; professionally managed associations.

A. A professionally managed association or its common interest community manager may charge certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required by § [55-509.5](#), and for such other services as set out in this section. The seller or the seller's authorized agent shall specify in writing whether the disclosure packet shall be delivered electronically or in hard copy, at the option of the seller or the seller's authorized

agent, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered.

B. A reasonable fee may be charged by the preparer as follows for:

1. The inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration and as required to prepare the association disclosure packet, a fee not to exceed \$100;
2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed \$150 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of \$125 for an electronic copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. The preparer of the disclosure packet shall provide the disclosure packet directly to the designated persons. Only one fee shall be charged for the preparation and delivery of the disclosure packet;
3. At the option of the seller or the seller's authorized agent, with the consent of the association or the common interest community manager, expediting the inspection, preparation and delivery of the disclosure packet, an additional expedite fee not to exceed \$50;
4. At the option of the seller or the seller's authorized agent, an additional hard copy of the disclosure packet, a fee not to exceed \$25 per hard copy;
5. At the option of the seller or the seller's authorized agent, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of the association disclosure packet; and
6. A post-closing fee to the purchaser of the property, collected at settlement, for the purpose of establishing the purchaser as the owner of the property in the records of the association, a fee not to exceed \$50.

Except as otherwise provided in subsection E, neither the association nor its common interest community manager shall require cash, check, certified funds or credit card payments at the time the request for the disclosure packet is made. The disclosure packet shall state that all fees and costs for the disclosure packet shall be the personal obligation of the lot owner and shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration

and § [55-516](#), if not paid at settlement or within 60 days of the delivery of the disclosure packet, whichever occurs first.

For purposes of this section, an expedite fee shall only be charged if the inspection and preparation of delivery of the disclosure packet are completed within five business days of the request for a disclosure packet.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the association or its common interest community manager for compliance with the duties and responsibilities of the association under this chapter. No additional fee shall be charged for access to the association's or common interest community manager's website. The association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so the seller or the seller's authorized agent will know such fees at the time of requesting the packet.

D. Any fees charged pursuant to this section shall be collected at the time of settlement on the sale of the lot and shall be due and payable out of the settlement proceeds in accordance with this section. The settlement agent shall escrow a sum sufficient to pay such costs of the seller at settlement. The seller shall be responsible for all costs associated with the preparation and delivery of the association disclosure packet, except for the costs of any disclosure packet update or financial update, which costs shall be the responsibility of the requester, payable at settlement. Neither the association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time of the request is made for the association disclosure packet.

E. If settlement does not occur within 60 days of the delivery of the disclosure packet, or funds are not collected at settlement and disbursed to the association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the disclosure packet against the lot owner, (ii) the personal obligation of the lot owner, and (iii) an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § [55-516](#). The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association. The association shall pay the common interest community manager the amount due from the lot owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

G. If an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or the seller's authorized agent, including the seller or the seller's authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requester shall specify whether the disclosure packet update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requester shall specify whether the financial update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the disclosure packet update or financial update may be charged by the preparer not to exceed \$50. At the option of the purchaser or the purchaser's authorized agent, the requester may request that the association or the common interest community manager perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed \$100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. The settlement agent shall escrow a sum sufficient to pay such costs of the seller at settlement. Neither the association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The requester may request that the specified update be provided in hard copy or in electronic form.

J. No association or common interest community manager may require the requester to request the specified update electronically. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the association. If the requester asks

that the specified update be provided in electronic format, neither the association nor its common interest community manager may require the requester to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or the seller's authorized agent.

K. When an association disclosure packet has been delivered as required by § [55-509.5](#), the association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

L. If the association or its common interest community manager has been requested in writing to furnish the association disclosure packet required by § [55-509.5](#), failure to provide the association disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The preparer of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the association disclosure packet within 14 days against any (i) property owners' association pursuant to § [54.1-2351](#) or (ii) common interest community manager pursuant to § [54.1-2349](#) and regulations promulgated thereto, and may issue a cease and desist order pursuant to § [54.1-2349](#) or [54.1-2352](#), as applicable.

2008, cc. [851](#), [871](#); 2009, c. [557](#); 2011, cc. [334](#), [577](#), [585](#); 2014, c. [216](#); 2015, c. [277](#); 2016, c. [471](#); 2017, cc. [387](#), [405](#).

§55-509.7. Fees for disclosure packets; associations not professionally managed.

A. An association that is not professionally managed may charge a fee for the preparation and issuance of the association disclosure packet required by § [55-509.5](#). Any fee shall reflect the actual cost of the preparation of the association disclosure packet, but shall not exceed \$0.10 per page of copying costs or a total of \$100 for all

costs incurred in preparing the association disclosure packet. The seller or his authorized agent shall specify whether the association disclosure packet shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the disclosure packet shall be delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his authorized agent, the preparer shall provide the disclosure packet directly to the designated persons, at the same time it is delivered to the seller or his authorized agent. The association shall advise the requestor if electronic delivery of the disclosure packet or the disclosure packet update or financial update is not available, if electronic delivery has been requested by the seller or his authorized agent.

B. No fees other than those specified in this section shall be charged by the association for compliance with its duties and responsibilities under this section. Any fees charged pursuant to this section shall be collected at the time of delivery of the disclosure packet. If unpaid, any such fees shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § [55-516](#). The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association.

C. If an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or his authorized agent, including the seller or his authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requestor shall specify whether the disclosure packet update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the specified update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request therefor.

D. The settlement agent may request a financial update. The requestor shall specify whether the financial update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request therefor.

E. A reasonable fee for the disclosure packet update or a financial update may be charged by the preparer not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may request that the association perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the

declaration, for a fee not to exceed \$50. Any fees charged for the specified update shall be collected at the time of delivery of the update. The association shall not require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The requestor may request that the specified update be provided in hard copy or in electronic form.

F. No association may require the requestor to request the specified update electronically. The seller or his authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the association. If the requestor asks that the specified update be provided in electronic format, the association shall not require the requester to pay any fees to use the provider's electronic network or system. If the requestor asks that the specified update be provided in electronic format, the requestor may designate no more than two additional recipients to receive the specified update in electronic format at no additional charge. A copy of the specified update shall be provided to the seller or his authorized agent.

G. When a disclosure packet has been delivered as required by § [55-509.5](#), the association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

H. If the association has been requested to furnish the association disclosure packet required by this section, failure to provide the association disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The association shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$500. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

2008, cc. [851](#), [871](#); 2010, c. [165](#); 2011, c. [334](#).

§55-509.8. Properties subject to more than one declaration.

If the lot is subject to more than one declaration, the association or its common interest community manager may charge the fees authorized by § [55-509.6](#) or [55-509.7](#) for each of the applicable associations, provided however, that no association shall charge inspection fees unless the association has architectural control over the lot.

2008, cc. [851](#), [871](#).

§55-509.9. Requests by settlement agents.

A. The settlement agent may request a financial update from the preparer of the disclosure packet. The preparer of the disclosure packet shall, upon request from the settlement agent, provide the settlement agent with written escrow instructions directing the amount of any funds to be paid from the settlement proceeds to the association or the common interest community manager. There shall be no fees charged for a response by the association or its common interest community manager to a request from the settlement agent for written escrow instructions, however a fee may be charged for a financial update pursuant to this chapter.

B. The settlement agent, when transmitting funds to the association or the common interest community manager, shall, unless otherwise directed in writing, provide the preparer of the disclosure packet with (i) the complete record name of the seller, (ii) the address of the subject lot, (iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted or by providing a copy of a settlement statement, unless otherwise prohibited.

2008, cc. [851](#), [871](#).

§55-509.10. Exceptions to disclosure requirements.

A. The contract disclosures required by § [55-509.4](#) and the association disclosure packet required by § [55-509.5](#) shall not be provided in the case of:

1. A disposition of a lot by gift;
2. A disposition of a lot pursuant to court order if the court so directs;
3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;
4. A disposition of a lot by a sale at an auction, where the association disclosure packet was made available as part of an auction package for prospective purchasers prior to the auction sale; or

5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by such person or entity. If such disclosures are not requested, a statement in the contract of sale that the purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters.

B. In any transaction in which an association disclosure packet is required and a trustee acts as the seller in the sale or resale of a lot, the trustee shall obtain the association disclosure packet from the association and provide the packet to the purchaser.

C. In the case of an initial disposition of a lot by the declarant, the association disclosure packet required by § [55-509.5](#) need not include the information referenced in subdivisions A 2, A 3, A 5 nor A 9 of § [55-509.5](#), and it shall include the information referenced in subdivision A 17 of § [55-509.5](#) only if the association has filed an annual report prior to the date of such disclosure packet.

2008, cc. [851](#), [871](#); 2009, c. [69](#); 2013, c. [357](#).

§55-510. Access to association records; association meetings; notice.

A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association, shall be available for examination and copying by a member in good standing or his authorized agent including but not limited to:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and

2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. Probable litigation means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § [55-513](#);
5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of § [55-510.1](#);
8. Documentation, correspondence or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or
9. Individual unit owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the

reasonable costs of materials and labor, not to exceed the actual costs thereof. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to such requesting member at the time the request is made.

E. Notwithstanding the provisions of subsections B and C, all books and records of the association, including individual salary information for all employees and payments to independent contractors, shall be available for examination and copying upon request by a member of the board of directors in the discharge of his duties as a director.

F. Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 14 days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

Notice shall be sent by United States mail to all members at the address of their respective lots unless the member has provided to such officer or his agent an address other than the address of the member's lot; or notice may be hand delivered by the officer or his agent, provided the officer or his agent certifies in writing that notice was delivered to the member. Except as provided in subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (i) within 60 days from the conclusion of the meeting to which such minutes appertain or (ii) when such minutes are distributed to board members as part of an agenda package for the next meeting of the board of directors, whichever occurs first.

1989, c. 679; 1991, c. 667; 1992, cc. 69, 71; 1993, cc. 365, 827; 1999, cc. [594](#), [654](#), [1029](#); 2000, cc. [905](#), [1008](#); 2001, c. [419](#); 2003, c. [442](#); 2004, c. [193](#); 2007, c. [675](#); 2008, cc. [851](#), [871](#); 2009, c. [665](#); 2011, c. [361](#); 2013, c. [275](#); 2014, c. [207](#).

§55-510.1. Meetings of the board of directors.

A. All meetings of the board of directors, including any subcommittee or other committee thereof, shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § [55-510](#).

B. Notice of the time, date and place of each meeting of the board of directors or of any subcommittee or other committee thereof shall be published where it is reasonably calculated to be available to a majority of the lot owners.

A lot owner may make a request to be notified on a continual basis of any such meetings which request shall be made at least once a year in writing and include the lot owners' name, address, zip code, and any e-mail address as appropriate. Notice of the time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or e-mail in the case of meetings of the board of directors or (ii) by e-mail in the case of meetings of any subcommittee or other committee of the board of directors.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the association's board of directors or any subcommittee or other committee thereof conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee thereof for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee thereof.

Any member may record any portion of a meeting required to be open. The board of directors or subcommittee or other committee thereof conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the member recording the meeting to provide notice that the meeting is being recorded.

If a meeting is conducted by telephone conference or video conference or similar electronic means, at least two members of the board of directors shall be physically

present at the meeting place included in the notice. The audio equipment shall be sufficient for any member in attendance to hear what is said by any member of the board of directors participating in the meeting who is not physically present.

Voting by secret or written ballot in an open meeting shall be a violation of this chapter except for the election of officers.

C. The board of directors or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the board of directors, the board of directors shall provide a designated period of time during a meeting to allow members an opportunity to comment on any matter relating to the association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the board of directors may limit the comments of members to the topics listed on the meeting agenda.

1999, c. [1029](#); 2000, c. [905](#); 2001, c. [715](#); 2003, c. [404](#); 2004, c. [333](#); 2005, c. [353](#).

§55-510.2. Distribution of information by members.

The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.

2001, c. [715](#).

§55-510.3. Common areas; notice of pesticide application.

The association shall post notice of all pesticide applications in or upon the common areas. Such notice shall consist of conspicuous signs placed in or upon the common areas where the pesticide will be applied at least 48 hours prior to the application.

2011, c. [264](#).

§55-511. Repealed.

Repealed by Acts 2008, cc. [851](#) and [871](#), cl. 5.

§55-513. Adoption and enforcement of rules.

A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. A majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions of the association's bylaws and called for that purpose shall repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or actual damages, during which the court may award to the prevailing party court costs and reasonable attorney fees.

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

C. Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the

alleged violation to the member at the address required for notices of meetings pursuant to § [55-510](#). If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.

Notice of a hearing, including the actions that may be taken by the association in accordance with this section, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.

D. The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed \$50 for a single offense or \$10 per day for any offense of a continuing nature and shall be treated as an assessment against the member's lot for the purposes of § [55-516](#). However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

E. The board of directors may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief arising from any violation of the declaration or duly adopted rules and regulations.

F. After the date a lawsuit is filed in the general district or circuit court by (i) the association, by and through its counsel, to collect the charges or obtain injunctive relief and correct the violation or (ii) the lot owner challenging any such charges, no additional charges shall accrue. If the court rules in favor of the association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.

G. In any suit filed in general district court pursuant to this section, the court may enter default judgment against the lot owner on the association's sworn affidavit.

1989, c. 679; 1991, c. 667; 1993, c. 956; 1994, c. [368](#); 1997, cc. [173](#), [417](#); 2000, cc. [846](#), [905](#); 2002, c. [509](#); 2008, cc. [851](#), [871](#); 2011, cc. [372](#), [378](#); 2014, c. [784](#).

§55-513.1. Display of the flag of the United States; necessary supporting structures; affirmative defense.

A. In accordance with the federal Freedom to Display the American Flag Act of 2005, no association shall prohibit any lot owner from displaying upon property to which the lot owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code, or any rule or custom pertaining to the proper display of the flag. The association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property provided such restrictions are necessary to protect a substantial interest of the association.

B. The association may restrict the display of such flag in the common areas.

C. In any action brought by the association under § [55-513](#) for violation of a flag restriction, the association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the association.

D. In any action brought by the association under § [55-513](#), the lot owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitations pertaining to the display of flags or any flagpole or similar structure necessary to display such flags was not contained in the disclosure packet required pursuant to § [55-509.5](#).

2000, c. [891](#); 2007, cc. [854](#), [910](#); 2008, cc. [851](#), [871](#); 2010, cc. [166](#), [453](#).

§55-513.2. Home-based businesses permitted; compliance with local ordinances.

Except to the extent the declaration provides otherwise, no association shall prohibit any lot owner from operating a home-based business within his personal residence. The association may, however, establish (i) reasonable restrictions as to the time, place, and manner of the operation of a home-based business and (ii) reasonable restrictions as to the size, place, duration, and manner of the placement or display of any signs on the owner's lot related to such home-based business. Any home-based business shall comply with all applicable local ordinances.

2013, c. [310](#).

§55-513.3. Assessments; late fees.

Except to the extent that the declaration or any rules or regulations promulgated pursuant thereto provides otherwise, the board may impose a late fee for, not to exceed

the penalty provided in § [58.1-3915](#), any assessment or installment thereof that is not paid within 60 days of the due date for payment of such assessment.

2013, c. [256](#); 2014, c. [239](#).

§55-514. Authority to levy special assessments.

A. In addition to all other assessments which are authorized in the declaration, the board of directors shall have the power to levy a special assessment against its members if the purpose in so doing is found by the board to be in the best interests of the association and the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of association responsibility expressly provided for in the declaration, including capital expenditures. A majority of votes cast, in person or by proxy, at a meeting of the membership convened in accordance with the provisions of the association's bylaws within 60 days of promulgation of the notice of the assessment shall rescind or reduce the special assessment. No director or officer of the association shall be liable for failure to perform his fiduciary duty if a special assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the owners pursuant to this section, and the association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty arising therefrom.

B. The failure of a member to pay the special assessment allowed by subsection A shall entitle the association to the lien provided by § [55-516](#) as well as any other rights afforded a creditor under law.

C. The failure of a member to pay the special assessment allowed by subsection A will provide the association with the right to deny the member access to any or all of the common areas. Notwithstanding the immediately preceding sentence, direct access to the member's lot over any road within the development which is a common area shall not be denied the member.

1989, c. 679; 1991, c. 667; 1992, c. 450; 1998, cc. [32](#), [751](#); 2008, cc. [851](#), [871](#).

§55-514.1. Reserves for capital components.

A. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace and restore the capital components;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitation:

1. The current estimated replacement cost, estimated remaining life and estimated useful life of the capital components;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside, to repair, replace or restore capital components and the amount of the expected contribution to the reserve fund for that year; and

3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect.

2002, c. [459](#).

§55-514.2. Deposit of funds; fidelity bond.

A. All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the association and shall be segregated for each account in the records of the managing agent in a manner that permits the funds to be identified on an individual association basis.

B. Any association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the association, or committed by any managing agent or employees of the managing agent. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of \$1 million or the amount of the reserve balances of the association plus one-fourth of the aggregate annual assessment income of such association. The minimum coverage amount shall be \$10,000.

The board of directors or managing agent may obtain such bond or insurance on behalf of the association.

2007, cc. [696](#), [712](#); 2008, cc. [851](#), [871](#).

§55-515. Compliance with declaration.

A. Every lot owner, and all those entitled to occupy a lot shall comply with all lawful provisions of this chapter and all provisions of the declaration. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the association, or by its board of directors or any managing agent on behalf of such association, or in any proper case, by one or more aggrieved lot owners on their own behalf or as a class action. Except as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § [8.01-382](#). This section shall not preclude an action against the association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § [8.01-382](#) in such actions.

B. In actions against a lot owner for nonpayment of assessments in which the lot owner has failed to pay assessments levied by the association on more than one lot or such lot owner has had legal actions taken against him for nonpayment of any prior assessment and the prevailing party is the association or its board of directors or any managing agent on behalf of the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in subsection A, even if the proceeding is settled prior to judgment. The delinquent owner shall be personally responsible for reasonable attorney fees and costs expended in the matter by the association, whether any judicial proceedings are filed.

C. A declaration may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ [8.01-577](#) et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the development is located, or as mutually agreed to by the parties.

1989, c. 679; 1993, c. 956; 2012, c. [758](#); 2014, c. [569](#).

§55-515.1. Amendment to declaration and bylaws; consent of mortgagee.

A. In the event that any provision in the declaration requires the written consent of a mortgagee in order to amend the bylaws or the declaration, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, or by regular mail with proof of mailing to the mortgagee at the address supplied by such mortgagee in a written request to the association to receive notice of proposed amendments to the declaration and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise. If the mortgagee has not supplied an address to the association, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office, and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise.

B. Subsection A shall not apply to amendments which alter the priority of the lien of the mortgagee or which materially impair or affect a lot as collateral or the right of the mortgagee to foreclose on a lot as collateral.

C. Where the declaration is silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the declaration does not specifically affect mortgagee rights.

D. Except as otherwise provided in the declaration, a declaration may be amended by a two-thirds vote of the owners.

E. An action to challenge the validity of an amendment adopted by the association may not be brought more than one year after the amendment is effective.

F. Agreement of the required majority of lot owners to any amendment of the declaration adopted pursuant to subsection D shall be evidenced by their execution of the amendment, or ratifications thereof, and the same shall become effective when a copy of the amendment is recorded together with a certification, signed by the principal officer of the association or by such other officer or officers as the declaration may specify, that the requisite majority of the lot owners signed the amendment or ratifications thereof.

G. Subsections D and F shall not be construed to affect the validity of any amendment recorded prior to July 1, 2017.

1997, c. [887](#); 1998, c. [32](#); 1999, c. [805](#); 2003, cc. [59](#), [74](#); 2017, c. [374](#).

§55-515.2. Validity of declaration; corrective amendments.

A. All provisions of a declaration shall be deemed severable, and any unlawful provision thereof shall be void.

B. No provision of a declaration shall be deemed void by reason of the rule against perpetuities.

C. No restraint on alienation shall discriminate or be used to discriminate on any basis prohibited under the Virginia Fair Housing Law (§ [36-96.1](#) et seq.).

D. Subject to the provisions of subsection C, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of a declaration restraining the alienation of lots other than such lots as may be restricted to residential use only.

E. The rule of property law known as the doctrine of merger shall not apply to any easement included in or granted pursuant to a right reserved in a declaration.

F. The declarant may unilaterally execute and record a corrective amendment or supplement to the declaration to correct a mathematical mistake, an inconsistency or a scrivener's error, or clarify an ambiguity in the declaration with respect to an objectively verifiable fact (including without limitation recalculating the liability for assessments or the number of votes in the association appertaining to a lot), within five years after the recordation of the declaration containing or creating such mistake, inconsistency, error or ambiguity. No such amendment or supplement may materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error or ambiguity had not occurred. Regardless of the date of recordation of the declaration, the principal officer of the association may also unilaterally execute and record such a corrective amendment or supplement upon a vote of two-thirds of the members of the board of directors. All corrective amendments and supplements recorded prior to July 1, 1997, are hereby validated to the extent that such corrective amendments and supplements would have been permitted by this subsection.

1998, c. [32](#); 2001, c. [271](#).

§55-515.2:1. Reformation of declaration; judicial procedure.

A. An association may petition the circuit court in the county or city wherein the development or the greater part thereof is located to reform a declaration where the association, acting through its board of directors, has attempted to amend the declaration regarding ownership of legal title of the common areas or real property using provisions outlined therein to resolve (i) ambiguities or inconsistencies in the declaration that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the association or individual lot owners or (ii) scrivener's errors, including incorrectly identifying the association, incorrectly identifying an entity other than the association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

B. The court shall have jurisdiction over matters set forth in subsection A regarding ownership of legal title of the common areas or real property to:

1. Reform, in whole or in part, any provision of a declaration; and
2. Correct mistakes or any other error in the declaration that may exist with respect to the declaration for any other purpose.

C. A petition filed by the association with the court setting forth any inconsistency or error made in the declaration, or the necessity for any change therein, shall be deemed sufficient basis for the reformation, in whole or in part, of the declaration, provided that:

1. The association has made three good faith attempts to convene a duly called meeting of the association to present for consideration amendments to the declaration for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the association;
2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;
3. Where the declarant of the development still owns a lot or other property in the development, the declarant joins in the petition of the association;
4. A copy of the petition is sent to all owners at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the association; and

5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the association.

D. Any mortgagee of a lot in the development shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any lot as collateral for a mortgage, or affect a mortgagee's right to foreclose on a lot as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to [§ 55-515.1](#).

2014, c. [659](#).

§55-515.3. Use of technology.

A. Unless the declaration expressly provides otherwise, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any declaration or bylaw provision or any provision of this chapter may be accomplished using the most advanced technology available at that time if such use is a generally accepted business practice. This section shall govern the use of technology in implementing the provisions of any declaration or bylaw provision or any provision of this chapter dealing with notices, signatures, votes, consents, or approvals.

B. Electronic transmission and other equivalent methods. The association, lot owners, and those entitled to occupy a lot may perform any obligation or exercise any right under any declaration or bylaw provision or any provision of this chapter by use of any technological means providing sufficient security, reliability, identification, and verifiability. "Acceptable technological means" shall include without limitation electronic transmission over the Internet, or the community or other network, whether by direct connection, intranet, telecopier, or electronic mail.

C. Signature requirements. An electronic signature meeting the requirements of applicable law shall satisfy any requirement for a signature under any declaration or bylaw provision or any provision of this chapter.

D. Voting rights. Voting, consent to and approval of any matter under any declaration or bylaw provision or any provision of this chapter may be accomplished by electronic transmission or other equivalent technological means provided that a

record is created as evidence thereof and maintained as long as such record would be required to be maintained in nonelectronic form.

E. Acknowledgment not required. Subject to other provisions of law, no action required or permitted by any declaration or bylaw provision or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the executive organ.

F. Nontechnology alternatives. If any person does not have the capability or desire to conduct business using electronic transmission or other equivalent technological means, the association shall make reasonable accommodation, at its expense, for such person to conduct business with the association without use of such electronic or other means.

G. This section shall not apply to any notice related to an enforcement action by the association, an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

2010, c. [432](#).

§55-516. Lien for assessments.

A. Once perfected, the association shall have a lien on every lot for unpaid assessments levied against that lot in accordance with the provisions of this chapter and all lawful provisions of the declaration. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that lot, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of said lien. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens. Notice of a memorandum of lien to a holder of a credit line deed of trust under § [55-58.2](#) shall be given in the same fashion as if the association's lien were a judgment.

B. The association, in order to perfect the lien given by this section, shall file before the expiration of 12 months from the time the first such assessment became due and payable in the clerk's office of the circuit court in the county or city in which such development is situated, a memorandum, verified by the oath of the principal officer of the association, or such other officer or officers as the declaration may specify, which contains the following:

1. The name of the development;

2. A description of the lot;
3. The name or names of the persons constituting the owners of that lot;
4. The amount of unpaid assessments currently due or past due relative to such lot together with the date when each fell due;
5. The date of issuance of the memorandum;
6. The name of the association and the name and current address of the person to contact to arrange for payment or release of the lien; and
7. A statement that the association is obtaining a lien in accordance with the provisions of the Virginia Property Owners' Association Act as set forth in Chapter 26 (§ [55-508](#) et seq.) of Title 55.

It shall be the duty of the clerk in whose office such memorandum is filed as hereinafter provided to record and index the same as provided in subsection D, in the names of the persons identified therein as well as in the name of the association. The cost of recording and releasing the memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

C. Prior to filing a memorandum of lien, a written notice shall be sent to the property owner by certified mail, at the property owner's last known address, informing the property owner that a memorandum of lien will be filed in the circuit court clerk's office of the applicable city or county. The notice shall be sent at least 10 days before the actual filing date of the memorandum of lien.

D. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1989, all memoranda of liens arising under this section shall be recorded in the deed books in the clerk's office. Any memorandum shall be indexed in the general index to deeds, and the general index shall identify the lien as a lien for lot assessments.

E. No suit to enforce any lien perfected under subsection B shall be brought or action to foreclose any lien perfected under subsection I shall be initiated after 36 months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any suit wherein the petition may be properly filed shall be regarded as the institution of a suit under this section. Nothing herein shall extend the time within which any such lien may be perfected.

F. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and reasonable attorneys' fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

G. When payment or satisfaction is made of a debt secured by the lien perfected by subsection B hereof, the lien shall be released in accordance with the provisions of § [55-66.3](#). Any lien which is not so released shall subject the lien creditor to the penalty set forth in subdivision A 1 of § [55-66.3](#). For the purposes of § [55-66.3](#), the principal officer of the association, or any other officer or officers as the declaration may specify, shall be deemed the duly authorized agent of the lien creditor.

H. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A hereof creates a lien, maintainable pursuant to § [55-515](#).

I. At any time after perfecting the lien pursuant to this section, the property owners' association may sell the lot at public sale, subject to prior liens. For purposes of this section, the association shall have the power both to sell and convey the lot and shall be deemed the lot owner's statutory agent for the purpose of transferring title to the lot. A nonjudicial foreclosure sale shall be conducted in compliance with the following:

1. The association shall give notice to the lot owner prior to advertisement required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the lot owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the lot. The notice shall further inform the lot owner of the right to bring a court action in the circuit court of the county or city where the lot is located to assert the nonexistence of a debt or any other defense of the lot owner to the sale.

2. After expiration of the 60-day notice period specified in subdivision 1, the association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which such development is situated. It shall be the duty of the clerk in whose office such appointment is filed to record and index the same as provided in subsection D, in the

names of the persons identified therein as well as in the name of the association. The association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the lot owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the lot owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the lot. Those conditions are that the lot owner: (i) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (ii) pays all expenses and costs incurred in perfecting and enforcing the lien, including but not limited to advertising costs and reasonable attorneys' fees.

4. In addition to the advertisement required by subdivision 5, the association shall give written notice of the time, date and place of any proposed sale in execution of the lien, and including the name, address and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the association, (ii) any lienholder who holds a note against the property secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale, shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the association shall be in a newspaper having a general circulation in the city or county wherein the property to be sold, or any portion thereof, lies pursuant to the following provisions:

a. The association shall advertise once a week for four successive weeks; however, if the property or some portion thereof is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement which is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the association finds appropriate, shall set forth a description of the property to be sold, which description need not be as extensive as that contained in the deed of trust, but shall identify the property by street address, if any, or, if none, shall give the general location of the property with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the association. It shall set forth the name, address and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b above, the association may give such other further and different advertisement as the association finds appropriate.

6. In the event of postponement of sale, which postponement shall be at the discretion of the association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

8. In the event of a sale, the association shall have the following powers and duties:

a. Written one-price bids may be made and shall be received by the trustee from the association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the declaration, the association may bid to purchase the lot at a foreclosure sale. The association may own, lease, encumber, exchange, sell or convey the lot. Whenever the written bid of the association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision I 10 of this section and § [64.2-1309](#). The written bid submitted pursuant to this subsection may be prepared by the association, its agent or attorney.

b. The association may require of any bidder at any sale a cash deposit of as much as 10 percent of the sale price before his bid is received, which shall be refunded to him if the property is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the association in connection with that sale.

c. The property owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including attorneys' fees; second, to the satisfaction of all taxes, levies and assessments, with costs and interest; third, to the satisfaction of the lien for the owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the owner or his assigns; provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the owner's equity, without actual notice thereof prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the lot with special warranty of title. The trustee shall not be required to take possession of the property prior to the sale thereof or to deliver possession of the lot to the purchaser at the sale.

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § [64.2-1309](#) and every account of a sale shall be recorded pursuant to § [64.2-1310](#). In addition, the accounting shall be made available for inspection and copying pursuant to § [55-510](#) upon the written request of the prior lot owner, current lot owner or any holder of a recorded lien against the lot at the time of the sale. The association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a lot is made pursuant to subsection I and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the accounting by the commissioner of accounts, the sale is set aside by the court or an appeal is allowed by the Supreme Court of Virginia, and a decree is therein entered requiring such sale to be set aside.

1989, c. 679; 1991, c. 667; 1997, cc. [760](#), [766](#); 2000, c. [905](#); 2004, cc. [778](#), [779](#), [786](#).

§55-516.01. Notice of sale under deed of trust.

In accordance with the provisions of § [15.2-979](#), the association shall be given notice whenever a lot becomes subject to a sale under a deed of trust. Upon receipt of such notice, the board of directors, on behalf of the association, shall exercise whatever due diligence it deems necessary with respect to the lot subject to a sale under a deed of trust to protect the interests of the association.

2015, cc. [93](#), [410](#).

§55-516.1. Annual report by association.

A. The association shall file an annual report in a form and at such time as prescribed by regulations of the Common Interest Community Board. The annual report shall be accompanied by a fixed fee in an amount established by the Board.

B. The Common Interest Community Board may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the Common Interest Community Board.

C. The association shall also remit to the agency an annual payment as follows:

1. The lesser of:

a. \$1,000 or such other amount as established by agency regulation; or

b. Five hundredths of one percent (0.05%) of the association's gross assessment income during the preceding year.

2. For the purposes of subdivision 1 b, no minimum payment shall be less than \$10.00.

D. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § [55-529](#).

1993, c. 958; 2008, cc. [851](#), [871](#); 2009, c. [557](#); 2012, cc. [481](#), [797](#).

§55-516.2. Condemnation of common area; procedure.

When any portion of the common area is taken or damaged under the power of eminent domain, any award or payment therefor shall be paid to the association, which shall be a party in interest in the condemnation proceeding. The common area that is affected shall be valued on the basis of the common area's highest and best use as though it were free from restriction to sole use as a common area.

Except to the extent the declaration or any rules and regulations duly adopted pursuant thereto otherwise provide, the board of directors shall have the authority to negotiate with the condemning authority, agree to an award or payment amount with the condemning authority without instituting condemnation proceedings and, upon such agreement, convey the subject common area to the condemning authority. Thereafter, the president of the association may unilaterally execute and record the deed of conveyance to the condemning authority.

A member of the association, by virtue of his membership, shall be estopped from contesting the action of the association in any proceeding held pursuant to this section.

1995, c. [377](#); 1998, c. [32](#); 2016, c. [719](#).

Public Finance Act

§15.2-2600. Short title.

This chapter shall be known and may be cited as the "Public Finance Act of 1991."

Code 1950, § 15-666.13; 1958, c. 640; 1962, c. 623, § 15.1-170; 1971, Ex. Sess., c. 224; 1991, c. 668, § 15.1-227.1; 1997, c. 587.

§15.2-2601. Chapter not to affect general, special and local acts and charters under which bonds are issued or validated.

Unless expressly stated to the contrary nothing in this chapter repeals, amends, impairs or in any way affects (i) any act under the provisions of which bonds have heretofore been issued and are outstanding as of June 30, 1991, (ii) any act, general or special, validating bonds or any proceedings in connection with the issuance of bonds, or (iii) any special rights, privileges, restrictions or limitations now contained in any locality's charter. Nothing in this chapter repeals, amends, impairs or in any way affects any of the provisions of any charter or special or local act authorizing or regulating the issuance of bonds by a locality. The provisions of this chapter are in addition to the powers conferred by any charter or special or local act, and a locality may issue bonds, at the election of its governing body, under either (i) the provisions of this chapter without regard to the requirements, restrictions or other provisions contained in any charter or local or special act applicable to the locality or (ii) the provisions of such charter or local or special act; however, after July 1, 1992,

notwithstanding the foregoing, any referendum requirement for the issuance of bonds or debt limit contained in any charter or local or special act shall control over the provisions of this chapter.

Code 1950, § 15-666.14; 1958, c. 640; 1962, c. 623, § 15.1-171; 1991, c. 668, § 15.1-227.2; 1997, c. 587.

§15.2-2602. Definitions.

As used in this chapter, the following words and terms have the following meanings, unless some other meaning is plainly intended:

"Bonds" mean any obligations of a locality for the payment of money.

"Cost" as applied to any project or to extensions or additions to any project, includes the purchase price of any project acquired by the locality or the cost of acquiring all of the capital stock of the corporation owning the project and the amount to be paid to discharge any obligations in order to vest title to the project or any part of it in the locality, the cost of improvements, property or equipment, the cost of construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all land, property, rights, easements and franchises acquired, financing charges, interest before and during construction and for up to one year after completion of construction, start-up costs and operating capital, the cost of plans and specifications, surveys and estimates of cost and of revenues, the cost of engineering, legal and other professional services, expenses incident to determining the feasibility or practicability of the project, payments by a locality of its share of the cost of any multi-jurisdictional project, administrative expense, any amounts to be deposited to reserve or replacement funds, and other expenses as may be necessary or incident to the financing of the project. Any obligation or expense incurred by the locality in connection with any of the foregoing items of cost may be regarded as a part of the cost and reimbursed to the locality out of the proceeds of bonds issued to finance the project.

"General obligation bonds" mean the bonds of a locality for the payment of which the locality is required to levy ad valorem taxes, including any obligations which may be additionally secured by a pledge of revenues, special assessments or funds derived from any other source.

"Governing body" means the board of supervisors, council, or other local legislative body, board, commission or authority having charge of the finances of any locality,

and when the separate concurrence or approval of two or more sets of authorities is required by law for the making of appropriations, to the extent so required "governing body" includes both or all of them.

"Project" means any public improvement, property or undertaking for which the locality is authorized by law to appropriate money, except for current expenses, and specific undertakings from which the locality may derive revenues (sometimes called "revenue-producing undertakings") including, without limitation, water, sewer, sewage disposal, and garbage and refuse collection and disposal systems and facilities as defined in § [15.2-5101](#), recycling facilities, facilities for the production of energy from waste, gasworks, electric light and other lighting systems, airports, off-street parking facilities, and facilities for public transit or transportation systems.

"Revenue bonds" mean bonds of a locality for which only the specified revenues of the locality are pledged and to which no ad valorem or other taxes of the locality are pledged, including, without limitation bonds of a locality for which only the revenues of a revenue producing undertaking or undertakings, or such revenues together with a mortgage or deed of trust lien on the undertaking or undertakings, are pledged to their payment.

Code 1950, § 15-666.15; 1958, c. 640; 1962, c. 623, § 15.1-172; 1970, c. 268; 1973, c. 513; 1991, c. 668, § 15.1-227.3; 1997, c. 587.

§15.2-2603. Disposition of unclaimed funds due on matured bonds or coupons.

Any locality having bonds outstanding on which principal, premium or interest has matured for a period of more than five years may pay any money being held to pay the matured principal, premium or interest into the general fund of the locality. The locality shall maintain a record of the bonds for which the funds were held. Thereafter the owners of the matured bonds may look only to the locality for payment.

Code 1950, § 15-666.17; 1958, c. 640; 1962, c. 623, § 15.1-174; 1991, c. 668, § 15.1-227.6; 1997, c. 587.

§15.2-2604. Powers generally.

Subject to the provisions of Articles 3 (§ [15.2-2632](#) et seq.) and 4 (§ [15.2-2638](#) et seq.) of this chapter, any locality may:

1. Acquire, construct, reconstruct, improve, extend, enlarge, equip, maintain, repair and operate any project which is located within or outside the locality;

2. Contract debts for any project, borrow money for any project, and issue its bonds to pay all or any part of the cost of acquiring, constructing, reconstructing, improving, extending, enlarging and equipping any project;
3. Refund any bonds previously issued by the locality or for which the locality is responsible or may assume responsibility for payment;
4. Provide for the rights of the owners of bonds issued by the locality;
5. Secure bonds issued by the locality as permitted by law;
6. Issue bonds to create any self-insurance reserve fund;
7. Issue bonds to pay all or any part of the cost of satisfying a final judgment imposed against the locality (including its local school board) by a court of competent jurisdiction;
8. Acquire in the name of the locality, by purchase, gift or the exercise of the power of eminent domain, land and rights and interests in land, including land under water and riparian rights, and acquire personal property as the governing body of the locality may deem necessary in connection with any project;
9. Enter on any land, water or premises located within or outside the locality for the purpose of making surveys, borings, soundings or examinations in connection with any project; any such entry shall not be deemed a trespass or an entry under any eminent domain proceedings, but the locality shall make reimbursement for any actual damages resulting from the entry;
10. Receive and accept from any federal or state agency grants for or in aid of the construction of any project, and receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied for the purposes for which the aid or contributions may be made; and comply with any conditions not inconsistent with the Constitution of Virginia or provision of law imposed by any federal or state agency as a prerequisite to obtaining any grant, including, but not limited to, the execution of any required contracts or arrangements;
11. Employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents as may be necessary;

12. Acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this chapter;
13. Enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter;
14. Do all things necessary or convenient to carry out the powers expressly given in this chapter and to carry out any project;
15. Assess, levy and collect unlimited ad valorem taxes on all property subject to taxation to pay the principal of and premium, if any, and interest on any bonds issued under the provisions of this chapter, subject to and in accordance with the provisions of any ordinance, resolution, trust agreement, indenture or other instrument providing for the issuance of the bonds; and
16. Fix and collect rates, rents, fees and other charges for the services and facilities furnished by, or for the use of, or in connection with any revenue-producing undertaking or undertakings, subject to and in accordance with the provisions of any ordinance, resolution, trust agreement, indenture or other instrument providing for the issuance of the bonds.

Code 1950, § 15-666.18; 1958, c. 640; 1962, c. 623, § 15.1-175; 1986, cc. 379, 468; 1991, c. 668, § 15.1-227.7; 1994, cc. [432](#), [714](#); 1997, c. 587.

§15.2-2605. Collection of rents and charges; liens on real estate; discharge and enforcement of liens.

The rates, rents, fees or charges when made for the use of any revenue-producing undertaking may be collected by distress, levy, garnishment, attachment or as otherwise provided by law. Any unpaid rate, rent, fee or charge shall become a lien superior to the interest of any owner, lessee or tenant, and next in succession to taxes, on the real property on or for which the use of any such undertaking was made and for which the rate, rent, fee or charge was imposed. However, the lien shall not bind or affect a subsequent bona fide purchaser of the real estate for valuable consideration without actual notice of the lien, until amount of the rate, rent, fee or charge is entered in the judgment records kept in the clerk's office where deeds are recorded with respect to the real estate against which the lien is asserted. It shall be the duty of the clerk in such office to keep, preserve and hold available for public inspection the judgment records and to cause entries to be made and indexed in them from time to time upon certification by the locality.

The lien on any real estate may be discharged by the payment to the locality of the total amount of the lien, plus interest at the judgment rate of interest provided for in § [6.2-302](#) from the date the rate, rent, fee or charge was due and payable to the date of payment. It shall be the duty of the locality to deliver a certificate of payment to the person paying the lien. Upon presentation of the certificate, the clerk having the record of the lien shall mark the lien satisfied.

Jurisdiction to enforce any lien shall be in equity, and the court may order any real estate subject to the lien, or any part of it, sold and the proceeds applied to the payment of the lien and the interest which may accrue to the date of payment.

Nothing contained in this section shall be construed to prejudice the right of the locality to recover the amount of any lien, or of the rate, rent, fee or charge, and the interest which may accrue, by action at law or otherwise.

Code 1950, § 15-666.18; 1958, c. 640; 1962, c. 623, § 15.1-175; 1986, cc. 379, 468; 1991, c. 668, § 15.1-227.7; 1994, cc. [432](#), [714](#); 1997, c. 587.

§15.2-2606. Public hearing before issuance of bonds.

A. Notwithstanding any contrary provision of law, general or special, but subject to subsection B of this section, before the final authorization of the issuance of any bonds by a locality, the governing body of the locality shall hold a public hearing on the proposed bond issue. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the locality. The notice shall (i) state the estimated maximum amount of the bonds proposed to be issued, (ii) state the proposed use of the bond proceeds, and if there is more than one use, state the proposed uses for which more than 10 percent of the total bond proceeds is expected to be used, and (iii) specify the time and place of the hearing at which persons may appear and present their views. The hearing shall not be held less than six nor more than 21 days after the date the second notice appears in the newspaper.

B. No notice or public hearing shall be required for (i) bonds which have been approved by a majority of the voters of the issuing locality voting on the issuance of such bonds or (ii) obligations issued pursuant to § [15.2-2629](#), [15.2-2630](#) or [15.2-2643](#).

1987, c. 402, § 15.1-171.1; 1990, c. 175; 1991, c. 668, § 15.1-227.8; 1994, c. [714](#); 1997, c. 587; 2011, c. [590](#).

§15.2-2607. Provisions which may be embodied in bond ordinances or resolution; adoption; filing copy with court.

The governing body of any locality, subject to the approval of a majority of the qualified voters of the locality voting on the issuance of such bonds if required by the Constitution of Virginia or by this chapter, is authorized to provide by ordinance or resolution for the issuance, at one time or from time to time, of bonds of the locality for the purposes set forth in and subject to the provisions of this chapter.

Any such ordinance or resolution may contain provisions which shall be a part of the contract with the owners of the bonds as to:

1. The payment of the principal of and premium, if any, and the interest on bonds from ad valorem taxes to be levied without limitation as to rate or amount on all property subject to taxation and the pledging of the full faith and credit of the locality to secure the payment of bonds;
2. The pledge of specified revenues of the locality, other than taxes, ad valorem or otherwise, including, without limitation, the pledge of the revenues of any revenue-producing undertaking or undertakings, to the payment of the principal of and premium, if any, and interest on bonds;
3. The granting of a mortgage or deed of trust lien on any specific revenue-producing undertaking or undertakings to secure the payment of the principal of and premium, if any, and interest on bonds issued to finance in whole or in part the costs of the undertaking or undertakings, but only if the full faith and credit of the locality is not pledged to the payment of the bonds;
4. The securing of the payment of the principal of and premium, if any, and interest on bonds by an ordinance resolution, trust agreement, indenture or other instrument, which may (i) appoint any trust company or bank having the powers of a trust company within or outside the Commonwealth as corporate trustee, (ii) set forth the rights and remedies of the bondholders and of the trustee, (iii) restrict the individual right of action by bondholders, and (iv) contain any other provisions as the governing body of the locality deems reasonable and proper for the security of the bondholders;
5. The payment of the principal of and premium, if any, and the interest on bonds from any one or more of the sources of funds provided for in this section or any combination of them and the pledging of any one or more of the sources of funds or any

combination of them to secure the payment of the principal of and premium, if any and interest on bonds;

6. The rates, rents, fees, charges, taxes and other revenues or receipts of any revenue-producing undertaking or undertakings and the amounts to be raised in each year by them, and the use and disposition of such rates, rents, fees, charges, taxes and other revenues and receipts of any undertaking or undertakings;

7. The setting aside of reserves or sinking funds and the regulation and disposition of them;

8. Limitations on the right of the locality to restrict and regulate the use of any project;

9. Limitations on the purpose to which the proceeds of sale of any bonds may be applied;

10. Limitations on issuance of additional revenue bonds;

11. The procedure, if any, by which the terms of any contract with bondholders may be amended or discharged, the amount of bonds the owners of which shall consent to the amendment or abrogation, and the manner in which the consent must be given;

12. Conferring upon the bondholders or the trustee under any ordinance, resolution, trust agreement, indenture or other instrument remedies for enforcing the rights of the bondholders and requiring the governing body to carry out any agreement with the bondholders;

13. Any other matter required by any state or federal agency as a condition precedent to the obtaining of a direct grant or grants of money for or in aid of any project or to defray or partially to defray the cost of the labor and materials employed upon any project, or to obtain a loan or loans of money for or in aid of any project from any state or federal agency; and

14. Any provisions necessary to qualify the interest on the bonds for exclusion from gross income for federal income tax purposes and to maintain that exclusion.

Any ordinance or resolution authorizing the issuance of bonds may be finally adopted at the meeting at which it is introduced, which may be a regular or special meeting, by a majority of the members of the governing body. A certified copy of each such ordinance or resolution shall be filed in the circuit court having jurisdiction over the locality. When any town is situated partly in two or more counties, the certified

copy of the ordinance or resolution may be presented to the circuit court for any of the counties. Except as expressly required by this article, the ordinance or resolution need not be published, posted or advertised.

Code 1950, § 15-666.40; 1958, c. 640; 1962, c. 623, § 15.1-199; 1973, c. 513; 1991, c. 668, § 15.1-227.9; 1994, c. [714](#); 1997, c. 587.

§15.2-2608. Bonds for revenue-producing undertakings.

The governing body of any locality may, in accordance with the provisions of Article VII, Section 10 of the Constitution of Virginia, issue bonds for any revenue-producing undertaking.

Code 1950, § 15-666.21; 1958, c. 640; 1962, c. 623, § 15.1-178; 1971, Ex. Sess., c. 224; 1991, c. 668, § 15.1-227.10; 1997, c. 587.

§15.2-2609. Covenants relating to issuance of revenue bonds.

The governing body of any locality proposing to issue bonds for any revenue-producing undertaking may covenant in the ordinance, resolution, trust agreement, indenture or other instrument providing for the issuance of the bonds that the rates, rents, fees or other charges for the services and facilities furnished by, for the use of, or in connection with the undertaking shall be fixed and maintained at the level that will produce sufficient revenue to pay the cost of operation and administration, the cost of insurance against loss by injury to persons or property, and the principal of and premium, if any, and interest on the bonds when due and payable, and to provide reserves for such purposes. The ordinance, resolution, trust agreement, indenture or other instrument, in order to assure the faithful observance of such covenant, may provide for the creation of a commission, or the appointment of a receiver, vested with such powers as to the management of the undertaking, or the fixing of rates, rents, fees or other charges, or both, as the governing body may deem proper.

Code 1950, § 15-666.27; 1958, c. 640; 1962, c. 623, § 15.1-184; 1991, c. 668, § 15.1-227.11; 1997, c. 587.

§15.2-2610. Request for referendum filed with court; order for election; notice.

If voter approval of any bond issue by a locality is required by the Constitution of Virginia or this chapter or any charter provision, a copy of the resolution or ordinance adopted by the governing body of the locality, certified by the clerk of the governing body, requesting that a referendum on the question of the issuance of the bonds be held, shall be filed with the circuit court for the locality or in the case of a town the

circuit court for the county in which the town is located. The circuit court shall order a special election, in accordance with § [24.2-681](#) et seq., requiring the election officers of the locality on the day fixed in the order to open the polls and take the sense of the voters of the locality on the question of contracting the debt and issuing bonds for the purpose or purposes set forth in the resolution or ordinance. When any town is situated partly in two or more counties, the certified copy of the resolution or ordinance may be presented to the circuit court for any of the counties and the court shall order an election to be held in the town in accordance with the provisions of §§ [24.2-601](#) and [24.2-681](#) et seq. Notice of the election in the form prescribed by the court shall be published at least once but not less than ten days before the election in a newspaper published or having general circulation in the locality.

Where voter approval is required by the Constitution of Virginia, this chapter or any charter provision, a locality may, at its option, provide in the ordinance or resolution that any two or more purposes and amounts of the bonds proposed to be issued for such purposes be combined into a single question for the election and referred to as "capital improvement bonds" in an aggregate principal amount equal to the sum of the amounts for the purposes so combined.

Code 1950, §§ 15-666.25, 15-666.30; 1958, c. 640; 1962, c. 623, §§ 15.1-182, 15.1-187; 1968, c. 579; 1971, Ex. Sess., c. 224; 1975, c. 517; 1982, c. 181; 1991, c. 668, § 15.1-227.12; 1997, c. 587.

§15.2-2611. Holding of election; order authorizing bonds; authority of governing body.

The regular election officers of the locality at the time designated in the order authorizing the vote shall open the polls at the various voting places in the locality and conduct the election in the manner provided by law for other elections. At the election, each voter may cast his or her vote for or against the bond issue. The votes shall be counted, the returns made and canvassed and the results certified as provided in § [24.2-681](#) et seq. If it appears from the returns that a majority of the voters of the locality voting on the question at the election are against the proposed bond issue, an order shall be entered by the court to such effect. If a majority of the voters of the locality voting on the question approve the bond issue, the court shall enter an order to such effect, a copy of which shall be promptly certified by the clerk of the court to the governing body of the locality. The locality may then proceed to prepare, issue and sell its bonds up to the amount so authorized and in doing so shall have all of the

powers granted to the locality by this chapter with respect to incurring debt and issuing bonds. Bonds authorized by a referendum may not be issued by a locality more than eight years after the date of the referendum; however, this eight-year period may, at the request of the governing body of the locality, be extended to up to ten years after the date of the referendum by order of the circuit court for the locality, or in the case of a town the circuit court for the county in which the town is located, entered before the expiration of the eight-year period. The court shall grant such extension unless the court is shown by clear and convincing evidence that the extension is not in the best interests of the locality.

Code 1950, § 15-666.31; 1958, c. 640; 1962, c. 623, § 15.1-188; 1982, c. 181; 1991, c. 668, § 15.1-227.13; 1997, c. 587.

§15.2-2612. Dating; rate of interest; maturity; denomination; place of payment.

The bonds of a locality may be dated, may mature at such time or times not exceeding forty years from their date or dates, may be subject to redemption or repurchase, at such price or prices and under such terms and conditions, and may contain such other provisions, all as determined before their issuance by the governing body or in such manner as the governing body may provide. The bonds may bear interest payable at such time or times and at such rate or rates as determined by the governing body or in such manner as the governing body may provide, including the determination by reference to indices or formulas or by agents designated by the governing body under guidelines established by it. The governing body may fix the denomination or denominations of the bonds and the place or places of payment.

Code 1950, § 15-666.41; 1958, c. 640; 1962, cc. 496, 623, § 15.1-200; 1984, c. 451; 1991, c. 668, § 15.1-227.14; 1997, c. 587.

§15.2-2613. Form and manner of execution; signature of person ceasing to be officer.

The governing body shall determine the form and the manner of execution of bonds. Any bonds issued under the provisions of this chapter, and any bonds previously or hereafter authorized to be issued by any locality under the provisions of any general or special law, if so authorized by the governing body of the locality, may bear or be executed with the facsimile signature of any official authorized to sign or execute them. If any law provides for the sealing of bonds with the official or corporate seal of the locality or of its governing body, a facsimile of the seal may be imprinted on

the bonds, if so authorized by the governing body of the locality, and it will not be necessary in such case to impress the seal physically on the bonds.

In case any officer whose signature or a facsimile of whose signature appears on any bonds ceases to be such officer before the delivery of the bonds, the signature or facsimile will nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery. Any bond may bear the facsimile signature of, or may be signed by, the person who at the actual time of the execution of the bond is the proper officer to sign the bond although at the date of the bond the person may not have been such officer.

When all signatures on bonds are facsimiles, the bonds must be authenticated by an agent appointed by the governing body of the locality issuing the bonds or in such manner as the governing body may provide.

Code 1950, § 15-666.42; 1958, c. 640; 1962, c. 623, § 15.1-201; 1983, c. 607; 1991, c. 668, § 15.1-227.15; 1997, c. 587.

§15.2-2614. Bearer, registered or book entry form.

The bonds may be issued in bearer, registered or book entry form, or any combination of such forms, as the governing body may determine.

Code 1950, § 15-666.43; 1958, c. 640; 1962, c. 623, § 15.1-202; 1991, c. 668, § 15.1-227.16; 1997, c. 587.

§15.2-2615. Bonds deemed negotiable instruments.

Notwithstanding any of the foregoing provisions of this chapter or any recitals in any bonds issued under the provisions of this chapter, all bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth.

Code 1950, § 15-666.44; 1958, c. 640; 1962, c. 623, § 15.1-203; 1991, c. 668, § 15.1-227.17; 1997, c. 587.

§15.2-2616. Interim receipts or temporary bonds exchangeable for definitive bonds.

Before the preparation of definitive bonds, the governing body of a locality may, subject to the same provisions of this chapter as are applicable to the issuance of definitive bonds, issue interim receipts or temporary bonds, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

Code 1950, § 15-666.45; 1958, c. 640; 1962, c. 623, § 15.1-204; 1991, c. 668, § 15.1-227.18; 1997, c. 587.

§15.2-2617. Sale of bonds.

Any locality may sell any bonds authorized under the provisions of this chapter in such manner, either at public or private sale, and for such price as the governing body of the locality may determine.

Code 1950, § 15-666.46; 1958, c. 640; 1962, c. 623, § 15.1-205; 1991, c. 668, § 15.1-227.19; 1997, c. 587.

§15.2-2618. Disposition of proceeds; separate fund.

Unless otherwise specifically provided by the governing body of a locality or in the ordinance, resolution, trust agreement, indenture or other instrument authorizing the issuance of bonds, all proceeds received from the sale of the bonds of any locality issued under the provisions of this chapter shall be paid to, or at the direction of, the treasurer or chief financial officer of the locality who shall promptly deposit the funds in a bank or other depository to the credit of the locality as prescribed by general law or the provisions of the charter applicable to the locality. The treasurer or chief financial officer shall account for the money through a fund, separate from all other funds, in the system of accounting of the locality.

Code 1950, § 15-666.47; 1958, c. 640; 1962, c. 623, § 15.1-206; 1991, c. 668, § 15.1-227.20; 1997, c. 587.

§15.2-2619. Investment of proceeds pending application to authorized purpose.

Pending the application of the proceeds of any bonds authorized under the provisions of this chapter to the purpose or purposes for which the bonds have been authorized, all or any part of the proceeds may be invested, in accordance with Chapter 45 (§ [2.2-4500](#) et seq.) of Title 2.2. Any security purchased as an investment of the proceeds of bonds shall be deemed at all times to be a part of the proceeds, and the interest accruing on the investment and any profit realized from it shall be credited to the proceeds; provided, however, if authorized by resolution of the governing body, the locality may apply the interest accruing on the investment and any profit realized from it to pay costs as defined by this chapter.

Code 1950, § 15-666.48; 1958, c. 640; 1960, c. 92; 1962, c. 623, § 15.1-207; 1988, c. 834; 1991, c. 668, § 15.1-227.21; 1997, c. 587.

§15.2-2620. Bonds made legal investments.

Bonds issued under this chapter are made securities in which public officers and bodies of the Commonwealth, counties, cities and towns and municipal subdivisions of the Commonwealth, insurance companies and associations, savings banks, savings institutions, savings and loan associations, trust companies, beneficial and benevolent associations, administrators, guardians, executors, trustees and other fiduciaries in the Commonwealth may properly and legally invest funds under their control.

Code 1950, § 15-666.49; 1958, c. 640; 1962, c. 623, § 15.1-208; 1991, c. 668, § 15.1-227.22; 1997, c. 587.

§15.2-2621. Bonds mutilated, lost or destroyed.

If any bond is mutilated, destroyed or lost, the governing body of the locality obligated to pay the bond may cause a new bond of like date, number and tenor to be executed and delivered in exchange and substitution for and upon the cancellation of the mutilated bond, or in lieu of and in substitution for the bond destroyed or lost, upon the owner paying the reasonable expense and charges in connection therewith. In the case of a bond destroyed or lost, its owner may be required to file with the person having custody of the funds from which the bond is to be paid evidence satisfactory to that person that the bond was destroyed or lost, and evidence of the ownership of the bond and may be required to furnish indemnity satisfactory to that person.

Code 1950, § 15-666.50; 1958, c. 640; 1962, c. 623, § 15.1-209; 1986, c. 468; 1991, c. 668, § 15.1-227.23; 1997, c. 587.

§15.2-2622. Destruction of bonds and coupons after payment in full.

A. Whenever the fiscal agent for any locality pays in full any bonds representing an obligation of the locality, the fiscal agent may, by agreement with the locality, destroy the bond and certify the facts of the payment and destruction to the treasurer or director of finance, as the case may be, of the locality.

B. The certification required by this section shall set forth the issue, series, number and maturity date of each bond, together with any additional facts as are necessary to specifically identify each bond paid and destroyed. However, the treasurer or director of finance may waive the requirement that the number of each interest coupon be supplied.

C. Every certification shall be in such form as is prescribed by the Auditor of Public Accounts and shall be acknowledged in the manner prescribed by law for the acknowledgment of deeds.

D. Whenever any certification, appearing on its face to have been executed and acknowledged as prescribed by this section, has been delivered to the treasurer or director of finance of any locality by the fiscal agent, the treasurer or director of finance shall, in the absence of actual knowledge of any misrepresentation or irregularity as to the certification, be relieved of all further liability for all the bonds represented in the certificate to have been paid and destroyed. For accounting purposes, every such certification which appears on its face to have complied with the requirements of this section shall constitute sufficient evidence of the facts set forth in it.

Code 1950, § 15-666.27:1; 1962, c. 310, § 15.1-184.1; 1966, c. 574; 1983, c. 30; 1991, c. 668, § 15.1-227.24; 1997, c. 587.

§15.2-2623. Defeasance of indebtedness; rights of owners.

The governing body of any locality is authorized to provide by resolution or ordinance for the defeasance of any bonds of the locality now or hereafter outstanding, to the extent that the defeasance of such bonds is not otherwise provided for in the resolution, ordinance, indenture or other document governing the issuance of such bonds. Bonds to be defeased pursuant to this section shall be deemed defeased and no longer outstanding when there has been established with a bank or trust company designated by the locality an escrow or sinking fund consisting of cash and non-callable obligations of, or unconditionally guaranteed by, the United States of America or noncallable obligations of, or unconditionally guaranteed by, the Commonwealth in an amount which together with interest to be earned on such obligations will be sufficient to pay all bonds to be defeased either at maturity or upon redemption; however, if such bonds are to be defeased either at maturity or upon redemption, notice of the redemption of such bonds shall have been duly given or irrevocable instructions to redeem such bonds shall have been given by the locality.

Any escrow fund established pursuant to this section shall be irrevocably pledged to the payment of the bonds to be defeased and shall be used solely to pay such bonds at maturity or upon earlier redemption. It is the intent that any escrow fund established pursuant to this section shall constitute a special fund for the payment of the defeased bonds and that the defeased bonds shall not be included for the purpose of

determining any limitation upon the amount of indebtedness of the locality which is imposed by law.

The owners of any outstanding bonds to be defeased shall be divested of all rights and security relating to the bonds, except the right to payment due to principal, premium, if any, and interest, which shall be paid solely from the escrow fund.

1994, c. [714](#), § 15.1-227.24:1; 1997, c. 587.

§15.2-2624. Tax to pay principal and interest.

Notwithstanding any other provision of law or any charter provision, the governing body is authorized and required to levy and collect annually, at the same time and in the same manner as other taxes of the locality are assessed, levied and collected, a tax upon all taxable property within the locality, over and above all other taxes, authorized or limited by law and without limitation as to rate or amount, sufficient to pay when due the principal of and premium, if any, and interest on any general obligation bonds of the locality issued under the provisions of this chapter to the extent other funds of the locality are not lawfully available and appropriated for such purpose.

1991, c. 668, § 15.1-227.25; 1997, c. 587.

§15.2-2625. Deposit of funds; security; investment of funds.

Unless otherwise provided in the ordinance, resolution, trust agreement, indenture or other instrument authorizing the issuance of bonds, all money collected and required to be set aside for the payment of bonds issued under the provisions of this chapter, whether from the proceeds of taxes levied for such purpose or from revenues or special assessments pledged for such purpose, shall be deposited in escrow with some solvent bank or trust company in the Commonwealth which is acceptable to the governing body and shall be secured pursuant to the Virginia Security for Public Deposits Act, Chapter 44 (§ [2.2-4400](#) et seq.) of Title 2.2. In lieu of retaining the money on deposit, all or part of the money may be invested in securities that are legal investments under the laws of the Commonwealth, which mature, or which are subject to redemption by the owner at the option of the owner, not later than the date upon which the money shall be required to make the payments for which it has been designated.

Code 1950, § 15-666.52; 1958, c. 640; 1960, c. 92; 1962, c. 623, § 15.1-211; 1978, c. 389; 1988, c. 834; 1991, c. 668, § 15.1-227.26; 1997, c. 587.

§15.2-2626. Contracts concerning interest rates, currency, cash flow or other basis.

A. Any locality may enter into any contract which the governing body of the locality determines to be necessary or appropriate to place the obligation or investment of the locality, as represented by the bonds or the investment of their proceeds, in whole or in part, on the interest rate, cash flow or other basis desired by the locality, which contract may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the locality in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the governing body of the locality, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate.

B. Any money set aside and pledged to secure payments of bonds or any of the contracts entered into pursuant to this section, may be invested in accordance with Chapter 45 (§ [2.2-4500](#) et seq.) of Title 2.2 and may be pledged to and used to service any of the contracts or agreements entered into pursuant to this section.

1991, c. 668, § 15.1-227.27; 1997, c. 587.

§15.2-2627. Time for contesting validity of proposed bond issue; when bonds presumed valid.

For a period of thirty days after the date of the filing with the circuit court having jurisdiction over the locality of a certified copy of the initial ordinance or resolution of the governing body of the locality authorizing the issuance of bonds, any person in interest has the right to contest the validity of the bonds, the taxes to be levied for the payment of the bonds, the rates, rents, fees and other charges for the services and facilities furnished by, for the use of, or in connection with, any revenue-producing undertaking, the pledge of the revenues of any revenue-producing undertaking, any provisions which may be recited in any ordinance, resolution, trust agreement, indenture or other instrument authorizing the issuance of bonds, or any matter contained in, provided for or done or to be done pursuant to the foregoing. If such contest is

not begun within the thirty-day period, the authority to issue the bonds, the validity of the taxes or the pledge of revenues necessary to pay the bonds, the validity of any other provision contained in the ordinance, resolution, trust agreement, indenture or other instrument, and all proceedings in connection with the authorization and the issuance of the bonds shall be conclusively presumed to have been legally taken and no court shall have authority to inquire into such matters and no such contest shall thereafter be instituted.

Upon the delivery of any bonds reciting that they are issued pursuant to this chapter and an election held or ordinance or resolution adopted under this chapter, the bonds shall be conclusively presumed to be fully authorized by all the laws of the Commonwealth and to have been sold, executed and delivered by the locality in conformity with such laws, and the validity of the bonds shall not be questioned by a party plaintiff, a party defendant, the locality, any taxpayer of the locality, or any other interested party in any court, anything in this chapter or in any other statutes to the contrary notwithstanding.

Code 1950, § 15-666.53; 1958, c. 640; 1962, c. 623, § 15.1-212; 1991, c. 668, § 15.1-227.28; 1997, c. 587.

§15.2-2628. Notes in anticipation of bond issue.

In anticipation of the issuance of bonds under the provisions of this chapter and of the receipt of the proceeds from the sale of bonds, any locality may borrow money and issue its notes for any purpose for which bonds of the locality have been authorized in a principal amount not to exceed the principal amount of the authorized bonds. The notes shall mature and be paid within five years of the date of their original issuance. Any notes may be extended or refinanced from time to time, provided that no extension or refinancing matures later than five years from the date of the original issuance of the notes.

The locality may, in its discretion, retire any notes by means of current revenues, special assessments, or other funds, in lieu of retiring them by the issuance of bonds, provided that the maximum amount of bonds that has been authorized must be reduced by the amount of the notes retired in such manner.

Code 1950, § 15-666.64; 1958, c. 640; 1962, cc. 220, 623, § 15.1-223; 1966, c. 161; 1970, c. 144; 1991, c. 668, § 15.1-227.29; 1997, c. 587.

§15.2-2629. Loans to meet appropriations for current year.

Any locality may borrow money and issue its notes in anticipation of the collection of the taxes and revenues of the locality for the current year, but the principal amount of the notes may not exceed the anticipated revenues for such year. Such notes shall mature and be paid within one year from the date they are issued. No extension of such notes shall be valid and no additional notes shall be issued under this section until all notes issued during preceding years have been paid.

1991, c. 668, § 15.1-227.30; 1997, c. 587.

§15.2-2630. Loans in anticipation of federal and state funds.

Any locality may borrow money and issue its notes in advance of grants and reimbursements due the locality from the federal or state government for the purpose of meeting appropriations made for the then fiscal year. "Grants" means grants which the locality has been formally advised in writing it will receive and "reimbursements" means money which either the federal or state government is obligated to pay the locality on account of expenditures made in anticipation of receiving the payment from the federal or state government. The locality may borrow the full amount of the grant or reimbursement that the federal or state government is obligated to pay at the time the notes are issued. The notes shall be repaid by the earlier of thirty days after the grant or reimbursement is received or one year from the date of their issuance.

1991, c. 668, § 15.1-227.31; 1997, c. 587.

§15.2-2631. Terms of temporary loans.

The temporary loans authorized by §§ [15.2-2628](#), [15.2-2629](#), and [15.2-2630](#), shall be evidenced by bonds or notes issued under and governed by the provisions of this chapter insofar as they are applicable. The bonds or notes may be extended or refinanced from time to time, but shall mature within the time limits prescribed by §§ [15.2-2628](#), [15.2-2629](#), and [15.2-2630](#).

1991, c. 668, § 15.1-227.32; 1997, c. 587.

§15.2-2632. Certain debts that may be contracted by city on transition from town.

Any city may, within one year from the date of its transition from a town to a city pursuant to the provisions of Chapter 38 (§ [15.2-3800](#) et seq.) of this title, contract debts, borrow money, and authorize the issuance of its bonds in the principal amount of its proportionate share of all state, county, and district levies on property within the territory occupied by the city actually collected by the county treasurer

pursuant to § [15.2-3828](#) in the year in which the transition takes place, and which does or would constitute credit against the amount of the assumption of county indebtedness by the city pursuant to § [15.2-3829](#).

Code 1950, § 15-666.18:1; 1962, c. 558, § 15.1-175.1; 1991, c. 668, § 15.1-227.33; 1997, c. 587.

§15.2-2633. Borrowing by certain cities to pay expenses.

Notwithstanding any provision of law to the contrary, any city may contract debts by borrowing money and authorizing the issuance of its bonds maturing more than one year after their date to pay the expenses associated with it becoming a city, including without limitation, payments to any county for educational services pending the establishment of its school system, provided:

1. The debts shall not be created after five years from the date it became a city, and
2. The debts shall not at any time during the five-year period exceed one percent of the assessed valuation of the real estate in the city subject to taxation, as shown by the last preceding assessment for taxes.

1978, c. 524, § 15.1-175.2; 1991, c. 668, § 15.1-227.34; 1997, c. 587.

§15.2-2634. Limitation on amount of outstanding bonds.

Subject to §§ [15.2-2601](#) and [15.2-2635](#), no municipality may issue any bonds or other interest-bearing indebtedness which, including existing indebtedness, at any time exceeds ten percent of the assessed valuation of the real estate in the municipality subject to taxation, as shown by the last preceding assessment for taxes.

Code 1950, § 15-666.19; 1958, c. 640; 1962, c. 623, § 15.1-176; 1971, Ex. Sess., c. 224; 1985, c. 56; 1991, c. 668, § 15.1-227.35; 1997, c. 587.

§15.2-2635. What indebtedness not included in determining limitation.

In determining the limitation contained in § [15.2-2634](#), there shall not be included the classes of indebtedness described in clauses (1) through (4) of Article VII, Section 10 (a) of the Constitution of Virginia.

1991, c. 668, § 15.1-227.36; 1997, c. 587.

§15.2-2636. Ordinance or resolution to provide for issue of bonds.

Except as otherwise provided in this section, whenever any municipality proposes to borrow money and issue its bonds under the provisions of Article VII, Section 10(a), of the Constitution of Virginia and this chapter, the governing body shall adopt an

ordinance or resolution, stating the maximum principal amount of the bonds to be issued and in brief and general terms the purpose or purposes for which the proceeds of the bonds are to be used. Subject to § [15.2-2601](#), if the proposed bond issue is pursuant to the provisions of Article VII, Section 10(a) of the Constitution of Virginia (other than subsection (2) thereof), the governing body may authorize and issue bonds in accordance with the applicable provisions of this chapter, without submission of the question of the issuance of the bonds to the voters for approval. If the bonds are being issued under the provisions of Article VII, Section 10(a)(2) of the Constitution of Virginia, and are not to be included within the otherwise authorized indebtedness of the municipality, the bonds shall be authorized by an ordinance which shall state that fact, as well as the specific undertaking for which the money is proposed to be borrowed and the bonds are to be issued, and request that a referendum on the issuance of the bonds be held in accordance with §§ [15.2-2610](#) and [15.2-2611](#). Any ordinance or resolution authorizing the issuance of bonds by a municipality must be passed by the recorded affirmative vote of a majority of all the members elected to its governing body. If the ordinance or resolution is vetoed by the mayor, where the power of veto exists, it may be adopted notwithstanding the veto in the manner prescribed by Article VII, Section 7 of the Constitution of Virginia.

Code 1950, § 15-666.22; 1958, c. 640; 1962, c. 623, § 15.1-179; 1971, Ex. Sess., c. 224; 1973, c. 144; 1991, c. 668, § 15.1-227.37; 1997, c. 587.

§15.2-2637. Danville to incur indebtedness only in accordance with charter.

In the City of Danville no money shall be borrowed, no bonds issued and no indebtedness incurred under this chapter except in accordance with the terms of its charter.

Code 1950, § 15-666.24; 1958, c. 640; 1962, c. 623, § 15.1-181; 1970, c. 209; 1991, c. 668, § 15.1-227.38; 1997, c. 587.

§15.2-2638. Powers of counties generally; approval of voters required.

A. Except as provided in subsection B of this section, no county has the power to contract any debt or to issue its bonds unless a majority of the voters of the county voting on the question at an election held in accordance with §§ [15.2-2610](#) and [15.2-2611](#) approve contracting the debt, borrowing the money and issuing the bonds.

B. Voter approval is not required for a county (i) to contract debt or to issue bonds described in Article VII, Section 10(a)(1) and (3) of the Constitution of Virginia, (ii) to issue refunding bonds, or (iii) to issue bonds, with the consent of the school board

and the governing body of the county, for capital projects for school purposes which are sold to the Literary Fund, the Virginia Retirement System, or other state agency prescribed by law.

Code 1950, § 15-666.28; 1958, c. 640; 1962, c. 623, § 15.1-185; 1971, Ex. Sess., c. 224; 1991, c. 668, § 15.1-227.39; 1997, c. 587.

§15.2-2639. County may elect to be treated as city for issuing bonds.

Any county may, upon approval by the affirmative vote of the voters of the county voting in an election on the question, elect to be treated as a city for the purpose of incurring debt and issuing bonds under this chapter. If a county so elects, it will thereafter be subject to all of the benefits and limitations of Article VII, Section 10 (a) of the Constitution of Virginia and all provisions of this chapter relating to bonded indebtedness applicable to municipalities, but in determining the debt limitation for such county under § [15.2-2634](#) there shall be included, unless otherwise excluded under Article VII, Section 10 (a) of the Constitution of Virginia, indebtedness of any town or district in that county empowered to levy taxes on real estate.

1971, Ex. Sess., c. 224, § 15.1-185.1; 1991, c. 668, § 15.1-227.40; 1997, c. 587.

§15.2-2640. Resolution for bond issue; contents; request for bonds for school purposes.

Whenever the governing body of any county determines that it is advisable to contract a debt and issue general obligation bonds of the county, it shall adopt an ordinance or resolution setting forth in brief and general terms the purpose or purposes for which the bonds are to be issued and the maximum amount of the bonds to be issued.

Where voter approval is required or permitted by the Constitution of Virginia or this chapter, the ordinance or resolution shall request the circuit court to order an election to be held pursuant to §§ [15.2-2610](#) and [15.2-2611](#) on the question of contracting the debt and issuing the proposed bonds.

Before the adoption of an ordinance or resolution by the governing body of any county requesting the ordering of an election on the question of contracting a debt and issuing bonds for school purposes, or, if no referendum is required, adopting an ordinance or resolution authorizing the issuance of bonds for school purposes, the school board of the county must first request, by resolution, the governing body of the county to take such action.

If voter approval is not required by the Constitution of Virginia or the provisions of this chapter, the governing body of the county has all the powers granted by this chapter to the governing bodies of municipalities with respect to incurring debt and issuing bonds.

Code 1950, § 15-666.29; 1958, c. 640; 1960, c. 563; 1962, c. 623, § 15.1-186; 1971, Ex. Sess., c. 224; 1980, c. 559; 1989, c. 177; 1991, c. 668, § 15.1-227.41; 1997, c. 587.

§15.2-2641. Subsequent resolutions.

If the question of contracting a debt, borrowing money and issuing bonds for the purpose or purposes set forth in the ordinance or resolution is approved at the election called and held for such purpose, the governing body of the county, subsequent to the recording of the results of the election, may, by ordinance or resolution, at one time or from time to time, authorize the issuance of bonds. A copy of each ordinance or resolution authorizing the issuance of bonds, certified by the clerk of the governing body of the county, shall be filed with the clerk of the circuit court for the county.

Code 1950, § 15-666.32; 1958, c. 640; 1962, c. 623, § 15.1-189; 1980, c. 559; 1991, c. 668, § 15.1-227.42; 1997, c. 587.

§15.2-2642. School district bonds.

The governing body of any county, acting for and on behalf of any school district in the county, or acting for and on behalf of two or more school districts jointly, may provide for the issuance of general obligation bonds of the school district or districts for school purposes. Where voter approval is required by the Constitution of Virginia or the provisions of this chapter, the bonds shall not be issued unless a majority of the voters of the district voting in the election held pursuant to §§ [15.2-2610](#) and [15.2-2611](#) on the question in the district, or in each of the districts separately, approve the contracting of the debt and the issuing of the bonds. The bonds of two or more school districts shall be issued as joint obligations of such school districts. Any school district, or any school districts jointly, shall constitute a locality. For the purpose of this section, each magisterial district in each county shall constitute a school district, but any such school district shall not include a town constituting a separate school district. In any county where an incorporated town constitutes both a school district and an entire magisterial district, the remaining magisterial districts shall, upon the adoption of resolutions by the governing body and the school board, constitute a single school district which may thereafter issue general obligation bonds for

school purposes after approval by a majority of all the voters of the district voting in an election on the question. The issuance of the bonds shall be governed by the provisions of this chapter.

Code 1950, § 15-666.32:1; 1958, c. 640; 1962, cc. 76, 623, § 15.1-190; 1964, c. 133; 1968, c. 611; 1971, Ex. Sess., c. 224; 1991, c. 668, § 15.1-227.43; 1997, c. 587.

§15.2-2643. Authority for issuance; resolutions or ordinances.

The governing body of any locality is authorized to provide by resolution or ordinance for the issuance of bonds of the locality for the purpose of refunding any or all bonds of the locality now or hereafter outstanding, other than obligations issued in anticipation of the collection of the revenue of the locality for the then current year, and for the purpose of paying the cost of issuing the refunding bonds, whether the locality created the indebtedness or assumed or became liable for it and whether or not the indebtedness to be refunded has matured or is then subject to redemption.

This article shall without reference to any other sections of the Code or acts of the General Assembly be full authority for the issuance, sale, or exchange of bonds authorized under it, and no order, resolution or proceeding in respect of the issuance of the bonds shall be necessary except as required by this article. No approval of the authorization, sale, or exchange of bonds under this article shall be required by any official, court, board, or body and no publication of any notice, order, resolution, or proceeding relating to the issuance of refunding bonds shall be necessary, except as expressly required in this article. The authorization and issuance of refunding bonds shall not be subject to referendum.

Code 1950, § 15-666.33; 1958, c. 640; 1962, c. 623, § 15.1-192; 1977, c. 442; 1991, c. 668, § 15.1-227.44; 1997, c. 587.

§15.2-2644. Issuance or exchange for indebtedness to be retired; sale and disposition of proceeds; rights of owners.

Any refunding bonds may be issued or exchanged for the indebtedness to be retired by them, including indebtedness not matured, redeemable or surrendered for retirement. Unless so exchanged, any locality may sell refunding bonds authorized under the provisions of this article in such manner, either at public or private sale, and for such price as the governing body of the locality may determine. The proceeds of any refunding bonds may be applied to (i) the payment of matured or redeemable indebtedness, including any redemption premium, (ii) the payment of unmatured indebtedness the evidences of which are on deposit with a bank or trust company

designated by the locality for surrender to the locality upon receipt of payment in an amount not exceeding the amount of the indebtedness, or (iii) the establishment of an escrow or sinking fund consisting of cash and noncallable obligations of, or unconditionally guaranteed by, the United States of America or noncallable obligations of, or unconditionally guaranteed by, the Commonwealth in an amount which together with interest to be earned on such obligations shall be sufficient to pay all indebtedness to be refunded either at maturity or upon redemption as provided for upon the creation of the escrow or sinking fund. Any escrow or sinking fund established, in whole or in part, from the proceeds of the sale of refunding bonds shall be irrevocably pledged to the payment of the indebtedness to be refunded and shall be used solely to pay the indebtedness at maturity or upon redemption or for the purchase of not less than all of the indebtedness to be refunded. It is the intent that any escrow or sinking fund established pursuant to this section shall constitute a special fund for the payment of the refunded indebtedness and that the refunded indebtedness shall not be included for the purpose of determining any limitation upon the amount of indebtedness of the locality which is imposed by law.

The owners of any outstanding indebtedness to be refunded shall be divested of all rights and security relating to the indebtedness, except the right to payment when due of principal, premium, if any, and interest, which shall be paid solely from the escrow or sinking fund; provided that, in the case of debt issued before March 27, 1977, the governing body of the locality may provide that if the escrow or sinking fund is in any respect insufficient to make payment of principal, premium, if any, and interest, the original rights and security relating to the indebtedness shall be restored to the extent necessary to provide full payment.

Code 1950, § 15-666.34; 1958, c. 640; 1962, c. 623, § 15.1-193; 1977, c. 442; 1985, c. 196; 1991, c. 668, § 15.1-227.45; 1994, c. [714](#); 1997, c. 587.

§15.2-2645. Amount of bonds.

No refunding bonds shall be issued in a principal amount exceeding that necessary to amortize the principal of and premium, if any, and interest on the bonds to be refunded and pay all expenses reasonably incurred in the issuance of the refunding bonds less the amount then in any sinking, escrow and other funds which are available for the payment of the principal, premium, if any, or interest on the bonds to be refunded.

Code 1950, § 15-666.35; 1958, c. 640; 1962, c. 623, § 15.1-194; 1977, c. 442; 1991, c. 668, § 15.1-227.47; 1997, c. 587.

§15.2-2646. Participation in funds donated by the Commonwealth.

The issuance of refunding bonds for the retirement of bonds which are now or may hereafter be entitled to participate in funds donated by the Commonwealth, or funds receivable from any source other than local taxes levied for such purposes, shall not be construed to deprive the bonds of the right to continue to participate in the distribution of those funds, and the refunding bonds after their issuance shall enjoy all rights as would have been enjoyed by the bonds refunded.

Code 1950, § 15-666.36; 1958, c. 640; 1962, c. 623, § 15.1-195; 1991, c. 668, § 15.1-227.48; 1997, c. 587.

§15.2-2647. Expenses of authorization and issuance; agent to assist in refunding transaction.

The governing body may authorize the payment by any locality of all expenses reasonably incurred by it in connection with the authorization and issuance of refunding bonds. The governing body may appoint or retain an agent for the purpose of assisting it in the refunding transaction and in obtaining the surrender of its outstanding bonds and may pay a fee to the agent as it may consider proper.

Code 1950, § 15-666.37; 1958, c. 640; 1962, c. 623, § 15.1-196; 1991, c. 668, § 15.1-227.49; 1997, c. 587.

§15.2-2648. Purchase in open market.

Provision may be made in the proceedings authorizing refunding bonds for the purchase of the refunded bonds in the open market or pursuant to tenders made from time to time when there is available in the escrow or sinking fund for the payment of the refunded bonds a surplus in an amount or amounts to be fixed in such proceedings.

Code 1950, § 15-666.38; 1958, c. 640; 1962, c. 623, § 15.1-197; 1991, c. 668, § 15.1-227.50; 1997, c. 587.

§15.2-2649. District refunding bonds.

The governing body of any county, acting for and in behalf of any road district, magisterial district, sanitary district, or school district in the county, may provide for the issuance of refunding bonds of the district for the purpose of refunding any bonds of

the district. The issuance of the refunding bonds shall be governed by the provisions of this chapter insofar as they may be applicable.

Code 1950, § 15-666.39; 1958, c. 640; 1962, c. 623, § 15.1-198; 1991, c. 668, § 15.1-227.51; 1997, c. 587.

§15.2-2650. Article controlling as to proceedings involving validity.

The provisions of this article apply to all suits, actions and proceedings of whatever nature involving the validity of bonds of any locality or other political subdivision, agency or instrumentality of the Commonwealth or of any locality, whether the bonds are to be issued following an election on the question of their issuance or without necessity of an election. These provisions supersede all other acts and statutes on the subject and are controlling in all cases, notwithstanding the provisions of any other law or charter to the contrary.

Code 1950, § 15-666.54; 1958, c. 640; 1962, c. 623, § 15.1-213; 1991, c. 668, § 15.1-227.52; 1997, c. 587; 2003, c. [570](#).

§15.2-2651. Proceeding by political subdivision to establish validity; procedure; parties defendant.

The governing body of any locality or other political subdivision, agency or instrumentality of the Commonwealth or of any locality proposing to issue bonds may bring at any time a proceeding in any court of the county or city having general jurisdiction and in which the issuer is located to establish the validity of the bonds, the legality of all proceedings taken in connection with the authorization or issuance of the bonds, the validity of the tax or other means provided for the payment of the bonds, and the validity of all pledges of revenues and of all covenants and provisions which constitute a part of the contract between the issuer and the owners of the bonds. The proceeding shall be brought by filing a motion for judgment describing the bonds and the proceedings taken in connection with their issuance and alleging that the bonds when issued shall be valid and legal obligations of the issuer. In the motion for judgment the taxpayers, property owners and citizens of the jurisdiction where the issuer is located, including nonresidents owning property in or subject to taxation by it, and all other persons interested in or affected in any way by the issuance of the bonds shall be made parties defendant.

Code 1950, § 15-666.55; 1958, c. 640; 1962, c. 623, § 15.1-214; 1991, c. 668, § 15.1-227.53; 1997, c. 587; 2003, c. [570](#).

§15.2-2652. Service by publication of motion for judgment; parties defendant.

Upon the filing of the motion for judgment the court shall fix the time and place for hearing the proceeding and shall enter an order requiring the publication of the motion for judgment or a summary of it approved by the court, together with the order setting forth the time and place of the hearing, once a week for two consecutive weeks in a newspaper published or having general circulation in the jurisdiction where the issuer is located. The date fixed for the hearing shall not be sooner than ten days after the date the second publication of the motion for judgment or summary and the order appears in the newspaper.

By the publication of the motion for judgment or summary and the order, all taxpayers, property owners and citizens of the jurisdiction where the issuer is located, including nonresidents owning property in or subject to taxation by it, and all other persons having or claiming any right, title or interest in any property or funds affected in any way by the issuance of the bonds, or having or claiming to have any right or interest in the subject matter of the motion for judgment, shall be considered parties defendant in the proceedings, and the court shall have jurisdiction of them the same as if each of them were named individually as a defendant in the motion for judgment and personally served with process.

Code 1950, § 15-666.56; 1958, c. 640; 1962, c. 623, § 15.1-215; 1991, c. 668, § 15.1-227.54; 1997, c. 587.

§15.2-2653. Contesting issuance of bonds; notice and hearing; service on member of governing body, etc.

Any person, corporation, or association desiring to contest the issuance of any bonds pursuant to the provisions of this chapter, or any other law, general or special, shall proceed by filing a motion for judgment within thirty days after the filing of the resolution or ordinance authorizing the issuance of the bonds with the circuit court having jurisdiction over the issuer, or in contesting the validity of a petition for or the results of a referendum, within thirty days after the date that the result of the election for the issuance of the bonds is certified, in the court having jurisdiction as provided in § [15.2-2651](#). For bonds which are not authorized pursuant to a referendum, or for which the authorizing resolution or ordinance is not required to be filed with the circuit court, the contestant shall proceed by filing a motion for judgment within thirty days after the adoption of the authorizing resolution or ordinance. Upon the filing of a motion for judgment, the court shall fix a time and place for hearing the proceeding and shall enter an order requiring the publication of the motion

for judgment or a summary of it approved by the court, together with the order setting forth the time and place of the hearing, once a week for two consecutive weeks in a newspaper published or having general circulation in the jurisdiction where the issuer is located. The date fixed for the hearing shall not be sooner than ten days after the date the second publication of the motion for judgment or summary and the order appears in the newspaper. In addition to such publication, the plaintiff shall secure personal service on at least one member of the governing body of the issuer.

Code 1950, § 15-666.57; 1958, c. 640; 1962, c. 623, § 15.1-216; 1979, c. 184; 1991, c. 668, § 15.1-227.55; 1994, c. [714](#); 1997, c. 587.

§15.2-2654. Reply by party defendant; intervention by interested parties; determination of questions; orders; precedence over other business.

Any party defendant may reply to the motion for judgment within ten days after its second publication as required by §§ [15.2-2652](#) and [15.2-2653](#) but not thereafter.

Any property owner, taxpayer, citizen or other person in interest may become a party to the proceedings by pleading to the motion for judgment on or before the time set for hearing as provided by § [15.2-2652](#) or § [15.2-2653](#), or such earlier time as may be specified in the order of the court, or thereafter by intervention upon leave of the court. At the time and place designated in the order for the hearing as provided for in § [15.2-2652](#) or § [15.2-2653](#), the judge shall proceed to hear and determine all questions of law and fact in the proceeding and may make such orders as to the proceeding and such adjournments as will enable the judge properly to try and determine the proceeding and to render a final decree with the least possible delay. The proceeding shall take precedence over all other business of the court.

Code 1950, § 15-666.58; 1958, c. 640; 1962, c. 623, § 15.1-217; 1991, c. 668, § 15.1-227.56; 1997, c. 587.

§15.2-2655. Consolidation of actions or proceedings.

Upon motion of the plaintiff or the issuer, the court in which the first proceeding to invalidate or sustain the bonds was instituted may enjoin the commencement by any person, corporation, or association of any other action or proceeding involving the validity of the bonds or any matter recited in the motion for judgment. The court may order a joint hearing before it of all issues then pending in any actions or proceedings in any court in the Commonwealth, may order all such actions or proceedings consolidated with the validation proceeding pending before it, and may

make such orders as may be necessary or proper to effect consolidation and as may tend to avoid unnecessary costs or delays. Such orders shall not be appealable.

Code 1950, § 15-666.59; 1958, c. 640; 1962, c. 623, § 15.1-218; 1991, c. 668, § 15.1-227.57; 1997, c. 587.

§15.2-2656. Appeals.

An appeal from the final judgment of the circuit court in a bond validation proceeding may be taken to the Supreme Court of Virginia. No appeal shall be allowed unless a notice of appeal is filed in the circuit court within 15 days after the date on which the final judgment of the court is entered and unless the appealing party's petition for appeal is filed with the Supreme Court of Virginia within 30 days after the date on which the final judgment of the court is entered. When a notice of appeal is timely and properly filed with the clerk of the circuit court, the clerk shall certify and transmit the record to the Clerk of the Supreme Court of Virginia within 30 days after the date on which the final judgment of the circuit court is entered. Failure of the clerk to comply with this requirement shall not affect the jurisdiction of the Supreme Court of Virginia to consider the appeal. If the Supreme Court of Virginia grants the petition for appeal, it shall be placed on the privileged docket.

Code 1950, § 15-666.60; 1958, c. 640; 1962, c. 623, § 15.1-219; 1991, c. 668, § 15.1-227.58; 1997, c. 587; 2003, c. [679](#).

§15.2-2657. Decree validating bonds binding and conclusive.

In the event the decree of the court validates the bonds and no appeal is taken within the time prescribed in § [15.2-2656](#), or if an appeal is taken and the decree of the court is affirmed, the decree shall be forever binding and conclusive as to the validity of the bonds, the validity of the tax or other means provided for the payment of the bonds, and the validity of all pledges of revenues and of all covenants and provisions contained in any ordinance, resolution, trust agreement, indenture, or other instrument authorizing or providing for the issuance of the bonds, the legality of proceedings taken in connection with the issuance of the bonds, and all matters adjudicated and all objections presented or which might have been presented in the proceeding, and shall constitute a permanent injunction against the institution by any person of any action or proceeding contesting the validity of the bonds or any other matter adjudicated or which might have been called in question in such proceedings.

Code 1950, § 15-666.61; 1958, c. 640; 1962, c. 623, § 15.1-220; 1991, c. 668, § 15.1-227.59; 1997, c. 587.

§15.2-2658. Bonds invalidated only for substantial defects, etc.; matters of form disregarded.

No court in which a proceeding to invalidate or sustain bonds is brought shall invalidate the bonds unless it finds substantial defects, material errors, and omissions in the bond issue. Matters of form shall be disregarded.

Code 1950, § 15-666.62; 1958, c. 640; 1962, c. 623, § 15.1-221; 1991, c. 668, § 15.1-227.60; 1997, c. 587.

§15.2-2659. Investigation by Governor of alleged defaults; withholding state funds from defaulting locality; payment of funds withheld; receipts, reports, etc.; magisterial and school district defaults included.

Whenever it appears to the Governor from an affidavit filed with him by or on behalf of the owner or owners of any general obligation bonds of any locality, or by any paying agent for the bonds that the locality has defaulted in the payment of the principal of or premium, if any, or interest on any of its outstanding general obligation bonds, the Governor shall immediately make a summary investigation into the facts set forth in the affidavit.

If it is established to the satisfaction of the Governor that the locality is in default in the payment of its bonds or the interest on them, the Governor shall immediately make an order directing the Comptroller to withhold all further payment to the locality of all funds, or of any part of them, appropriated and payable by the Commonwealth to the locality for any and all purposes, until the default is cured. The Governor shall, while the default continues, direct in writing the payment of all sums withheld by the Comptroller, or as much of them as is necessary, to the owners of the bonds in default, or the paying agent for the bonds, so as to cure, or cure insofar as possible, the default as to the bonds or interest on them.

The Governor shall, as soon as practicable, give notice of the default and of the availability of funds with the paying agent or with the Comptroller by publication one time in a daily newspaper of general circulation in the City of Richmond and in the case of registered bonds, by mail, to the registered owners of the bonds. The cost of the publication and mailing shall be a further charge against the funds in the hands of the Comptroller payable to the locality. Any payment so made by the Comptroller to the owners of the bonds in default, or to the paying agent for the bonds, shall be

credited as if made directly by the locality and shall be charged by the Comptroller against the first appropriations otherwise payable to the locality as if paid to the locality. The owners of the bonds in default, or the paying agent for the bonds, at the time of payment or at the time of each payment shall receipt for the payment and deliver to the Comptroller all bonds and interest coupons or assignments, in a form satisfactory to the Comptroller, of the right to receive the principal or interest satisfied by the payment. The Comptroller shall report each payment made to the governing body of the defaulting locality and deliver or send by registered mail to the governing body all bonds, interest coupons, and assignments received by the Comptroller under the provisions of this section.

If there is no paying agent for the bonds, the Comptroller shall hold for the benefit of the owners of the bonds in default who do not present their bonds, coupons or assignments for payment their pro rata share of the amounts so withheld and shall pay their share of such amounts when the bonds, coupons or assignments are presented.

For the purpose of this section, bonds of any magisterial district or school district of any county shall be treated as bonds of the county in which the magisterial district or school district is located.

Nothing in this section shall be construed to create any obligation on the part of the Comptroller or the Commonwealth to make any payment on behalf of the defaulting locality other than from funds appropriated and payable to the defaulting locality.

Code 1950, § 15-666.66; 1958, c. 640; 1962, c. 623, § 15.1-225; 1964, c. 46; 1971, Ex. Sess., c. 224; 1988, c. 210; 1991, c. 668, § 15.1-227.61; 1997, c. 587.

§15.2-2660. Bonds not affected by project undertaken.

The authorization and issuance of the bonds under this chapter shall not be dependent on or affected in any way by proceedings taken, contracts made, or acts performed or done in connection with, or in furtherance of, the project undertaken by the locality authorizing and issuing the bonds.

Code 1950, § 15-666.67; 1958, c. 640; 1962, c. 623, § 15.1-226; 1991, c. 668, § 15.1-227.62; 1997, c. 587.

§15.2-2661. Provisions of chapter controlling; powers conferred are additional.

Insofar as the provisions of this chapter are inconsistent with the provisions of any law, the provisions of this chapter shall be controlling. The powers conferred by this

chapter are in addition to the powers conferred by any other law. Bonds may be issued under this chapter for any permitted purpose notwithstanding that any other law may provide for the issuance of bonds for like purposes and without regard to the requirements, restrictions or other provisions contained in any other law. Bonds may be issued under this chapter notwithstanding any debt or other limitation prescribed by any other law. The mode and method of procedure for the issuance of bonds under this chapter need not conform to the provisions of any other law.

Bonds may be issued under the provisions of this chapter without obtaining the consent of any commission, board, bureau or agency of the Commonwealth, and without any other proceeding or the happening of any other condition or thing except those proceedings, conditions or things which are specifically required by this chapter.

Notwithstanding anything in this section to the contrary, any referendum requirement for the issuance of bonds or debt limitation contained in any charter or local or special act shall control over the provisions of this chapter after July 1, 1992.

Code 1950, § 15-666.68; 1958, c. 640; 1962, c. 623, § 15.1-227; 1991, c. 668, § 15.1-227.63; 1997, c. 587.

§15.2-2662. Validation of bonds.

All proceedings taken before July 1, 1991, for or with respect to the authorization, issuance, sale, execution or delivery of bonds by or on behalf of any locality are validated, ratified, approved and confirmed, and any bonds so issued are valid, legal, binding and enforceable obligations of the locality.

All proceedings taken before July 1, 1992, for or with respect to the authorization, issuance, sale, execution or delivery of bonds by or on behalf of any locality are validated, ratified, approved and confirmed, and any bonds so issued, are valid, legal, binding and enforceable obligations of the locality.

1991, c. 668, §§ 15.1-227.64; 1994, c. [714](#); 1997, c. 587.

§15.2-2663. Transition.

If any proceedings with respect to the authorization, issuance, sale, execution or delivery of bonds have been commenced before July 1, 1991, the bonds may, at the election of the governing body of the locality issuing the bonds, be issued under the provisions of this chapter or under the provisions of law in effect immediately before July 1, 1991.

1991, c. 668, § 15.1-227.65; 1997, c. 587.

Public Recreational Facilities Authorities Act

§15.2-5600. Short title.

This chapter shall be known and may be cited as the "Public Recreational Facilities Authorities Act."

Code 1950, § 15-714.13; 1962, c. 393, § 1, § 15.1-1271; 1997, c. 587.

§15.2-5601. Definitions.

As used in this chapter, the following words and terms shall mean, unless the context indicates otherwise:

"Authority" means an authority created under the provisions of § [15.2-5602](#) or, if any such authority shall be abolished the entity succeeding to the principal functions thereof.

"Bonds" or "revenue bonds" means bonds, notes, certificates or other evidences of borrowing.

"Cost" means, as applied to any project, all or any part of the cost of acquisition, construction, alteration, enlargement, reconstruction and remodeling of a project or portion thereof, including the cost of the acquisition of all land, rights-of-way, property, rights, easements and interests acquired by the authority for such construction, additions or expansion, the cost of demolishing or removing any building or structure on land so acquired, including the cost of acquiring any lands to which such building or structures may be removed, the cost of all labor, materials, machinery and equipment, financing charges, insurance, interest on all bonds prior to and during such construction, and during the construction of any addition or expansion, and if deemed advisable by the authority, for a period not exceeding one year after completion of such construction, addition or expansion, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, provisions for working capital, the cost of surveys, engineering and architectural expenses, borings, plans and specifications and other engineering and architectural services, legal expenses, studies, estimates of cost and revenues, administrative expenses and such other expenses as may be necessary or incident to the

construction of the project, and of such subsequent additions thereto or expansion thereof, the cost of financing such construction, additions or expansion and placing the project and such additions or expansion in operation.

"Federal agency" means the United States of America and any department, bureau, agency or instrumentality thereof.

"Project" or "projects" means any one or more of the following: auditorium, theater, concert or entertainment hall, coliseum, convention center, arena, field house, stadium, fairground, campground, land conservation project, including but not limited to the holding of conservation easements, sports facilities, including racetracks, amusement park or center, garden, park, zoo and museum, as such terms are generally used, and parking, transportation, utility and restaurant facilities and concessions in connection with any of the foregoing, including any and all buildings, structures, approaches, roadways, and other facilities and appurtenances thereto which the authority may deem necessary or desirable, together with all property, rights, easements and interests which may be acquired by the authority for the construction, improvement and operation of any of the foregoing. The transportation facilities hereinabove mentioned may be principally for the use and benefit of the inhabitants of the locality creating the authority so long as they are incidentally related to the acquisition and construction of any of the foregoing and may be financed contemporaneously with, prior to or subsequent to the acquisition and construction of any of the foregoing.

Code 1950, § 15-714.14; 1962, c. 393, § 2, § 15.1-1272; 1973, c. 238; 1974, c. 132; 1986, c. 442; 1997, c. 587; 1999, cc. [502](#), [528](#).

§15.2-5602. Creation of authorities.

A. A locality may by ordinance or resolution, or two or more localities, may by concurrent ordinances or resolutions, signify their intention to create an authority under an appropriate name and title containing the word "authority." Each participating locality shall hold a public hearing, notice of which shall be given by publication at least once, not less than ten days prior to the date fixed for the hearing, in a newspaper having general circulation in the locality. The notice shall contain a brief statement of the substance of the proposed authority, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing. The locality, by resolution, may call for a referendum on the question of the creation of an authority, which shall be held as provided by § [24.2-681](#) et seq. When a

referendum is to be held in more than one locality, the referendum shall be held on the same date in all of such localities.

B. The articles of incorporation shall set forth:

1. The name of the authority and address of its principal office.
2. A statement that the authority is created under this chapter.
3. The name of each participating locality.
4. The names, addresses and terms of office of the first members of the authority.
5. The purpose or purposes for which the authority is to be created.

C. Passage of such ordinance or resolution by the governing body or governing bodies shall constitute the authority a body politic and corporate of the Commonwealth.

D. Any locality may become a member of an existing authority, and any locality which is a member of an existing authority may withdraw therefrom, but no locality shall be permitted to withdraw from any authority that has outstanding obligations unless United States securities have been deposited for their payment or without the unanimous consent of all holders of the outstanding obligations.

E. Having specified the initial purpose or purposes of the authority in the articles of incorporation, the governing bodies of the participating localities may, from time to time by subsequent ordinance or resolution, after public hearing, modify the articles of incorporation and the purpose or purposes specified therein. Such modification may be made either with or without a referendum.

Code 1950, § 15-714.15; 1962, c. 393, § 3, § 15.1-1273; 1975, c. 517; 1996, c. [1021](#); 1997, c. 587.

§15.2-5603. Board to exercise powers of authority.

The powers of each authority created hereunder shall be exercised by a board which shall consist of not less than five nor more than seventeen members who shall be appointed by the participating localities and who shall be selected in the manner and for the terms provided by the ordinance or resolution creating the authority. Officers and employees of the participating localities may be appointed to the board and may constitute a majority of the members of the board. The members of the board shall elect one of their number chairman and shall elect a secretary and treasurer who need not be members of the board. The offices of secretary and treasurer may be combined. A majority of the members of the board shall constitute a quorum and the

vote of a majority of such members shall be necessary for any action taken by the authority. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. The members of the board shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. The localities may provide for compensation of the members of the board; provided no compensation shall be paid for meetings not attended.

Alternate members of the board may also be selected. Such alternates shall be selected in the same manner as the members. The term of each alternate shall be the same as the term of the member for whom each serves as an alternate; however, the alternate's term shall not expire because of the member's death, disqualification, resignation or termination of employment with the member's locality. If a member is not present at a meeting of the authority, the alternate for the member shall have all the voting and other rights of a member and shall be counted for purposes of determining a quorum at any meeting of the authority.

Code 1950, § 15-714.16; 1962, c. 393, § 4, § 15.1-1274; 1974, c. 132; 1986, c. 442; 1995, c. [626](#); 1996, c. [1021](#); 1997, c. 587.

§15.2-5604. Powers of authority generally.

Each authority created hereunder shall be a political subdivision of the Commonwealth Virginia and shall be an instrumentality exercising public and essential governmental functions to provide for the public health and welfare. Each authority is authorized and empowered:

1. To have existence for such term of years as specified by the participating localities;
2. To contract and be contracted with; to sue and be sued; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with general law to carry out its purposes; and to adopt a corporate seal and alter the same at its pleasure;
3. To acquire, purchase, lease as lessee, construct, reconstruct, improve, extend, operate and maintain projects within or outside any of the participating localities; and to acquire by gift or purchase lands or rights in land in connection therewith and to sell, lease as lessor, transfer or dispose of any property or interest therein acquired by it, at any time;

4. To lease all or any part of any project upon any such terms or conditions and for such term of years as it may deem advisable to carry out the provisions of this chapter;
5. To regulate the uses of all lands and facilities under control of the authority;
6. To fix and revise from time to time and to charge and collect fees, rents and other charges for the use of any project or facilities thereof owned or controlled, and to establish and revise from time to time regulations in respect of the use, operation and occupancy of any such project or facilities thereof;
7. To enter into contracts with any participating locality, the Commonwealth, or any other political subdivision, agency or instrumentality thereof, any federal agency or with any person providing for or relating to any project, including contracts for the management or operation of all or any part of a project;
8. To accept grants and gifts from any participating locality, the Commonwealth or any other political subdivision, agency or instrumentality thereof, any federal agency and from any person;
9. To issue bonds and refunding bonds of the authority, such bonds to be payable solely from funds of the authority; and from such other sources of payment as are authorized by § [15.2-5607](#);
10. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including a trust agreement or trust agreements securing any bonds or refunding bonds issued hereunder; and
11. To do all acts and things necessary or convenient to carry out the powers granted by this chapter.

Code 1950, § 15-714.17; 1962, c. 393, § 5, § 15.1-1275; 1973, c. 238; 1986, c. 442; 1997, c. 587.

§15.2-5605. Transfers of property, appropriations and contracts by participating localities.

Each participating locality is authorized and empowered:

1. To transfer jurisdiction over, to lease, lend, grant or convey to the authority at its request, with or without consideration, such real or personal property as may be necessary or desirable to carry out the purposes of the authority, upon such terms

and conditions as such participating locality shall determine to be for its best interests;

2. To make appropriations and to provide funds for any purpose of the authority, including the acquisition, construction, improvement and operation of any project or facilities thereof and payment of principal and interest on its indebtedness;

3. To enter into contracts agreeing to carry out any of the provisions set forth in subdivisions 1 or 2, providing for the operation and maintenance of all or any part of a project or otherwise facilitating the construction, development, operation or financing of all or any part of a project; and

4. To enter into leases with the authority pursuant to which a project or any part thereof is leased to the locality. The lease may be for a term ending not later than the end of the then current fiscal year of the locality and renewable for additional terms of one fiscal year each or as may be agreed upon by the parties provided that the total of the original term and any renewals shall in no event exceed fifty years. Each renewal shall be at the option of such locality and the lease may provide that it is renewed for an additional term if the locality fails to cancel the lease in writing on or prior to sixty days before the end of the then current term. Rentals under such lease may be computed at fixed amounts or by a formula based on any factors provided therein and the rentals payable may include provision for all or any part of or a share of the amounts necessary (i) to pay or provide for the expenses of operation and maintenance of a project, (ii) to provide for the payment of principal and interest on any bonds of the authority, and (iii) to maintain such reserves or sinking funds as may be required by the terms of any contract of the authority or as may be deemed necessary or desirable by the authority. Such payments shall be payable only from revenues of the locality available during the fiscal year during which the lease is in effect. Notwithstanding the provisions of § [15.2-5606](#) or any other provision hereof the authority or the locality leasing the project may contract with a person as sublessee or operator of the project at a compensation to be agreed upon by the parties.

Code 1950, § 15-714.18; 1962, c. 393, § 6, § 15.1-1276; 1973, c. 238; 1975, c. 109; 1997, c. 587.

§15.2-5606. Acquisition, maintenance and operation of projects; revenues from projects.

The authority may acquire or construct and maintain and operate any one or more projects under this chapter in such manner as the authority may determine, and the

authority may operate each project separately or it may operate one or more projects together. The authority shall have exclusive control over the revenues derived from its operations and may use revenues from one project in connection with any other project. No person shall receive any profit or dividend from the revenues, earnings or other funds or assets of the authority other than for debts contracted, for services rendered, for materials and supplies furnished and for other value actually received by the authority.

Code 1950, § 15-714.19; 1962, c. 393, § 7, § 15.1-1277; 1997, c. 587.

§15.2-5607. Authority to issue bonds; source of payment.

The authority is authorized to issue bonds from time to time in its discretion for the purpose of paying all or any part of the cost of acquiring, purchasing, constructing, reconstructing, improving or extending any project and acquiring necessary land and equipment therefor. The authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds payable as to principal and interest: (i) from its revenues generally; (ii) exclusively from the income and revenues of a particular project; or (iii) exclusively from the income and revenues of certain designated projects, whether or not they are financed in whole or in part from the proceeds of such bonds.

Any such bonds may be additionally secured by a pledge of any grant or contribution from a participating locality, the Commonwealth or any political subdivision, agency or instrumentality thereof, any federal agency or any unit, private corporation, copartnership, association, or individual, or a pledge of any income or revenues of the authority, or a mortgage on any project or other property of the authority, or any contract obligation or undertaking, whether in the nature of a guaranty or otherwise, of any participating locality. However, any such contract obligation or undertaking by any participating locality which is a city or town shall not be considered an indebtedness within the meaning of any debt limitation or restriction and that any such contract obligation or undertaking by a participating locality which is a county shall be authorized in accordance with the provisions of Article VII, Section 10 (b) of the Constitution of Virginia.

Neither the members of the board of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of the Commonwealth or any political

subdivision thereof other than the participating localities which have entered into contract obligations or other undertakings with respect to the repayment thereof as authorized in the preceding paragraph, and neither the Commonwealth nor any political subdivision thereof other than the authority and, to the extent provided in the preceding paragraph, participating localities, shall be liable thereon, nor shall such bonds or obligations be payable out of any funds or properties other than those of the authority and those created by contract obligations or undertakings of any participating localities entered into pursuant to the preceding paragraph. The bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction. Bonds of the authority are declared to be issued for an essential public and governmental purpose.

Code 1950, § 15-714.20; 1962, c. 393, § 8, § 15.1-1278; 1986, c. 442; 1997, c. 587.

§15.2-5608. Bond resolution; terms, conditions, form and execution of bonds; sale; interim receipts or temporary bonds.

Bonds of the authority shall be authorized by resolution of the board and may be issued in one or more series, shall be dated, shall mature at such time or times not exceeding forty years from their date or dates and shall bear interest at such rate or rates, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or outside the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before delivery of such bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this chapter or any recitals in any bonds issued under the provisions of this chapter, all such bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth. The bonds may be issued in coupon or registered form or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The authority may

sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the authority.

Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

Bonds may be issued under the provisions of this chapter without obtaining the consent of any commission, board, bureau or agency of the Commonwealth or of any political subdivision thereof, and without any other proceedings or the happening of other conditions or things than those proceedings, conditions or things which are specifically required by this chapter.

Code 1950, § 15-714.21; 1962, c. 393, § 9, § 15.1-1279; 1973, c. 238; 1997, c. 587.

§15.2-5609. Trust indenture or agreement to secure payment of bonds.

In the discretion of the authority, any bonds issued under the provisions of this chapter may be secured by a trust indenture by way of conveyance, deed of trust or mortgage of any project or any other property of the authority, whether or not financed in whole or in part from the proceeds of such bonds, or by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside the Commonwealth or by both such conveyance, deed of trust or mortgage and indenture or trust agreement. Such trust indenture or agreement, or the resolution providing for the issuance of such bonds may pledge or assign fees, rents, charges and receipts, collected by, payable to or otherwise derived by the authority, and all other moneys and income of whatever kind or character collected by, payable to or otherwise derived from any project. Such trust indenture or agreement, or resolution providing for the issuance of such bonds, may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and issuance of any project or other property of the authority, and the rates of fees, rents and other charges to be charged, and the custody, safeguarding and application of all moneys of the authority, and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any bank or trust

company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of such bonds or of other revenues of the authority to furnish indemnifying bonds or to pledge such securities as may be required by the authority. Such trust indenture or agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders.

In addition to the foregoing, such trust indenture or agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust indenture or agreement or resolution may be treated as a part of the cost of a project.

Code 1950, § 15-714.22; 1962, c. 393, § 10, § 15.1-1280; 1973, c. 238; 1997, c. 587.

§15.2-5610. Fees, rents and other charges; reserves.

The authority is authorized to fix, revise, charge and collect fees, rents and other charges for the use of any project and the facilities thereof. The fees, rents and other charges shall be fixed and adjusted so as to provide funds, which when added to other funds, are sufficient to pay: (i) the cost of maintaining, repairing and operating the project and (ii) the principal and any interest on the bonds as the same shall become due and payable. Reserves may be accumulated and maintained out of the revenues and receipts of the authority for extraordinary repairs and expenses and for such other purposes as may be provided in any resolution authorizing a bond issue or in any trust indenture securing the authority's bonds. Such fees, rents and charges shall not be subject to supervision or regulation by any commission, board, bureau or agency of the Commonwealth or any participating locality.

Code 1950, § 15-714.23; 1962, c. 393, § 11, § 15.1-1281; 1973, c. 238; 1986, c. 442; 1997, c. 587.

§15.2-5611. Moneys received deemed trust funds.

All moneys received pursuant to the provisions of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter.

Code 1950, § 15-714.24; 1962, c. 393, § 12, § 15.1-1282; 1997, c. 587.

§15.2-5612. Remedies of bondholders and trustee.

Any holder of bonds, notes, certificates or other evidences of borrowing or any coupons appertaining thereto issued under the provisions of this chapter and the trustee under any trust indenture or agreement, except to the extent of the rights herein given may be restricted by such trust indenture, or agreement may protect and enforce their rights under (i) the laws of the Commonwealth; (ii) this chapter; (iii) the trust indenture or agreement; or (iv) the resolution authorizing the issuance of such bonds, notes or certificates. Such holder and trustee may enforce and compel the performance of all duties required by this chapter or by such trust indenture or agreement or resolution to be performed by the authority or by any officer or agent thereof, including the fixing, charging and collection of fees, rents and other charges.

Code 1950, § 15-714.25; 1962, c. 393, § 13, § 15.1-1283; 1997, c. 587.

§15.2-5613. Authority to exercise a governmental function; exemption from taxation.

The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the Commonwealth, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience and prosperity, and as the operation and maintenance of any project which the authority may undertake will constitute the performance of an essential governmental function, no authority shall be required to pay any taxes or assessments upon any project acquired and constructed by it under the provisions of this chapter. The bonds, notes, certificates or other evidences of debt issued under the provisions of this chapter, their transfer and the income therefrom including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any political subdivision thereof.

Code 1950, § 15-714.26; 1962, c. 393, § 14, § 15.1-1284; 1997, c. 587.

§15.2-5614. Bonds legal investments.

Bonds issued by the authority are securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are securities which legally may be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is, or may hereafter be, authorized by law.

Code 1950, § 15-714.27; 1962, c. 393, § 15, § 15.1-1285; 1997, c. 587.

§15.2-5615. Chapter to constitute complete authority for acts authorized; liberal construction.

This chapter shall constitute full and complete authority, without regard to the provisions of any other law, for the doing of the acts and things herein authorized. This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes hereof.

Code 1950, § 15-714.28; 1962, c. 393, § 16, § 15.1-1286; 1973, c. 238; 1997, c. 587; 2015, c. [709](#).

§15.2-5616. Dissolution of authority; disposition of property.

Whenever the board of the authority shall by resolution determine that the purposes for which the authority was formed have been substantially complied with and all bonds therefore issued and all obligations theretofore incurred by the authority have been fully paid or adequate provisions have been made for the payment, the board shall execute and file for record with the participating localities a resolution declaring such facts. If the participating localities are of the opinion that the facts stated in the authority's resolution are true and the authority should be dissolved, they shall so resolve and the authority shall stand dissolved as of the date on which the last participating locality adopts such resolution. Upon such dissolution, the title to all funds and properties owned by the authority at the time of such dissolution shall vest in the participating localities.

1986, c. 442, § 15.1-1286.1; 1997, c. 587.

Regional Cooperation Act

§15.2-4200. Short title.

This chapter shall be known and may be cited as the "Regional Cooperation Act."

1968, c. 224, § 15.1-1400; 1995, cc. [732](#), [796](#); 1997, c. 587.

§15.2-4201. Purpose of chapter.

This chapter is enacted:

1. To improve public health, safety, convenience and welfare, and to provide for the social, economic and physical development of communities and metropolitan areas

of the Commonwealth on a sound and orderly basis, within a governmental framework and economic environment which will foster constructive growth and efficient administration.

2. To provide a means of coherent articulation of community needs, problems, and potential for service.
3. To foster planning for such development by encouraging the creation of effective regional planning agencies and providing the financial and professional assistance of the Commonwealth.
4. To provide a forum for state and local government on issues of a regional nature.
5. To encourage regional cooperation and coordination with the goals of improved services to citizens and increased cost-effectiveness of governmental activities.
6. To deter the fragmentation of governmental units and services.

1968, c. 224, § 15.1-1401; 1995, cc. [732](#), [796](#); 1997, c. 587.

§15.2-4202. Definitions.

For the purposes of this chapter:

"Commission" means a planning district commission. Planning district commissions are composed of the duly appointed representatives of the localities or Indian tribes which are parties to the charter agreement.

"Indian tribe" means an Indian tribe or band that is recognized by federal law.

"Planning district" means a contiguous area within the boundaries established by the Department of Housing and Community Development.

"Population," unless a different census is clearly set forth, means the number of inhabitants according to the United States census latest preceding the time at which any provision dependent upon population is being applied, or the time as of which it is being construed, unless there is available an annual estimate of population prepared by the Weldon Cooper Center for Public Service of the University of Virginia, which has been filed with the Department of Housing and Community Development, in which event the estimate shall govern.

1968, c. 224, § 15.1-1402; 1976, c. 760; 1986, c. 164; 1990, c. 722; 1995, cc. [732](#), [796](#); 1997, c. [587](#); 2017, c. [377](#).

§15.2-4203. Organization of planning district commission.

A. At any time after the establishment of the geographic boundaries of a planning district, the localities or Indian tribes embracing at least 45 percent of the population within the district acting by their governing bodies may organize a planning district commission by written agreement. Any locality not a party to such charter agreement shall continue as a part of the planning district, but, until such time as such locality elects to become a part of the planning district commission as hereinafter provided, shall not be represented in the composition of the membership of the planning district commission. Any Indian tribe (i) whose land is located within the boundaries of the planning district and (ii) that is not a party to such charter agreement may elect to become part of the planning district commission at any time after its formation, and may negotiate the terms of such membership with the planning district commission. Whenever a planning district is created which contains only two counties, the governing body of either county may organize a planning district commission in accordance with the provisions of this chapter if the governing body of the other county does not agree to organize such a planning district commission.

B. The charter agreement shall set forth:

1. The name of the planning district. An entity organized as a planning district commission under this act may employ the name "regional council" or "regional commission" as a substitute for the name "planning district commission."
2. The locality in which its principal office shall be situated.
3. The effective date of the organization of the planning district commission.
4. The composition of the membership of the planning district commission. At least a majority of its members shall be elected officials of the governing bodies of the localities within the district, or members of the General Assembly, with each county, city and town of more than 3,500 population having at least one representative. In any planning district other than planning district number 23, a town of 3,500 or less population may petition the planning district commission to be represented thereon. The planning district commission may, in its discretion, grant representation to such town by a majority vote of the members of the commission. Other members shall be qualified voters and residents of the district. In planning districts number 4 and 14, the membership may also include representatives of higher education institutions. Should the charter agreement, as adopted, so provide, an alternate may serve in lieu of one of the elected officials of each of the governing bodies of the participating localities.

5. The term of office of the members, their method of selection or removal and the method for the selection and the term of office of a chairman.

6. The voting rights of members. Such voting rights need not be equal and may be weighed on the basis of the population of the locality represented by the member, the aggregation of the voting rights of members representing one locality, or otherwise.

7. The procedure for amendment, for addition of other localities within the planning district which are not parties to the original charter agreement, and the withdrawal from the charter agreement by localities within the planning district electing to do so.

C. The governing body of any locality which is a member of the planning district commission may provide for compensation to be paid by it for its commission members, except for any full-time salaried employees of the locality. The amount of such compensation shall not exceed the amount fixed by the planning district commission.

1968, c. 224, § 15.1-1403; 1970, cc. 303, 703; 1972, c. 595; 1973, c. 176; 1982, c. 660; 1989, c. 49; 1993, c. 838; 1995, cc. [732](#), [796](#); 1997, c. [587](#); 1998, cc. [668](#), [686](#); 2000, c. [984](#); 2005, c. [819](#); 2017, c. [377](#).

§15.2-4204. Disposition of earnings and assets of planning district commissions.

No part of the net earnings of any planning district commission organized under the provisions of this chapter shall inure to the benefit of, or be distributable to, any of its members, officers or other private persons, other than to its member localities as provided in this chapter. However, the commission may pay reasonable compensation for services rendered and make payments and distributions in furtherance of the purposes of a planning district commission as set forth in this chapter and in its charter and bylaws. Upon the dissolution or termination of any planning district commission, it shall, after paying or making provisions for the payment of its liabilities, distribute its assets to its member localities, pro rata, based upon the formula used to determine local government dues to the commission.

1989, c. 178, § 15.1-1403.1; 1995, cc. [732](#), [796](#); 1997, c. 587.

§15.2-4205. Powers of commission generally.

A. Upon organization of a planning district commission, pursuant to charter agreement, it shall be a public body corporate and politic, the purposes of which shall be

to perform the planning and other functions provided by this chapter, and it shall have the power to perform such functions and all other powers incidental thereto.

B. Without in any manner limiting or restricting the general powers conferred by this chapter, the planning district commission may:

1. Adopt and have a common seal and to alter the same at pleasure.
2. Sue and be sued.
3. Adopt bylaws and make rules and regulations for the conduct of its business; however, a planning district commission shall not amend its budget once adopted during the applicable fiscal year except pursuant to an affirmative vote of the same number of the entire membership of the planning district commission required to adopt the budget.
4. Make and enter into all contracts or agreements, as it may determine, which are necessary or incidental to the performance of its duties and to the execution of the powers granted under this chapter.
5. Apply for and accept, disburse and administer, for itself or for member localities so requesting, loans and grants of money or materials or property at any time from any private or charitable source or the United States of America or the Commonwealth, or any agency or instrumentality thereof.
6. Exercise any power usually possessed by private corporations, including the right to expend such funds as may be considered by it to be advisable or necessary in the performance of its duties and functions.
7. Employ engineers, attorneys, planners, such other professional experts and consultants and such general and clerical employees as may be deemed necessary, and prescribe their powers and duties and fix their compensation.
8. Do and perform any acts and things authorized by this chapter through or by means of its own officers, agents and employees, or by contracts with any persons.
9. Execute instruments and do and perform acts or things necessary, convenient or desirable for its purposes or to carry out the powers expressly given in this chapter.
10. Create an executive committee which may exercise the powers and authority of the planning district commission under this chapter. The chairman of the planning district commission shall serve as a member and as the chairman of the executive committee. The composition of the remaining membership of the executive

committee, the term of office of its members and any alternate members, their method of selection or removal, the voting rights of members, procedures for the conduct of its meetings, and any limitations upon the general authority of the executive committee shall be established by the bylaws of the planning district commission. Any planning district commission may establish such other special and standing committees, advisory, technical, or otherwise, as it deems desirable for the transaction of its affairs.

1968, c. 224, § 15.1-1404; 1975, c. 83; 1986, c. 164; 1990, c. 722; 1995, cc. [732](#), [796](#); 1997, c. 587.

§15.2-4206. Additional powers of planning district commissions.

Planning district commissions may, in addition to and not in limitation of all other powers granted by this chapter:

1. Acquire, lease, sell, exchange, donate and convey its projects, property or facilities in furtherance of the purposes of planning district commissions as set forth in this chapter;
2. Issue its bonds, notes or other evidences of indebtedness, whether payable solely out of the revenues and receipts derived or to be derived from the leasing, sale or other disposition or use of such projects, property or facilities or otherwise, for the purpose of carrying out any of its powers or purposes set forth in this chapter; and
3. As security for the payment of the principal of and premium, if any, and interest on any such bonds, notes or other evidences of indebtedness, mortgage and pledge its projects, property or facilities or any part or parts thereof and pledge the revenues therefrom or from any part thereof.

1989, c. 178, § 15.1-1404.1; 1995, cc. [732](#), [796](#); 1997, c. 587.

§15.2-4207. Purposes of commission.

A. It is the purpose of the planning district commission to encourage and facilitate local government cooperation and state-local cooperation in addressing on a regional basis problems of greater than local significance. The cooperation resulting from this chapter is intended to facilitate the recognition and analysis of regional opportunities and take account of regional influences in planning and implementing public policies and services. Functional areas warranting regional cooperation may include, but shall not be limited to: (i) economic and physical infrastructure development; (ii) solid waste, water supply and other environmental management; (iii) transportation;

(iv) criminal justice; (v) emergency management; (vi) human services; and (vii) recreation.

Types of regional cooperative arrangements that commissions may pursue include but are not limited to (i) the facilitation of revenue sharing agreements; (ii) joint service delivery approaches; (iii) joint government purchasing of goods and services; (iv) regional data bases; and (v) regional plans.

B. The planning district commission shall also promote the orderly and efficient development of the physical, social and economic elements of the district by planning, and encouraging and assisting localities to plan, for the future. If requested by a member locality or group of member localities and to the extent the commission may elect to act, the commission may assist the localities by carrying out plans and programs for the improvement and utilization of their physical, social and economic elements. The commission shall not, however, have a legal obligation to perform the functions necessary to implement the plans and policies established by it or to furnish governmental services to the district. Additionally, Planning District Commissions 1, 2, and 13 shall be designated as economic development organizations within the Commonwealth.

C. The authority of the commission includes the power, to the extent the commission may from time to time determine, when requested to do so by a member locality or group of member localities, (i) to participate in the creation or organization of non-profit corporations to perform functions or operate programs in furtherance of the purposes of this chapter; (ii) to perform such functions and to operate such programs itself; (iii) to contract with nonprofit entities, including localities, performing such functions or operating such programs to provide administrative, management, and staff support, accommodations in its offices, and financial assistance; and (iv) to provide financial assistance, including matching funds, to interdistrict entities which perform governmental or quasi-governmental functions directly benefiting the commission's district and which are organized under authority of the Commonwealth or of the federal government.

D. Nothing herein shall be construed to permit the commission to perform functions, operate programs, or provide services within and for a locality if the governing body of that jurisdiction opposes its doing so.

1968, c. 224, § 15.1-1405; 1972, c. 814; 1975, c. 381; 1984, c. 739; 1986, c. 164; 1991, c. 208; 1995, cc. [732](#), [796](#); 1997, c. 587; 1998, cc. [668](#), [686](#); 2009, c. [863](#).

§15.2-4208. General duties of planning district commissions.

Planning district commissions shall have the following duties and authority:

1. To conduct studies on issues and problems of regional significance;
2. To identify and study potential opportunities for state and local cost savings and staffing efficiencies through coordinated governmental efforts;
3. To identify mechanisms for the coordination of state and local interests on a regional basis;
4. To implement services upon request of member localities;
5. To provide technical assistance to state government and member localities;
6. To serve as a liaison between localities and state agencies as requested;
7. To review local government aid applications as required by § [15.2-4213](#) and other state or federal law or regulation;
8. To conduct strategic planning for the region as required by §§ [15.2-4209](#) through [15.2-4212](#);
9. To develop regional functional area plans as deemed necessary by the commission or as requested by member localities;
10. To assist state agencies, as requested, in the development of substate plans;
11. To participate in a statewide geographic information system, the Virginia Geographic Information Network, as directed by the Department of Planning and Budget; and
12. To collect and maintain demographic, economic and other data concerning the region and member localities, and act as a state data center affiliate in cooperation with the Virginia Employment Commission.

1995, cc. [732](#), [796](#), § 15.1-1405.1; 1997, c. 587; 1998, cc. [668](#), [686](#).

§15.2-4209. Preparation and adoption of regional strategic plan.

A. Except in planning districts in which regional planning also is conducted by multi-state councils of government, each planning district commission shall prepare a regional strategic plan for the guidance of the district. The plan shall concern those elements which are of importance in more than one of the localities within the district, as distinguished from matters of only local importance. The plan shall include regional goals and objectives, strategies to meet those goals and objectives and

mechanisms for measuring progress toward the goals and objectives. The strategic plan shall include those subjects necessary to promote the orderly and efficient development of the physical, social and economic elements of the district such as transportation, housing, economic development and environmental management. The plan may be divided into parts or sections as the planning district commission deems desirable. In developing the regional strategic plan, the planning district commission shall seek input from a wide range of organizations in the region, including local governing bodies, the business community and citizen organizations.

B. In planning districts in which regional planning also is conducted by multi-state councils of government, each planning district commission may prepare a regional strategic plan for the guidance of the district. If prepared in accordance with this section, such plan shall conform with the requirements of subsection A and also shall include references to the relevant provisions of the most current regional strategic plan prepared by the multi-state council of governments that includes any of the area comprising the planning district.

C. Before the strategic plan is adopted, it shall be submitted to the Department of Housing and Community Development and to the governing body of each locality within the district for a period of not less than thirty days prior to a hearing to be held by the planning district commission thereon, after notice as provided in [§ 15.2-2204](#). Each such local governing body shall make recommendations to the planning district commission on or before the date of the hearing with respect to the effect of the plan within its locality. The Department of Housing and Community Development shall notify the planning district commission prior to the hearing as to whether the proposed strategic plan conflicts with plans of adjacent planning districts.

D. Upon approval of the strategic plan by a planning district commission after a public hearing, it shall be submitted to the governing body of each locality (excluding towns of less than 3,500 population unless members of the commission) within the district for review and possible adoption. The plan shall become effective with respect to all action of a planning district commission upon approval by the planning district commission. The plan shall not become effective with respect to the action of the governing body of any locality within the district until adopted by the governing body of such locality.

E. The adopted strategic plan shall be submitted within thirty days of adoption to the Department of Housing and Community Development for information and coordination purposes.

1968, c. 224, § 15.1-1406; 1976, c. 760; 1981, c. 315; 1995, cc. [732](#), [796](#); 1997, c. 587; 1998, cc. [668](#), [686](#); 2013, c. [607](#).

§15.2-4210. Commission to act only in conformity with regional strategic plan.

When the strategic plan becomes effective as the district plan, the planning district commission shall not, except as provided in the plan, establish any policies or take any action which, in its opinion, is not in conformity with the plan.

1968, c. 224, § 15.1-1407; 1995, cc. [732](#), [796](#); 1997, c. 587; 1998, cc. [668](#), [686](#).

§15.2-4211. Amendment of regional strategic plan.

The strategic plan may be amended in the same manner as provided for the original approval and adoption of the plan. However, if the planning district commission determines that a proposed amendment has less than districtwide significance, such amendment may be submitted only to the governing bodies of those localities which the planning district commission determines to be affected. The amended strategic plan shall be submitted within thirty days of amendment to the Department of Housing and Community Development.

1968, c. 224, § 15.1-1408; 1995, cc. [732](#), [796](#); 1997, c. 587.

§15.2-4212. Review of regional strategic plan by commission.

At least once every five years the regional strategic plan shall be revised and formally approved by the planning district commission. The revised plan shall not become effective with respect to the action of the governing body of any locality within the district until adopted by the governing body of such locality.

1968, c. 224, § 15.1-1409; 1995, cc. [732](#), [796](#); 1997, c. 587.

§15.2-4213. Commission to be informed of applications for state or federal aid by local governing bodies.

In each planning district in which a planning district commission has been organized, the governing body of each locality shall make available to the planning district commission a summary of applications to agencies of the state or federal government for loans or grants-in-aid for local projects. Submission of the summary of applications is for informational purposes only, unless otherwise directed by state or federal regulations or laws.

1968, c. 224, § 15.1-1410; 1972, c. 599; 1995, cc. [732](#), [796](#); 1997, c. 587.

§15.2-4214. Cooperation and consultation with other agencies.

A planning district commission may cooperate with other planning district commissions, councils of governments, or the legislative and administrative bodies and officials of other districts or localities within or outside a district, so as to coordinate the planning, development and services of a district with the plans and services of other districts and localities and the Commonwealth. A planning district commission may appoint committees and adopt rules to effect such cooperation. A planning district commission shall also cooperate with the Department of Housing and Community Development and use advice and information furnished by such Department and by other state and federal officials, departments and agencies. Such Department and such officials, departments and agencies having information, maps and data pertinent to the planning and development of a district may make the material, together with services and funds, available for use of a planning district commission.

All agencies of the Commonwealth shall notify the Department of Housing and Community Development prior to engaging in planning activities which will require planning district commission participation. State agencies are encouraged to consult with planning district commissions in the development of regional plans and services and for data collection.

1968, c. 224, § 15.1-1411; 1976, cc. 488, 760; 1977, c. 613; 1995, cc. [732](#), [796](#); 1997, c. 587.

§15.2-4215. Annual report required.

Each planning district commission shall submit an annual report by September 1 to its member local governments and the Department of Housing and Community Development in accordance with a format prescribed by the Department. The annual report shall contain at a minimum a description of the activities conducted by the planning district commission during the preceding fiscal year, including how the commission met the provisions of this chapter, and information showing the sources and amounts of funding provided to the commission. The Department of Housing and Community Development shall summarize the annual reports in a report to be distributed in accordance with § [36-139.6](#).

1995, cc. [732](#), [796](#), § 15.1-1411.1; 1997, c. 587.

§15.2-4216. State aid.

A. Upon the organization of a planning district commission, it shall be entitled to receive state financial support to assist it in carrying out its purposes. Such state aid shall be in an amount as provided in the general appropriations act. In order to be allocated such state aid, each planning district commission shall prepare and submit an annual report, as required in § [15.2-4215](#), which details its compliance with the provisions of this chapter, and an annual work program of activities proposed for the next fiscal year. The fiscal year of the planning district commission shall end June 30.

B. If two planning districts are merged pursuant to § [15.2-4221](#), the new district shall be entitled to receive the combined amount of aid to which the two districts it replaced separately would have been entitled for five years from the effective date of the merger.

1968, c. 224, § 15.1-1412; 1977, c. 613; 1985, c. 127; 1990, c. 722; 1995, cc. [732](#), [796](#); 1997, c. 587.

§15.2-4217. Regional Cooperation Incentive Fund created; administration thereof.

A. There is hereby created a Regional Cooperation Incentive Fund for the purpose of encouraging inter-local strategic and functional area planning and other regional cooperative activities. In addition, the fund shall have the purpose of fostering inter-local service delivery consolidation or coordination where such consolidation or coordination will result in the more efficient use of local funds. The Fund shall be administered by the Department of Housing and Community Development. Fund availability is subject to the Appropriation Act.

B. From time to time the General Assembly and the Governor may designate specific functional areas or activities which are to be given highest priority for funding, including but not limited to economic development, criminal justice, solid waste management, water supply, emergency management and transportation.

C. Disbursements from the Regional Cooperation Incentive Fund shall be made on a matching grant basis to planning district commissions, or in the case of inter-local service delivery consolidation or coordination, to two or more cooperating localities. The Department of Housing and Community Development shall promulgate regulations for the administration of the funds, including application forms, eligibility requirements and terms and duration of grants. In establishing regulations, the following criteria shall be met:

1. The planning district commission or member localities must provide, at a minimum, a 25 percent match to the grant, or in the case of inter-local service delivery consolidation or coordination, the Regional Cooperation Incentive Fund may provide up to 50 percent of the cost of implementation; and

2. Any project for which a grant is sought shall use private initiative and enterprise insofar as feasible, and emphasize coordination of available governmental and private financial and technical resources.

D. The Department of Housing and Community Development shall require periodic reports from grant recipients concerning progress of the project and the use of funds.

1995, cc. [732](#), [796](#), § 15.1-1412.1; 1997, c. 587; 2012, c. [500](#).

§15.2-4217.1. Specialized Transportation Incentive Fund.

The Specialized Transportation Incentive Fund (the "Fund") is established and shall be used to assist participating planning districts in the development of coordinated specialized transportation plans and projects. In order to be eligible to receive monies from the Fund, a planning district commission or single locality shall establish, in consultation with its metropolitan planning organization if one exists, an advisory transportation coordination committee and shall submit to the Disability Commission a plan for cost-effective coordination of specialized transportation services in the planning district or in localities within the planning district. Single localities may appoint an advisory transportation coordinating committee independent of the planning district commission and receive specialized transportation incentive funds if the locality is located in a regional planning district in which all other localities are recipients of the federal funds and subject to the provisions of Title II of the Americans with Disabilities Act, Public Law 101-336 (42 U.S.C. § 12131 et seq.). The advisory transportation coordination committee shall guide planning for the coordination and administration of specialized transportation with human service agencies, participating public transportation systems and, where appropriate, with private for-profit and nonprofit transportation providers. Advisory transportation coordination committees shall be composed of, but not limited to, elderly and disabled persons, providers of specialized transportation systems, participating public transportation systems, and local private for-profit and nonprofit transportation providers. Localities and public transportation systems subject to Title II of the Americans with Disabilities Act, Public Law 101-336 (42 U.S.C. § 12131 et seq.), shall not be required to

participate in coordinated specialized transportation plans, but may participate at their option.

2003, c. [454](#).

§15.2-4218. Local governing bodies authorized to appropriate or lend funds.

The governing bodies of the localities within a planning district are authorized to appropriate or lend funds to the planning district commission.

1968, c. 224, § 15.1-1413; 1997, c. 587.

§15.2-4219. Exemption of commission from taxation.

The planning district commission shall not be required to pay any taxes or assessments upon any project or upon any property acquired or used by it or upon the income therefrom. For purposes of subdivision 4 of § [58.1-609.1](#), a planning district commission is deemed a "political subdivision of this Commonwealth" as the term is used in that section.

1968, c. 224, § 15.1-1415; 1993, c. 310; 1997, c. 587.

§15.2-4220. Dual membership authorized.

Any locality which is a member of a planning district commission may become a member of an additional planning district commission upon such terms and conditions as mutually agreed to by the locality and the additional planning district commission. The locality shall notify the Department of Housing and Community Development of its membership status in the additional planning district commission within thirty days of becoming a member. Whenever a state-directed activity is conducted by all the planning district commissions, the planning district boundaries identified by the Department of Housing and Community Development shall be used, unless alternative boundaries are agreed to by the localities and the planning district commissions affected. No additional state financial support shall be paid due to a locality becoming a member of an additional planning district commission.

1985, c. 109, § 15.1-1416; 1988, c. 263; 1991, c. 35; 1993, c. 797; 1994, c. [650](#); 1995, cc. [732](#), [796](#); 1997, c. 587.

§15.2-4221. Merger of two planning district commissions.

The commissions of any two planning districts and a majority of the governing bodies of the localities comprising each district, upon finding that the community of interest, ease of communications and transportation, and geographic factors and natural boundaries among the localities of the two districts are such that the best

interest of the localities would be served, may by resolutions concurrently adopted vote to merge into one district and request the Department of Housing and Community Development to declare the districts so merged. Upon such declaration, the commissions of the two districts shall be merged into one commission. The commission of the new district thereupon shall organize as provided in § [15.2-4203](#); however, nothing shall prevent the commissions of the two districts which are to be merged from agreeing to the terms of such organization prior to their vote to merge.

1990, c. 722, § 15.1-1416.1; 1997, c. 587.

§15.2-4222. Inconsistent laws inapplicable.

All other general or special laws inconsistent with any provisions of this chapter are hereby declared to be inapplicable to the provisions of this chapter.

1968, c. 224, § 15.1-1452; 1997, c. 587.

Registration and Protection of Trade-marks and Service Marks

§59.1-92.1. Short title.

This chapter shall be known as the "Virginia Trademark and Service Mark Act (1998)."

1998, c. [819](#).

§59.1-92.2. Definitions.

As used in this chapter, the following words shall have the following meanings:

"Abandoned" means either (i) the discontinuance of use of a mark with intent not to resume such use (intent not to resume may be inferred from circumstances, i.e., nonuse for three consecutive years shall constitute prima facie evidence of abandonment) or (ii) any course of conduct of the owner, including acts of omission as well as commission, which causes the mark to lose its significance as a mark.

"Applicant" means any person filing an application for registration of a mark under this chapter, and the legal representatives, successors, or assigns of such person.

"Commission" means the State Corporation Commission.

"Mark" means any trademark or service mark registered in the Commonwealth or the United States Patent and Trademark Office, or entitled to registration under this chapter, whether registered or not.

"Registrant" means any person to whom the registration of a mark under this chapter or prior law is issued, and the legal representatives, successors, or assigns of such person.

"Service mark" means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the services of such person from the services of others.

"Trade name" means any name used by a person to identify a business or enterprise.

"Trademark" means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the goods of such person from those manufactured or sold by others.

"Use" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this chapter, a mark shall be deemed to be in use (i) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and the goods are possessed in the Commonwealth or sold or otherwise distributed in commerce in the Commonwealth, and (ii) in connection with services when it is used or displayed in the course of selling or providing services in the Commonwealth, or advertising descriptive of services available within the Commonwealth that is communicated within or into the Commonwealth.

1998, c. [819](#); 2008, cc. [759](#), [800](#); 2011, c. [801](#).

§59.1-92.3. Registrability.

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it consists of or comprises:

1. Any immoral, deceptive or scandalous matter;
2. Any matter which may falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

3. The flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof;
4. The name, signature or portrait identifying a particular living individual, except by the individual's written consent;
5. A mark which (i) when used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them; (ii) when used on or in connection with the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them; or (iii) is primarily merely a surname; however, nothing in this subdivision shall prevent the registration of a mark used by the applicant which has become distinctive in this Commonwealth of the applicant's goods or services. The Commission may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this Commonwealth for the five years before the date of the application for registration; or
6. A mark which so resembles a mark registered in this Commonwealth or a trademark, service mark or trade name previously used in this Commonwealth by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake, or to deceive.

1998, c. [819](#).

§59.1-92.4. Application for registration.

Subject to the limitations set forth in this chapter, any person who uses a mark may file with the Commission, in a manner complying with the requirements of the Commission, an application for registration of that mark setting forth, but not limited to, the following information:

1. The name and business address of the person applying for such registration; and, if a corporation, limited liability company, partnership, limited liability partnership, or any other legal entity, the state or other jurisdiction of incorporation, formation, or organization, as the case may be;
2. The goods or services on or in connection with which the mark is used and the manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall;

3. The date when the mark was first used anywhere and the date when it was first used in this Commonwealth by the applicant or a predecessor in interest; and
4. A statement that the applicant is the owner of the mark, that the mark is in use in this Commonwealth, and that, to the knowledge of the person verifying the application, no other person has registered the mark in this Commonwealth, or has the right to use such mark in this Commonwealth either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, to cause confusion or mistake, or to deceive.

The Commission may also require that a drawing of the mark, complying with such requirements as the Commission may specify, accompany the application.

The application shall be signed and verified (by oath, affirmation or declaration subject to perjury laws) by the applicant or by a person authorized by the applicant to make the application.

The application shall be accompanied by a specimen showing the mark as actually used.

The application shall be accompanied by a nonrefundable application fee.

1998, c. [819](#).

§59.1-92.5. Filing of applications.

- A. Upon the filing of an application for registration and payment of the application fee, the Commission shall cause the application to be examined for conformity with this chapter.
- B. The applicant shall provide any additional relevant information requested by the Commission, including a description of a design mark, and may make, or authorize the Commission to make, such amendments to the application as may be reasonably requested by the Commission or deemed by the applicant to be advisable to respond to any rejection or objection.
- C. The Commission may require the applicant to disclaim any unregistrable component of a mark otherwise registrable, and an applicant may voluntarily disclaim any component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's common law rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of regis-

tration on another application if the disclaimed matter is or has become distinctive of the applicant's or registrant's goods or services.

D. Amendments to the application may be made by the Commission with the applicant's consent.

E. If the applicant is found not to be entitled to registration, the Commission shall notify the applicant thereof in writing and of the reasons therefor. The applicant shall have ninety days from the date of the Commission's notice to make a bona fide reply, or to amend the application, in which event the application shall then be reexamined. This procedure may be repeated until (i) the Commission finally refuses registration of the mark or (ii) the applicant fails to reply or amend within the specified period, whereupon the request for registration shall be deemed to have been finally refused.

1998, c. [819](#).

§59.1-92.6. Certificate of registration.

Upon compliance by the applicant with the requirements of this chapter, the Commission shall cause a certificate of registration to be issued and delivered to the applicant. The certificate shall show (i) the name and business address of the registrant and, if a corporation, limited liability company, partnership, limited liability partnership, or any other legal entity, the state or other jurisdiction of incorporation, formation, or organization, as the case may be; (ii) the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this Commonwealth; (iii) the class of goods or services and a description of the goods or services on or in connection with which the mark is used; (iv) a reproduction of the mark; and (v) the registration date and the term of the registration.

Any certificate of registration issued by the Commission under the provisions hereof or a copy thereof duly certified by the clerk of the Commission shall be prima facie evidence of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark within the Commonwealth on or in connection with the goods or services specified in the certificate, and shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any actions or judicial proceedings in any court of this Commonwealth.

1998, c. [819](#).

§59.1-92.7. Duration and renewal.

A registration of a mark hereunder shall be effective for a term of five years from the date of registration and, upon application filed within six months prior to the expiration of such term, in a manner complying with the requirements of the Commission, the registration may be renewed for a like term from the end of the expiring term. A renewal fee shall accompany the application for renewal of the registration.

A registration may be renewed for successive periods of five years in like manner.

Any registration in force on the date on which this chapter becomes effective shall continue in full force and effect for the unexpired term thereof and may be renewed for five years by filing with the Commission, within six months prior to the expiration of the registration, an application for renewal complying with the requirements of the Commission and paying the aforementioned renewal fee therefor.

All applications for renewal under this chapter, whether of registrations made under this chapter or of registrations effected under any prior law, shall include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

1998, c. [819](#).

§59.1-92.8. Assignments and changes of name.

A. Any mark and its registration hereunder shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be filed with the Commission upon the payment of a fee. The Commission shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is filed with the Commission within three months after the date of the assignment or prior to such subsequent purchase.

B. Any applicant effecting a change of name may file a certificate of name change with the Commission upon the payment of a fee. The Commission shall prescribe the form and content of such certificate. If the Commission issues a registration based on such applicant's request for registration, the registration shall be issued in the new name of the applicant.

C. Any registrant effecting a change of name may file a certificate of name change with the Commission upon the payment of a fee. The Commission shall prescribe the form and content of such certificate. The Commission shall issue in the new name of the registrant a new certificate of registration for the remainder of the term of the registration or last renewal thereof.

D. A photocopy of any instrument referred to in this section shall be accepted for filing if it is certified by any of the parties thereto, or their successors, to be a true and correct copy of the original.

1998, c. [819](#).

§59.1-92.9. Records.

The Commission shall keep for public examination a record of all marks registered or renewed under this chapter, as well as a record of all documents filed pursuant to § [59.1-92.8](#).

1998, c. [819](#).

§59.1-92.10. Cancellation.

A. The Commission shall cancel, in whole or in part:

1. Any registration concerning which the Commission receives a voluntary request for cancellation thereof from the registrant or the assignee of record;
2. Any registration granted under this chapter or prior law and not renewed in accordance with the provisions hereof; or
3. Any registration concerning which the Commission finds on its own motion, or on petition of any person who alleges that he is or will be damaged by such registration, that:
 - a. The registered mark has been abandoned;
 - b. The registrant is not the owner of the mark;
 - c. The registration was granted as a result of a clerical error;
 - d. The registration was obtained fraudulently;
 - e. The mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered; or
 - f. There is a substantial likelihood of confusion with a mark or trade name previously used in this Commonwealth by another and not abandoned.

B. The Commission may also cause a partial cancellation of a registration by requiring the registrant to amend the registration to adopt a narrower identification of goods or services than is identified in the original certificate.

C. Before the Commission cancels or partially cancels any registration under subdivision A 3, the Commission shall give reasonable notice and an opportunity to be heard to the registrant and to other persons known to have or claim an interest in the mark.

1998, c. [819](#).

§59.1-92.11. Classification.

The Commission shall by regulation establish a classification of goods and services for convenience of the administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services in connection with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the Commission may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States Patent and Trademark Office.

1998, c. [819](#).

§59.1-92.12. Infringement.

Subject to the provisions of § [59.1-92.15](#), any person who (i) uses in a manner likely to cause a consumer confusion, mistake, or deception as to the source or origin of any goods or services, without the consent of the owner of a registered mark, any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of such goods or services or (ii) reproduces, counterfeits, copies or colorably imitates a registered mark and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, advertisements, or any item intended to be used in a manner likely to cause a consumer confusion, mistake, or deception as to the source or origin of any goods or services in connection with the sale, offering for sale, distribution, or advertising of such goods or services shall be liable in a civil action by the owner of a registered mark for any and all of the remedies provided in § [59.1-92.13](#), except that under this subdivision the owner shall not be entitled to recover profits, damages, or attorney fees unless the acts have been

committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

1998, c. [819](#); 2008, cc. [759](#), [800](#); 2011, c. [801](#).

§59.1-92.13. Remedies and penalties.

A. Any owner of a registered mark in force and effect may proceed by suit in a court of competent jurisdiction to enjoin violations of § [59.1-92.12](#), seek such other remedies as are set forth herein, or both. Any court of competent jurisdiction may grant such injunctions as may by the court be deemed just and reasonable to restrain such violations, and may require any defendant to pay to such owner all profits derived from and/or all damages suffered by reason of such violations. The court shall also order that any material that violates § [59.1-92.12](#) that is in the possession or under the control of any defendant in such case be destroyed or delivered to an officer of the court or to the owner for destruction, or alternatively disposed of in another manner with the written consent of the owner of the registered mark. The court, in its discretion upon consideration of the circumstances of the case, may award reasonable attorney fees to the prevailing party.

B. Any person who:

1. Knowingly and intentionally violates the provisions of § [59.1-92.12](#) is guilty of a Class 1 misdemeanor and, upon a second or subsequent conviction, is guilty of a Class 6 felony.

2. Knowingly and intentionally violates the provisions of § [59.1-92.12](#) and possesses 100 or more identical counterfeit registered marks or possesses counterfeit items valued at \$200 or more, is guilty of a Class 6 felony.

C. Property subject to lawful seizure by any officer charged with enforcing this chapter shall include any article bearing or consisting of a counterfeit mark used in violation of this chapter, any property used in the substantial connection with or intended for use in the course of a violation of this chapter, or any interest or profits substantially connected to a violation of this chapter. Forfeiture, seizure, and disposition of such property shall be in accordance with Chapter 22.1 (§ [19.2-386.1](#) et seq.) of Title 19.2.

D. In any proceeding under this chapter, any certificate of registration issued by the Commonwealth or the United States Patent and Trademark Office shall be prima facie evidence of the facts stated therein.

E. In any criminal proceeding under subsection B, upon motion of the Commonwealth the court shall order any material that violates § [59.1-92.12](#) that is in the possession or under the control of any defendant or law-enforcement officer be destroyed or delivered to an officer of the court or to the owner of the registered mark for destruction, or alternatively disposed of in another manner with the written consent of the owner of the registered mark.

1998, c. [819](#); 2008, cc. [759](#), [800](#); 2011, c. [801](#).

§59.1-92.14. Service on out-of-state registrants.

In any action brought against a nonresident registrant, service may be effected upon the clerk of the Commission as agent for service of the registrant in accordance with the procedures established in § [12.1-19.1](#).

1998, c. [819](#).

§59.1-92.15. Common law rights.

Nothing herein shall adversely affect the rights or the enforcement of common-law rights in marks.

1998, c. [819](#).

§59.1-92.16. Fees.

The Commission shall by regulation prescribe the fees payable for the various application and filing fees and for related services. Unless specified by the Commission, the fees payable herein are not refundable.

1998, c. [819](#).

§59.1-92.17. Commission may consider final judgments.

In any proceeding before the Commission involving the right to registration, or the cancellation of registration, in whole or in part, the final judgment of a court of record involving the right to use the mark, in whole or in part, may be offered in evidence to the Commission or filed with the Commission by any party to the registration or cancellation proceeding before the Commission. The Commission may consider the judgment of the court in determining what action it should take with respect to the registration or cancellation involved.

1998, c. [819](#).

§59.1-92.18. Appeals from final action of Commission.

From any final action of the Commission under the provisions of this chapter an appeal shall lie of right to the Supreme Court in accordance with the provisions of §§ [12.1-39](#), [12.1-40](#) and [12.1-41](#).

1998, c. [819](#).

§59.1-92.19. Regulations and forms.

A. The Commission shall have authority from time to time to make, amend, and rescind such regulations as may be necessary to carry out the provisions of this chapter, including regulations and forms governing applications, registrations, assignments, renewals, and fees, and defining technical and trade terms used in this chapter insofar as such definitions are not inconsistent with the provisions of this chapter. For the purpose of regulations and forms, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes.

B. All such regulations and forms shall be made available for distribution at the office of the Commission.

C. No provision of this chapter imposing any liability shall apply to any act done or omitted in conformity with any regulation of the Commission, notwithstanding that such regulation may, after such act or omission, be amended, rescinded, or found for any reason to be invalid.

1998, c. [819](#).

§59.1-92.20. Fees to cover expense of regulation.

The fees paid into the state treasury under this chapter, except for fees and funds collected for the Literary Fund, shall be deposited into a special fund and specifically accounted for and used by the Commission to defray the costs of supervising, implementing, and administering the provisions of this chapter, Chapters 5 (§ [13.1-501](#) et seq.) and 8 (§ [13.1-557](#) et seq.) of Title 13.1, and Chapter 7 (§ [59.1-93](#) et seq.) of this title. Included in the Commission's costs shall be a reasonable margin in the nature of a reserve fund. All excesses of fees collected exceeding these costs shall revert to the general fund.

1998, c. [819](#).

§59.1-92.21. Olympic symbols.

A. Without the permission of the United States Olympic Committee, a person shall not, for the purpose of trade, to induce the sale of goods or services, or to promote a theatrical exhibition, athletic performance, or competition, use:

1. The symbol of the International Olympic Committee, consisting of five interlocking rings;
2. The emblem of the United States Olympic Committee, consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with five interlocking rings displayed on the chief;
3. A trademark, trade name, sign, symbol, or insignia falsely representing association with or authorization by the International Olympic Committee or the United States Olympic Committee; or
4. The words "Olympic," "Olympiad," or "Citius Altius Fortius" or a combination or simulation of those words that tends to cause confusion or mistake, to deceive, or to suggest falsely a connection with the United States Olympic Committee or an Olympic activity.

B. Any person who actually used the emblem described in subdivision A 2, or the words, or any combination thereof, described in subdivision A 4, for any lawful purpose prior to September 21, 1950, shall not be prohibited by this section from continuing such lawful use for the same purpose and for the same goods or services. In addition, any person who actually used, or whose assignor actually used, any other trademark, trade name, sign, symbol, or insignia described in subdivisions A 3 and A 4 for any lawful purpose prior to September 21, 1950, shall not be prohibited by this section from continuing such lawful use for the same purpose and for the same goods or services.

C. On violation of subsection A, the United States Olympic Committee is entitled to the remedies available to a registrant on infringement of a mark registered under this chapter.

1998, c. [819](#).

§59.1-92.22. Use of name, logo, or symbol of a bank, trust company, savings institution, or credit union.

Any bank, trust company, savings institution, or credit union whose name, logo, or symbol, or any combination thereof, or any name, logo, or symbol, or any combination thereof that is deceptively similar thereto, is used by a person in a manner prohibited by §§ [6.2-941](#), [6.2-1043](#), [6.2-1105](#), and [6.2-1307](#), is entitled to the remedies that are available to a registrant under subsection A of § [59.1-92.13](#).

2005, c. [240](#).

Requirements Applicable to Surface Coal Mines

§45.1-161.253. Scope of chapter.

This chapter shall be applicable to the operation of any surface coal mine in the Commonwealth, and shall supplement the provisions of Chapter 14.2 (§ [45.1-161.7](#) et seq.).

1994, c. [28](#).

§45.1-161.254. Regulations governing conditions and practices at surface coal mines.

A. The Chief shall have authority, after consultation with the Virginia Coal Mine Safety Board and in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.), to promulgate rules and regulations necessary to ensure safe and healthy working conditions in surface coal mines in the Commonwealth. Such rules and regulations governing surface coal mines shall relate to:

1. Safety and health standards for the protection of the life, health and property of, and the prevention of injuries to persons involved in or likely to be affected by any surface coal mining operations which shall include but not be limited to the control of dust concentration levels; installation, maintenance and use of electrical devices, equipment, cables and wires; fire protection; the use and storage of explosives; hoistings; drilling; loading and haulage areas; training of surface miners; preparation of responses to emergencies; examinations of conditions at a surface mine site; and reporting requirements;
2. The storage or disposal of any matter or materials extracted or disturbed as the result of a surface coal mining operation or operations or used in the mining operation or for the refinement or preparation of the materials extracted from the coal mining operation so that such matter or material does not threaten the health or safety of the miners or the general public; and
3. The operation, inspection, operating condition and movement of drilling equipment and machines to protect the health, safety and property of miners and the general public.

B. The Chief shall not promulgate any rule or regulation establishing requirements for the operation of, or conditions at, a surface coal mine which are inconsistent with requirements established by this Act.

Code 1950, §§ 45-8, 45-84; 1954, c. 191; 1966, c. 594, § 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 520; 1978, c. 120; 1982, c. 118; 1990, c. 963; 1994, c. [28](#).

§45.1-161.255. Standards for regulations.

In promulgating the rules and regulations pursuant to § [45.1-161.254](#), the Chief shall consider:

1. Standards utilized and generally recognized by the surface coal mining industry;
2. Standards established by recognized professional coal mining organizations and groups;
3. Standards established by federal mine safety laws;
4. Research, demonstrations, experiments and such other information that is available regarding the maintenance of the highest degree of safety protection, including the latest available scientific data in the field, the technical feasibility of the standards, and the experience gained under this Act and other mine safety laws; and
5. Such other criteria as shall be necessary for the protection of the safety and health of miners and other persons or property likely to be affected by surface coal mines or related operations.

Code 1950, §§ 45-8, 45-84; 1954, c. 191; 1966, c. 594, § 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 520; 1978, c. 120; 1982, c. 118; 1990, c. 963; 1994, c. [28](#).

§45.1-161.256. Safety examinations.

A. On-shift examinations of the work area including pit, auger, thin seam and high-wall operations shall be conducted by certified persons once every production shift and at such other times or frequency as the Chief designates necessary for hazardous conditions.

B. Pre-operational examinations of all mobile equipment shall be conducted by an authorized person.

C. Pre-shift examinations shall be conducted by a certified person for certain hazardous conditions designated by the Chief.

D. Mine refuse piles shall be examined daily by an authorized person on any day on which a person works at such location.

E. The location of all natural gas pipelines on permitted surface mine areas shall be identified and conspicuously marked so that equipment operators can readily see such lines. Pre-shift examinations shall be conducted of the location of pipelines whenever the work area approaches within 500 feet unless otherwise approved by the Chief.

F. Air quality examinations shall be conducted by a certified person when a surface coal mining operation intersects an underground mine, auger hole or other underground workings.

G. Examinations for methane shall be conducted in surface installations, enclosures or other facilities in which coal is handled or stored once each production shift. Such areas shall also be tested for methane before any activity involving welding, cutting or an open flame. Examinations pursuant to this subsection shall be made by an authorized person certified to make gas tests.

H. Electrical equipment and wiring shall be inspected as often as necessary but at least once a month.

I. Fire extinguishers shall be examined at least once every six months.

J. Areas of inactive surface coal mines shall be examined for hazardous conditions by a mine foreman immediately before miners are permitted to enter into such areas to take emergency actions to preserve a mine.

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-61, 45-68.1, 45-69.7; 1954, c. 191; 1966, c. 594, §§ 45.1-20, 45.1-42, 45.1-65; 1976, c. 598; 1978, cc. 118, 120; 1982, c. 385; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.257. Records of examinations.

A. Documentation of examinations and testing conducted pursuant to § [45.1-161.256](#) shall be recorded in a mine record book provided for that purpose. Documentation shall include hazardous conditions found in the work area. However, examinations of fire extinguishers shall be conducted by an authorized person and documentation shall be accomplished by recording the date of the examination on a permanent tag attached to the extinguisher.

B. The actual methane readings taken during examinations required under this Act shall be recorded in the mine record book.

C. The surface foreman shall maintain and sign a daily record book. Where such reports disclose hazardous conditions, the surface foreman shall take prompt action to have such conditions corrected, barricaded, or posted with warning signs.

D. Records shall be countersigned by the supervisor of the examiner creating the records. Where such records disclose hazardous conditions, the countersigning of the records shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination records were completed, and the person countersigning shall ensure that actions to eliminate or control the hazardous conditions have been taken. Where such records do not disclose hazardous conditions, the countersigning may be completed within 24 hours following the end of the shift for which the examination records were completed. The operator may authorize another person with equivalent authority of the supervisor to act in the supervisor's temporary absence to read and countersign the records and ensure that action is taken to eliminate the hazardous conditions disclosed in the records.

E. All records of inspections shall be open for inspection by interested persons and maintained at the mine site for a minimum of one year.

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-61, 45-68.1, 45-69.7; 1954, c. 191; 1966, c. 594, §§ 45.1-20, 45.1-42, 45.1-65; 1976, c. 598; 1978, cc. 118, 120; 1982, c. 385; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#); 2007, cc. [894](#), [914](#).

§45.1-161.258. Areas with safety or health hazards; duties of surface mine foreman.

A. Any hazardous condition shall be corrected promptly or the affected area shall be barricaded or posted with warning signs specifying the hazard and proper safety procedures. Any imminent danger that cannot be removed within a reasonable time shall be reported to the Chief by the quickest available means.

B. The surface mine foreman shall see that the requirements of this Act pertaining to his duties and to the health and safety of the miners are fully complied with at all times.

C. The surface mine foreman shall see that every miner employed to work at the mine, before beginning work therein, is aware of all hazardous conditions incident to his work at the mine.

Code 1950, §§ 45-7, 45-12, 45-14.1, 45-35, 45-40, 45-61, 45-68.1, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, §§ 45.1-17, 45.1-21, 45.1-42, 45.1-89; 1974, c. 323; 1976, c. 598; 1978, cc. 118, 222, 489, 729; 1982, c. 255; 1984, cc. 178, 590; 1985, c. 500; 1988, c. 577; 1993, cc. 170, 171, 442; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2015, cc. [103](#), [397](#).

§45.1-161.259. Personal protection devices and practices.

A. All persons at a surface coal mine shall wear the following protection in the specified conditions:

1. Hard hats in and around mines where falling objects may cause injury.
2. Hard-toed footwear in and around mines.
3. Safety goggles or shields where there is a hazard of flying material.
4. Protective shield or goggles when welding.
5. Snug-fitting clothes when working around moving parts or machinery.
6. Gloves where hands could be injured. Gauntlet cuffed gloves are prohibited around moving machinery.

B. Ear protection shall be supplied by the operator to all miners upon request.

C. Every person assigned to or performing duties at a surface mine work area shall wear reflective materials adequate to be visible from all sides. The reflective material shall be placed on hard hats and at least one other item of outer clothing such as belts, suspenders, jackets, coats, coveralls, shirts, pants, or vests.

Code 1950, §§ 45-72, 45-86; 1954, c. 191; 1966, c. 594, §§ 45.1-26, 45.1-99; 1978, cc. 489, 729; 1994, c. [28](#); 2011, cc. [826](#), [862](#).

§45.1-161.260. Housekeeping.

A. Good housekeeping shall be practiced in and around buildings, shafts, slopes, yards and other areas of the mine. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails, broken glass and material that may potentially fall or roll.

B. All surface mine structures, enclosures, and other facilities shall be maintained in a safe condition.

Code 1950, § 45-85.8; 1954, c. 191; 1966, c. 594, § 45.1-37; 1978, c. 729; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.261. Noxious fumes.

Painting or operations creating noxious fumes shall be performed only in a well-ventilated atmosphere.

Code 1950, § 45-85.5; 1954, c. 191; 1966, c. 594, § 45.1-34; 1978, c. 729; 1994, c. [28](#).

§45.1-161.262. First aid equipment.

Each surface coal mine shall have an adequate supply of first aid equipment as determined by the Chief. Such supplies shall be located at strategic locations at the mine site so as to be available in a reasonable response time. The first aid supplies shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and moisture proof. In addition to the supplies in the cases, blankets, splints and properly constructed stretchers in good conditions shall be provided. The supplies shall be available for use of all persons employed at the mine. No first aid supplies shall be removed or diverted without authorization except in case of injury at the mine.

Code 1950, § 45-69.6; 1954, c. 191; 1966, c. 594, § 45.1-101; 1978, c. 94; 1994, c. [28](#).

§45.1-161.263. First aid training.

A. Surface foremen shall have completed and passed a first aid course of study as prescribed by the Chief. The Chief is authorized to utilize the Department's educational and training facilities in the conduct of such training programs and may require the cooperation of mine operators in making such programs available to their employees.

B. Each operator of a surface coal mine, upon request, shall make available to every miner employed in such mine first aid training, including refresher training.

1977, c. 679, § 45.1-101.2; 1978, c. 94; 1984, c. 590; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.264. Attention to injured persons.

A. Prompt medical attention shall be provided in the event of an injury, and adequate facilities shall be made available for transporting injured persons to a hospital where necessary.

B. Safe transportation shall be provided to move injured persons from the site where the injury occurred to areas accessible to emergency transportation.

C. The operator of each mine shall post directional signs that are conspicuously located to identify the routes of ingress to and egress from any mine located off of a public road.

Code 1950, § 45-69.6; 1954, c. 191; 1966, c. 594, § 45.1-101; 1978, c. 94; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.265. Fire-fighting equipment; duties in case of fire; fire precaution in transportation of mining equipment; fire prevention generally.

A. Each mine shall be provided with suitable fire-fighting equipment, adequate for the size of the mine and shall include at least three 20-pound dry chemical fire extinguishers. Equipment and devices used for the detection, warning and extinguishing of fires shall be suitable in type, size and quantity for the type of fire hazard that may be encountered. Such equipment and devices shall be strategically located and plainly identified.

B. Suitable fire extinguishers shall be provided at all (i) electrical stations, such as substations, transformer stations and permanent pump stations, (ii) self-propelled mobile equipment, (iii) belt heads, (iv) areas used for the storage of flammable materials, (v) fueling stations, and (vi) other areas that may constitute a fire hazard, so as to be out of the smoke in case of a fire.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.266. Duties in case of fire.

A. Should a fire occur, the person discovering it and any person in the vicinity of the fire shall make a prompt effort to extinguish it. When a fire that may endanger persons at the mine cannot be extinguished immediately, all persons shall be withdrawn promptly from the area of the fire.

B. In case of any unplanned fire at or about a mine not extinguished within thirty minutes of discovery, the operator or agent shall report by the quickest available means to the Chief, giving all information known to him regarding the fire. The Chief shall take prompt action, based on the information, to go in person or dispatch qualified subordinates to the scene of the fire for consultation, and assist in the extinguishing of the fire and the protection of exposed persons. In the event of a difference of opinion as to measures required, the decision of the Chief or his des-

ignated subordinate shall be final, but must be given to the operator in writing to have the force of an order.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.267. Fire precautions.

A. An examination for fire shall be made after every blasting operation.

B. No person shall smoke or use an open flame within twenty-five feet of locations used to handle or store flammable or combustible liquids or where an arc or flame may cause a fire or explosion.

C. Areas surrounding flammable liquid storage tanks, electrical substations and transformers shall be kept free of combustible material for at least twenty-five feet in all directions. Such storage tanks, substations and transformers shall be posted with readily visible fire hazard warning signs.

D. Structures or areas used for storage of flammable materials shall be constructed of fire resistant material, well ventilated, kept clean and orderly and posted with readily visible fire hazard warning signs.

E. Fuel lines shall be equipped with shut-off valves at the sources. Such valves shall be readily accessible and maintained in good operating condition.

F. Battery charging areas shall be well ventilated and posted with warning signs prohibiting smoking or open flames within twenty-five feet.

G. Oil, grease, other flammable hydraulic fluid, and other flammable materials shall be kept in closed metal containers and separated from other materials so as to not create a fire hazard.

H. Combustible materials, grease, lubricants, paints and other flammable materials and liquids shall not be allowed to accumulate where they could create a fire hazard. Provision shall be made to prevent the accumulation of such material on any equipment, at storage areas and any location where the material is used.

I. Electric motors, switches, lighting fixtures, and controls shall be protected by dust-tight construction.

J. Precautions shall be taken to ensure that sparks or other hot materials do not result in a fire when welding or cutting. Welding or cutting with arc or flame shall not

be done in excessively dusty atmospheres or locations. Fire-fighting apparatus shall be readily available when welding or cutting is performed.

K. Precautions shall be taken before applying heat, cutting or welding on any pipe or container that has contained a flammable or combustible material.

L. Oxygen and acetylene bottles shall be stored in racks designated and constructed for the storage of such bottles with caps in place and secured when not in use. Such bottles shall not be stored near oil, grease, and other flammable material.

M. Oxygen and acetylene gauges and regulators shall be kept clean and free of oil, grease, and other combustible materials.

N. Belt conveyors shall be equipped with control switches to automatically stop the driving motor of the conveyor in the event the belt is stopped by slipping on the driving pulley, by breakage or other accident.

O. Areas surrounding main fan installations and other mine openings shall be kept free from grass, weeds, underbrush and other combustible materials for twenty-five feet in all directions.

P. Internal combustion engines, except diesel engines, shall be shut off prior to fueling.

Code 1950, § 45-85.9; 1954, c. 191; 1966, c. 594, § 45.1-39; 1978, c. 729; 1994, c. [28](#).

§45.1-161.268. Haulage and mobile equipment; operating condition.

A. All mobile equipment shall be maintained in a safe operating condition.

B. Positive-acting stopblocks shall be used where necessary to protect persons from danger of moving or runaway haulage equipment.

C. Where it is necessary for men to cross conveyors regularly, suitable crossing facilities shall be provided.

D. Persons shall not get on or off moving equipment.

E. When the equipment operator is present, persons shall notify him before getting on or off mobile equipment.

F. Mobile equipment shall not be left unattended unless brakes are set. Mobile equipment with wheels or tracks, when parked on a grade, shall either be blocked or

turned into a bank unless the lowering of the bucket or blade to the ground will prevent movement.

G. Persons shall not work on or from a piece of mobile equipment in a raised position unless the equipment is specifically designed to lift persons.

H. Water, debris or spilled materials which may create hazards to moving equipment shall be removed.

I. Where seating facilities are provided on self-propelled mobile equipment, the operator shall be seated before such equipment is moved. No person shall be allowed to ride on top of self-propelled mobile equipment.

J. Operators of self-propelled haulage equipment shall sound a warning before starting such equipment and as approaching any place where persons are or are likely to be.

K. Each man-trip shall be under the charge of an authorized person, and operated independently.

L. Operator provided man-trips shall be maintained in safe operating condition, and enough of them shall be provided to prevent their being overloaded.

M. Employees shall not board or leave moving man-trips; they shall remain seated while in moving cars, and shall proceed in an orderly manner to and from man-trips.

Code 1950, §§ 45-69.1 to 45-69.3, 45-69.5; 1954, c. 191; 1966, c. 594, §§ 45.1-71 to 45.1-74; 1979, c. 315; 1983, c. 70; 1985, cc. 296, 302; 1994, c. [28](#).

§45.1-161.269. Equipment operation.

A. Equipment operating speeds, conditions and characteristics shall be prudent and consistent with conditions of roadway, grades, clearance, visibility, traffic, type and use of equipment.

B. Vehicles shall follow at a safe distance; passing shall be limited to areas of adequate clearance and visibility.

C. Mobile equipment shall be operated under power control at all times and mobile equipment operators shall have full control of the equipment while in motion.

D. Before starting or moving equipment, an equipment operator must be certain by signal or other means that all persons are clear.

1994, c. [28](#); 1999, c. [256](#).

§45.1-161.270. Safety measures on equipment.

- A. Rubber tired or crawler mounted equipment shall have rollover protective structures to the extent required by 30 CFR 77.403a .
- B. Seat belts provided in mobile equipment shall be maintained in safe working condition. Operators of such equipment shall wear seat belts when the equipment is in motion.
- C. Mobile equipment shall be equipped with adequate brakes and parking brakes.
- D. Cab windows shall be of safety design, kept in good condition and clean for adequate visibility.
- E. Tires shall be deflated before repairs on them are started and adequate means shall be provided to prevent wheel locking rims from creating a hazard during tire inflation.
- F. An audible warning device and headlights shall be provided on all self-propelled mobile equipment.
- G. An automatic backup alarm, that is audible above surrounding noise levels, shall be provided on all mobile equipment. An automatic reverse-activated strobe light may be substituted for an audible alarm when mobile equipment is operated at night.
- H. All equipment raised for repairs or other work shall be securely blocked prior to persons positioning themselves where the falling of such equipment could create a hazardous condition.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.271. Transportation of personnel.

No person shall be permitted to ride or be otherwise transported on or in: (i) dippers, shovels, buckets, forks and clamshells, (ii) the cargo space of dump trucks, (iii) outside cabs or beds of heavy equipment, or (iv) chain, belt or bucket conveyors unless specifically designed to transport persons.

1994, c. [28](#).

§45.1-161.272. Lighting.

- A. Lights shall be provided as needed, in or on surface structures.

B. Roads, paths and walks outside of surface structures shall be kept free from obstructions and shall be well illuminated if used at night.

1966, c. 594, § 45.1-38; 1994, c. [28](#).

§45.1-161.273. Shop and other equipment.

A. The following shall be guarded and maintained adequately:

1. Gears, sprockets, pulleys, fan blades or propellers, friction devices and couplings with protruding bolts or nuts.

2. Shafting and projecting shaft ends that are within seven feet of floor or platform level.

3. Belt, chain or rope drives that are within seven feet of floor or platform.

4. Fly wheels. Where fly wheels extend more than seven feet above the floor, they shall be guarded to a height of at least seven feet.

5. Circular and band saws and planers.

6. Repair pits. Guards shall be kept in place when the pits are not in use.

7. Counterweights.

8. Mine fans. The approach shall be guarded.

9. Lighting and other electrical equipment that may cause shock hazards or personal injury.

B. Machinery shall not be repaired or oiled while in motion; provided, however, that this shall not apply where safe remote oiling devices are used.

C. A guard or safety device removed from any machine shall be replaced before the machine is put in operation.

D. Mechanically operated grinding wheels shall be equipped with:

1. Safety washers and tool rests.

2. Substantial retaining hoods, the hood opening of which shall not expose more than a 90 degree sector of the wheel. Such hoods shall include a device to control and collect excess rock, metal or dust particles, or equivalent protection shall be provided to the employees operating such machinery.

3. Eyeshields, unless goggles are worn by the operators.

E. The operator or his agent shall develop procedures for examining for potential hazards, completing proper maintenance, and properly operating each type of centrifugal pump. The procedures shall, at a minimum, address the manufacturers' recommendations for start-up and shutdown of the pumps, proper actions to be taken when a pump is suspected of overheating, safe location of start and stop switches, and actions to be taken when signs of structural metal fatigue such as cracks in the frame, damaged cover mounting brackets, or missing bolts or other components are detected. All miners who repair, maintain, or operate such pumps shall be trained in these procedures.

Code 1950, § 45-85.3; 1954, c. 191; 1966, c. 594, § 45.1-88; 1978, c. 118; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.274. Hydraulic hoses.

All hydraulic hoses used on equipment purchased after January 1, 1986, shall be clearly stamped or labeled by the hydraulic hose manufacturer to indicate the manufacturer's rated pressure in pounds per square inch (psi). For hoses purchased after January 1, 1989, the rated pressure shall be permanently affixed on the outer surface of the hose and repeated at least every two feet. Hoses purchased and installed on automatic displacement hydraulic systems shall have a four-to-one safety factor based on the ratio between minimum burst pressure and the setting of the hydraulic unloading system (such as a relief valve) or shall meet the minimum hose pressure requirements set by the hydraulic equipment manufacturer per the applicable hose standards for each type of equipment. No hydraulic hose shall be used in an application where the hydraulic unloading system is set higher than the hose's rated pressure.

1985, c. 612, § 45.1-88.1; 1988, c. 301; 1994, c. [28](#).

§45.1-161.275. Stairways, platforms, runways and floor openings.

A. Stairways, platforms, and runways shall be provided where men work or travel.

B. Stairways, elevated platforms, floor openings and elevated runways shall be equipped with suitable handrails or guardrails.

C. Elevated platforms, floor openings, stairways and runways shall be provided with toe boards. Platforms, stairways and runways shall be kept clear of stumbling and slipping hazards and maintained in good repair.

Code 1950, § 45-85.7; 1954, c. 191; 1966, c. 594, § 45.1-36; 1978, c. 729; 1994, c. [28](#).

§45.1-161.276. Loading and haulage work area requirements.

A. Ramps and dumps shall be of solid construction, ample width, ample clearance and head room and shall be kept reasonably free of spillage.

B. Berms or guards shall be provided on the outer bank of elevated haulage roads. Berms constructed on or after July 1, 2005, shall be constructed of substantial material to the mid-axle height of the largest vehicle regularly used on the haulage road. The width and height of the berm shall be constructed on a two-to-one ratio when constructed of unconsolidated material. Other no-less effective methods may be used for berms.

C. Berms, bumper blocks, safety hooks or similar means shall be provided to prevent overtravel and overturning at dump stations.

D. Dumping locations and haulage roads shall be kept reasonably free of water, debris and spillage. Water, debris or spilled material that creates hazards to moving equipment shall be removed.

E. Haulage roads constructed on or after July 1, 2005, shall be constructed at least one and one-half times the width of the widest equipment in use, and those haulage roads used for passing shall be constructed at least three times the width of the widest equipment in use. In areas where this may not be possible, the foreman shall establish procedures for safe travel of haulage vehicles.

F. Traffic rules, signals, and warning signs shall be standardized at each mine and posted. This shall include, but not be limited to, rules for the travel of on-road vehicles operating near off-road haulers in work areas.

G. Dumping stations where material is dumped over an embankment shall be designed to minimize backing and, where conditions permit, to provide for perpendicular travel to allow the equipment operator to observe the dumping station for changing conditions prior to backing. Reflectorized signs, strobe lights, or other available means shall be used to clearly indicate dumping locations. This subsection shall not apply to dumping stations (i) that are moved after each dumped load as mining progresses, (ii) where spotters are being used, or (iii) where loads are dumped short and pushed over the embankment. Dump stations that may interfere with haulroads or work areas below shall be clearly marked with signs to prevent further dumping,

unless other effective precautions are taken to protect haulroads or work areas below the dump station.

Code 1950, § 45-85.7; 1954, c. 191; 1966, c. 594, § 45.1-36; 1978, c. 729; 1994, c. [28](#); 1996, c. [774](#); 2005, c. [3](#); 2010, cc. [809](#), [857](#).

§45.1-161.277. Equipment operation.

A. If truck spotters are used, they shall be well in the clear while trucks are backing into dumping position and dumping. Truck spotters shall use lights at night to direct backing and dumping operations.

B. Dippers, buckets, scraper blades and similar movable parts shall be secured or lowered to the ground when not in use.

C. Equipment which is to be hauled shall be loaded and protected so as to prevent sliding or spillage. When moving between work areas the equipment shall be secured in the travel position.

D. Tow bars shall be used to tow heavy equipment and a safety chain shall be used in conjunction with each tow bar.

E. Dust control measures shall be taken so as to not obstruct visibility of equipment operators.

F. Dippers, buckets, loading booms, or other heavy loads shall not be swung over cabs of haulage equipment until the driver is out of the cab and is in a safe location unless the equipment is designed specifically to protect drivers from falling material.

G. Lights, flares, or other warning devices shall be posted when parked equipment creates a hazard for other vehicles.

1994, c. [28](#); 2005, c. [3](#).

§45.1-161.278. Control of dust and combustible material.

A. Where mining operations raise an excessive amount of dust into the air, water or water with wetting agent added to it or other effective methods shall be used to allay such dust at its sources.

B. Drilling in rock shall be done wet, or other means of dust control shall be used.

C. Loose coal, coal dust, oil, grease, and other combustible materials shall not be permitted to accumulate excessively on equipment or surface structures.

Code 1950, §§ 45-77.1, 45-85.1; 1954, c. 191; 1966, c. 594, §§ 45.1-66, 45.1-87; 1979, c. 315; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.279. Overhead high-potential power lines; surface transmission lines; electric wiring in surface buildings.

A. Overhead high-potential power lines shall be placed at least fifteen feet above the ground and twenty feet above driveways and haulage roads, shall be installed on insulators, and shall be supported and guarded to prevent contact with other circuits.

B. Surface transmission lines shall be protected against short circuits and lightning.

C. Electric wiring in surface buildings shall be installed so as to prevent fire and contact hazards.

Code 1950, §§ 45-82, 45-82.3; 1954, c. 191; 1966, c. 594, § 45.1-75; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.280. Transformers.

A. Unless surface transformers are isolated by elevation (eight feet or more above the ground), they shall be enclosed in a transformer house or surrounded by a suitable fence at least six feet high. If the enclosure or fence is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

B. Surface transformers containing flammable oil and installed where they present a fire hazard shall be provided with means to drain or to confine the oil in the event of rupture of the transformer casing.

C. Suitable danger signs shall be posted conspicuously at all transformer stations on the surface.

D. All transformer stations on the surface shall be kept free of nonessential combustible materials and refuse.

E. No electrical work shall be performed on low-voltage, medium-voltage, or high-voltage distribution circuits or equipment, except by a certified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a certified person. All high-voltage circuits shall be grounded before repair work is performed. Disconnecting devices shall be locked out and suitably tagged by the persons who perform electrical or mechanical work on such circuits or equipment connected to the circuits, except that in cases where locking out is not

possible, such devices shall be opened and suitably tagged by such persons. Locks and tags shall be removed only by the persons who installed them or, if such persons are unavailable, by certified persons authorized by the operator or his agent. However, employees may, where necessary, repair energized trolley wires if they wear insulated shoes and lineman's gloves. This section does not prohibit certified electrical repairmen from making checks on or troubleshooting energized circuits or the performance of repairs or maintenance on equipment by authorized persons once the power is off and the equipment is blocked against motion, except where motion is necessary to make adjustments.

Code 1950, §§ 45-82 to 45-82.2; 1954, c. 191; 1966, c. 594, §§ 45.1-76, 45.1-78; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.281. Grounding.

A. All metallic sheaths, armors, and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded effectively.

B. Metallic frames, casing, and other enclosures of stationary electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded effectively or equivalent protection shall be provided.

C. When electric equipment is operated from three-phase alternating current circuits originating in transformers connected to provide a neutral point, a continuous grounding conductor of adequate size shall be installed and connected to the neutral point and to the frames of the power-utilizing equipment. Such grounding conductors shall be grounded at the neutral point and at intervals along the conductor if feasible. A suitable circuit breaker or switching device shall be provided having a ground-trip coil connected in series with the grounding conductor to provide effective ground-fault tripping.

1966, c. 594, § 45.1-79; 1994, c. [28](#).

§45.1-161.282. Circuit breakers and switches.

A. Automatic circuit breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and power circuits against excessive overload. Wires or other conducting materials shall not be used as a substitute for properly designed fuses, and circuit breaking devices shall be maintained in safe operating condition.

B. Operating controls, such as switches, starters, and switch buttons, shall be so installed that they are readily accessible and can be operated without danger of contact with moving or live parts.

C. Electric equipment and circuits shall be provided with switches or other controls of safe design, construction and installation.

D. Insulating mats or other electrically nonconductive material shall be kept in place at each power-control switch and at stationary machinery where shock hazards exist.

E. Suitable danger signs shall be posted conspicuously at all high-voltage installations.

F. All power wires and cables shall have adequate current-carrying capacity, shall be guarded from mechanical injury and installed in a permanent manner.

G. Power circuits shall be labeled to indicate the unit or circuit they control.

H. Persons shall stay clear of an electrically powered shovel or other similar heavy equipment during an electrical storm.

I. All devices installed on or after July 1, 2005, which provide either short circuit protection or protection against overload, shall conform to the minimum requirements for protection of electric circuits and equipment of the National Electric Code in effect at the time of their installation.

J. All electric conductors installed on or after July 1, 2005, shall be sufficient in size to meet the minimum current-carrying capacity provided for in the National Electric Code in effect at the time of their installation.

K. All trailing cables purchased on or after July 1, 2005, shall meet the minimum requirements for ampacity provided in the standards of the Insulated Power Cable Engineers Association -- National Electric Manufacturers Association in effect at the time such cables are purchased.

Code 1950, §§ 45-82, 45-82.1, 45-82.3, 45-82.4; 1954, c. 191; 1966, c. 594, §§ 45.1-78, 45.1-80, 45.1-81; 1978, c. 118; 1979, c. 315; 1993, c. 442; 1994, c. [28](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.283. Electrical trailing cables.

A. Trailing cables shall be provided with suitable short-circuit protection and means of disconnecting power from the cable.

B. Temporary splices in trailing cables shall be made in a workmanlike manner, mechanically strong, and well insulated.

C. The number of temporary, unvulcanized splices in a trailing cable shall be limited to one.

D. Permanent splices in trailing cables shall be made as follows:

1. Mechanically strong with adequate electrical conductivity and flexibility.
2. Effectively insulated and sealed so as to exclude moisture.
3. The finished splice shall be vulcanized or otherwise treated with suitable materials to provide flame-resistant properties and good bonding to the outer jacket.

E. Trailing cables shall be protected against mechanical injury.

Code 1950, § 45-82.5; 1954, c. 191; 1966, c. 594, § 45.1-84; 1978, c. 118; 1993, c. 442; 1994, c. [28](#).

§45.1-161.284. Surface storage of explosives and detonators.

A. Separate surface magazines shall be provided for the storage of explosives and detonators.

B. Surface magazines for storing and distributing explosives in amounts exceeding 150 pounds shall be:

1. Reasonably bulletproof and constructed of incombustible material or covered with fire-resistive material. The roofs of magazines so located that it is impossible to fire bullets directly through the roof from the ground, need not be bulletproof, but where it is possible to fire bullets directly through them, roofs shall be made bullet-resistant by material construction, or by a ceiling that forms a tray containing not less than a four-inch thickness of sand, or by other methods;
2. Provided with doors constructed of three-eighth inch steel plate lined with a two-inch thickness of wood, or the equivalent;
3. Provided with dry floors made of wood or other nonsparking material and have no metal exposed inside the magazine;
4. Provided with suitable warning signs so located that a bullet passing directly through the face of a sign will not strike the magazine;
5. Provided with properly screened ventilators;
6. Equipped with no openings except for entrance and ventilation;

7. Kept locked securely when unattended; and
 8. Electrically bonded and grounded, if constructed of metal.
- C. Surface magazines for storing detonators need not be bulletproof, but they shall be in accordance with other provisions for storing explosives.
- D. Explosives in amounts of 150 pounds or less or 5,000 detonators or less shall be stored in accordance with the preceding standards or in separate locked box-type magazines. Box-type magazines may also be used as distributing magazines when quantities do not exceed those mentioned. Box-type magazines shall be constructed strongly of two-inch hardwood or the equivalent. Metal magazines shall be lined with nonsparking material. No magazine shall be placed in a building containing oil, grease, gasoline, wastepaper or other highly flammable material; nor shall a magazine be placed within twenty feet of a stove, furnace, open fire or flame.
- E. The location of magazines shall be not less than 300 feet from any mine opening. However, in the event that a magazine cannot be practicably located at such a distance, the magazine may be located less than 300 feet from a mine opening, if it is sufficiently barricaded and approved by the Chief. Unless approved by the Chief, magazines shall not be located closer to occupied buildings, public roads, or passenger railways than allowed in the "American Table of Distances for Storage of Explosive Materials" published by the Institute of Makers of Explosives.
- F. The supply kept in distribution magazines shall be limited to approximately a forty-eight hour supply, and such supplies of explosives and detonators may be distributed from the same magazine, if separated by at least a four-inch substantially fastened hardwood partition or the equivalent.
- G. The area surrounding magazines for not less than twenty-five feet in all directions shall be kept free of rubbish, dry grass or other materials of a combustible nature.
- H. If the explosives magazine is illuminated electrically, the lamps shall be of vapor-proof type, installed and wired so as to present minimum fire and contact hazards.
- I. Only nonmetallic tools shall be used for opening wooden containers. Extraneous materials shall not be stored in an explosives or detonator magazine.
- J. Smoking, carrying smokers' articles or open flames shall be prohibited in or near any magazine.

Code 1950, § 45-53.2; 1954, c. 191; 1966, c. 594, § 45.1-44; 1978, c. 729; 1994, c. [28](#); 2010, cc. [809](#), [857](#).

§45.1-161.285. Misfires.

A. Misfires shall be reported promptly to the mine foreman and no other work shall be performed in the blasting area until the hazard has been corrected. A waiting period of at least fifteen minutes shall elapse before anyone returns to the misfired holes. If explosives are suspected of burning in a hole, all persons affected shall move to a safe location for the longer of one hour or until the danger has passed. When such failure involves electronic detonators, the blasting cable shall be disconnected from the source of power and the battery ends short-circuited before electric connections are examined.

B. Explosives shall be removed by firing a separate charge at least two feet away from, and parallel to, the misfired charge or by washing the stemming and the charge from the borehole with water, or by inserting and firing a new primer after the stemming has been washed out.

C. A very careful search of the blasting area, and if necessary, of the coal after it reaches the tipple shall be made after blasting a misfired hole to recover any undetonated explosive.

D. The handling of a misfired shot shall be under the direct supervision of the foreman or an authorized person designated by him.

Code 1950, § 45-53.7; 1954, c. 191; 1966, c. 594, § 45.1-50; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.286. Minimum blasting practices.

A. When explosives are in use on the surface and an electrical storm approaches, all persons shall be removed from such blast area until the storm has passed.

B. In accordance with the standards set forth in § [45.1-161.255](#) the Chief shall promulgate regulations regarding the safe storage, transportation, handling, and use of blasting agents and other explosives.

Code 1950, §§ 45-53.1, 45-53.5; 1954, c. 191; 1966, c. 594, §§ 45.1-48, 45.1-53.1; 1978, c. 729; 1981, c. 179; 1984, c. 229; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.287. Ground control.

A. All surface coal mining operations shall establish and follow a ground control plan approved by the Chief to ensure the safety of workers and others affected by the operations. The ground control plan shall be consistent with prudent engineering design. Mining methods shall ensure wall and bank stability, including benching, to obtain a safe overall slope. The ground control plan shall also ensure the safety of persons (i) in residences or other occupied buildings, (ii) working or traveling on any roadway, and (iii) in any other area where persons congregate, work, or travel that may be affected by blasting or falling, sliding, or other uncontrolled movement of material. The plan shall identify how residents or occupants of other buildings located down the slope from active workings will be notified when ground disturbing activities will take place above them and what actions will be taken to protect such residents or occupants from ground control failures during the work.

B. Scaling and removal of loose hazardous material from the tops of pits and highwalls, banks, walls and benches shall be completed to assure a safe work area.

C. Employees and other persons, except those involved in correction of the condition, shall be restricted from areas where hazardous highwall or pit conditions exist.

D. Unless required for the purpose of repairs, all persons shall be restricted from areas between equipment and walls, benches, or banks if the equipment may hinder their escape from falling or sliding material. Special precautions shall be taken when persons are required to perform such repairs.

1994, c. [28](#); 2005, c. [3](#).

§45.1-161.288. Inspection of electric equipment and wiring; checking and testing methane monitors.

Electric equipment and wiring that extend to underground areas shall be inspected by a certified person at least once a week and more often if necessary to assure safe operating conditions, and any hazardous condition found shall be corrected or the equipment or wiring shall be removed from service. This surface inspection is required for trailing cables and circuit breakers used in conjunction with such equipment and wiring.

1966, c. 594, § 45.1-85; 1978, c. 118; 1993, c. 442; 1994, c. [28](#); 2005, c. [3](#); 2011, cc. [826](#), [862](#).

§45.1-161.289. Highwall inspections.

A. The face of all highwalls, for a distance of 25 feet in both directions from an auger or highwall miner operation, shall be inspected by a mine foreman before any such operation begins and at least once during each coal producing shift.

B. Mine foreman shall examine the face of all highwalls for a distance of 25 feet in both directions from auger or highwall miner operations frequently during periods of heavy rainfall or intermittent freezing-thawing.

C. Hazardous conditions shall be corrected and loose material removed from above the mining area before any work is begun.

D. Records shall be kept of the inspection compiled pursuant to subsections A and B. Such records shall be maintained for one year.

1994, c. [28](#); 2011, cc. [826](#), [862](#).

§45.1-161.290. Penetration of underground mines; testing.

A. A qualified person shall test for methane and deficiency of oxygen using an approved device at the entrance to an auger hole or highwall miner entry when either penetrates a worked-out area of an underground mine.

B. If one percent or more of methane is detected or 19.5 percent or less of oxygen is found to exist no further work shall be performed until the atmosphere has been made safe.

1994, c. [28](#); 1999, c. [256](#); 2011, cc. [826](#), [862](#).

§45.1-161.291. Safety precautions.

A. No person shall enter an auger hole or highwall miner entry without prior approval from the Chief.

B. Auger holes and highwall miner entries shall be blocked with highwall spoil or other suitable material before abandoned.

C. Auger and highwall mining machines which are exposed to highwall and explosion hazards shall be provided with worker protection from falling material and mine explosions.

D. At least one person shall be assigned to observe the highwall for possible movement while ground personnel are working in high risk areas in close proximity to the highwall.

E. Persons shall stay clear of any moving auger or highwall miner train and no persons shall pass over or under a moving train unless adequate crossing facilities are provided.

F. The ground control plan shall specify spacing of holes, web design, and alignment control devices.

G. The ground control plan shall include other administrative, engineering, and source controls provided for safe operations.

1994, c. [28](#); 2011, cc. [826](#), [862](#).

§45.1-161.292. Surface coal mining; distance from wells; requirements.

A. Any mine operator who plans to remove coal or extend any workings in any mine closer than 500 feet to any gas or oil well already drilled or in the process of being drilled shall file with the Chief a notice that mining is taking place or will take place, together with a copy of parts of the maps and plans required under § [45.1-161.64](#) which show the mine workings and projected mine workings beneath the tract in question and within 500 feet of the well. Such mine operator shall simultaneously mail copies of such notice, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector. Each notice shall certify that the mine operator has complied with the provisions of this subsection.

B. Subsequent to the filing of the notice required by subsection A of this section, the mine operator may proceed with mining operations in accordance with the maps and plans; however, without the prior approval of the Chief, he shall not remove any coal or extend any workings in any mine closer than 200 feet to any gas or oil well already drilled or in the process of being drilled. The Chief shall promulgate regulations which prescribe the procedure to be followed by mine operators in petitioning the Chief for approval to conduct such activities closer than 200 feet to a well. A petition may include a request to mine through a plugged well or plugged vertical ventilation hole. A petition may also include a request to mine through a well or vertical ventilation hole and lower the head of such well or vertical ventilation hole. Each mine operator who files a petition to remove coal or extend any workings closer than 200 feet to any gas or oil well shall mail copies of the petition, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the well operator shall have standing to object to any petition filed under this section. Such objections shall be filed within ten days following the date such petition is filed.

1990, c. 92, § 45.1-92.1; 1994, c. [28](#).

Requirements Applicable to Surface Mineral Mining

§45.1-161.304. Scope of chapter.

This chapter shall be applicable to the operation of any surface mineral mine in the Commonwealth, and shall supplement the provisions of Chapter 14.4:1 (§ [45.1-161.292:1](#) et seq.).

1994, c. [28](#); 1997, c. [390](#).

§45.1-161.305. Regulations governing conditions and practices at surface mineral mines.

A. The Director shall promulgate rules and regulations, in accordance with Article 2 (§ [2.2-4006](#) et seq.) of the Administrative Process Act, necessary to ensure safe working conditions and practices at surface mineral mines in the Commonwealth. Nothing in this section shall restrict the Director from promulgating regulations more stringent than regulations promulgated pursuant to the federal mine safety law. Such rules and regulations applicable to surface mineral mines shall establish requirements:

1. For protecting miners from general risks found at surface mineral mines;
2. For the provision and use of personal protection equipment;
3. For controlling unstable ground conditions;
4. For the handling and storage of combustible materials, including requirements for emergency plans, fire-fighting and emergency rescue, fire prevention and safety features on mine equipment, and fire prevention and safety in mine structures and buildings;
5. For controlling exposure to airborne toxic contaminants;
6. For safe storage, transportation, and use of explosives and blasting devices;
7. For the safe design, operation, maintenance, and inspection of drilling equipment;

8. For the construction, use, maintenance, and inspection of boilers, air compressors, and compressed gas systems;
9. For the safe design, operation, maintenance, and inspection of mobile equipment;
10. For the safe design, use, maintenance, and inspection of ladders, walkways, and travel ways;
11. For the safe design, operation, maintenance, and inspection of electrical equipment and systems;
12. For the safe design, use, maintenance, and inspection of guards on moving parts of equipment and machinery;
13. For the storage, transportation and handling of materials, including corrosive and hazardous substances;
14. For the safe design, operation, maintenance, and inspection of hoisting equipment and cables;
15. For the actions of certified and competent persons; and
16. For the design, construction, maintenance, inspection of refuse piles, and water and silt retaining dams, including emergency response plans.

B. The Director shall not promulgate any regulation relating to surface mineral mines which is inconsistent with requirements established by the Act, or which, when an operator takes action to comply with the provisions of such regulation, would place the operator in violation of the federal mine safety law.

1994, c. [28](#); 1996, c. [774](#); 1998, c. [695](#).

§45.1-161.306. Standards for regulations.

In promulgating rules and regulations pursuant to § [45.1-161.305](#), the Director shall consider:

1. Standards utilized and generally recognized by the surface mineral mining industry;
2. Standards established by recognized professional mineral mining organizations and groups;
3. The federal mine safety law;

4. Research, demonstrations, experiments, and such other information that is available regarding the maintenance of a reasonable degree of safety protection, including the latest available scientific data in the field, the technical and economical feasibility of the standards, and the experience gained under this Act and other mine safety laws; and

5. Such other criteria as shall be necessary for the protection of safety of miners and other persons or property likely to be endangered by surface mineral mines or related operations.

1994, c. [28](#).

§45.1-161.307. Mining in proximity to gas and oil wells.

A. The Director shall promulgate regulations requiring licensed operators to notify, and in appropriate circumstances obtain the consent of, the Director prior to removing minerals in the proximity of any gas or oil well already drilled or in the process of being drilled.

B. Any licensed operator who plans to remove any mineral, drive any passage or entry or extend any workings in any mine closer than 500 feet to any gas or oil well already drilled or in the process of being drilled shall file with the Director a notice that mining is taking place or will take place, together with a copy of parts of the maps and plans required under § [45.1-161.292:37](#), which show the mine workings and projected mine workings which are within 500 feet of the well. The licensed operator shall simultaneously mail copies of such notice, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector. Each notice shall contain a certification made by the sender that he has complied with these requirements.

C. Subsequent to the filing of the notice, the licensed operator may proceed with mining operations in accordance with the maps and plans; however, without the prior approval of the Director, he shall not remove any material, drive any entry, or extend any workings in any mine closer than 200 feet to any gas or oil well already drilled or in the process of being drilled. Each licensed operator who files such a petition shall mail copies of the petition, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the well operator shall have standing to object to any petition filed under this section. Such objections shall be filed within ten days following the date such petition is filed.

1990, c. 92, § 45.1-92.1; 1994, c. [28](#); 1997, c. [390](#); 1998, c. [695](#).

§45.1-161.308. Respiratory equipment.

A. The Director shall promulgate regulations requiring miners exposed for short periods to hazards from inhalation of gas, dust, or fumes to wear approved respiratory equipment.

B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, miners exposed for short periods to hazards from inhaling dust or fumes shall wear approved respiratory equipment.

Code 1950, § 45-86; 1954, c. 191; 1966, c. 594, § 45.1-99; 1994, c. [28](#).

§45.1-161.309. Health regulations.

A. The Director shall have the authority to promulgate regulations requiring that sources of dust at surface mineral mines be wetted down unless controlled by dry collection measures, or other means approved by the Director.

B. The Director shall have the authority to promulgate regulations providing that miners at surface mineral mines which are subject to inspection by the Department pursuant to § [45.1-161.292:54](#) shall not be exposed to noise levels that exceed the federal limit adopted by the Mine Safety and Health Administration for non-coal miners. The regulations shall provide that if such exposure exceeds the federal limit, the Director may require the operator to employ feasible engineering and administrative control measures.

1994, c. [28](#); 1997, c. [390](#).

Requirements Applicable to Underground Coal Mines

§45.1-161.105. Scope of chapter.

This chapter shall be applicable to the operation of any underground coal mine in the Commonwealth, and shall supplement the provisions of Chapter 14.2 (§ [45.1-161.7](#) et seq.).

1994, c. [28](#).

§45.1-161.106. Regulations governing conditions and practices at underground coal mines.

A. The Chief shall have authority, after consultation with the Virginia Coal Mine Safety Board and in accordance with the provisions of Article 2 (§ [2.2-4006](#) et seq.) of the Administrative Process Act, to promulgate rules and regulations necessary to ensure safe and healthy working conditions in underground coal mines in the Commonwealth. Such rules and regulations governing underground coal mines shall relate to:

1. The maintenance, operation, storage, and transportation of any mechanical or electrical equipment, device or machinery used for any purpose in the underground mining of coal;
2. Safety and health standards for the protection of the life, health and property of, and the prevention of injuries to, persons involved in or likely to be affected by any underground coal mining operations which shall include but not be limited to the control of dust concentration levels; use of respiratory equipment and ventilating systems; development and maintenance of roof control systems; handling of combustible materials and rock dusting; installation, maintenance and use of electrical devices, equipment, cables and wires; fire protection, including equipment, emergency evacuation plans, emergency shelters, and communication facilities; the use and storage of explosives; and the establishment and maintenance of barriers in underground mines around gas and oil wells. The Chief is authorized to promulgate regulations setting forth specific occupations and conditions for which a miner will be prohibited from working alone underground; and
3. The storage or disposal of any matter or materials extracted or disturbed as the result of an underground coal mining operation or operations or used in the mining operation or for the refinement or preparation of the materials extracted from the coal mining operation so that such matter or material does not threaten the health or safety of the miners or the general public.

B. The Chief shall not promulgate any regulation establishing requirements for the operation of, or conditions at, an underground coal mine which are inconsistent with requirements established by the Act.

Code 1950, §§ 45-8, 45-84; 1954, c. 191; 1966, c. 594, § 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 520; 1978, c. 120; 1982, c. 118; 1990, c. 963; 1994, c. [28](#).

§45.1-161.107. Standards for regulations.

In promulgating rules and regulations pursuant to § [45.1-161.106](#), the Chief shall consider:

1. Standards utilized and generally recognized by the coal mining industry;
2. Standards established by recognized professional coal mining organizations and groups;
3. The federal mine safety law;
4. Research, demonstrations, experiments, and such other information that is available regarding the maintenance of the highest degree of safety protection, including the latest available scientific data in the field, the technical feasibility of the standards, and the experience gained under this Act and other mine safety laws; and
5. Such other criteria as shall be necessary for the protection of safety and health of miners and other persons or property likely to be endangered by underground coal mines or related operations.

Code 1950, §§ 45-8, 45-84; 1954, c. 191; 1966, c. 594, § 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 520; 1978, c. 120; 1982, c. 118; 1990, c. 963; 1994, c. [28](#).

§45.1-161.108. Roof, ribs and faces to be secure.

A. All underground active workings and travel ways shall be secured and controlled to protect miners from falls of roof, face or ribs. Loose roof and loose or overhanging ribs and faces shall be taken down or supported.

B. The method of mining followed shall not expose miners to hazardous conditions caused by excessive widths of rooms and entries, faulty pillar-recovery methods, or other hazardous mining methods or working conditions.

Code 1950, §§ 45-68.1 to 45-68.3; 1954, c. 191; 1966, c. 594, §§ 45.1-40, 45.1-41; 1975, c. 520; 1978, cc. 118, 729; 1980, c. 338; 1982, c. 234; 1984, c. 590; 1988, c. 577; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.109. Roof control plans.

A. Each underground coal mine shall have a roof control plan approved by the Chief. Each plan shall include (i) a minimum standard for adequately controlling the roof, face, and ribs; (ii) a description of mining methods used; (iii) a listing and specification of roof and rib support materials; (iv) instruction for the installation of temporary and permanent roof supports; (v) a description of any pillar recovery methods; (vi) applicable drawings that demonstrate width of openings, roof support

installation sequences, and pillar recovery sequences; and (vii) any additional requirements deemed necessary by the Chief. The initial submission of any roof control plan shall include maps of mine projections, overlying and underlying mine workings, coal contours, and surface contours. If changes are to be made in the mining system that necessitate any change in the roof control plan, the plan shall be revised and approved by the Chief prior to implementing the new mining system.

B. The Chief shall, where he deems necessary, prescribe adequate minimum standards for systematic support of mine roof, suitable to the roof conditions and mining system of each mine. Such standards shall be incorporated into an approved roof control plan for the mine. This section shall not apply to roof control systems installed prior to January 27, 1988, so long as the support system continues to effectively control the roof, face and ribs.

C. Failure to comply with the approved roof control plan for the mine shall constitute a violation of this section.

D. The approved roof control plan shall be posted conspicuously at the mine and a copy shall be available at each working section of the mine.

E. The minimum standards and plan shall provide for temporary support at all active workings, without regard to natural condition.

F. If the minimum standards do not afford adequate protection, such additional supports as shall be necessary shall be installed. Such additional supports shall be described in the plan.

Code 1950, § 45-68.2; 1954, c. 191; 1966, c. 594, § 45.1-40; 1975, c. 520; 1978, c. 729; 1984, c. 590; 1994, c. [28](#); 1999, c. [256](#); 2005, c. [3](#); 2011, cc. [826](#), [862](#).

§45.1-161.110. Instruction of miners.

The operator, or his agent, shall instruct all miners in the removal and installation of temporary and permanent roof supports as may be required by the roof control plan.

Code 1950, § 45-68.2; 1954, c. 191; 1966, c. 594, § 45.1-40; 1975, c. 520; 1978, c. 729; 1984, c. 590; 1994, c. [28](#).

§45.1-161.111. Copies of plan.

The operator, or his agent, shall furnish to any miner engaged in removing or installing temporary or permanent roof supports, upon request, a copy of the roof control plan.

Code 1950, § 45-68.2; 1954, c. 191; 1966, c. 594, § 45.1-40; 1975, c. 520; 1978, c. 729; 1984, c. 590; 1994, c. [28](#).

§45.1-161.112. Repealed.

Repealed by Acts 1996, c. [774](#), effective April 6, 1996.

§45.1-161.114. Automated temporary roof support systems.

The Chief shall promulgate regulations requiring automated temporary roof support systems for the installation of roof bolts.

Code 1950, §§ 45-68.1, 45-68.3; 1954, c. 191; 1966, c. 594, § 45.1-41; 1975, c. 520; 1978, c. 118; 1980, c. 338; 1982, c. 234; 1988, c. 577; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.115. Supplies of materials for supports.

A. The operator, or his agent, shall provide at or near the working places an ample supply of suitable materials of proper size with which to secure all roofs, ribs and faces of working places in a safe manner. Suitable supply materials shall be provided for variations in seam height. If the operator, or his agent, fails to provide such suitable materials, the mine foreman shall cause the miners to withdraw from the mine, or the portion thereof affected, until such material or supplies are received.

B. Safety posts, jacks or temporary crossbars shall be set close to the face before other operations are begun and as needed thereafter, if miners go in by the last permanent roof support.

C. Unless an automated temporary roof support system is used, safety posts or jacks shall be used to protect the miners when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed, or when any other work is being performed that would reasonably require roof support to protect the miners involved.

D. The operator, or his agent, shall make immediately available for emergency use at each mine site at least two lifting devices with a combined total of at least 80 tons lifting capacity. Each individual lifting device shall have 20 tons or greater lifting capacity.

Code 1950, §§ 45-68.1, 45-68.3; 1954, c. 191; 1966, c. 594, § 45.1-41; 1975, c. 520; 1978, c. 118; 1980, c. 338; 1982, c. 234; 1988, c. 577; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.116. Examination and testing of roof, face, and ribs.

A. The operator, or his agent, shall instruct all miners how to make visual examinations and sound and vibration testing of roof, face and ribs.

B. Miners exposed to danger from falls of roof, face, and ribs shall visually examine and, if conditions permit, test the roof, face, and ribs by sounding the roof before starting work or before starting a machine and as frequently thereafter as may be necessary to ensure safety. When hazardous conditions are found, miners discovering them shall correct such conditions immediately by taking down the loose material, by proper timbering, or installation of proper roof support before work is continued or any other work is done, or shall vacate the place.

C. At least once each shift, or more often if necessary, the mine foreman or other certified person shall examine and test the roof, face and ribs of all active working sections where coal is being produced while miners are working therein. Any place in which a hazardous condition is found by the mine foreman shall be made safe in his presence or under his direction, or the miners shall be withdrawn from such place. Such hazardous conditions and corrective actions taken shall be recorded in the on-shift record book at the mine.

Code 1950, §§ 45-61, 45-68.1; 1954, c. 191; 1966, c. 594, § 45.1-42; 1976, c. 598; 1978, c. 118; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.117. Mapping of roof falls.

Unplanned roof falls that are required to be reported in accordance with § [45.1-161.78](#) shall be marked on a map maintained at the mine to indicate the specific location of the fall.

Code 1950, §§ 45-61, 45-68.1; 1954, c. 191; 1966, c. 594, § 45.1-42; 1976, c. 598; 1978, c. 118; 1994, c. [28](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.118. Unsafe conditions.

A. No person shall work or travel under unsupported roof except to install temporary supports in accordance with the approved roof control plan. Areas inby the breaker line where second mining has been or is being conducted shall be considered unsupported.

B. If roof, face, or rib conditions are found to be unsafe, no person shall start any other work until the conditions have been corrected by taking down loose material or securely supporting the roof, face, or ribs.

C. A bar of proper length shall be used to pull down any loose material discovered.

Code 1950, §§ 45-61, 45-68.1, 45-68.3; 1954, c. 191; 1966, c. 594, §§ 45.1-41, 45.1-42; 1975, c. 520; 1976, c. 598; 1978, c. 118; 1980, c. 338; 1982, c. 234; 1988, c. 577; 1994, c. [28](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.119. Removal of supports.

A. No person shall deliberately remove any support in active areas unless equivalent protection is provided.

B. Any person who accidentally knocks out or dislodges a support shall promptly replace the support.

Code 1950, §§ 45-68.1, 45-68.3; 1954, c. 191; 1966, c. 594, § 45.1-41; 1975, c. 520; 1978, c. 118; 1980, c. 338; 1982, c. 234; 1988, c. 577; 1994, c. [28](#).

§45.1-161.120. Repealed.

Repealed by Acts 2005, c. [3](#), cl. 2, effective February 10, 2005.

§45.1-161.121. Mining in proximity to gas and oil wells.

A. Except as provided in subsection D, an operator who plans to remove coal, drive any passage or entry, or extend any workings in any mine, within 500 feet of any gas or oil well already drilled into the projected mine workings or in the process of being drilled into the projected mine workings shall file with the Chief a notice that mining is taking place or will take place. The notice shall include a copy of parts of the maps and plans required under § [45.1-161.64](#) which show the mine workings and projected mine workings which are within 500 feet of the well. The operator shall simultaneously mail copies of such notice, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector. Each notice shall contain a certification made by the operator that he has complied with the provisions of this subsection.

B. Subsequent to the filing of the notice required by subsection A, the operator may proceed with mining operations in accordance with the maps and plans; however, without the prior approval of the Chief, he shall not remove any coal, drive any entry, or extend any workings in any mine closer than 200 feet to any gas or oil well already drilled into the projected mine workings or in the process of being drilled into the projected mine workings.

C. The Chief shall promulgate regulations which prescribe the procedure to be followed by mine operators in petitioning the Chief for approval to conduct such activities within 200 feet of a gas or oil well or a vertical ventilation hole drilled or in the

process of being drilled into the projected mine workings. Each operator who files such a petition shall mail copies of the petition, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the operator of the gas or oil well or vertical ventilation hole shall have standing to object to any petition filed under this section. Such objections shall be filed within ten days following the date such petition is filed.

D. Procedures for safely mining in proximity to or through coalbed methane wells or vertical ventilation holes developed for methane drainage in a mine shall be addressed in the bleeder system plan for that mine required by § [45.1-161.220](#).

1990, c. 92, § 45.1-92.1; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.122. Mining in proximity to abandoned areas.

A. The mine foreman shall ensure that boreholes are drilled in each advancing working place that is (i) within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, (ii) within 200 feet of abandoned areas in the mine which have not been certified as surveyed or, (iii) within 200 feet of any mine workings of an adjacent mine located in the same coal bed unless the adjacent area of the mine has been pre-shift examined. The boreholes shall be at least 20 feet in depth and always maintained not less than 10 feet in advance of the face, and not more than eight feet apart unless approved by the Chief. One borehole shall also be drilled for each cut on sides of the active workings that are being driven toward, and in proximity to, an abandoned mine or part of a mine which may contain flammable gas or which is filled with water.

B. Sufficient holes shall be drilled through to accurately determine whether hazardous quantities of methane, carbon dioxide and other gases or water are present in the abandoned area. Materials shall be available to plug such holes to prevent an inundation of hazardous quantities of gases or water if detected.

C. Mining shall not advance into any abandoned area penetrated by boreholes drilled in accordance with subsection A until a plan has been submitted and approved by the Chief. The plan will include at a minimum: (i) procedures for testing the atmosphere at the back of boreholes drilled into the abandoned area; (ii) the method of ventilation, ventilation controls, and the air quantities and velocities in the affected working section and working place; (iii) procedures for mining-through when hazardous quantities of methane, carbon dioxide, or other hazardous gases cannot be removed;

(iv) dewatering procedures to be used if a penetrated area contains hazardous water accumulation; and (v) the procedures and precautions to be followed during mining-through operation. A copy of the plan shall be made available near the site of the penetration operation and the operator shall review the plan with all miners involved in the operation. Failure to comply with the approved plan shall constitute a violation of this section.

D. Any operator, his agent, mine foreman or miner engaged in drilling or mining into inaccessible abandoned areas shall have upon his person a self-contained self-rescuer.

E. Whenever a mine or section of a mine advances under any body of water that is sufficiently large or in close proximity as to constitute a hazard to miners, the operator shall submit to the Chief a plan meeting the requirements of 30 C.F.R. § 75.1716 . The operator shall obtain approval for the submitted plan from the Chief prior to advancing the mine or any section of the mine under the body of water.

F. Prior to penetrating any portion of an active mine with a borehole, ventilation hole, or other hole drilled from the surface or overlying or underlying mines or drilling from the active mine, the operator shall submit a plan to the Chief addressing: (i) the purpose of the hole, (ii) information about abandoned mines that the hole may penetrate, (iii) procedures for withdrawal or limiting the number of miners from the mine or affected area during penetration, (iv) casing details and procedures to prevent water inflow and air transfer from the hole into the active mine, (v) procedures for grouting or sealing the hole when it is no longer used, and (vi) such other information as the Chief may require. The drilling of such hole shall not begin until the plan is approved by the Chief. The provisions of this section shall not apply to gas wells, coalbed methane wells, or vertical ventilation holes.

Code 1950, § 45-38; 1954, c. 191; 1966, c. 594, § 45.1-93; 1979, c. 56; 1994, c. [28](#); 1996, c. [774](#); 2005, c. [3](#); 2011, cc. [826](#), [862](#).

§45.1-161.123. Face and other equipment.

A. The cutter chains of mining machines shall be locked securely by mechanical means or electrical interlocks, while such machines are parked or being trammed.

B. Drilling in rock shall be conducted wet or by other means of dust control.

C. Electric drills or other electrically operated rotating tools intended to be held in the hands shall have the electric switch constructed so as to break the circuit when

the hand releases the switch, or shall be equipped with properly adjusted friction or safety clutches.

D. While equipment is in operation or is being trammed, no miner shall position himself or be placed in a pinch point between such equipment and the face or ribs of the mine or another piece of equipment in the mine.

E. All equipment raised for repairs or other work shall be securely blocked prior to persons positioning themselves where the falling of such equipment could create a hazardous condition.

Code 1950, § 45-85.1; 1954, c. 191; 1966, c. 594, § 45.1-87; 1979, c. 315; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.124. Shop and other equipment.

A. The following items of shop and other equipment shall be guarded and maintained adequately:

1. Gears, sprockets, pulleys, fan blades or propellers, friction devices and couplings with protruding bolts or nuts;
2. Shafting and projecting shaft ends that are within seven feet of floor or platform level;
3. Belt, chain or rope drives that are within seven feet of the floor or platform;
4. Fly wheels, provided that fly wheels extending more than seven feet above the floor shall be guarded to a height of at least seven feet;
5. Circular and band saws and planers;
6. Repair pits, provided that guards shall be kept in place when the pits are not in use;
7. Counterweights; and
8. The approach to mine fans shall be guarded.

B. Machinery shall not be repaired or serviced while the machinery is in motion; however, this shall not apply where safe remote devices are used.

C. A guard or safety device removed from any machine shall be replaced before the machine is put in operation.

D. Mechanically operated grinding wheels shall be equipped with (i) safety washers and tool rests; (ii) substantial retaining hoods, the hood opening of which shall not expose more than a 90 degree sector of the wheel; and (iii) eyeshields, unless goggles are worn by the miners. Retaining hoods shall include either a device to control and collect excess rock, metal or dust particles, or a device providing equivalent protection to the miners operating such machinery.

E. The operator or his agent shall develop procedures for examining for potential hazards, completing proper maintenance, and properly operating each type of centrifugal pump. The procedures shall, at a minimum, address the manufacturer's recommendations for start-up and shutdown of the pumps, proper actions to be taken when a pump is suspected of overheating, safe location of start and stop switches, and actions to be taken when signs of structural metal fatigue such as cracks in the frame, damaged cover mounting brackets, or missing bolts or other components are detected. All miners who repair, maintain, or operate such pumps shall be trained in these procedures.

Code 1950, § 45-85.3; 1954, c. 191; 1966, c. 594, § 45.1-88; 1978, c. 118; 1994, c. [28](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.125. Hydraulic hoses.

All hydraulic hoses used on equipment purchased after January 1, 1986, shall be clearly stamped or labeled by the hydraulic hose manufacturer to indicate the manufacturer's rated pressure in pounds per square inch (psi). For hoses purchased after January 1, 1989, the rated pressure shall be permanently affixed on the outer surface of the hose and repeated at least every two feet. Hoses purchased and installed on automatic displacement hydraulic systems shall have a four-to-one safety factor based on the ratio between minimum burst pressure and the setting of the hydraulic unloading system (such as a relief valve) or shall meet the minimum hose pressure requirements set by the hydraulic equipment manufacturer per the applicable hose standards for each type of equipment. No hydraulic hose shall be used in an application where the hydraulic unloading system is set higher than the hose's rated pressure.

1985, c. 612, § 45.1-88.1; 1988, c. 301; 1994, c. [28](#).

§45.1-161.126. Surface storage of explosives.

A. Separate surface magazines shall be provided for the storage of explosives and detonators.

B. Surface magazines for storing and distributing explosives in amounts exceeding 150 pounds shall be:

1. Reasonably bulletproof and constructed of incombustible material or covered with fire-resistive material. The roofs of magazines so located that it is impossible to fire bullets directly through the roof from the ground need not be bulletproof, but where it is possible to fire bullets directly through them, roofs shall be made bullet-resistant by material construction, or by a ceiling that forms a tray containing not less than a four-inch thickness of sand, or by other methods;
2. Provided with doors constructed of three-eighth inch steel plate lined with a two-inch thickness of wood, or the equivalent;
3. Provided with dry floors made of wood or other nonsparking material and have no metal exposed inside the magazine;
4. Provided with suitable warning signs so located that a bullet passing directly through the face of a sign will not strike the magazine;
5. Provided with properly screened ventilators;
6. Equipped with no openings except for entrance and ventilation;
7. Kept locked securely when unattended; and
8. Electrically bonded and grounded if constructed of metal.

C. Surface magazines for storing detonators need not be bulletproof, but they shall conform to the other provisions of subsection B regarding the storage of explosives.

D. Explosives in amounts of 150 pounds or less or 5,000 detonators or less shall be stored in accordance with preceding standards or in separate locked box-type magazines. Box-type magazines may also be used as distributing magazines when quantities do not exceed those mentioned. Box-type magazines shall be constructed strongly of two-inch hardwood or the equivalent. Metal magazines shall be lined with nonsparking material. No magazine shall be placed in a building containing oil, grease, gasoline, wastepaper or other highly flammable material; nor shall a magazine be placed within 20 feet of a stove, furnace, open fire or flame.

E. Magazines shall be located not less than 300 feet from any mine opening. However, in the event that a magazine cannot be practicably located at such a distance, a magazine may be located less than 300 feet from any mine opening, if it is sufficiently barricaded and approved by the Chief. Unless approved by the Chief,

magazines shall not be located closer to occupied buildings, public roads, or passenger railways than allowed in the "American Table of Distances for Storage of Explosive Materials."

F. The supply kept in distribution magazines shall be limited to approximately a 48-hour supply, and such supplies of explosives and detonators may be distributed from the same magazine, if separated by at least a four-inch substantially fastened hardwood partition or equivalent barrier.

G. The area surrounding magazines for not less than 25 feet in all directions shall be kept free of rubbish, dry grass or other materials of a combustible nature.

H. If the explosives magazine is illuminated electrically, vapor-proof lamps shall be installed and wired so as to present minimum fire and contact hazards.

I. Only nonmetallic tools shall be used for opening wooden explosives containers. Extraneous materials shall not be stored with explosives or detonators in an explosives magazine.

Code 1950, § 45-53.2; 1954, c. 191; 1966, c. 594, § 45.1-44; 1978, c. 729; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.127. Underground transportation of explosives.

A. Explosives or detonators carried anywhere underground by any person shall be in individual containers. Such containers shall be constructed substantially of non-conductive material, maintained in good condition, and kept closed.

B. Explosives or detonators transported underground in cars moved by means of a locomotive or rope, or in shuttle cars, shall be in substantially covered cars or in special substantially covered containers used specifically for transporting detonators or explosives, and only under the following conditions:

1. The bodies and covers of such cars and containers shall be constructed or lined with nonconductive material;

2. If explosives and detonators are hauled in the same explosive car or in the same special container, they shall be separated by at least a four-inch substantially fastened hardwood partition or equivalent barrier;

3. Explosives, detonators, or other blasting devices shall not be transported on the same trip with miners;

4. When explosives or detonators are transported in special cars or containers in cars, they shall be hauled in special trips not connected to any other trip; however, this shall not prohibit the use of such additional cars as needed to lower a rope trip, or to haul supplies including timbers. Materials so transported shall not project above the top of the car. In no case shall flammable materials such as oil or grease be hauled on the same trip with explosives; and

5. Explosives or detonators shall not be hauled into or out of a mine within five minutes preceding or following a man-trip or any other trip. If traveling against the air current, the man-trip shall precede the explosives trip; if traveling with the air current, the man-trip shall follow the explosives trip.

C. In low coal seams where it is impractical to comply with subsection B, explosives may be transported in the original and unopened case, or in suitable individual containers, to the underground distribution magazine.

D. Explosives and detonators shall be transported underground by belt only under the following conditions:

1. They shall be transported in the original and unopened case, in special closed cases constructed of nonconductive material, or in suitable individual containers;

2. Clearance requirements shall be the same as those for transporting miners on belts;

3. Suitable loading and unloading stations shall be provided; and

4. Stop controls shall be provided at loading and unloading points, and an authorized person shall supervise the loading and unloading of explosives and detonators.

E. Neither explosives nor detonators shall be transported on flight or shaking conveyors, scrapers, mechanical loading machines, locomotives, cutting machines, drill trucks, or any self-propelled mobile equipment; however, this shall not prohibit the transportation of explosives or detonators in special closed containers in shuttle cars or in equipment designed especially to transport such explosives or detonators.

Code 1950, § 45-53.3; 1954, c. 191; 1966, c. 594, § 45.1-46; 1994, c. [28](#).

§45.1-161.128. Underground storage of explosives.

A. When supplies of explosives and detonators for use in one or more sections are stored underground, they shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside. Such boxes or magazines shall be

located at least twenty-five feet from roadways and power wires, and in a reasonably dry, well rock-dusted location protected from falls of roof. In pitching beds, where it is not possible to comply with the location requirement, such boxes shall be placed in niches cut into the solid coal or rock.

B. When explosives or detonators are stored in the section, they shall be kept in separate boxes or magazines not less than twelve feet apart if feasible; if kept in the same box or magazine, they shall be separated by at least a four-inch substantially fastened hardwood partition or the equivalent. Not more than a forty-eight-hour supply of explosives or detonators shall be stored underground in such boxes or magazines.

C. Explosives and detonators, kept near the face for the use of workmen, shall be kept in separate individual closed containers, in niches in the rib, not less than twelve feet apart, at least fifty feet from the working place and out of the line of blast. Such containers shall be constructed of substantial material and maintained electrically nonconductive. Where it is physically impracticable to comply with such distance requirements, the explosives and detonator containers shall be stored in the safest available place not less than fifteen feet from any pipe, rail, conveyor, haulage road, or power line, not less than twelve feet apart, and at least fifty feet from the working face and out of line of blast.

D. Explosives and detonators shall be kept in their containers until immediately before use at the working faces.

Code 1950, § 45-53.4; 1954, c. 191; 1966, c. 594, § 45.1-47; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.129. Blasting practices; penalty.

A. All explosives shall be of the permissible type except where addressed in the plan for shaft and slope development required by § [45.1-161.250](#) B.

B. All explosives shall be used as follows:

1. Explosives shall be fired only with electric detonators of proper strength;
2. Explosives shall be fired with permissible shot-firing units, unless firing is done from the surface when all persons are out of the mine, or in accordance with a plan approved by the Chief;

3. Boreholes in coal shall not be drilled beyond the limits of the cut where the coal is cut nor into the roof or floor;
4. Boreholes shall be cleaned, and shall be checked to see that they are placed properly and are of correct depth in relation to the cut, before being charged;
5. All blasting charges in coal shall have a burden of at least eighteen inches in all directions if the height of the coal permits;
6. Boreholes shall be stemmed with at least twenty-four inches of incombustible material, or at least one-half of the length of the hole shall be stemmed if the hole is less than four feet in depth. The Chief may approve the use of other stemming devices;
7. Examinations for gas shall be made immediately before firing each shot or group of multiple shots, and after blasting is completed;
8. Shots shall not be fired in any place where a methane level of one percent or greater can be detected with a permissible methane detector;
9. Without approval, charges exceeding one and one-half pounds, but not exceeding three pounds, shall be used only if (i) boreholes are six feet or more in depth; (ii) the explosives are charged in a continuous train, with no cartridges deliberately deformed or crushed; (iii) all cartridges are in contact with each other, with the end cartridges touching the back of the hole and the stemming, respectively; and (iv) permissible explosives are used; however, the three-pound limit shall not apply to solid rock work;
10. Any solid shooting shall be done in compliance with conditions prescribed by the Chief;
11. Shots shall be fired by a certified underground shot firer;
12. Boreholes shall not be charged while any other work is being done at the face, and the shot or shots shall be fired before any other work is done in the zone of danger from blasting except that which is necessary to safeguard the miners;
13. Only nonmetallic tamping bars, including a nonmetallic tamping bar with a non-sparking metallic scraper on one end, shall be used for charging and tamping boreholes;
14. The leg wires of electric detonators shall be kept shunted until ready to connect to the firing cable;

15. The roof and faces of working places shall be tested before and after firing each shot or group of multiple shots;
16. Ample warning shall be given before shots are fired, and care shall be taken to ascertain that all miners are in the clear;
17. All miners shall be removed from the working place and the immediately adjoining working place or places to a distance of at least 100 feet and accounted for before shots are fired;
18. Mixed types or brands of explosives shall not be charged or fired in any borehole;
19. Adobe (mudcap) or other open, unconfined shots shall not be fired in any mine except those types approved by the Mine Safety and Health Administration and the Chief;
20. Power wires and cables that could contact blasting cables or leg wires shall be de-energized during charging and firing;
21. Firing shots from a properly installed and protected blasting circuit may be permitted by the Chief;
22. No miner shall return, or shall be allowed to return, to the working place after the firing of any shot or shots until the smoke has reasonably cleared away;
23. Before returning to work and beginning to load coal, slate or refuse, a miner shall make a careful examination of the condition of the roof and do what is necessary to make the working place safe; and
24. An examination for fire shall be made of the working area after any blasting.

C. It shall be unlawful for an operator, his agent, or mine foreman to cause or permit any solid shooting to be done without first having obtained a written permit from the Chief. It shall be unlawful for any miner to shoot coal from the solid without first obtaining permission to do so from the operator, his agent, or mine foreman. A violation of this subsection is a Class 1 misdemeanor.

Code 1950, §§ 45-53.1, 45-53.5; 1954, c. 191; 1966, c. 594, § 45.1-48; 1978, c. 729; 1981, c. 179; 1984, c. 229; 1993, c. 442; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.130. Blasting cables.

Blasting cables shall be:

1. Well insulated and as long as may be necessary to permit the shot firer to get in a safe place around a corner;
2. Short-circuited at the battery end until ready to attach to the blasting unit;
3. Staggered as to length or the ends kept well separated when attached to the detonator leg wires; and
4. Kept clear of power wires and all other possible sources of active or stray electric currents.

Code 1950, § 45-53.6; 1954, c. 191; 1966, c. 594, § 45.1-49; 1994, c. [28](#).

§45.1-161.131. Misfires.

A. Where misfires occur with electric detonators, a waiting period of at least fifteen minutes shall elapse before a miner shall be allowed to return to the shot area. After such failure, the blasting cable shall be disconnected from the source of power and the battery ends short-circuited before electric connections are examined.

B. Explosives shall be removed by firing a separate charge at least two feet away from, and parallel to, the misfired charge or by washing the stemming and the charge from the borehole with water, or by inserting and firing a new primer after the stemming has been washed out.

C. A very careful search of the working place, and, if necessary, of the coal shall be conducted after the coal reaches the tippie after blasting a misfired hole to recover any undetonated explosive.

D. The handling of a misfired shot shall be directly supervised by the mine foreman or a certified person designated by him.

Code 1950, § 45-53.7; 1954, c. 191; 1966, c. 594, § 45.1-50; 1994, c. [28](#).

§45.1-161.132. Explosives and blasting practices in shaft and slope operations.

A. Blasting areas in shaft or slope operations shall be covered with mats or materials when the excavations are too shallow to retain the blasted material.

B. If explosives are in the shaft or slope when an electrical storm approaches, all miners shall be removed from such working places until the storm has passed.

1978, c. 729, § 45.1-53.1; 1994, c. [28](#).

§45.1-161.133. Haulage roads.

A. The roadbed, rails, joints, switches, frogs and other elements of the track of all haulage roads shall be constructed, installed and maintained in a manner that ensures their safe operation. In determining their safety, consideration shall be given to the speed of equipment, and type of haulage operations conducted on the haulage roads.

B. Haulage tracks shall be kept free of accumulations of coal spillage and debris and water shall not be allowed to accumulate over the top of the rail.

C. Off-track haulage equipment operators shall observe haulage roads for hazardous conditions during the course of travel and shall promptly correct or report to the mine foreman any hazardous condition observed.

D. Off-track haulage roads shall be maintained reasonably free of bottom irregularities, excess spillage, debris, wet or muddy conditions that make controlling off-track equipment difficult, and accumulations of water over such areas of haulage roads and in such depths that water could enter electrical panels and create potentially hazardous conditions.

E. Uninsulated trolley lines shall not be used or installed in underground coal mines without approval of the Chief.

Code 1950, § 45-69.4; 1954, c. 191; 1966, c. 594, § 45.1-70; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2011, cc. [826](#), [862](#).

§45.1-161.134. Track switches and rails.

A. All track switches shall be provided with properly installed throws, latches, and bridle bars.

B. All track switches, other than those in rooms and in entry development, shall be equipped with properly installed guardrails.

C. All switch throws and stands shall be installed on the side of the track where clearance is provided.

D. Rails shall be secured at all joints by plates or welds.

Code 1950, §§ 45-69.1, 45-69.4; 1954, c. 191; 1966, c. 594, §§ 45.1-70, 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.135. Clearance on haulage roads.

A. Track haulage roads in entries, rooms, and crosscuts shall have a continuous clearance on one side of at least 24 inches from the farthest projection of moving traffic.

The clearance shall be kept free of any obstruction to a height permitted by the height of the coal seam. When not possible to maintain such clearance, close clearance signs shall be posted inby and outby the affected area.

B. Track haulage roads in entries, rooms, and crosscuts shall have a continuous clearance, on the side opposite the clearance required by subsection A, of at least six inches from the farthest projection of moving traffic. When not possible to maintain such clearance, close clearance signs shall be posted inby and outby the affected area.

C. Haulage roads where trolley lines are used shall have the clearance required by subsection A on the side of the track opposite the trolley lines. This requirement shall not apply where the trolley lines are 6 1/2 feet or more above the rail.

D. The clearance space on all track haulage roads shall be kept free of loose rock, loose coal, supplies, and other loose materials. If the clearance space exceeds 24 inches, not more than 24 inches of the clearance space shall be required to be kept free of such materials.

E. All parallel tracks shall be installed so as to provide a clearance of at least 24 inches between the outermost projections of passing traffic.

F. Ample clearance shall be provided (i) at conveyor loading heads, (ii) at conveyor control panels, and (iii) along conveyor lines.

G. Belt conveyors shall be equipped with control switches to automatically stop the driving motor in the event the belt is stopped by slipping on the driving pulley, by breakage or other accident.

Code 1950, §§ 45-14.1, 45-69.5; 1954, c. 191; 1966, c. 594, §§ 45.1-71, 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.136. Conveyor crossings.

Suitable facilities for crossing conveyors shall be provided where it is necessary for miners to cross conveyors regularly.

Code 1950, § 45-69.5; 1954, c. 191; 1966, c. 594, § 45.1-71; 1994, c. [28](#).

§45.1-161.137. Shelter holes.

A. Track haulage roads shall have shelter holes at intervals not to exceed the interval permitted for crosscuts. Except at points where more than six feet of side clearance,

measured from the rail, is maintained and at room switches, shelter holes shall be provided at manually operated doors and at switch throws.

B. Except for shelter holes at underground slope landings where men pass and cars are handled, (i) the depth of shelter holes shall not be less than five feet, (ii) the width of shelter holes shall not be greater than four feet unless a room neck or cross-cut width exceeding four feet is used as a shelter hole, and (iii) height of shelter holes shall not be less than six feet or, if the height of the traveling space is less than six feet, as high as the traveling space.

C. Shelter holes at underground slope landings where men pass and cars are handled shall be at least (i) ten feet in depth, (ii) four feet in width, and (iii) six feet in height.

D. Shelter holes shall be kept free of refuse, loose roof, and other obstructions.

Code 1950, § 45-69.5; 1954, c. 191; 1966, c. 594, § 45.1-71; 1994, c. [28](#).

§45.1-161.138. Refuge from moving traffic.

Upon the approach of moving traffic, miners not engaged in haulage operations shall take refuge in shelter holes or other places of safety.

Code 1950, § 45-69.5; 1954, c. 191; 1966, c. 594, § 45.1-71; 1994, c. [28](#).

§45.1-161.139. Inspection of underground equipment.

Once a week or more often if necessary, the mine foreman or a certified person shall inspect electrical and diesel transportation equipment to assure its safe operating condition. Such equipment located on the surface shall be inspected as often as necessary but at least monthly. Such person shall correct any defect found during the inspection. A record of such examination shall be maintained.

1966, c. 594, § 45.1-85; 1978, c. 118; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.140. Maintenance of equipment.

Locomotives, mine cars, shuttle cars, supply cars, conveyors, self-propelled mobile equipment, and all other equipment shall be maintained in a safe operating condition.

Code 1950, § 45-69.3; 1954, c. 191; 1966, c. 594, § 45.1-72; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.141. Self-propelled equipment.

A. All self-propelled mobile transportation and haulage equipment for use underground shall be equipped with safe seating facilities for the person operating the

equipment unless equipped for remote control operation. Where seating facilities are provided on self-propelled mobile equipment, the person operating such equipment shall be seated before the equipment is put into motion.

B. All track-mounted equipment shall be equipped with proper lifting devices, for the rerailing of such equipment.

C. An audible warning device and headlights shall be provided on each locomotive, shuttle car and any other self-propelled mobile transportation and haulage equipment.

D. A trip light capable of being seen for at least 300 feet underground shall be used on the rear of trips pulled and on the front of pushed trips and trips lowered in slopes; however, trip lights need not be used where locomotives are used on each end of a trip.

E. Effective means, including but not limited to trailing locomotives, slides, skids or drags shall be used during track haulage to ensure safe control is maintained when grades create a potential hazard.

F. Where block signals are used, procedures shall be established in writing to safely control traffic movement within the system and shall be posted and reviewed with all mine personnel.

Code 1950, §§ 45-69.1, 45-69.3; 1954, c. 191; 1966, c. 594, §§ 45.1-72, 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.142. Pushing cars.

Pushing cars on main haulage roads shall be prohibited except (i) where necessary to push cars from sidetracks located near the working section to the producing entries and rooms, (ii) where necessary to clear switches and sidetracks, and (iii) on the approach to cages, slopes and surface inclines. However, where rail transportation systems are utilized and it becomes necessary to routinely push cars, the operator shall develop procedures for coordination and control of rail traffic, such as provisions of effective trip lights or other warning devices, and other safety precautions specific to the mine. These procedures shall be subject to approval of the Chief.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.143. Transportation of material.

A. Equipment or material being transported shall be loaded in a manner to protect the operator and other personnel from sliding equipment or material.

B. Materials and supplies not necessary for the operation of self-propelled mobile equipment shall not be transported on such equipment, except for when the mobile equipment is designed to carry such materials or supplies and a hazard is not created. Only small hand tools and supplies which do not create hazards may be transported in the same compartment of personnel carriers where miners are seated.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.144. Securing cars.

A. Standing cars on any track, unless held effectively by brakes, shall be properly blocked or spragged.

B. Positive-acting stopblocks or derails shall be used where necessary to protect miners from danger of runaway rail equipment. Derails shall be located where grades at the entrance and other locations in the mine create potential collision hazards.

C. Safety chains, steel ropes, or other effective devices capable of holding the load shall be used to prevent runaway man-trip or other supply cars.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.145. Riding on cars.

A. No person other than the motorman and trip rider shall ride on a locomotive, unless authorized by the mine foreman.

B. No person shall ride on loaded cars or between cars of any trip.

C. No person shall get on or off moving locomotives or cars being moved by locomotives.

D. No person shall be allowed to ride on top of self-propelled mobile equipment.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.146. Back-poling.

Back-poling shall be prohibited except (i) at places where the trolley pole cannot be reversed or (ii) when going up extremely steep grades. In all circumstances, back-poling shall occur only at very slow speed.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. [28](#).

§45.1-161.147. Operation of equipment.

A. Operators of self-propelled haulage equipment shall face in the direction of travel except when the equipment is being loaded and is under the boom of the loading equipment.

B. Track haulage cars which require coupling and uncoupling shall be equipped with automatic couplers or devices designed to allow coupling and uncoupling without exposing miners between equipment. Specialty cars designed with safe clearance when connecting to other cars are excluded from the provisions of this subsection.

C. Persons operating self-propelled haulage equipment shall sound a warning before starting such equipment and on approaching curves, sidetracks, doors, curtains, man-way crossings, or any other place where persons are or are likely to be.

D. All rail equipment shall be operated at speeds which are safe for the condition of the rail installation, grades and clearances encountered. When rail equipment is being operated at normal safe speeds, a distance of 300 feet shall be maintained from the rear of other rail equipment in operation except trailing locomotives that are an integral part of the trip.

E. All persons shall stand in the clear during switching operations.

F. No two pieces of self-propelled mobile mining equipment traveling in opposite directions inside a coal mine shall be allowed to pass each other while both are in motion on the same haulage road unless a minimum of 24 inches is maintained between the vehicles.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.148. Dispatchers.

Where a dispatcher is employed to control trips, traffic under his jurisdiction shall be moved only at his direction. The dispatcher shall be stationed on the surface at the mine.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. [28](#).

§45.1-161.149. Availability of man-trips.

The operator or his agent shall maintain a man-trip or other equipment suitable for providing reasonable access within a reasonable time to areas of the mine where miners are working and where transportation is ordinarily provided. The suitability of the equipment, and the reasonableness of the time required to reach such areas of the mine, shall be determined by the Chief.

1994, c. [28](#).

§45.1-161.150. Man-trips.

A. Man-trips operated by means of locomotives shall be pulled and at safe speeds consistent with the condition of roads and type of equipment used, and shall be so controlled that they can be stopped within the limits of visibility.

B. Each man-trip shall be under the charge of an authorized person and shall be operated independently of any loaded trip.

C. Man-trips shall be maintained in safe operating condition, and in sufficient number to prevent becoming overloaded.

D. No person shall ride under a trolley wire other than in suitably covered man-cars. Covered man-cars shall not be required under trolley wires that are guarded or positioned in accordance with subsection F of § [45.1-161.187](#).

E. Other than small hand tools carried on the person, supplies or tools shall not be transported in the same car or cage with miners on any man-trip, except in special compartments in such cars.

F. Miners shall not board or leave moving man-trip cars. Miners shall remain seated while in moving cars, and shall proceed in an orderly manner to and from man-trips.

Code 1950, § 45-69.2; 1954, c. 191; 1966, c. 594, § 45.1-74; 1985, c. 296; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.151. Man-trip loading and unloading areas.

A. Areas used regularly for loading or unloading man-trips or man-cages shall be kept clear, free of obstructions, and with ample clearance for moving equipment. Miners shall remain in such area until the man-trip or man-cage is ready to load.

B. Trolley and power wires shall be guarded effectively at areas where persons regularly load or unload from man-trips or man-cages where there is a possibility of any person coming in contact with energized electric wiring while boarding or leaving the man-trip.

Code 1950, § 45-69.2; 1954, c. 191; 1966, c. 594, § 45.1-74; 1985, c. 296; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.152. Transporting miners by belts.

A. When belts are used for transporting miners, such belts shall be free of loose materials, and a minimum clearance of at least eighteen inches shall be maintained between the belt and the roof or crossbars, projecting equipment, cap pieces, overhead cables, wiring, and other objects. Belts used for transporting miners shall be equipped with emergency stop cords for their entire length.

B. The belt speed shall not exceed (i) 250 feet per minute while miners are being transported where the clearance between the belt and overhead roof or projections is between eighteen inches and twenty-four inches and (ii) 300 feet per minute where the overhead clearance is twenty-four inches or more. The use of conveyor belts to transport miners shall be prohibited if the clearance between the belt and overhead is less than eighteen inches. Such belt shall be stopped while miners are boarding or leaving.

C. The space between miners riding on a belt line shall be not less than five feet.

D. Adequate clearance and proper illumination shall be provided where miners board or leave conveyor belts.

Code 1950, § 45-69.2; 1954, c. 191; 1966, c. 594, § 45.1-74; 1985, c. 296; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.153. Hoisting equipment.

A. All hoists used for handling men shall be equipped with overspeed, overwind, and automatic stop controls.

B. All suspended work decks and platforms (i) shall operate automatically, (ii) shall be equipped with guardrails capable of protecting men and materials from accidental overturning, and (iii) shall be equipped with safety belts and such other protective devices as the Chief shall require by regulation.

C. Any platform or work deck used for transporting miners or materials shall be equipped with leveling indicators and such conveyance shall be maintained and operated in a reasonably level position at all times.

D. Slope, shaft, or surface incline hoists shall be equipped with brakes capable of stopping and holding the fully loaded unbalanced cage or trip at any point in the shaft or slope or on the incline.

E. An accurate and reliable indicator showing the position of the cage or trip shall be placed so as to be in clear view of the hoisting engineer, unless the position of the car or trip is clearly visible to the hoisting engineer or other person operating the equipment at all times.

F. Any conveyance used to haul miners or materials within a shaft or slope (i) shall be designed to prevent materials from falling back into the shaft or slope and (ii) shall be equipped with a retaining edge of not less than six inches to prevent objects from falling into the shaft or slope.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, §§ 45.1-68, 45.1-69; 1972, c. 784; 1978, c. 729; 1994, c. [28](#).

§45.1-161.154. Hoisting ropes.

A. Hoisting ropes on all cages or trips shall be adequate in size to handle the load and have a proper factor of safety. Ropes used to hoist or lower coal and other materials shall have a factor of safety of not less than five to one; ropes used to hoist or lower miners shall have a factor of safety of not less than 10 to one.

B. The hoisting rope shall have at least three full turns on the drum when extended to its maximum working length. The rope shall make at least one full turn on the drum shaft or around the spoke of the drum, in case of a free drum, and be fastened securely by means of clamps.

C. The hoisting rope shall be fastened to its load by a spelter-filled socket or by a thimble and adequate number of clamps properly spaced and installed.

D. Any cage, man-car, or trip used for hoisting or lowering men with a single rope shall be provided with two bridle chains or wire ropes connected securely to the rope at least three feet above the socket or thimble and to the crosspiece of the cage or to the man-car or trip. Multiple hoisting ropes installed according to subsection C may be used in lieu of two bridle chains.

E. When equipment or supplies are being hoisted or lowered in the slope, safety chains or wire ropes shall be provided and connected securely to the hoist rope. In addition, visible or audible warning devices shall be installed in the slope where they may be seen or heard by persons approaching the slope track entry from any access.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, §§ 45.1-68, 45.1-89.1; 1972, c. 784; 1978, c. 729; 1983, c. 111; 1994, c. [28](#); 2005, c. [3](#); 2011, cc. [826](#), [862](#).

§45.1-161.155. Hoisting cages.

A. Cages used for hoisting miners shall be of substantial construction and shall have (i) adequate steel bonnets, with enclosed sides; (ii) gates, safety chains, or bars across the ends of the cage when men are being hoisted or lowered; and (iii) sufficient hand-holds or chains for all men on the cage to maintain their balance. A locking device to prevent tilting of the cage shall be used on all self-dumping cages when miners are transported thereon.

B. The floor of the cage shall be constructed so that it will be adequate to carry the load and so that it will be impossible for a miner's foot or body to enter any opening in the bottom of the cage.

C. Cages used for hoisting miners shall be equipped with safety catches that act quickly and effectively in case of an emergency. The provisions of this subsection shall not apply to capsules or buckets used for emergency escape or used during slope or shaft sinking.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, § 45.1-69; 1978, c. 729; 1994, c. [28](#); 1997, c. [293](#).

§45.1-161.156. Slope and shaft conditions.

A. All shafts shall be equipped with safety gates at the top and at each landing. Safety gates shall be kept closed except when the cage is being loaded or unloaded.

B. Positive-acting stopblocks or derails shall be installed near the top and at intermediate landings of slopes and surface inclines and at the approaches to all shaft landings.

C. Positive-acting stopblocks or derails shall be installed on the haulage track in the slope near the top of the slope. The stopblocks or derails shall be in a position to hold or stop any load, including heavy mining equipment, to be lowered into the mine until such time as the equipment is to be lowered into the mine by the hoist.

D. At the bottom of each hoisting shaft and at intermediate landings, a runaround shall be provided for safe passage from one side of the shaft to the other. This passageway shall be not less than five feet in height and three feet in width.

E. Ice shall not be permitted to accumulate excessively in any shaft where miners are hoisted or lowered.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, §§ 45.1-69, 45.1-89.1; 1978, c. 729; 1983, c. 111; 1994, c. [28](#); 1996, c. [774](#); 2005, c. [3](#).

§45.1-161.157. Signaling; signal code.

A. Two independent means of signaling shall be provided between the top, bottom, and all intermediate landings of shafts, slopes, and surface inclines and the hoisting station. At least one of these means of signaling shall be audible to the hoisting engineer or other person operating the equipment. Bell cords shall be installed in shafts in such a manner as to prevent unnecessary movement of such cords within the shaft.

B. A uniform signal code approved by the Chief shall be in use at each mine and shall be at the cage station designated by the mine foreman.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, § 45.1-69; 1978, c. 729; 1994, c. [28](#).

§45.1-161.158. Inspections of hoisting equipment.

A. Before hoisting or lowering miners in a shaft, the hoisting engineer shall operate empty cages up and down each shaft at least one round trip at the beginning of each shift and after the hoist has been idle for one hour or more.

B. Before hoisting or lowering miners in slope and surface incline hoisting, the hoisting engineer shall operate empty cages at least one round trip at the beginning of each shift and after the hoist has been idle for one hour or more.

C. The hoisting engineer, at the time the inspections required by subsections A and B are performed, shall (i) inspect all cable or rope fastenings at all cages, buckets, or slope cars; (ii) inspect hammer locks and pins, thimbles, and clamps; (iii) inspect safety chains on buckets, cage or slope cars; (iv) inspect the braking system for malfunctions; (v) clean all excess oil and extraneous materials from the hoist housing construction; (vi) inspect the overwind, overtravel, and lilly switch or control from stopping at the collar and within 100 feet of the work deck; and (vii) check communications between the top house, work deck and work deck tugger house.

D. Hoisting rope on all cages or trips shall be inspected at the beginning of each shift by the hoisting engineer.

E. A test of safety catches on cages shall be made at least once each month. A written record shall be kept of such tests, and such record shall be available for inspection by interested persons.

F. Hoisting equipment including the headgear, cages, ropes, connections, links and chains, shaft guides, shaft walls, and other facilities shall be inspected daily by an authorized person designated by the operator. Such person shall also inspect all bull wheels and lighting systems on the head frame. Such person shall report immediately to the operator, or his agent, any defects found, and any such defect shall be corrected promptly. The person making such examination shall make a daily permanent record of such inspection, which shall be available for inspection by interested persons. If a hoist is used only during a weekly examination of an escapeway, then the inspection required by this subsection shall only be required to be completed weekly before the examination occurs.

G. Subsections A, B, C, and D shall not apply to automatically operated elevators.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, §§ 45.1-68, 45.1-69; 1972, c. 784; 1978, c. 729; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.159. Hoisting engineers.

A. A certified hoisting engineer shall be either on duty continuously, or available within a reasonable time as determined by the Chief, to provide immediate transportation while any person is underground, where miners are transported into or out of underground areas of a mine by hoists or on surface inclines.

B. When miners are being hoisted or lowered in shafts, slopes, or on surface inclines, the loading and unloading of miners and movement of the cage, car, or trip shall be under the direction of an authorized person.

C. Subsections A and B shall not apply to automatically operated elevators that can be safely operated by any miner; however, a person qualified as an automatic elevator operator shall be available at such elevators within a reasonable time as determined by the Chief.

D. No operator, or his agent, of any mine worked by shaft, slope or incline shall place in charge of any engine or drum used for lowering or hoisting miners any but competent and sober hoisting engineers. No hoisting engineer in charge of such

machinery shall allow any person, except such as may be designated for such purpose by the operator, or his agent, to interfere with any part of the machinery. No person shall interfere with or intimidate the hoisting engineer or automatic elevator operator in the discharge of his duties.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, §§ 45.1-21, 45.1-68, 45.1-69; 1972, c. 784; 1976, c. 598; 1978, cc. 222, 489, 729; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.160. Operations of hoisting equipment.

A. The speed of the cage, car, or trip in shafts, slopes, or on surface inclines shall not exceed 1,000 feet per minute when miners are being hoisted or lowered.

B. When moving the platform or work deck, all miners traveling thereon shall have safety belts secured.

C. No person shall ride on a loaded cage.

D. The number of persons riding in any cage or car at one time shall not exceed the maximum prescribed by the manufacturer. The Chief may prescribe a lesser number when necessary to ensure the safety of miners being transported.

E. Conveyances being lowered into a shaft in which miners are working shall be stopped at least twenty feet above the area where such miners are working.

F. Whenever miners are working at the bottom of a shaft, there shall be an adjustable ladder or chain ladder attached to the work deck to provide an additional means of escape. Such ladder shall be at least twenty feet in length.

G. All chokers and slings used to transport materials within a shaft or slope shall meet specifications established by the United States of America Standards Institute.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, §§ 45.1-68, 45.1-69; 1972, c. 784; 1978, c. 729; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.161. Maintenance of hoisting equipment.

Hoists, ropes, cages, and other hoisting equipment shall be maintained in a safe operating condition. Hoisting ropes shall be replaced as soon as there is evidence of possible failure.

Code 1950, §§ 45-68.4, 45-69.3; 1954, c. 191; 1966, c. 594, §§ 45.1-68, 45.1-72; 1972, c. 784; 1978, c. 729; 1994, c. [28](#).

§45.1-161.162. Mine openings.

- A. Except as provided in § [45.1-161.164](#), there shall be at least two travel ways, entries, or openings to the surface from each section of a mine worked. All longwall panels shall be developed with at least three entries; however, if new technology becomes available pursuant to which two-entry systems may be safely developed, such technology may be used, with the approval of the Chief.
- B. One of the required travel ways may be the haulage road.
- C. The first opening shall not be made through an adjoining mine. The second opening may be made through an adjoining mine.
- D. One of the required travel ways shall be designated as the primary escapeway and shall be in intake air.
- E. After July 1, 1999, new surface structures where miners congregate or where the mine map or other official records are kept at the mine shall be offset not less than fifteen feet from the nearest side of any mine opening, or otherwise located to be out of the direct line of possible forces coming out of the mine should an explosion occur, unless otherwise approved by the Chief.

Code 1950, §§ 45-71, 45-71.1; 1954, c. 191; 1966, c. 594, §§ 45.1-94, 45.1-95; 1984, c. 228; 1985, c. 395; 1990, c. 372; 1992, c. 360; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.163. Separation of openings.

- A. In drift or slope mines, openings shall be separated by not less than 50 feet of natural strata, unless specifically approved in the roof control plan. All connections between openings not used for the coursing of air, travel, or haulage shall be closed with stoppings of fireproof material.
- B. In shaft mines, openings shall be separated by not less than 200 feet of natural strata.

Code 1950, § 45-71; 1954, c. 191; 1966, c. 594, § 45.1-94; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.164. Number of miners in openings.

Until the two travel ways are made as required by § [45.1-161.162](#), not more than twenty miners shall work underground in the mine at one time. No additional development shall be permitted until the connection is made to the second opening. In

mines where final pillar removal operations necessitate closing the second opening, not more than twenty miners shall be permitted to work in the mine.

Code 1950, § 45-71; 1954, c. 191; 1966, c. 594, § 45.1-94; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.165. Maintenance of mine openings.

Mine openings that are used for entering and leaving the mine and other required travelways shall be kept in good condition and shall at all times be maintained in a safe condition.

Code 1950, § 45-71; 1954, c. 191; 1966, c. 594, § 45.1-94; 1994, c. [28](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.166. Signs, life lines, and equipment.

A. Direction signs shall be posted conspicuously at all points where the travel way to the mine opening, escapeway, or escapement shaft is intercepted by other travel ways. The signs shall indicate the direction of the place of exit, manways, and escapeways.

B. Continuous life lines shall be installed and maintained in accordance with the approved emergency response plan pursuant to subsection A of § [45.1-161.202](#).

C. Escapeways shall be equipped with all necessary stairways, ladders, cleated walkways, or other equipment approved by the Chief. All equipment shall be installed in such manner that persons using it in emergencies may do so quickly and without undue hazard.

Code 1950, §§ 45-71, 45-71.1; 1954, c. 191; 1966, c. 594, §§ 45.1-94, 45.1-95; 1984, c. 228; 1985, c. 395; 1990, c. 372; 1992, c. 360; 1994, c. [28](#); 1996, c. [774](#); 2011, cc. [826](#), [862](#).

§45.1-161.167. Examination of escapeways.

The mine foreman shall examine all escapeways for hazardous conditions at least once per week. The mine foreman shall mark his initials and the date at the places examined, and if hazardous conditions are found they shall be reported promptly. A record of these examinations and tests shall be kept at the mine.

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-68.1, 45-69.7; 1954, c. 191; 1966, c. 594, § 45.1-65; 1978, c. 120; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.168. Longwall escape routes and plan.

A. The operator of any mine which uses longwalls as a method of mining shall maintain an accessible travel route off the tailgate end of the longwall working face. He shall familiarize all miners working on the longwall section with the procedures to follow for escape from the section, and shall also inform these miners at any time during which the travel route is impassable.

B. The operator shall develop a plan for use if the travel route becomes impassable. The plan shall address (i) notification of miners that the travel way is blocked and of the method and timetable for reestablishment of the travel way, (ii) re-instruction of miners regarding escapeways and escape procedures in the event of an emergency, (iii) re-instruction of miners on the availability and use of self-contained self-rescue devices, (iv) monitoring and evaluation of the air entering the longwall section, (v) location and effectiveness of the two-way communication systems, and (vi) a means of transportation from the longwall section to the main line. The plan provisions shall remain in effect until a travel way is reestablished on the tailgate side of a longwall section. Such an operation shall include provisions for such protective devices as fire extinguishers and respirators for miners working on the longwall section.

Code 1950, § 45-71.1; 1954, c. 191; 1966, c. 594, § 45.1-95; 1984, c. 228; 1985, c. 395; 1990, c. 372; 1992, c. 360; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.169. Fire protection.

A. Shafts and partitions therein shall be as nearly fireproof as is practicable.

B. Where there is danger of fire entering the mine, openings shall have adequate protection against surface fires or hazardous volumes of smoke entering the mine.

Code 1950, § 45-71.1; 1954, c. 191; 1966, c. 594, § 45.1-95; 1984, c. 228; 1985, c. 395; 1990, c. 372; 1992, c. 360; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.170. Unused openings.

All unused and abandoned surface openings shall be effectively closed or fenced against unauthorized entrance.

Code 1950, § 45-71.1; 1954, c. 191; 1966, c. 594, § 45.1-95; 1984, c. 228; 1985, c. 395; 1990, c. 372; 1992, c. 360; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.171. Portable illumination.

A. All miners underground shall use only permissible electric cap lamps that are worn on the person for portable illumination.

B. Light bulbs on extension cables shall be guarded adequately.

C. The requirement of subsection A shall not preclude the use of other type of permissible electric lamps, permissible flashlights, permissible safety lamps, or any other permissible portable illumination device.

Code 1950, § 45-33; 1954, c. 191; 1966, c. 594, §§ 45.1-20, 45.1-96; 1978, c. 120; 1982, c. 385; 1994, c. [28](#).

§45.1-161.172. Underground illumination.

A. Electric-light wires shall be supported by suitable insulators or installed in conduit, fastened securely to the power conductors and shall not contact combustible materials.

B. Electric lights shall be guarded and installed so that they do not contact combustible materials.

Code 1950, § 45-82.6; 1954, c. 191; 1966, c. 594, § 45.1-86; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.173. Inspection of electric illumination equipment.

All lamps, extension lights and permissible portable illumination such as cap lamps and flashlights that are used for personal illumination underground shall be inspected by an authorized person at least once per week, and more often if necessary, to ensure safe operating conditions. Such equipment located at the surface shall be inspected by an authorized person at least once per month, and more often if necessary, to ensure safe operating conditions. Any defect found shall be corrected.

1966, c. 594, § 45.1-85; 1978, c. 118; 1993, c. 442; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.174. Checking system; tracking system.

A. Each mine shall have a personnel checking system containing the following:

1. Every person underground shall have on his person means of positive identification bearing a number recorded by the operator;
2. An accurate record of the persons in the mine shall be kept on the surface in a place that will not be affected by an explosion;
3. The record shall consist of a written record, check board, lamp check, or time-clock record; and
4. The record shall bear a number identical to that carried by the person underground.

B. Mine-wide tracking systems shall be maintained in useable and operative conditions.

Code 1950, § 45-70; 1954, c. 191; 1966, c. 594, § 45.1-97; 1994, c. [28](#); 2015, cc. [103](#), [397](#).

§45.1-161.175. Protective clothing.

A. All miners shall wear protective hats while underground and while in those areas on the surface where there is a danger of injury from falling objects.

B. Every person assigned to or performing duties on the surface of an underground mine, or any person entering the underground portion of the mine, shall wear reflective materials adequate to be visible from all sides. The reflective material shall be placed on hard hats and at least one other item of outer clothing such as belts, suspenders, jackets, coats, coveralls, shirts, pants, or vests.

C. Protective footwear shall be worn by miners while on duty in and around a mine where falling objects may cause injury.

D. All employees inside or outside of mines shall wear approved-type goggles or shields where there is a hazard from flying particles.

E. Welders and helpers shall use proper shields or goggles to protect their eyes.

F. Miners engaged in haulage operations and miners employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

G. Gloves shall be worn when material which may injure the hands is handled. Gloves with gauntlet cuffs shall not be worn around moving equipment. Gloves shall be worn when handling energized cables.

H. Miners exposed for short periods to hazards from inhalation of gas, dust, fumes, and mist shall wear approved respiratory equipment. When the exposure is for prolonged periods, adequate approved measures to protect miners or to reduce the hazard shall be taken.

Code 1950, § 45-86; 1954, c. 191; 1966, c. 594, § 45.1-99; 1994, c. [28](#); 2005, c. [3](#); 2011, cc. [826](#), [862](#).

§45.1-161.176. Noise levels and ear protection.

Approved hearing protection shall be provided to miners by the mine operator. Miners shall wear approved hearing protection in areas of excess noise levels in accordance with the mine's hearing conservation program approved under 30 CFR Part 62.

1978, c. 729, § 45.1-99.1; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.177. Smoking materials prohibited; penalty.

A. No miner or other person shall smoke or carry or possess underground any smoker's articles or matches, lighters, or similar materials generally used for igniting smoker's articles. Any person convicted of a violation of this subsection shall be guilty of a Class 6 felony.

B. The operator shall institute a smoker search program, approved by the Chief, to ensure that any person entering the underground area of the mine does not carry smoking materials, matches, or lighters.

C. Any person entering or present in any underground area of a coal mine shall, by his entry into the underground area of the mine, be subject to a search of his person, such of his personal property as may be in any underground area of the mine at any time he is underground, or both. Such search shall be conducted at the direction of the Chief by employees of the Department. It shall be limited in scope to the person and property of the persons present underground at the time of the search and shall be for the purpose of enforcing the provisions of this section.

D. This section shall not prohibit the possession of equipment used solely for the operation of flame safety lamps or for welding or cutting.

1993, c. 389, § 45.1-98.1; 1994, c. [28](#); 1995, c. [569](#).

§45.1-161.178. Allowing persons to work in a mine with smoker's articles; penalty.

A. No operator, agent, or mine foreman shall knowingly permit any person in an underground coal mine to smoke, carry or possess any smoker's articles or materials used for igniting smoker's articles.

B. Any person convicted of a violation of this section shall be guilty of a Class 6 felony.

1993, c. 389, § 45.1-98.3; 1994, c. [28](#).

§45.1-161.179. Posting of notice.

The operator, or his agent, shall display, in bold-faced type, on a sign placed at the mine office, bath house, and on a bulletin board at the mine site, the following notice:

NOTICE

IT IS UNLAWFUL FOR A MINER OR OTHER PERSON IN AN UNDERGROUND COAL MINE TO SMOKE OR CARRY OR POSSESS UNDERGROUND ANY SMOKER'S ARTICLES OR MATCHES, LIGHTERS, OR SIMILAR MATERIALS GENERALLY USED FOR IGNITING SMOKER'S ARTICLES. A VIOLATION IS PUNISHABLE AS A CLASS 6 FELONY. ANY PERSON ENTERING OR PRESENT IN THE UNDERGROUND AREA OF ANY COAL MINE IS SUBJECT TO A SEARCH OF HIS PERSON AND PROPERTY BY OFFICIALS OF THE DEPARTMENT OF MINES, MINERALS AND ENERGY FOR SUCH PROHIBITED SMOKER MATERIALS AT ANY TIME WHILE UNDERGROUND.

1993, c. 389, § 45.1-98.2; 1994, c. [28](#); 1995, c. [569](#).

§45.1-161.180. Smoking in surface and other areas.

A. No miner or other person shall smoke, carry or possess any smoker's articles, or carry an open flame in or near any magazine for the storage of explosive materials.

B. No miner or other person shall smoke in or around oil houses, tipples, and other surface areas where such practice may cause a fire or explosion.

Code 1950, §§ 45-53.2, 45-85.9; 1954, c. 191; 1966, c. 594, §§ 45.1-39, 45.1-44; 1978, c. 729; 1994, c. [28](#).

§45.1-161.181. Surface electrical installations.

A. Overhead high-potential power lines shall be placed at least fifteen feet above the ground and twenty feet above driveways, shall be installed on insulators, and shall be supported and guarded to prevent contact with other circuits.

B. Surface transmission lines including trolley circuits shall be protected against short circuits and lightning. Each power circuit that leads underground shall be equipped with lightning arrestors within 100 feet of where the circuit enters the mine.

C. Electric wiring in surface buildings shall be installed so as to prevent fire and contact hazards.

Code 1950, §§ 45-82, 45-82.3; 1954, c. 191; 1966, c. 594, § 45.1-75; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.182. Surface transformers.

A. Surface transformers which are not isolated by elevation of eight feet or more above the ground shall be enclosed in a transformer house or surrounded by a suitable fence at least six feet high. If the enclosure or fence is of metal, it shall be

grounded effectively. The door to the enclosure or the gate to the fence shall be kept locked at all times unless persons authorized to enter the gate or enclosure are present.

B. Surface transformers containing flammable oil and installed near mine openings, in or near combustible buildings, or at other places where they present a fire hazard shall be provided with means to drain or to confine the oil in the event of rupture of the transformer casing.

Code 1950, § 45-82.2; 1954, c. 191; 1966, c. 594, § 45.1-76; 1994, c. [28](#).

§45.1-161.183. Underground transformers.

All transformers used underground shall be air-cooled or filled with nonflammable liquid or inert gas.

Code 1950, § 45-82.2; 1954, c. 191; 1966, c. 594, § 45.1-76; 1994, c. [28](#).

§45.1-161.184. Stations and substations.

A. Suitable danger signs shall be posted conspicuously at all transformer stations.

B. All transformer stations, substations, battery-charging stations, pump stations, and compressor stations shall be kept free of nonessential combustible materials and refuse.

C. Reverse-current protection shall be provided at storage-battery-charging stations to prevent the storage batteries from energizing the power circuits in the event of power failure.

Code 1950, §§ 45-60.4, 45-82.2; 1954, c. 191; 1966, c. 594, §§ 45.1-76, 45.1-77; 1994, c. [28](#).

§45.1-161.185. Repealed.

Repealed by Acts 1999, c. [256](#).

§45.1-161.186. Power circuits.

A. All underground power wires and cables shall have adequate current-carrying capacity, shall be guarded from mechanical injury, and shall be installed in a permanent manner.

B. Wires and cables not encased in armor shall be supported by well installed insulators and shall not touch combustible materials, roof, or ribs; however, this shall not apply to ground wires, grounded power conductors, and trailing cables.

C. Power wires and cables installed in belt-haulage slopes shall be insulated adequately and buried in a trench not less than 12 inches below combustible material, unless encased in armor or otherwise fully protected against mechanical injury.

D. Splices and repairs in power cables shall be made in accordance with the following:

1. Mechanically strong with adequate electrical conductivity;
2. Effectively insulated and sealed so as to exclude moisture;
3. If the cable has metallic armor, mechanical protection and electrical conductivity equivalent to that of the original armor; and
4. If the cable has metallic shielding around each conductor, then the new shielding shall be equivalent to that of the original shielding.

E. All underground high-voltage transmission cables shall be:

1. Installed only in regularly inspected airways;
2. Covered, buried, or placed on insulators so as to afford protection against damage by derailed equipment if installed along the haulage road;
3. Guarded where miners regularly work or pass under them unless they are 6 1/2 feet or more above the floor or rail;
4. Securely anchored, properly insulated, and guarded at ends; and
5. Covered, insulated or placed to prevent contact with trolley circuits and other low-voltage circuits.

F. New high-voltage disconnects installed on all underground electrical equipment shall automatically ground all three power leads when in the open position. All high-voltage disconnects that are rebuilt or remanufactured after July 1, 2011, shall meet this standard.

G. All power wires and cables shall be insulated adequately where they pass into or out of electrical compartments and where they pass through doors and stoppings.

H. Where track is used as a power conductor:

1. Both rails of main-line tracks shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet. If the rails are par-

alleled with a feeder circuit of like polarity, such paralleled feeder shall be bonded to the track rails at intervals of not more than 1,000 feet;

2. At least one rail on secondary track-haulage roads shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet; and

3. Track switches on entries shall be well bonded.

Code 1950, §§ 45-82, 45-82.1; 1954, c. 191; 1966, c. 594, § 45.1-78; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#); 2011, cc. [826](#), [862](#).

§45.1-161.187. Trolley wires and feeder wires.

A. Trolley wires and trolley feeder wires shall be installed on the side of the entry opposite the clearance space and shelter holes, except where the wires are guarded or 6 1/2 feet or more above the top of the rail.

B. Trolley-wire hangers shall be so spaced that the wire may become detached from any one hanger without creating a shock hazard.

C. Trolley wires shall be aligned properly and installed on insulated hangers at least six inches outside the rail.

D. Trolley wires and trolley feeder wires shall be provided with cut-out switches at intervals of not more than 1,500 feet and near the beginning of all branch lines.

E. Trolley wires and trolley feeder wires shall be kept taut and not permitted to touch the roof, ribs, timbers or any combustible material.

F. Trolley wires and trolley feeder wires shall be guarded adequately at both sides of doors and at all places where it is necessary to work or pass under them, unless they are more than six and one-half feet above the top of the rail.

G. Trolley wires and trolley feeder wires shall not extend beyond any open crosscut between intake and return airways, and shall be kept at least 150 feet from any active, open pillar workings.

H. Trolley wires and trolley feeder wires shall be guarded, anchored securely, and insulated properly at the ends.

I. Trolley wires and trolley feeder wires shall be installed only in intake air.

J. Trolley wires or other exposed conductors shall not carry more than 300 volts.

Code 1950, §§ 45-82, 45-82.1; 1954, c. 191; 1966, c. 594, § 45.1-78; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.188. Grounding.

A. All metallic sheaths, armors, and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded effectively.

B. Metallic frames, casing, and other enclosures of stationary electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded effectively, or equivalent protection shall be provided.

C. Three-phase alternating current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend with the power conductors and serve as the grounding conductor for the frames of all the electrical equipment supplied power from that circuit. Grounding resistors that are manufactured to meet the extended time rating as set forth in IEEE Standard 32-1972, formerly AIEE Standard 32, are deemed to meet the requirements of this section. High-voltage circuits extending underground shall be supplied with a grounding resistor of a proper Ohmic value located on the surface to limit the voltage drop in the grounding circuit external to the resistor to not more than 100 volts under fault conditions. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system. All resistance-grounded alternating circuits used underground shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure the continuity of the ground conductor.

1966, c. 594, § 45.1-79; 1994, c. [28](#); 1999, c. [256](#); 2011, cc. [826](#), [862](#).

§45.1-161.189. Circuit breakers and switches.

A. Automatic circuit breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and power circuits against excessive overload; however, this shall not apply to locomotives operated regularly on grades exceeding five percent. Wires or other conducting materials shall not be used as a substitute for properly designed fuses, and circuit breaking devices shall be maintained in safe operating condition.

B. An automatic circuit breaker of correct type and capacity shall be installed on each resistance grounded circuit used underground. Such circuit breaker shall be located at

the power source and equipped with devices to provide protection against under-voltage, grounded phase, short circuit and overcurrent.

C. Operating controls, such as switches, starters, and switch buttons, shall be so installed that they are readily accessible and can be operated without danger of contact with moving or live parts.

D. Disconnecting switches shall be installed underground in all main power circuits within approximately 500 feet of the bottoms of shafts and boreholes, and at other places where main power circuits enter the mine.

E. Electric equipment and circuits shall be provided with switches or other controls of safe design, construction and installation.

F. Insulating mats or other electrically nonconductive material shall be kept in place at each power-control switch and at stationary machinery where shock hazards exist.

G. Circuit breakers, disconnecting devices and switches shall be marked for identification.

Code 1950, § 45-82.3; 1954, c. 191; 1966, c. 594, § 45.1-80; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.190. Repealed.

Repealed by Acts 1996, c. [774](#), effective April 6, 1996.

§45.1-161.191. Communication systems.

A. Telephone service or equivalent two-way communication facilities shall be provided between the top and each landing of main shafts and slopes. A telephone or equivalent two-way communication facility shall be located on the surface within 500 feet of all main portals, and shall be installed either in a building or in a box-like structure designed to protect the facilities from damage by inclement weather. At least one of these communication facilities shall be at a location where an authorized person who is always on duty when miners are underground can see or hear the facility and respond immediately in the event of an emergency.

B. Telephone lines, other than cables, shall be carried on insulators, installed on the opposite side from power or trolley wires, and where they cross power or trolley wires, they shall be insulated adequately.

C. Lightning arrestors shall be provided at the points where telephone circuits enter the mine and at each telephone on the surface. Where the telephone circuit enters a

building or structure, the lightning arrestor is only required where the circuit enters such building or structure.

D. If a communication system other than telephones is used and its operation depends entirely upon power from the mine electric system, means shall be provided to permit continued communication in the event the mine electric power fails or is cut off.

E. Communication systems equipped with audible and visual signals that become operative when telephone communication is being established between the phones of the communication station on the surface and the underground working sections shall be provided.

F. The Chief shall promulgate regulations governing any disruption of communication in mines.

Code 1950, § 45-82.4; 1954, c. 191; 1966, c. 594, § 45.1-81; 1978, c. 118; 1979, c. 315; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.192. Repealed.

Repealed by Acts 1999, c. [256](#).

§45.1-161.193. Electric equipment.

A. Electric equipment taken into or used in by the last open crosscut or in other than intake air shall be permissible equipment.

B. Permissible equipment used in areas specified in subsection A shall be maintained in permissible condition.

C. Electric equipment shall not be taken into or operated in any place where a methane level of one percent or more is detected.

D. Voltage limitations for underground installations of electric equipment using direct or alternating current shall conform to the voltages provided in 30 C.F.R. § 18.47.

E. Electric equipment must be permissible and maintained in a permissible condition when such equipment is located within 150 feet of pillar workings or longwall faces.

F. Electric conductors and cables installed in or by the last open crosscut, or within 150 feet of pillar workings or longwall faces, shall be:

1. Shielded high-voltage cables supplying power to permissible longwall and other equipment;

2. Interconnecting conductors and cables of permissible longwall equipment;
3. Conductors and cables of intrinsically safe circuits; or
4. Cables and conductors supplying power to low and medium voltage permissible equipment.

G. Electric equipment shall be maintained in safe operating condition at all times while it is being used, and any unsafe condition shall be corrected promptly or the equipment shall be removed from service.

Code 1950, § 45-83; 1954, c. 191; 1966, c. 594, § 45.1-83; 1993, c. 442; 1994, c. [28](#); 1999, c. [256](#); 2011, cc. [826](#), [862](#); 2015, cc. [103](#), [397](#).

§45.1-161.194. Trailing cables.

- A. Trailing cables used underground shall be flame-resistant cables.
- B. Trailing cables shall be provided with suitable short-circuit protection and means of disconnecting power from the cable. Power connections made in other than intake air shall be by means of permissible connectors.
- C. Temporary splices in trailing cables shall be made in a workmanlike manner, mechanically strong, and well insulated.
- D. No more than one temporary, unvulcanized splice shall be allowed in a trailing cable.
- E. Permanent splices or repairs in trailing cables shall be made as follows:
 1. They shall be mechanically strong with adequate electrical conductivity and flexibility;
 2. They shall be effectively insulated and sealed so as to exclude moisture;
 3. The finished splice or repair shall be vulcanized or otherwise treated with suitable materials to provide flame-resistant properties and good bonding to the outer jacket; and
 4. If the cable has metallic shielding around each conductor, then the new shielding shall be equivalent to that of the original shielding.
- F. Trailing cables shall be protected against mechanical damage. Trailing cables damaged in a manner that exposes the insulated inner power conductors shall be repaired promptly or removed from service.

Code 1950, § 45-82.5; 1954, c. 191; 1966, c. 594, § 45.1-84; 1978, c. 118; 1993, c. 442; 1994, c. [28](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.195. Inspection of electric equipment and wiring; checking and testing methane monitors.

A. Electric equipment and wiring shall be inspected by a certified person at least weekly if located underground, and at least monthly if located on the surface, and more often if necessary to assure safe operating conditions, and any hazardous condition found shall be promptly corrected or the equipment or wiring shall be removed from service. Records of such examination shall be maintained at the mine for a period of one year.

B. A functional check of methane monitors on electrical face equipment shall be conducted to determine that such monitors are de-energizing the electrical face equipment properly. Such check shall be made on each production shift and shall be conducted by the equipment operator in the presence of a mine foreman, and shall be recorded in the on-shift report of the mine foreman.

C. Weekly calibration tests on methane monitors on electrical face equipment to determine the accuracy and operation of such monitors shall be conducted with a known mixture of methane at the flow rate recommended by the methane monitor manufacturer. A record of the results shall be maintained.

D. Required methane monitors shall be maintained in permissible and proper operating condition.

1966, c. 594, § 45.1-85; 1978, c. 118; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.196. Repairs to circuits and electric equipment.

No electrical work shall be performed on low-voltage, medium-voltage, or high-voltage distribution circuits or equipment, except by a certified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a certified person. All high-voltage circuits shall be grounded before repair work is performed. Disconnecting devices shall be locked out and suitably tagged by the persons who perform electrical or mechanical work on such circuits or equipment connected to the circuits, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks and tags shall be removed only by the persons who installed them or, if such persons are

unavailable, by certified persons authorized by the operator or his agent. However, miners may, where necessary, repair energized trolley wires if they wear insulated shoes and lineman's gloves. This section does not prohibit certified electrical repairmen from making checks on or troubleshooting energized circuits or the performance of repairs or maintenance on equipment by authorized persons once the power is off and the equipment is blocked against motion, except where motion is necessary to make adjustments.

Code 1950, §§ 45-82, 45-82.1; 1954, c. 191; 1966, c. 594, § 45.1-78; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.197. First aid equipment.

Each mine shall have an adequate supply of first aid equipment as determined by the Chief. Such supplies shall be located on the surface, at the bottom of shafts and slopes, and at other strategic locations near the working faces, as shall be prescribed by the Chief. The first aid supplies shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and moisture-proof. The supplies shall be available for use of all persons employed in the mine. No first aid material shall be removed or diverted without authorization except in case of injury at the mine.

Code 1950, § 45-69.6; 1954, c. 191; 1966, c. 594, § 45.1-101; 1978, c. 94; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.198. Attention to injured persons.

A. When an injury occurs underground, the injured person shall be brought promptly to the surface. Prompt medical attention shall be provided in the event of injury, and adequate facilities shall be made available for transporting injured persons to a hospital if necessary.

B. Safe transportation shall be provided to carry an injured person from the site where the injury occurred to the surface of the mine.

C. The operator of each mine shall post directional signs that are conspicuously located to identify the routes of ingress to and egress from any mine located off of a public road.

Code 1950, § 45-69.6; 1954, c. 191; 1966, c. 594, § 45.1-101; 1978, c. 94; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.199. Certified emergency medical services providers.

At least one person who is a working coal miner and who holds a valid certificate as an emergency medical services provider issued by the Commissioner of the Department of Health shall be located so as to be available for duty at each mine when miners are working at that mine. Such emergency medical services providers shall be utilized in sufficient numbers to assure that workers in any mine location can be reached by them within such reasonable time as is determined by the Chief. Emergency medical services providers shall have available to them at all times the necessary equipment, as specified by the Chief, for prompt response to emergencies. In the event that at any time there is at any mine an insufficient number of qualified miners volunteering to serve as emergency medical services providers as provided for in this section, the operator may elect to utilize the services of first aid trainees, in such numbers as the Chief determines to be appropriate. Telephone or equivalent facilities shall be installed to provide two-way voice communication between the emergency medical services providers and medical personnel outside the mine.

1977, c. 679, § 45.1-101.1; 1978, c. 94; 1994, c. [28](#); 2015, cc. [502](#), [503](#).

§45.1-161.200. Firefighting equipment; fire prevention.

A. Each mine shall be provided with suitable firefighting equipment, adequate for the size of the mine.

B. The following equipment, at a minimum, shall be immediately available at each mine:

1. A water car filled with water and provided with hose and pump, or waterlines and necessary hoses;
2. At least three 20-pound dry chemical fire extinguishers;
3. Ten 50-pound bags of rock dust, available at doors or other strategic places;
4. Bolt cutters which may be used to cut trolley wire in an emergency;
5. One pair of rubber gloves to be used with bolt cutters when cutting trolley wire;
6. Two sledge hammers; and
7. Five hundred square feet of brattice cloth, nails and hammer.

C. Clean dry sand, rock dust, or fire extinguishers, suitable from a toxic and shock standpoint, shall be provided and placed at each electrical station, such as substations, transformer stations and permanent pump stations, so as to be out of the smoke in case of a fire in the station.

D. Suitable fire extinguishers shall be provided at all (i) electrical stations, such as substations, transformer stations, and permanent pump stations; (ii) self-propelled mobile equipment; (iii) belt heads and at the inby end of belts; (iv) areas used for the storage of flammable materials; (v) fueling stations; and (vi) other areas that may constitute a fire hazard, so as to be on the fresh air side in case of a fire.

E. All firefighting equipment and fire sensor systems shall be maintained in a useable and operative condition. Chemical extinguishers shall be examined every six months and the date of the examination shall be indicated on a tag attached to the extinguishers.

F. A sufficient number of approved one-hour self-contained self-rescuers shall be readily available, not more than 100 feet away, for the persons involved in the moving or transporting of any unit of off-track mining equipment.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. [28](#); 1996, c. [774](#); 2005, c. [3](#); 2015, cc. [103](#), [397](#).

§45.1-161.201. Duties in case of fire.

A. In case of a fire, the next inby permanent stopping into the return air course shall be opened, as soon as possible, in order to short circuit the air and permit close access to the fire for extinguishment.

B. When a fire that may endanger persons underground cannot be extinguished immediately, the persons shall be withdrawn promptly from the mine.

C. Should a fire occur, the person discovering it and any person in the vicinity of the fire shall make a prompt effort to extinguish it.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. [28](#).

§45.1-161.202. Emergency response plans; list of next of kin.

A. Operators shall develop an emergency response plan for each mine. The plan shall include (i) a mine emergency communication plan, (ii) an evacuation procedure, (iii) the identification of waterlines, (iv) the number system of brattice, (v) the location of escapeways, and (vi) such other information as the Chief may reasonably require.

B. The operator shall maintain a list of the next of kin of all miners employed at the mine. The list shall be kept at the mine site or at a central facility readily accessible to the mine.

C. An emergency response plan shall be subject to approval by the Chief or mine inspector. The Chief may require periodic updates to an operator's emergency response plan. Operators shall comply with the requirements of the approved plan.

D. The emergency response plan shall be posted in a conspicuous manner and place, readily accessible to all miners, underground and at the surface of the mine.

E. The operator shall train miners in the implementation of the emergency response plan and shall conduct practice drills. Records of dates and times of practice drills shall be maintained in the emergency response plan.

F. Each miner employed by the operator who goes underground and each visitor authorized to enter the mine by the operator shall have available an adequate supply of self-rescue devices, each of which provides one hour or longer protection and is approved by the Mine Safety and Health Administration. The training related to self-rescue devices shall be included in the emergency response plan approved by the Chief.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. [28](#); 1996, c. [774](#); 2006, c. [291](#).

§45.1-161.203. Reporting fires; response.

In case of any unplanned fire at a mine not extinguished within thirty minutes of discovery, the operator shall report to the Chief, by the quickest available means, all information known to him. The Chief, based on the information, shall promptly go in person or dispatch a mine inspector to the scene of the fire for consultation, and assist in the extinguishing of the fire and the protection of exposed persons. In the event of a difference of opinion as to measures required, the decision of the Chief or the mine inspector shall be final. The decision of the Chief regarding measures to extinguish the fire and protect persons shall have the force of an order issued pursuant to § [45.1-161.91](#) if delivered to the operator in writing.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.204. Fire prevention in transportation of mining equipment.

A. Prior to moving or transporting any unit of off-track mining equipment in areas of the active workings where energized trolley wires or trolley feeder wires are present: (i) the unit of equipment shall be examined by a certified person to ensure that accumulations of coal dust, float coal dust, loose coal, oil, grease, and other combustible materials have been removed from such unit of equipment; and (ii) a qualified person shall examine the trolley wires, trolley feeder wires, and the associated automatic circuit interrupting devices to ensure that proper short circuit protection exists.

B. A record shall be kept of the examinations and shall be made available, upon request, to the Chief or his authorized representative.

C. Off-track mining equipment shall be moved or transported in areas of the active workings where energized trolley wires or trolley feeder wires are present only under the direct supervision of a certified person who shall be physically present at all times during moving or transporting such equipment.

D. The frames of off-track mining equipment being moved or transported shall be covered on the top and on the trolley wire side with fire-resistant material.

E. Electrical contact shall be maintained between the mine track and the frames of off-track mining equipment being moved in-track and trolley entries, except that rubber-tired equipment need not be grounded to a transporting vehicle if no metal part of such rubber-tired equipment can come into contact with the transporting vehicle.

F. To avoid accidental contact with power lines, the equipment being transported or trammed shall be insulated or assemblage removed, if necessary, if the clearance to the power lines is six inches or less.

G. Sufficient prior notice shall be given the Department so that a mine inspector may travel the route of the move before the actual move is made, if he deems it necessary.

H. A minimum vertical clearance of twelve inches shall be maintained between the farthest projection of the unit of equipment which is being moved and the energized trolley wires or trolley feeder wires at all times during the movement or transportation of such equipment. If the height of the coal seam does not permit twelve inches of vertical clearance to be so maintained, the following additional precautions shall be taken:

1. Electric power shall be supplied to the trolley wires or trolley feeder wires only from outby the unit of equipment being moved or transported. Where direct current electric power is used and such electric power can be supplied only from inby the

equipment being moved or transported, power may be supplied from inby such equipment if a miner with the means to cut off the power, and in direct communication with persons actually engaged in the moving or transporting operation, is stationed outby the equipment being moved;

2. The settings of automatic circuit interrupting devices used to provide short circuit protection for the trolley circuit shall be reduced to not more than one-half of the maximum current that could flow if the equipment being moved or transported were to come into contact with the trolley wire or trolley feeder wire;

3. At all times when the unit of equipment is being moved or transported, a miner shall be stationed at the first automatic circuit breaker outby the equipment being moved. Such miner shall be (i) in direct communication with persons actually engaged in the moving or transporting operation and (ii) capable of communicating with the authorized person on the surface required to be on duty;

4. Where trolley phones are utilized to satisfy the requirements of subdivision 3 of this subsection, telephones or other equivalent two-way communication devices that can readily be connected with the mine communication system shall be carried by the miner stationed at the first automatic circuit breaker outby the equipment being moved and by a miner actually engaged in the moving or transporting operation; and

5. No person shall be permitted to be inby the unit of equipment being moved or transported, or in the ventilating current of air that is passing over such equipment, except those persons directly engaged in moving such equipment.

The provisions of this subsection shall not apply to units of mining equipment that are transported in mine cars, provided that no part of the equipment extends above or over the sides of the mine car.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. [28](#).

§45.1-161.205. Storage and use of flammable fluids and materials.

A. Underground storage places for oil, grease and flammable hydraulic fluid shall be of fireproof construction.

B. Oil, grease and flammable hydraulic fluid kept underground for current use shall be in closed metal containers.

C. Provisions shall be made to prevent accumulation of spilled oil or grease at the storage places or at the locations where such materials are used.

D. Oily rags, oily waste, and wastepaper shall be kept in closed metal containers until removed for disposal.

E. No gasoline, benzene, kerosene or other flammable oils shall be used underground in powering machinery.

F. All oxygen and acetylene bottles used underground shall be secured while in use. When stored underground, oxygen and acetylene bottles shall be placed in a safe location, protected from physical damage, with caps in place where provided for on the tank, and secured upright or elevated, whichever mine heights allow.

Code 1950, §§ 45-14.1, 45-43; 1954, c. 191; 1966, c. 594, §§ 45.1-89, 45.1-90, 45.1-100; 1974, c. 323; 1978, cc. 118, 729; 1981, c. 131; 1984, c. 590, § 45.1-89, c. 639; 1985, c. 500; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.206. Diesel powered equipment.

Diesel powered equipment may be utilized underground with the written approval of the Chief. The Chief shall promulgate regulations necessary to carry out the provisions of this section. The regulations shall require that the air in each travel way in which diesel equipment is used, and in any active workings connected thereto, be of a quality necessary for a safe, healthful working environment. The minimum quantity of ventilating air that must be supplied for a permissible diesel machine in a given time shall conform to that shown on the approval plate attached to the machine. All diesel machines and equipment shall be maintained in such manner that the exhaust emissions meet the same standards to which the machine or equipment was manufactured.

Code 1950, § 45-43; 1954, c. 191; 1966, c. 594, § 45.1-90; 1978, c. 729; 1981, c. 131; 1984, c. 639; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.207. Arcs, sparks and flames.

A. The intentional creation of any open arc, open spark or open flame, except as provided in subsection B, shall be prohibited.

B. Welding and cutting with arc or flame or soldering underground in other than a fireproof enclosure ventilated with intake air shall be done by or under the direct instruction of a certified foreman or repairman. A person certified in gas detection shall test for methane before and during such operations in underground mines and

shall make a diligent search for fire after such operation in all mines. Rock dust or suitable fire extinguishers shall be immediately available during such welding or cutting. Welding operations shall be performed only in well ventilated areas.

Code 1950, §§ 45-72, 45-82.7; 1954, c. 191; 1966, c. 594, § 45.1-98; 1978, c. 729; 1993, cc. 389, 442; 1994, c. [28](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.208. Pre-shift examinations.

A. The operator or his agent shall establish eight-hour intervals of time subject to required pre-shift examinations. Within three hours preceding the beginning of any such eight-hour interval during which any person is scheduled to work or travel underground, mine foremen shall make a pre-shift examination. No person scheduled to enter the mine during the eight-hour interval other than the mine foremen conducting the examination may enter any underground area unless a pre-shift examination has been completed for such established eight-hour interval.

B. During the pre-shift examination, the mine foreman shall (i) examine for hazardous conditions, (ii) test for methane and oxygen deficiency with a suitable permissible device, and (iii) determine whether the air is traveling in its regular course and in sufficient volume in each split, at the following locations which are underground:

1. Track entries and other areas where persons are scheduled to work or travel during the oncoming shift;
2. Belt conveyors that will be used to transport persons during the oncoming shift and the entries in which these belt conveyors are located;
3. Working sections and areas where mechanized mining equipment is being installed or removed, if anyone is being scheduled to work on the section or in the area during the oncoming shift. This includes working places, approaches to worked-out areas, and ventilation controls on these sections or in these areas;
4. Approaches to worked-out areas along intake air courses if intake air passes by the worked-out area to ventilate working sections where anyone is scheduled to work during the oncoming shift;
5. Seals along intake air courses where intake air passes by a seal to ventilate working sections where anyone is scheduled to work during the oncoming shift;

6. Entries and rooms driven more than 20 feet off an intake air course without a crosscut and without permanent ventilation controls, or more than two crosscuts off an intake air course without permanent ventilation controls where intake air passes through or by these entries or rooms to a working section where anyone is scheduled to work during the oncoming shift; and

7. Where unattended diesel equipment is to operate or areas where trolley wires or trolley feeder wires are to be or will remain energized during the oncoming shift.

C. During the pre-shift examination, the mine foreman shall determine the volume of air entering each of the following areas if a miner is scheduled to work in the areas during the oncoming shift:

1. In the last open crosscut, which means the crosscut in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses, of each set of entries or rooms on each working section and areas where mechanized mining equipment is being installed or removed;

2. On each longwall or shortwall in the intake entry or entries at the intake end of the longwall or shortwall face immediately outby the face and the velocity of air at each end of the face at the locations specified in the approved ventilation plan required by the federal mine safety law; and

3. At the intake end of any pillar line (i) if a single split of air is used, in the intake entry furthest from the return air course, immediately outby the first open crosscut outby the line of pillars being mined, or (ii) if a split system is used, in the intake entries of each split immediately inby the split point.

D. A mine foreman shall make a pre-shift examination of surface areas of underground coal mines in accordance with the requirements for pre-shift examinations at surface coal mines as provided in § [45.1-161.256](#).

E. The Chief may require the mine foreman to examine other areas of the mine or examine for other hazards during the pre-shift examination.

F. Any area of the mine where hazardous conditions are found shall be posted with a conspicuous danger sign where anyone entering the area would pass. Only persons designated by the operator, or his agent, to correct or evaluate the condition may enter this posted area.

G. At each working place examined, the mine foreman shall certify by initials, date, and time, that the examination was made. In areas to be examined outby a working section, the mine foreman shall certify by initials, date, and time at enough locations to show that the entire area has been examined.

H. Idle and worked-out areas underground shall be inspected for gas and other hazardous conditions by a mine foreman, immediately before miners are permitted to enter or work in such places. A certified person shall supervise the correction of conditions that create an imminent danger. The mine operator, or his agent, may pass beyond the danger signal only in cases of necessity.

I. Where persons have not been working underground before an established eight-hour interval, no person other than the mine foremen conducting a pre-shift examination may enter the mine until the examination has been completed and the mine foremen report the mine to be clear of danger; however, miners may enter under the direction of a mine foreman for the purpose of making the mine safe. The Chief shall have the authority in certain mines, in his discretion, to authorize man-trips to proceed to a designated station underground, from which they may not pass until the mine foremen report the remainder of the areas of the mine to be clear of danger.

J. Miners regularly employed on a shift during which a pre-shift examination is being conducted shall be permitted to leave or enter the mine in the performance of their duties.

K. In multiple shift operations, certified persons may be used to make the pre-shift examination for the next or succeeding shift.

L. Areas of inactive underground coal mines shall be examined for gas and other hazardous conditions by a mine foreman immediately before miners are permitted to enter such areas to take emergency actions to preserve a mine.

M. In the performance of his duties under this section, the mine foreman shall have no superior officer, and all miners shall be subordinate to him.

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-68.1, 45-69.7; 1954, c. 191; 1966, c. 594, §§ 45.1-20, 45.1-65; 1978, c. 120; 1982, c. 385; 1994, c. [28](#); 1996, c. [774](#); 2005, c. [3](#).

§45.1-161.209. On-shift examinations.

A. At least once during each shift, and more often if necessary, a certified person shall examine each underground section where coal is produced and any other area where mechanized mining equipment is being installed or removed during the shift.

The certified person shall (i) examine for hazardous conditions, (ii) test for methane and oxygen deficiency with a suitable permissible device, and (iii) determine whether the air is traveling in its regular course and in sufficient volume in each split. Hazardous conditions shall be corrected immediately or the miners shall be withdrawn and the affected area plainly marked with "danger" signs.

B. During each shift that coal is produced, a certified person shall examine for hazardous conditions along each underground belt conveyor entry where a belt conveyor is operated. This examination may be conducted at the same time as the pre-shift examination of the belt conveyors and the belt conveyor entries, if the examination is conducted within three hours before the established eight-hour interval. The person conducting the examination shall certify by initials, date, and time at enough locations to show that the entire area has been examined.

C. Persons conducting the on-shift examination shall determine at the following locations which are underground:

1. The volume of air in the last open crosscut, which means the crosscut in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses, of each set of entries or rooms on each working section and areas where mechanized mining equipment is being installed or removed;
2. The volume of air on a longwall or shortwall, including areas where longwall or shortwall equipment is being installed or removed, in the intake entry or entries at the intake end of the longwall or shortwall;
3. The velocity of air at each end of the longwall or shortwall face at the locations specified in the approved ventilation plan required pursuant to the federal mine safety law; and
4. The volume of air at the intake end of any pillar line (i) where a single split of air is used, in the intake entry furthest from the return air course, immediately outby the first open crosscut outby the line of pillars being mined, or (ii) if a split system is used, in the intake entries of each split immediately inby the split point.

D. A test shall be made for methane before any electrically powered equipment is taken inby the last open crosscut, before blasting, and before work is resumed after blasting. When longwall or shortwall mining systems are used, these methane tests shall be made from under permanent roof support at the shearer, the plow, or cutting head. These methane tests shall be made at least once every 20 minutes or more

often as necessary for safety while such equipment is in operation. When mining has been stopped for more than 20 minutes, methane tests shall be conducted prior to the start up of equipment.

E. Idle or worked-out areas underground, including section belts that have been idle for a period of 24 hours, shall be examined by a certified person immediately before miners are permitted to enter or work in such areas. The person conducting the examination shall certify by initials, date, and time at enough locations to show that the entire area has been examined.

F. Daily and on-shift examinations of surface areas of underground coal mines shall be made in accordance with the requirements for daily and on-shift examinations at surface coal mines as provided in § [45.1-161.256](#).

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-60.5, 45-68.1, 45-69.7, 45-83; 1954, c. 191; 1966, c. 594, §§ 45.1-20, 45.1-62, 45.1-65, 45.1-83; 1978, c. 120; 1982, c. 385; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.210. Weekly examinations.

A. At least every seven days, a mine foreman shall examine unsealed worked-out areas where no pillars have been recovered.

B. At least every seven days, a mine foreman shall evaluate the effectiveness of bleeder systems used under § [45.1-161.220](#).

C. At least every seven days, a mine foreman shall examine the following locations for hazardous conditions:

1. In at least one entry of each intake air course, in its entirety, so that the entire air course is traveled.
2. In at least one entry of each return air course, in its entirety, so that the entire air course is traveled.
3. In each longwall or shortwall travel way in its entirety, so that the entire travel way is traveled.
4. At each seal along return and bleeder air courses and at each seal along intake air courses not examined under § [45.1-161.208](#).
5. In each escapeway so that the entire escapeway is traveled.

6. On each working section not examined under § [45.1-161.208](#) during the previous seven days.

D. At least every seven days, a certified person shall:

1. Determine the volume of air entering the main intakes and in each intake split;

2. Determine the volume of air and test for methane in the last open crosscut in any pair or set of developing entries or rooms, in the return of each split of air immediately before it enters the main returns and where the air leaves the main returns; and

3. Test for methane in the return entry nearest each set of seals immediately after the air passes the seals.

E. Hazardous conditions shall be corrected immediately. If the condition creates an imminent danger, everyone except those persons necessary to correct the hazardous conditions shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected.

F. Weekly examination is not required during any seven-day period in which no person enters any underground area of the mine. When a mine is idled or in a non-producing status with entry only for maintenance of the mine, weekly examinations may be conducted in accordance with a plan approved by the Chief.

G. Except for certified persons required to make examinations, no person shall enter any underground area of a coal mine if the weekly examination has not been completed within the preceding seven days. The weekly examination may be conducted at the same time as the pre-shift examination.

H. The person making the weekly examinations shall certify by initials, date, and the time that the examination was made. Certifications and time shall appear at enough locations to show that the entire area has been examined.

I. Examinations of surface areas of underground coal mines shall be made in accordance with the requirements for weekly examinations at surface coal mines as provided in § [45.1-161.256](#).

Code 1950, §§ 45-32, 45-33, 45-35, 45-40, 45-60.4, 45-68.1, 45-69.7; 1954, c. 191; 1966, c. 594, §§ 45.1-17, 45.1-56, 45.1-65; 1968, c. 310; 1978, cc. 120, 729; 1993, cc. 170, 442; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.211. Examinations of fans.

A. A daily inspection shall be made of all main fans and machinery connected therewith by an authorized person. The person making the examination shall make a record of the same in a book prescribed for this purpose or by adequate facilities provided to permanently record the performance of the main fan and to give warning of an interruption to a fan. No daily examination is required on any day in which no person goes underground, except that the examination shall be completed prior to any person entering the mine if the previous day's examination has not been made.

B. Places ventilated by means of blower fans shall be examined for methane by a certified person before the fan is started at the beginning of the shift and after any interruption of fan operation for five minutes or more during the shift.

C. The blower fan and tubing shall be inspected at least twice during each working shift by a certified person.

Code 1950, §§ 45-60.1, 45-60.2; 1954, c. 191; 1966, c. 594, §§ 45.1-54, 45.1-55; 1978, c. 120; 1988, c. 597; 1993, c. 442; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.212. Record of examinations.

A. Any hazardous condition found by the mine foreman or other certified persons designated by the operator for the purposes of conducting examinations under Article 14 (§ [45.1-161.208](#) et seq.) of this chapter shall be corrected immediately, or the affected area shall be dangered off until the condition is corrected. If the hazardous condition creates an imminent danger all persons except those required to perform work to correct the imminent danger shall be withdrawn from the affected area. A record of the hazardous condition found and the corrective actions taken shall be made in a book maintained for this purpose on the surface at the mine. The record shall be made by the completion of the shift on which the hazardous condition is found.

B. Upon completing the pre-shift examination, the mine foreman shall return to the surface or a designated station underground and report in person to an authorized person before other miners enter the mine. Immediately upon reaching the surface, the mine foreman shall record in ink or indelible pencil the result of his inspection in a book kept on the surface for that purpose.

C. At the completion of any shift during which a portion of a weekly examination is made, a record of hazardous conditions, their locations, the corrective action taken, and the results and location of air and methane measurements shall be made. The record shall be made by the person making the examination or by a person

designated by the operator. If the record is made by a person other than the examiner, the examiner shall verify the record by initials and date.

D. The actual level of methane detected in any examination shall be recorded in the book.

E. A mine foreman or other certified person conducting a required examination shall record the results of his examination in ink or indelible pencil in a book kept on the surface for that purpose. Similar records may be kept at designated stations or offices underground.

F. Records shall be countersigned by the supervisor of the examiner creating the records. Where such records disclose hazardous conditions, the countersigning of the records shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination records were completed, and the person countersigning shall ensure that actions to eliminate or control the hazardous conditions have been taken. Where such records do not disclose hazardous conditions, the countersigning may be completed within 24 hours following the end of the shift for which the examination records were completed. The operator may authorize another person with equivalent authority of the supervisor to act in the supervisor's temporary absence to read and countersign the records and ensure that action is taken to eliminate the hazardous conditions disclosed in the records.

G. All records of examination shall be open for inspection by interested persons and maintained at the mine site for a minimum of one year.

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-68.1, 45-69.7; 1954, c. 191; 1966, c. 594, § 45.1-65; 1978, c. 120; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.213. Repealed.

Repealed by Acts 2005, c. [3](#), cl. 2, effective February 10, 2005.

§45.1-161.214. Notice of hazardous conditions.

The mine foreman shall give prompt attention to the removal of all hazardous conditions reported to him by any person working in the mine. If it is impracticable to remove the hazardous condition at once, he shall notify every person whose safety is menaced thereby to remain away from the portion of the mine where the hazardous condition exists.

Code 1950, §§ 45-35, 45-40; 1954, c. 191; 1966, c. 594, § 45.1-17; 1978, c. 729; 1993, c. 170; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.215. Notice of monitor tampering prohibition.

The operator or agent, shall display, in bold-faced type, on a sign placed at the mine office, at the bath house, and on a bulletin board at the mine site, the following notice:

NOTICE: IT IS UNLAWFUL TO DISTURB, DISCONNECT, BYPASS, IMPAIR, OR OTHERWISE TAMPER WITH METHANE MONITORS OR OTHER DEVICES CAPABLE OF DETECTING THE PRESENCE OF EXPLOSIVE GASES IN AN UNDERGROUND COAL MINE. A VIOLATION IS PUNISHABLE AS A CLASS 6 FELONY.

1993, c. 247, § 45.1-65.2; 1994, c. [28](#).

§45.1-161.216. Main fans.

- A. The active workings of a mine shall be ventilated by means of main fans.
- B. Unless otherwise approved by the Chief, fans shall be (i) provided with pressure-recording gauges, (ii) installed on the surface in fireproof housings, and (iii) equipped with fireproof air ducts.
- C. In addition to the requirements of subsection B, main fans shall either:
 - 1. Be equipped with ample means of pressure relief, and be offset not less than 15 feet from the nearest side of the mine opening; or
 - 2. Be directly in front of, or over, the mine opening; however, the opening shall not be in direct line with possible forces coming out of the mine should an explosion occur, and there shall be another opening having a weak-wall stopping or explosion doors that would be in direct line with the forces coming out of the mine should an explosion occur, such opening to be not less than 15 feet nor more than 100 feet from the fan opening; and
 - 3. In mines ventilated by multiple main mine fans, incombustible doors shall be installed so that if any main mine fan stops and air reversals through the fan are possible, the doors on the affected fan automatically close.
- D. Main mine fans shall be provided with an automatic device to give alarm when the fan slows down or stops. Unless otherwise approved by the Chief, this device shall be placed so that it will be seen or heard by an authorized person.
- E. Main fans shall be on separate power circuits, independent of the mine circuit.
- F. The area surrounding main fan installations shall be kept free of combustible material for at least 100 feet in all directions where physical conditions permit.

G. Mine fans shall be operated continuously, except when intentionally stopped for necessary testing, adjustment, maintenance, or repairs while no miners are underground, or as otherwise approved by the Chief. If the main fan is intentionally stopped for testing, adjustment, maintenance, or repairs, the mine operator shall comply with the requirements set forth in the approved fan stoppage plan for that mine. If the main fan is stopped after all miners are out of the mine, the fan shall be operated for a period specified in the approved fan stoppage plan for that mine before any miner is allowed underground.

H. Where electric power is available, main mine fans shall not be powered by means of internal combustion engines; however, where electric power is not available or for emergency use, main mine fans may be powered with internal combustion engines if, unless otherwise approved by the Chief, (i) the fan shall be operated exhausting, and (ii) the engine operating the fan shall be offset at least 10 feet from the fan and housed in a separate fireproof structure.

Code 1950, § 45-60.1; 1954, c. 191; 1966, c. 594, § 45.1-54; 1978, c. 120; 1988, c. 597; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 2005, c. [3](#); 2011, cc. [826](#), [862](#).

§45.1-161.217. Fan stoppage plan.

A fan stoppage plan shall be prepared for each mine, which plan shall be subject to approval by the Chief or his designated representative. Failure to comply with requirements set forth in the approved plan will be a violation of this section. Fan stoppage plans shall require the following:

1. When the main fan fails or stops, the power shall be cut off from the mine and miners shall be withdrawn from the face areas.
2. Miners shall be withdrawn from the underground areas if the ventilation is not restored within a reasonable time determined by the Chief, which period of time shall not exceed fifteen minutes. In determining the reasonable time period, the Chief shall consider, among other things, the size and number of fans, and the methane liberation rate of the mine.
3. If ventilation is restored within the time period established in the plan, the face areas and other areas where methane is likely to accumulate shall be examined by a certified person, and if the areas are found to be free of explosive or harmful gases, power may be restored and work resumed.

4. If ventilation is not restored within the time period established in the plan and the miners are evacuated from the mine, the main fan shall be operated for a period of time specified in the plan, which shall not be less than fifteen minutes. Thereafter the mine shall be examined by a certified person before miners shall be permitted underground or energizing power circuits.

Code 1950, § 45-60.1; 1954, c. 191; 1966, c. 594, § 45.1-54; 1978, c. 120; 1988, c. 597; 1993, c. 442; 1994, c. [28](#).

§45.1-161.218. Auxiliary fans.

A. The installation or use of auxiliary fans in any mine shall be prohibited, without the prior written approval of the Chief.

B. Machine mounted scrubbers and spray fan systems may be used for control of coal dust and to enhance ventilation. Such installations are not considered auxiliary fans.

Code 1950, § 45-60.2; 1954, c. 191; 1966, c. 594, § 45.1-55; 1993, c. 442; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.219. Volume of air.

A. The quantity of air passing through the last open crosscut shall be not less than 9,000 cubic feet per minute; provided, however, that the quantity of air reaching the last open crosscut in pillar-recovery sections may be less than 9,000 cubic feet per minute, if at least 9,000 cubic feet of air per minute is being delivered to the intake end of the pillar line.

B. The air current at working faces shall, under all conditions, have a sufficient volume and velocity to readily dilute and carry away smoke from blasting and any flammable or harmful gases and dust.

C. In longwall and shortwall mining systems:

1. The quantity of air shall be at least 30,000 cubic feet per minute reaching the working face unless otherwise approved by the Chief; and

2. The velocity of air provided to control dust at designated locations on the longwall or shortwall face shall be maintained in accordance with the provisions of the mine ventilation plan approved by the Mine Safety and Health Administration.

D. Ventilation shall be maintained during the installation and removal of mechanized mining equipment.

Code 1950, §§ 45-4.1, 45-9, 45-12, 45-60.4, 45-74; 1954, c. 191; 1966, c. 594, §§ 45.1-5, 45.1-56; 1968, c. 310; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 2005, c. [3](#).

§45.1-161.220. Bleeder systems.

A. All mines shall have a system, which has been approved by the Chief, of bleeder openings of air courses designed to provide positive movement of air through or around worked-out areas which is sufficient to prevent a hazardous accumulation of gas in such areas and to minimize the effect of variations in atmospheric pressure. Operators shall submit bleeder system plans which comply with requirements developed by the Chief. The system requirements developed by the Chief shall, at a minimum, address standards for (i) supplemental roof supports, (ii) water accumulation, (iii) continuous movement of gases from gob areas, (iv) methane content, (v) the use and operation of degasification systems, (vi) air flow direction, and content, (vii) ventilation controls. The Chief shall not approve a plan which provides for a methane content exceeding four and one-half percent in bleeder air courses. Failure to comply with an approved plan will be a violation of this section. This section shall not prohibit the sealing of worked-out areas in accordance with § [45.1-161.228](#).

B. The mine map requirements of § [45.1-161.64](#) may be used to depict bleeder system standards specified in this section.

Code 1950, § 45-60.4; 1954, c. 191; 1966, c. 594, § 45.1-56; 1968, c. 310; 1978, c. 120; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.221. Coursing of air.

A. The main intake and return air currents of drifts or slope mines shall not be in a single partitioned opening.

B. All entries driven in coal shall be in sets of two or more.

C. Underground transformer stations, battery-charging stations, substations, rectifiers, and water pumps shall be housed in noncombustible structures or areas, or be equipped with an approved fire suppression system. These installations shall be ventilated with intake air that is coursed into a return air course or to the surface, and that is not used to ventilate working places. This requirement does not apply to: (i) rectifiers, power centers with transformers that are either dry-type or contain non-flammable liquid, or battery-charging stations, if they are located at or near the working section and are moved as the working section advances or retreats, (ii)

submersible pumps, (iii) permissible pumps and associated permissible switch gear, (iv) pumps located at or near the working section that are moved as the working section advances or retreats, and (v) small portable pumps. Such equipment shall be installed and operated only in well-ventilated locations.

D. Changes in ventilation that materially affect the main air current or any split thereof shall be made when the mine is not in operation and there are no miners in the mine other than those engaged in changing the ventilation.

E. Each section in a mine shall be ventilated by a separate split of air.

F. Air used to ventilate belt haulage entries shall not be used to ventilate any working place unless approved by the Chief.

Code 1950, §§ 45-60.4, 45-71; 1954, c. 191; 1966, c. 594, § 45.1-57; 1978, c. 120; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.222. Actions for excessive methane.

A. Tests for methane concentration under this section shall be made by certified or qualified persons trained in the use of an approved detecting device which is properly maintained and calibrated. Tests shall be made at least twelve inches from the roof, face, ribs, and floor.

B. When one percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located, or in an area where mining equipment is being installed or removed, work shall cease and electrical power shall be de-energized in the affected working place at the equipment except intrinsically safe atmospheric monitoring systems (AMS). Changes or adjustments shall be made to the ventilation system to reduce the concentration to below one percent. Only work to reduce the concentration of methane below one percent shall be permitted. This does not apply to other faces in the entry or slope in which work can be safely continued.

C. When one and one-half percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located, or an area where mining equipment is being installed or removed, only work necessary to reduce the methane concentration to less than one and one-half percent will be permitted and all other personnel shall be withdrawn from the affected area. Electrically powered equipment in the affected area shall be de-energized and other mechanized

equipment shall be shut off except for intrinsically safe atmospheric monitoring systems (AMS).

D. When one percent or more methane is present in a return or split between the last working place on a working section and where that split of air meets another split of air, or the location at which the split is used to ventilate seals or worked-out areas, changes or adjustments shall be made to the ventilation system to reduce the concentration of methane in the return air to less than one percent.

E. When one and one-half percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air or the location where the split is used to ventilate seals or worked-out areas, everyone except those persons required to perform necessary work to correct the problem shall be withdrawn from the affected area. Other than intrinsically safe atmospheric monitoring systems (AMS), all equipment in the affected area shall be de-energized at the source. No other work shall be permitted in the affected area until the concentration of methane in the return air is less than one percent.

F. An alternative methane level up to one and one-half percent may be allowed in the return air split where the following precautions are met: (i) the quantity of air in the split ventilating the active workings is at least 27,000 cubic feet per minute in the last open crosscut; (ii) the methane content of the air in the split is continuously monitored during mining operations by an intrinsically safe atmospheric monitoring system (AMS) that gives a visual and audible signal on the working section when the methane in the return air reaches one and one-half percent; and (iii) rock dust is continuously applied with a mechanical duster to the return air course during coal production at a location in the air course immediately outby the most inby monitoring point or inby such point provided the mechanical duster is maintained in a permissible condition and does not adversely affect the AMS. When one and one-half percent or more methane is present where a return air alternative is applied, all persons shall be withdrawn, except those necessary to improve ventilation, and changes or adjustments shall be made to reduce the concentration of methane in the return air to below one and one-half percent as set forth in subsection E.

G. The concentration of methane in a bleeder split of air immediately before the air in the split joins another split of air, or in a return air course other than described in subsections D and E, shall not exceed two percent.

Code 1950, § 45-60.3; 1954, c. 191; 1966, c. 594, § 45.1-58; 1978, c. 120; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.223. Crosscuts.

A. Crosscuts shall be made between entries and between rooms as provided in the approved roof control plan.

B. Crosscuts between intake and return air courses shall be closed, except the one nearest the face. Crosscuts between rooms shall be closed where necessary to provide adequate ventilation at the working face.

C. Where practicable, a crosscut shall be provided at or near the face of each entry or room before the place is abandoned.

D. Entries or rooms shall not be started off an entry beyond the last open crosscut.

Code 1950, § 45-60.4; 1954, c. 191; 1966, c. 594, § 45.1-59; 1978, c. 729; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.224. Permanent stoppings.

A. Permanent stoppings shall be built and maintained:

1. Between intake and return air courses, except temporary controls may be used in rooms that are 600 feet or less from the centerline of the entry from which the room was developed. Unless otherwise approved by the Chief, these stoppings shall be maintained to and including the third connecting crosscut outby the working face.

2. To separate belt conveyor haulageways from return air courses except where belt entries are used as return air courses.

3. To separate the primary escapeway from belt and trolley haulage entries unless otherwise approved by the Chief.

4. In return air courses to direct air into adjacent worked-out areas.

B. Permanent stoppings shall be built of substantial, incombustible material such as concrete, concrete blocks, brick, tile, or other approved material; however, where physical conditions prohibit the use of such materials, timbers laid longitudinally "skin to skin" may be used.

C. The use of an air lock in the permanent intake stopping line near the section loading point shall be permitted to access the belt and transport supplies.

D. Stoppings shall be maintained to serve the purpose for which they were built and shall be reasonably air tight.

Code 1950, § 45-60.4; 1954, c. 191; 1966, c. 594, § 45.1-59; 1978, c. 729; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.225. Ventilation controls.

A. Ventilation shall be so arranged by means of air locks, overcasts, or undercasts that the passage of haulage trips or persons along the entries will not cause interruption of the air current. Air locks shall be ventilated sufficiently to prevent accumulations of methane therein.

B. Air lock doors that are used in lieu of permanent stoppings or to control ventilation within an air course shall be (i) made of noncombustible material or coated on all accessible surfaces with flame-retardant material having a flame spread index of 25 or less as tested under ASTM E 162-187 and (ii) of sufficient strength to serve their intended purpose of maintaining separation and permitting travel between or within air courses or entries.

C. To provide easy access between the return, belt and intake escapeway entries, substantially constructed man-doors properly marked so as to be readily detected shall be installed in at least every fifth crosscut in the stopping lines separating such entries.

D. Doors shall be kept closed except when miners or equipment is passing through the doorways. Motor crews and other miners who open doors shall see that the doors are closed before leaving them.

E. Overcasts, undercasts, and regulators shall be well constructed of incombustible material, such as masonry, concrete, concrete blocks, or prefabricated metal. They shall (i) be of sufficient strength to withstand possible falls from the roof, (ii) be of ample area to pass the required quantity of air, and (iii) be kept clear of obstructions.

Code 1950, § 45-60.4; 1954, c. 191; 1966, c. 594, § 45.1-60; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 2005, c. [3](#).

§45.1-161.226. Line brattice.

A. Substantially constructed line brattice shall be used from the last open crosscut of an entry or room when necessary to provide adequate ventilation for the miners and to remove gases. Any line brattice damaged by falls or otherwise shall be repaired promptly.

B. The space between the line brattice and the rib shall be large enough to permit the flow of a sufficient volume of air to keep the working face clear of flammable and noxious gases.

C. Brattice cloth used underground shall be of flame-resistant material.

D. Accumulations of methane shall be moved only by means of properly installed line brattice, or other approved method.

Code 1950, § 45-60.4; 1954, c. 191; 1966, c. 594, § 45.1-61; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.227. Ventilation with air from certain areas.

Active face workings shall not be ventilated with air that has passed through worked-out areas or has been used to ventilate pillar lines. This section shall not apply to air which is being used to ventilate an active pillar line and rooms which are necessary to establish and maintain the pillar line.

Code 1950, § 45-60.5; 1954, c. 191; 1966, c. 594, § 45.1-62; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.228. Worked-out areas.

A. All worked-out areas shall be either sealed or ventilated.

B. Where practice is to seal worked-out areas, the sealing shall be done in accordance with sealing provisions of the approved bleeder plan.

Code 1950, § 45-60.5; 1954, c. 191; 1966, c. 594, § 45.1-62; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2005, c. [3](#).

§45.1-161.229. Air quality.

A. All active workings shall be ventilated by a current of air containing not less than 19.5 volume percent of oxygen and no harmful quantities of other noxious or poisonous gases.

B. The volume and velocity of the current of air in all active workings shall be sufficient to dilute, render harmless and carry away flammable, explosive, noxious and harmful gases and dust, smoke, and explosive fumes.

Code 1950, § 45-60.3; 1954, c. 191; 1966, c. 594, § 45.1-63; 1968, c. 310; 1993, c. 442; 1994, c. [28](#); 1996, c. [774](#); 2005, c. [3](#).

§45.1-161.230. Repealed.

Repealed by Acts 1999, c. [256](#).

§45.1-161.231. Examination of mines for explosive gas and other hazardous conditions.

A. Certified persons whose regular duties require them to inspect working places in any mine for hazardous conditions shall have in their possession, and shall use, when underground, a permissible methane detector or other permissible device capable of detecting methane and oxygen deficiency.

B. A sufficient number of permissible methane detectors or other permissible devices capable of detecting methane shall be kept at each mine inby the last open crosscut. All miners shall be trained in the operation of the device. Any miners working inby the last open crosscut shall be certified by the Board of Coal Mining Examiners to conduct gas testing. Methane detectors or indicators shall be maintained in permissible condition.

C. Methane detectors or indicators shall be calibrated at least monthly in accordance with manufacturers recommendations. A record of such calibration shall be made in a book for this purpose kept at a surface location at the mine and maintained for one year.

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-68.1, 45-69.7, 45-85.6; 1954, c. 191; 1966, c. 594, §§ 45.1-35, 45.1-65; 1978, cc. 118, 120; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#).

§45.1-161.232. Tampering with methane monitoring devices prohibited; penalty.

A. No person shall intentionally disturb, disconnect, bypass, impair, or otherwise tamper with methane monitors or other devices capable of detecting the presence of explosive gases used in an underground coal mine. If the methane monitor is installed on a face cutting machine, continuous miner, longwall face equipment, loading machine, or other mechanized equipment used to extract or load coal as required pursuant to 30 CFR Part 75.342, and the monitor or the equipment malfunctions, the monitor may be disconnected or bypassed for the purposes of removing the monitor or the equipment in order to make necessary repairs to the monitor or the equipment. Any other methane monitor may be disconnected, bypassed or removed.

B. Any person convicted of a violation of this section shall be guilty of a Class 6 felony.

1993, c. 247, § 45.1-65.1; 1994, c. [28](#).

§45.1-161.233. Allowing persons to work in mine where methane monitoring equipment disconnected; penalty.

An operator, agent, or mine foreman shall not knowingly permit any miner to work in any area of the underground coal mine where such operator, agent, or mine foreman has knowledge that a methane monitor or other device capable of detecting the presence of explosive gases has been impaired, disturbed, disconnected, or bypassed in violation of § [45.1-161.232](#). Any person convicted of a violation of this section shall be guilty of a Class 6 felony.

1993, c. 247, § 45.1-30.1; 1994, c. [28](#).

§45.1-161.233:1. Intentionally bypassing safety devices; prohibition.

No person shall intentionally bypass, bridge, or otherwise impair an electrical or hydraulic circuit that affects the safe operation of electrical or mechanical equipment. This shall not prohibit (i) a certified electrical repairmen from by-passing energized circuits for troubleshooting; (ii) an authorized person from performing repairs or maintenance on equipment once the power is off and the equipment is blocked against motion except where motion is necessary to make adjustment or to move the equipment to a safe location; (iii) an authorized person from bypassing a hydraulic circuit for the purpose of troubleshooting or moving equipment to a safe location in order to make necessary repairs or be taken out of service; or (iv) an authorized person from activating an override feature that is designed by the machine manufacturer to allow the machine to be moved to a safe location in order to make necessary repairs or be taken out of service.

2005, c. [3](#).

§45.1-161.234. Control of coal dust.

A. Coal dust shall not be permitted to accumulate excessively in any part of the active areas, including active workings soon to be worked-out.

B. Where mining operations create or raise an excessive amount of coal dust into the air, water or water with an added wetting agent, or other effective method of controlling dust approved by the Chief, or his authorized representative, shall be applied to coal dust on the ribs, roof, and floor to reduce dispersibility and to minimize the hazard of explosion, within forty feet from all active workings or such other areas as the Chief or his authorized representative shall require.

Code 1950, § 45-77.1; 1954, c. 191; 1966, c. 594, § 45.1-66; 1994, c. [28](#); 1996, c. [774](#).

§45.1-161.235. Rock dusting.

A. All underground areas of a mine, except those areas where the coal dust is too wet or too high in incombustible content to propagate an explosion, shall be rock dusted to within forty feet of all working faces, unless such areas are inaccessible or unsafe to enter or unless the Chief, or his authorized representative, permits an exception upon his finding that such exception will not pose a hazard to the miners. All cross-cuts that are less than forty feet from working faces shall also be rock dusted.

B. All other areas of a mine shall be rock dusted if conditions are found to be so dusty as to constitute a hazard after proper inspection. Should such conditions be found to exist, the Chief, or his authorized representative, shall require the necessary rock dusting to make the areas of the mine safe.

C. Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials shall be cleaned up and not be permitted to accumulate excessively in active workings, or on electric equipment therein.

Code 1950, § 45-77; 1954, c. 191; 1966, c. 594, § 45.1-67; 1978, c. 120; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.236. Housekeeping; noxious fumes.

A. Good housekeeping shall be practiced in and around buildings, shafts, slopes, yards and other areas of the mine. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails, broken glass and possible falling and rolling materials.

B. Painting or operations creating noxious fumes shall be performed only in a well ventilated atmosphere.

C. All surface mine structures, enclosures, and other facilities shall be maintained in good repair.

Code 1950, §§ 45-85.5, 45-85.8; 1954, c. 191; 1966, c. 594, §§ 45.1-34, 45.1-37; 1978, c. 729; 1994, c. [28](#); 2005, c. [3](#).

§45.1-161.237. Lighting.

A. Lights shall be provided as needed in or on surface structures.

B. Roads, paths and walks outside of structures shall be kept free from obstructions and shall be well illuminated, if used at night.

1966, c. 594, § 45.1-38; 1994, c. [28](#).

§45.1-161.238. Flammable or combustible materials.

A. Oil, grease, and similar flammable materials shall be kept in closed containers, separate from other materials so as not to create a fire hazard to nearby buildings or mines. If oil or grease is stored in a building, the building or room in which it is stored shall be of fireproof construction and well ventilated.

B. Oily rags, oily waste and wastepaper shall be kept in closed metal containers until removed for disposal.

C. The area within 100 feet of all mine openings shall be kept free of combustible material; however, this shall not apply to the temporary storage of not more than a one day's supply of such materials.

D. All oxygen and acetylene bottles shall be stored in racks designated and constructed for the storage of such bottles with caps in place and secured when not in use. Any storage place for such materials shall be posted to prohibit smoking.

Code 1950, § 45-85.9; 1954, c. 191; 1966, c. 594, § 45.1-39; 1978, c. 729; 1994, c. [28](#).

§45.1-161.239. Crane operations.

A crane operator shall at all times during any hazardous crane operation maintain visual or auditory communication with all persons involved in the crane operation.

Code 1950, § 45-85.7; 1954, c. 191; 1966, c. 594, § 45.1-36; 1978, c. 729; 1994, c. [28](#).

§45.1-161.240. Controlling dust at surface.

A. In surface structures at excessively dusty mines, electric motors, switches, lighting fixtures, and controls shall be protected by dust-tight construction.

B. Surface structures and equipment shall be kept free of coal dust accumulations.

C. Where mining operations raise an excessive amount of dust into the air, water or water with wetting agent added to it or other effective methods shall be used to allay such dust at its sources.

Code 1950, §§ 45-77, 45-85.5; 1954, c. 191; 1966, c. 594, §§ 45.1-34, 45.1-67; 1978, cc. 120, 729; 1994, c. [28](#).

§45.1-161.241. Scaffolding and overhead protection.

Where repairs are being made to the plant, or where equipment or material is being used or transported overhead, proper scaffolding or proper overhead protection shall be provided.

Code 1950, § 45-85.5; 1954, c. 191; 1966, c. 594, § 45.1-34; 1978, c. 729; 1994, c. [28](#).

§45.1-161.242. Welding and cutting.

Welding or cutting with arc or flame shall not be done in excessively dusty atmospheres or dusty locations. Fire-fighting apparatus shall be readily available when welding or cutting is performed.

Code 1950, § 45-85.5; 1954, c. 191; 1966, c. 594, § 45.1-34; 1978, c. 729; 1994, c. [28](#).

§45.1-161.243. Fire prevention and fire control.

The provisions of Article 5 (§ [45.1-161.265](#) et seq.) of Chapter 14.4 of this title shall apply with respect to requirements for fire-fighting equipment, duties in the event of a fire, and fire precautions at the surface areas of underground coal mines.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. [28](#).

§45.1-161.244. Surface equipment.

The provisions of Article 6 (§ [45.1-161.268](#) et seq.) of Chapter 14.4 of this title shall apply with respect to equipment at the surface areas of underground coal mines.

1994, c. [28](#).

§45.1-161.245. Travel ways, loading and haulage areas.

The provisions of Article 7 (§ [45.1-161.275](#) et seq.) of Chapter 14.4 of this title shall apply with respect to travel ways, loading, and haulage areas at the surface of underground coal mines.

1994, c. [28](#); 1996, c. [774](#).

§45.1-161.246. Electricity.

The provisions of Article 9 (§ [45.1-161.279](#) et seq.) of Chapter 14.4 of this title shall apply with respect to power lines, circuits, transformers, and other electric equipment at the surface areas of underground coal mines.

1994, c. [28](#).

§45.1-161.247. Surface blasting.

The provisions of Article 10 (§ [45.1-161.284](#) et seq.) of Chapter 14.4 of this title shall apply with respect to explosives and blasting at the surface areas of underground coal mines.

1994, c. [28](#).

§45.1-161.248. Ground control.

The provisions of Article 11 (§ [45.1-161.287](#)) of Chapter 14.4 of this title shall apply with respect to the pits, highwalls, benches, banks, and walls associated with any coal mining activities conducted at the surface areas of underground coal mines.

1994, c. [28](#).

§45.1-161.249. Duties of mine foreman.

A. The mine foreman shall see that the requirements of this Act that pertain to his duties and to the health and safety of the miners are fully complied with at all times.

B. The mine foreman shall see that every miner employed to work in such mine before beginning work therein, is aware of all hazardous conditions incident to his work in such mine. Any imminent danger that cannot be removed within a reasonable time shall be reported to the Chief by the quickest available means.

Code 1950, §§ 45-35, 45-40; 1954, c. 191; 1966, c. 594, § 45.1-17; 1978, c. 729; 1993, c. 170; 1994, c. [28](#); 1996, c. [774](#); 1999, c. [256](#); 2015, cc. [103](#), [397](#).

§45.1-161.250. Employment and duties of top persons; plan for excavation of shaft or slope.

A. During the construction or modification of any shaft or slope mine, the person engaged in the actual construction or modification of such mine shall employ one or more certified top persons. It shall be the duty of such top person to examine for proper and safe practices and materials used during the construction or modification of a shaft or slope mine. Such duties shall at all times be performed in the immediate vicinity of the shaft under construction.

B. Prior to commencing the excavation of any shaft or slope, the operator shall submit to the Department a copy of the plan that includes the following: (i) the name and location of the mine and slope or shaft; (ii) a description of the work and methods to be used in the construction of the slope or shaft; (iii) a description of the methods to be used to ensure wall and roof stability; (iv) a description of the system of ventilation to be used including procedures for evacuation of the slope or shaft should a fan stoppage occur; (v) details of hoisting equipment to be used; and (vi) such other information as may be required by the Chief. The excavation of a shaft or slope shall not begin until the plan is approved by the Chief.

1980, c. 442, § 45.1-20.1; 1994, c. [28](#); 2011, cc. [826](#), [862](#).

§45.1-161.251. Employment of inexperienced underground miners.

A. Inexperienced underground miners shall be required to work with an experienced underground miner for a total of at least six months following underground employment. However, experienced surface miners shall only be required to work with an experienced underground miner for a total of at least sixty days following underground employment.

B. No inexperienced underground miner shall be assigned, or allowed, or be required to perform work alone in any area where there is the potential to endanger his safety unless he can communicate with others, can be heard, or can be seen.

Code 1950, §§ 45-35, 45-40; 1954, c. 191; 1966, c. 594, § 45.1-17; 1978, c. 729; 1993, c. 170; 1994, c. [28](#); 1999, c. [256](#).

§45.1-161.252. Employment of authorized persons.

No miner shall be placed in charge of a cutting, loading, drilling, continuous miner, or timbering machine in any mine who is not an authorized person capable of determining the safety of the roof and ribs of the working places. Such miner shall also be capable of detecting the presence of explosive gas and shall be compelled to undergo examination by a mine inspector or other instructors who are certified by the Board of Coal Mining Examiners and authorized by the Chief to determine his fitness to detect explosive gas before being permitted to have charge of machines in such mines.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222,

489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. [28](#); 2012, cc. [109](#), [241](#).

Requirements Applicable to Underground Mineral Mines

§45.1-161.293. Scope of chapter.

This chapter shall be applicable to the operation of any underground mineral mine in the Commonwealth, and shall supplement the provisions of Chapter 14.4:1 (§ [45.1-161.292:1](#) et seq.).

1994, c. [28](#); 1997, c. [390](#).

§45.1-161.294. Regulations governing conditions and practices at underground mineral mines.

A. The Director shall promulgate rules and regulations, in accordance with the provisions of Article 2 (§ [2.2-4006](#) et seq.) of the Administrative Process Act, necessary to ensure the safety and health of miners and other persons and property at underground mineral mines in the Commonwealth. Nothing in this section shall restrict the Director from promulgating regulations more stringent than regulations promulgated pursuant to the federal mine safety law. Such rules and regulations applicable to underground mineral mines shall establish requirements:

1. For protecting miners from general risks found at underground mineral mines and mining;
2. For the provision and use of personal protection equipment and devices for the head, feet, hands, and body;
3. For the maintenance, operation, storage, and transportation of mechanical or electrical equipment, devices, and machinery used in the underground mining of minerals;
4. For controlling unstable roof, rib, wall and other ground conditions;
5. For the handling and storage of combustible materials, including requirements for emergency plans, fire fighting and emergency rescue, fire prevention and safety fea-

tures on mine equipment, fire safety in mine structures and other areas, and other flame and spark hazards;

6. For the control of exposure to airborne contaminants and excessive noise levels;
7. For adequate air quality through ventilation and other appropriate measures;
8. For the safe storage, transportation, and use of explosive and blasting devices;
9. For the safe design, operation, maintenance, and inspection of drilling equipment;
10. For the construction, installation, maintenance, use and inspection of boilers, air compressors, and compressed gas systems;
11. For the safe design, use, maintenance, and inspection of passageways, walkways, ladders, and other travel ways;
12. For the safe design, operation, maintenance, and inspection of electrical equipment and systems;
13. For the storage, transportation, and handling of materials, including corrosive and hazardous substances;
14. For the safe design, use, maintenance, and inspection of guards on moving parts of equipment and machinery;
15. For the safe design and operation of chutes;
16. For the inspection, maintenance, safe design, and operation of hoisting equipment and cables;
17. For the inspection, maintenance, and construction of mine shafts;
18. For the actions of certified and competent persons; and
19. For the safe design, operation, maintenance, and inspection of, and the conduct of mining activities at, surface areas of underground mineral mines.

B. The Director shall not promulgate any regulations relating to underground mineral mines which are inconsistent with requirements established by the Act, or which, when an operator takes action to comply with the provisions of such regulation, would place the operator in violation of the federal mine safety law.

1994, c. [28](#); 1996, c. [774](#); 1998, c. [695](#).

§45.1-161.295. Standards for regulations.

In promulgating rules and regulations pursuant to § [45.1-161.294](#), the Director shall consider:

1. Standards utilized and generally recognized by the underground mineral mining industry;
2. Standards established by recognized professional mineral mining organizations and groups;
3. The federal mine safety law;
4. Research, demonstrations, experiments, and such other information that is available regarding the maintenance of a reasonable degree of safety protection, including the latest available scientific data in the field, the technical and economic feasibility of the standards, and the experience gained under this Act and other mine safety laws; and
5. Such other criteria as shall be necessary for the protection of safety and health of miners and other persons or property likely to be affected by underground mineral mines or related operations.

1994, c. [28](#).

§45.1-161.296. Mining in proximity to gas and oil wells.

A. The Director shall promulgate regulations requiring licensed operators to notify, and in appropriate circumstances obtain the consent of, the Director prior to removing minerals in the proximity of any gas or oil well already drilled or in the process of being drilled.

B. Any licensed operator who plans to remove any mineral, drive any passage or entry or extend any workings in any mine closer than 500 feet to any gas or oil well already drilled or in the process of being drilled shall file with the Director a notice that mining is taking place or will take place, together with a copy of parts of the maps and plans required under § [45.1-161.292:37](#), which show the mine workings and projected mine workings which are within 500 feet of the well. The licensed operator shall simultaneously mail copies of such notice, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector. Each notice shall contain a certification made by the sender that he has complied with these requirements.

C. Subsequent to the filing of the notice, the licensed operator may proceed with mining operations in accordance with the maps and plans; however, without the prior approval of the Director, he shall not remove any material, drive any entry, or extend any workings in any mine closer than 200 feet to any gas or oil well already drilled or in the process of being drilled. Each licensed operator who files such a petition shall mail copies of the petition, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the well operator shall have standing to object to any petition filed under this section. Such objections shall be filed within ten days following the date such petition is filed.

1990, c. 92, § 45.1-92.1; 1994, c. [28](#); 1997, c. [390](#); 1998, c. [695](#).

§45.1-161.297. Flame safety lamps.

Flame safety lamps shall not be used for detecting methane. The Director shall determine whether flame safety lamps shall constitute approved devices for detecting oxygen deficiency. If flame safety lamps are approved for such purpose, the Director shall establish standards for their use and maintenance.

Code 1950, § 45-69.7; 1954, c. 191; 1966, c. 594, § 45.1-64; 1993, c. 442; 1994, c. [28](#).

§45.1-161.298. Transportation of miners.

A. The Director shall promulgate regulations regarding (i) the carrying of tools by miners on man-trips; (ii) the riding of miners, except the motorman and trip rider, inside the cars; and (iii) the boarding and unboarding of miners to and from man-trips.

B. Until final regulations promulgated by the Director pursuant to subsection A become effective, the following standards shall apply to the matters to be addressed by such regulations:

1. Each man-trip shall be operated independently of any loaded trip of minerals or other material;
2. All miners, except the motorman and trip rider, shall ride inside the cars; and
3. Miners shall remain seated while in moving man-trip cars, shall not board or leave moving man-trip cars, and shall proceed to and from man-trips in an orderly manner.

Code 1950, § 45-69.2; 1954, c. 191; 1966, c. 594, § 45.1-74; 1985, c. 296; 1994, c. [28](#).

§45.1-161.299. Bare wires and cables.

A. The Director shall promulgate regulations requiring bare wires, and cables other than ground wires, grounded power wires, and trailing cables to be supported by insulators and away from combustible materials, roof, and ribs.

B. Until final regulations promulgated by the Director pursuant to subsection A become effective, wires and cables not encased in armor shall be supported by well-installed insulators and shall not touch combustible materials, roof, or ribs; however, this requirement shall not apply to ground wires, grounded power conductors, and trailing cables.

Code 1950, §§ 45-82, 45-82.1; 1954, c. 191; 1966, c. 594, § 45.1-78; 1993, c. 442; 1994, c. [28](#).

§45.1-161.300. Use of track as electrical power conductor.

A. The Director shall promulgate regulations regarding the bonding, welding, or securing of rails and track switches where track is used to conduct electrical power.

B. Until final regulations promulgated by the Director pursuant to subsection A become effective, the following standards shall apply where track is used as a power conductor:

1. Both rails of main-line tracks shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet. If the rails are paralleled with a feeder circuit of like polarity, such paralleled feeder shall be bonded to the track rails at intervals of not more than 1,000 feet.

2. At least one rail on secondary track-haulage roads shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet.

3. Track switches on entries shall be well bonded.

4. Rails shall not be used as power conductors in rooms.

Code 1950, §§ 45-82, 45-82.1; 1954, c. 191; 1966, c. 594, § 45.1-78; 1993, c. 442; 1994, c. [28](#).

§45.1-161.301. Disconnecting switches.

A. The Director shall promulgate regulations requiring the installation of disconnecting switches underground in all main power circuits at appropriate locations.

B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, disconnecting switches shall be installed underground (i) in all main power circuits within approximately 500 feet of the bottoms of shafts and boreholes, and (ii) at other places where main power circuits enter the mine.

Code 1950, § 45-82.3; 1954, c. 191; 1966, c. 594, § 45.1-80; 1994, c. [28](#).

§45.1-161.302. Respiratory equipment and ear protectors.

A. The Director shall promulgate regulations requiring (i) miners exposed for short periods to hazards from inhalation of gas, dust, or fumes to wear approved respiratory equipment and (ii) operators to supply ear protectors to miners upon request.

B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, (i) miners exposed for short periods to hazards from inhaling gas, dust, or fumes shall wear approved respiratory equipment and (ii) ear protectors shall be supplied by the operator to all miners upon request.

Code 1950, § 45-86; 1954, c. 191; 1966, c. 594, § 45.1-99; 1978, c. 729, § 45.1-99.1; 1994, c. [28](#).

§45.1-161.303. Fire precautions in transportation of mining equipment.

A. The Director shall promulgate regulations requiring fire precautions be taken when mining equipment is transported underground in proximity to energized trolley wires or trolley feeder wires.

B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, the following standards shall apply to the transportation of mining equipment underground:

1. Prior to moving or transporting any unit of off-track mining equipment in areas of the active workings where energized trolley wires or trolley feeder wires are present: (i) the unit of equipment shall be examined by a certified person to ensure that accumulations of oil, grease, and other combustible materials have been removed from such unit of equipment; and (ii) a qualified person shall examine the trolley wires, trolley feeder wires, and the associated automatic circuit interrupting devices to ensure that proper short circuit protection exists.
2. A record shall be kept of the examinations and shall be made available, upon request, to the Director or his authorized representative.

3. Off-track mining equipment shall be moved or transported in areas of the active workings where energized trolley wires or trolley feeder wires are present only under the direct supervision of a certified person who shall be physically present at all times during moving or transporting such equipment.
4. The frames of off-track mining equipment being moved or transported, in accordance with this subsection, shall be covered on the top and on the trolley wire side with fire-resistant material, where appropriate as determined by the Director.
5. Electrical contact shall be maintained between the mine track and the frames of off-track mining equipment being moved in-track and trolley entries, except that rubber-tired equipment need not be grounded to a transporting vehicle if no metal part of such rubber-tired equipment can come into contact with the transporting vehicle.
6. To avoid accidental contact with power lines, the equipment being transported or trammed shall be insulated or assemblage removed, if necessary, if the clearance to the power lines is six inches or less.
7. Sufficient prior notice shall be given the Department so that a mine inspector may travel the route of the move before the actual move is made, if he deems it necessary.
8. A minimum vertical clearance of twelve inches shall be maintained between the farthest projection of the unit of equipment which is being moved and the energized trolley wires or trolley feeder wires at all times during the movement or transportation of such equipment. If the height of the seam of minerals does not permit twelve inches of vertical clearance to be so maintained, the following additional precautions shall be taken:
 - a. Electric power shall be supplied to the trolley wires or trolley feeder wires only from outby the unit of equipment being moved or transported. Where direct current electric power is used and such electric power can be supplied only from inby the equipment being moved or transported, power may be supplied from inby such equipment if a miner with the means to cut off the power, and in direct communication with persons actually engaged in the moving or transporting operation, is stationed outby the equipment being moved;
 - b. The settings of automatic circuit interrupting devices used to provide short circuit protection for the trolley circuit shall be reduced to not more than one-half of the maximum current that could flow if the equipment being moved or transported were to come into contact with the trolley wire or trolley feeder wire;

- c. At all times the unit of equipment is being moved or transported, a miner shall be stationed at the first automatic circuit breaker outby the equipment being moved. Such miner shall be in direct communication with persons actually engaged in the moving or transporting operation, and capable of communicating with the authorized person on the surface required to be on duty;
- d. Where trolley phones are utilized to satisfy the requirements of paragraph c of this subdivision, telephones or other equivalent two-way communication devices that can readily be connected with the mine communication system shall be carried by the miner stationed at the first automatic circuit breaker outby the equipment being moved and by a miner actually engaged in the moving or transporting operation; and
- e. No person shall be permitted to be inby the unit of equipment being moved or transported, in the ventilating current of air that is passing over such equipment, except those persons directly engaged in moving such equipment.

The provisions of subdivisions 1 through 8 shall not apply to units of mining equipment that are transported in mine cars, provided that no part of the equipment extends above or over the sides of the mine car.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. [28](#).

Retail Franchising Act

§13.1-557. Short title.

This chapter shall be known as the "Retail Franchising Act."

1972, c. 561.

§13.1-558. Policy of the Commonwealth.

It is hereby declared to be the policy of the Commonwealth, through the exercise by the General Assembly of its power to regulate commerce partly or wholly within the Commonwealth of Virginia, to correct as rapidly as practicable such inequities as may exist in the franchise system so as to establish a more even balance of power between franchisors and franchisees; to require franchisors to deal fairly with their franchisees with reference to all aspects of the franchise relationship and to provide franchisees more direct, simple, and complete judicial relief against franchisors who fail to deal in a lawful manner with them.

1972, c. 561.

§13.1-559. Definitions; applicability of chapter.

A. As used in this chapter, unless the context otherwise requires:

"Commission" means the State Corporation Commission.

"Controlling person" means a natural person who is an officer, director, or partner, or who occupies a similar status or performs a similar function, of a franchisor organized as a corporation, partnership, or other entity, or any person who possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a franchisor, whether through the ownership of voting securities, by contract, or otherwise.

"Franchise" means a written contract or agreement between two or more persons, by which:

1. A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services at retail under a marketing plan or system prescribed in substantial part by a franchisor;
2. The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logo-type, advertising or other commercial symbol designating the franchisor or its affiliate; and
3. The franchisee is required to pay, directly or indirectly, a franchise fee of \$500 or more.

"Franchise fee" means a fee or charge for the right to enter into or maintain a business under a franchise, including a payment or deposit for goods, services, rights, or training, but not including: (i) the payment of a bona fide wholesale price for starting and continuing inventory of goods for resale or (ii) the payment at fair market value for the purchase or lease of real property, fixtures, equipment, or supplies necessary to enter into or maintain the business.

"Franchisee" means a person to whom a franchise is granted or sold.

"Franchisor" means a person, including a subfranchisor, who grants or sells, or offers to grant or sell, a franchise.

"Offer" or "offer to sell" includes every attempt to offer to dispose of or grant, and every solicitation of an offer to buy, a franchise or an interest in a franchise for value.

"Place of business" means a building or portion thereof from which the goods or services authorized by the franchise are sold or offered for sale in person by the franchisee or employees or agents of the franchisee, or a truck or van used in the sale of such goods which is of a type designated by the franchisor and is equipped and marked in conformance with requirements of the franchisor.

"Preopening obligations" means the franchisor's obligations to provide to the franchisee, prior to the opening of the franchisee's business, real estate, improvements, equipment, inventory, training, or other items to be included in the offering.

"Sale" or "sell" includes every contract or agreement of sale or grant of, contract to sell, or disposition of a franchise or interest in a franchise for value.

"Subfranchisor" means a person who is authorized by a franchisor to grant a franchise within a particular geographic region.

B. This chapter shall apply only to a franchise the performance of which contemplates or requires the franchisee to establish or maintain a place of business within the Commonwealth of Virginia.

A franchise does not include a contract or agreement by which a retailer of goods or services is granted the right either (i) to utilize a marketing plan or system to promote the sale or distribution of goods or services which are incidental and ancillary to the principal business of the retailer (sales under such a plan or system accounting for less than 20 percent of the retailer's gross sales being deemed incidental and ancillary); or (ii) to sell goods or services within, or appurtenant to, a retail business establishment as a department or division thereof provided such retailer is not required to purchase such goods or services from the operator of such establishment.

1972, c. 561; 1978, c. 670; 1990, c. 420; 1991, c. 475; 2007, c. [668](#); 2009, c. [148](#).

§13.1-560. Registration required.

It shall be unlawful for any person to sell or offer to sell a franchise in this Commonwealth unless the franchise is registered under the provisions of this chapter or exempted from registration by rule or order of the Commission.

1972, c. 561; 1978, c. 670; 2007, c. [668](#); 2009, c. [148](#).

§13.1-561. Procedure for registration; bond; renewal; fee.

A. A franchise may be registered after filing with the Commission an application containing such relevant information as the Commission may require. The franchise shall

be registered if the Commission finds that the franchisor, including any controlling person of the franchisor, is a person of good character and reputation and that all information required of the applicant by the Commission has been supplied, that none of the grounds for revocation enumerated in § [13.1-562](#) are applicable to the franchise, and that the required fee has been paid.

B. The Commission may require, as a condition of registration or renewal of registration: (i) the escrow or deferral of franchise fees and other funds paid by the franchisee to the franchisor until the franchisor's preopening obligations are fulfilled, if the grounds enumerated in clause (i) of subdivision A 2 of § [13.1-562](#) exist, or (ii) the filing by a franchisor of a surety bond conditioned upon the payment of all criminal and civil penalties provided in this chapter in an amount determined by the Commission to be adequate to protect the public and all franchisees of the franchisor, taking into proper account the marketing plan or system to be franchised, the goods or services to be offered, whether or not the franchisor has a regular place of business in this Commonwealth, and any other facts indicating the necessary amount of the bond.

C. The Commission shall by rule or order prescribe the procedures for filing an application for exemption, amendments to the exemption, and when an exemption or renewal becomes effective.

D. All registrations, exemptions and renewals thereof shall expire at midnight on the annual date of their effectiveness. However, the Commission may extend such expiration of an exemption as much as 45 days.

E. Each application for the registration or exemption of a franchise shall be accompanied by a fee of \$500, payable to the Treasurer of Virginia. Each application for the renewal of a franchise registration or exemption, including any amendments to the registration or exemption application which accompany or are part of the application for renewal, shall be accompanied by a fee of \$250 payable to the Treasurer of Virginia. Unless submitted in connection with an application for renewal, each amendment or group of amendments to a registration or exemption application submitted after the application has been granted shall be accompanied by a fee of \$100, payable to the Treasurer of Virginia. If the application for registration, exemption or renewal is withdrawn or is not granted, or if the registration or exemption application is not amended, the fee shall not be returnable.

F. For the purposes of registration, exemption or renewal of registration of a franchise, a partnership shall be treated as the same partnership so long as two or more members of the partnership named in the application continue the business without change of location, and if the partnership, within one month after a change in the partnership, files with the Commission a copy of a certificate filed in compliance with [§ 50-74](#).

1972, c. 561; 1978, c. 670; 1991, c. 475; 1992, c. 158; 2007, c. [668](#).

§13.1-561.1. Fees to cover expense of regulation.

The fees paid into the state treasury under this chapter, except for fees and funds collected for the Literary Fund, shall be deposited into a special fund and specifically accounted for and used by the State Corporation Commission to defray the costs of supervising, implementing, and administering the provisions of this chapter and Chapters 5 ([§ 13.1-501](#) et seq.) and 6 ([§ 13.1-528](#) et seq.) of this title, and Chapters 6.1 ([§ 59.1-92.1](#) et seq.) and 7 ([§ 59.1-93](#) et seq.) of Title 59.1. Included in the Commission's costs shall be a reasonable margin in the nature of a reserve fund. All excesses of fees collected exceeding these costs shall revert to the general fund.

1987, c. 434.

§13.1-562. Revocation of or refusal to renew registration.

A. The Commission may, by order entered after a hearing on notice duly served on the defendant not less than thirty days before the date of the hearing, revoke the effectiveness of a franchise registration (or refuse to renew a registration if an application for renewal has been or is to be filed) if it finds that such an order is in the public interest or that the franchisor or any controlling person of the franchisor:

1. Has engaged in any fraudulent transaction;
2. Is insolvent, or in danger of becoming insolvent, either (i) in the sense that his liabilities exceed his assets or (ii) in the sense that he cannot meet his obligations as they mature;
3. Is a person for whom a conservator or guardian has been appointed and is acting;
4. Has been convicted, within or without this Commonwealth, of any misdemeanor involving a franchise, or any felony;
5. Has failed to furnish information requested by the Commission concerning the conduct of his business; or

6. Has violated any of the provisions of this chapter.

B. If it appears to the Commission that it is in the public interest and that there exists one or more of the grounds enumerated in subdivisions (1) through (6) of subsection A of this section, the Commission may so notify the franchisor. The franchisor shall have seven business days from the date of the written notice from the Commission within which to file a written response to the matters addressed in the notice. If (i) the Commission notified, or reasonably attempted to notify, the franchisor in writing, (ii) it appears to be in the public interest, and (iii) either the Commission, after consideration of the franchisor's response, reasonably believes the ground or grounds exist or a response is not filed in a timely manner, the Commission may summarily enter an order suspending the effectiveness of the franchisor's registration pending final determination of any proceeding under this section. The Commission shall promptly send a copy of the suspension order to the franchisor and each of its subfranchisors, if any are known to the Commission. At a minimum, the order shall set forth the basis for the suspension as well as the franchisor's or subfranchisor's right to file a written request for a hearing within twenty-one days after the date of entry of the order. If a hearing is requested in a timely manner, the Commission, after notice and an opportunity for a hearing as soon as practicable, may modify or vacate the suspension order or continue it in effect until final determination of the proceeding under this section. If a hearing is not requested in a timely manner, the suspension order shall remain in effect until it is modified or vacated by the Commission.

1972, c. 561; 1978, c. 670; 1991, c. 475; 1997, c. [921](#); 2007, c. [668](#).

§13.1-563. Unlawful offers.

It shall be unlawful for any person, in connection with the sale or offer to sell a franchise in this Commonwealth, directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;
2. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to avoid misleading the offeree;
3. To engage in any transaction, practice, or course of business that operates or would operate as a fraud or deceit upon the franchisee; or
4. To fail to provide the franchisee a copy of (i) the franchise agreement and (ii) such disclosure document as may be required by rule or order of the Commission.

1972, c. 561; 1978, c. 670; 1991, c. 475; 2009, c. [148](#).

§13.1-564. Unlawful cancellation of franchise; undue influence.

It shall be unlawful for a franchisor to cancel a franchise without reasonable cause or to use undue influence to induce a franchisee to surrender any right given to him by any provision contained in the franchise.

1972, c. 561.

§13.1-565. Voidable franchises.

Any franchise may be declared void by the franchisee at his option by sending a written declaration of that fact and the reasons therefor to the franchisor by registered or certified mail if:

1. The franchisor's offer to sell a franchise was unlawful, as provided in § [13.1-560](#) or § [13.1-563](#), provided that the franchisee send such written declaration within 72 hours after discovery thereof but not more than 90 days after execution of the franchise;
2. The franchisee was not afforded the opportunity to negotiate with the franchisor on all provisions within the franchise, except that such negotiations shall not result in the impairment of the uniform image and quality standards of the franchise, provided that the franchisee send such written declaration within 30 days after execution of the franchise; or
3. The franchisee was not furnished a copy of the franchise agreement and disclosure documents at least 72 hours prior to execution of the franchise, provided that the franchisee send such written declaration within 30 days after execution of the franchise.

1972, c. 561; 1978, c. 670; 1979, c. 104; 1991, c. 475; 2009, c. [148](#).

§13.1-566. Service of process on nonresident franchisor.

Every nonresident franchisor who has a franchise registered hereunder and which is not a corporation complying with § [13.1-759](#) or § [13.1-767](#) shall appoint in writing the clerk of the Commission as his agent upon whom may be served any process, notice, order or demand. Every nonresident franchisor who sells or offers to sell a franchise registered hereunder and every nonresident franchisor whose franchise is sold or offered to be sold in this Commonwealth shall be deemed to have appointed the clerk of the Commission as his agent upon whom may be served, in any matter

arising under this chapter any process, notice, order or demand. Service may be made on the clerk in accordance with § [12.1-19.1](#).

1972, c. 561; 1978, c. 670; 1990, c. 263; 1991, c. 672; 2009, c. [148](#).

§13.1-567. Investigations; confidentiality of information and documents.

The Commission may make such investigations within or outside of this Commonwealth as it deems necessary to determine whether any person has violated the provisions of this chapter or any order or injunction of the Commission, and any franchisor found guilty of such a violation may be required to pay the actual costs of the investigation including the time of the investigator. The Commission shall have power to issue subpoenas and subpoenas duces tecum to require the attendance of any person and the production of any papers for the purposes of such investigation. No person shall be excused from testifying on the ground that his testimony would tend to incriminate him, but if, after asserting his claim to the privilege, he is required to testify, he shall not be prosecuted or penalized on account of any transactions concerning which he does testify.

Information or documents obtained or prepared by any member, subordinate or employee of the Commission in the course of any examination or investigation conducted pursuant to the provisions of this chapter shall be deemed confidential and shall not be disclosed to the public; provided, however, that nothing contained herein shall be interpreted to prohibit or limit (i) the publication of the findings, decisions, orders, judgments or opinions of the Commission; (ii) the use of any such information or documents in proceedings by or before the Commission or a hearing examiner appointed by the Commission; (iii) the disclosure of any such information or documents to any quasi-governmental entity substantially associated with the retail franchising business approved by rule of the Commission; or, (iv) the disclosure of any such information or documents to any governmental entity approved by rule of the Commission, or to any attorney for the Commonwealth, or to the Attorney General of Virginia.

1972, c. 561; 1979, c. 379.

§13.1-568. Injunctions.

The Commission shall have all the power and authority of a court of record as provided in Article IX, Section 3 of the Constitution of Virginia to issue temporary and permanent injunctions against violations or attempted violations of this chapter or any order issued pursuant to this chapter. For the violation of any injunction or

order issued under this chapter it shall have the same power to punish for contempt as a court of equity.

1972, c. 561; 1992, c. 468 .

§13.1-569. Crimes.

A. Any person who shall knowingly and willfully make, or cause to be made, any false statement in any book of account or other paper of any person subject to the provisions of this chapter, or knowingly and willfully exhibit any false paper to the Commission, or who shall knowingly and willfully commit any act declared unlawful by this chapter with the intent to defraud any franchisee or with intent to deceive the Commission as to any material fact for the purpose of inducing the Commission to take any action or refrain from taking any action pursuant to this chapter, shall be guilty of a Class 4 felony.

B. Any person who shall knowingly make or cause to be made any false statement in any book of account or other paper of any person subject to the provisions of this chapter or exhibit any false paper to the Commission or who shall commit any act declared unlawful by this chapter shall be guilty of a misdemeanor, and on conviction, be punished by a fine of not less than \$100 nor more than \$5,000, or by confinement in jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

C. Prosecutions under this section shall be instituted by indictments in the courts of record having jurisdiction of felonies within three years from the date of the offense.

1972, c. 561; 1978, c. 670.

§13.1-569.1. Commission may transmit record or complaint to locality where violation occurred.

The Commission may transmit the record of any proceeding or complaint involving any violation of this chapter to the attorney for the Commonwealth in the county or city wherein the violation occurred.

1978, c. 670.

§13.1-570. Violations punishable by Commission.

The Commission may, by judgment entered after a hearing on thirty days' notice to the defendant, if it be proved that the defendant has knowingly made any misrepresentation of a material fact for the purpose of inducing the Commission to take any action or to refrain from taking action, or has violated any provision of this

chapter or any order, rule, or regulation of the Commission issued pursuant to this chapter, impose a civil penalty not exceeding \$25,000, which shall be collectible by the process of the Commission as provided by law.

Each franchise entered into contrary to the provisions of this chapter shall constitute a separate violation. The Commission may request the franchisor to rescind any franchise and to make restitution to the franchisee. If the franchisor complies with the request, the Commission shall consider such compliance in determining whether a penalty should be imposed on him on account of that illegal franchise, and if so, the amount of such penalty.

1972, c. 561; 1990, c. 31; 1991, c. 475; 2000, c. [166](#).

§13.1-571. Civil remedies.

(a) Any franchisee who has declared the franchise void under § [13.1-565](#) or who has suffered damages by reason of any violation of § [13.1-564](#) may bring an action against its franchisor to recover the damages sustained by reason thereof. Such franchisee, if successful, shall also be entitled to the costs of the action, including reasonable attorney's fees.

(b) No suit shall be maintained to enforce any liability created under this section unless brought within four years after the cause of action upon which it is based arose.

(c) Any condition, stipulation or provision binding any person to waive compliance with any provision of this chapter or of any rule or order thereunder shall be void; provided, however, that nothing contained herein shall bar the right of a franchisor and franchisee to agree to binding arbitration of disputes consistent with the provisions of this chapter.

(d) The rights and remedies provided by this section shall be in addition to any and all other rights and remedies that may exist at law or in equity.

1972, c. 561.

§13.1-572. Rules and forms.

A. The Commission shall have authority from time to time to make, amend and rescind such rules and forms as may be necessary to carry out the provisions of this chapter, including, but not limited to rules and forms governing disclosure documents, applications and reports, escrow and deferral of franchise fees and other funds paid by the franchisee, and defining accounting, technical and trade terms used

in this chapter not inconsistent with the provisions of this chapter. The Commission shall have the authority, for the purpose of this chapter to prescribe the content and form of financial statements and to direct whether they should be certified by independent public or certified accountants. For the purpose of rules and forms, the Commission may classify franchises, persons and matters within its jurisdiction and prescribe different requirements for different classes.

B. All such rules and forms shall be printed or mimeographed and available for distribution at the office of the Commission.

1972, c. 561; 1978, c. 670; 2007, c. [668](#).

§13.1-573. Certain records of Commission available to public; admissibility of copies; destruction.

The information contained in or filed with any registration statement, application or report shall be available to the public at the office of the Commission. Copies thereof certified by the clerk under the seal of the Commission shall be admissible in evidence in lieu of the originals, and the originals shall not be removed from the office of the Commission. However, papers, documents and files may be destroyed by the Commission when, in its opinion, they no longer serve any useful purpose.

1972, c. 561.

§13.1-574. Effective date.

The provisions of this chapter shall apply to grants and offers to grant franchises on and after July 1, 1972.

1972, c. 561.

Retail Sales and Use Tax

§58.1-600. Short title.

This chapter shall be known and may be cited as the "Virginia Retail Sales and Use Tax Act."

Code 1950, § 58-441.1; 1966, c. 151; 1984, c. 675.

§58.1-601. (Contingent expiration date -- see note*) Administration of chapter.

A. The Tax Commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter.

B. For purposes of evaluating the fiscal, economic and policy impact of sales and use tax exemptions, the Tax Commissioner may require from any person information relating to the evaluation of exempt purchases or sales, information relating to the qualification for exempt purchases, and information relating to direct or indirect government financial assistance which the person receives. Such information shall be filed on forms prescribed by the Tax Commissioner.

Code 1950, § 58-441.40; 1966, c. 151; 1984, c. 675; 1988, c. 457.

§58.1-601. (Contingent effective date -- see note*) Administration of chapter.

A. The Tax Commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter, including the collection and administration of all state and local sales and use taxes imposed on remote sellers.

B. To comply with any provisions in any legislation enacted by the Congress of the United States that require states to simplify the administration of their sales and use taxes as a condition to require remote sellers to collect and remit their state and local sales taxes, the Tax Commissioner shall take all administrative actions he deems necessary to facilitate the Commonwealth's compliance with the minimum simplification requirements, including but not limited to: (i) providing adequate software and services to remote sellers and single and consolidated providers that identify the applicable destination rate, including the state and local sales tax rate (if any), to be applied on sales on which the Commonwealth imposes sales and use tax; (ii) providing certification procedures for both single providers and consolidated providers to make software and services available to remote sellers; (iii) ensuring that no more than one audit be performed or required for all state and local taxing jurisdictions within the Commonwealth; and (iv) requiring that no more than one sales and use tax return per month be filed with the Department of Taxation by any remote seller or any single or consolidated provider on behalf of such remote seller.

C. For purposes of evaluating the fiscal, economic and policy impact of sales and use tax exemptions, the Tax Commissioner may require from any person information relating to the evaluation of exempt purchases or sales, information relating to the qualification for exempt purchases, and information relating to direct or indirect government financial assistance that the person receives. Such information shall be filed on forms prescribed by the Tax Commissioner.

Code 1950, § 58-441.40; 1966, c. 151; 1984, c. 675; 1988, c. 457; 2013, c. [766](#).

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any sub-fund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§58.1-602. (Contingent effective date) Definitions.

A. As used in this chapter, unless the context clearly shows otherwise:

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly. "Gross proceeds" does not include finance charges, carrying charges, service charges, or interest from credit extended on the lease or rental of tangible personal property under conditional lease or rental contracts or other conditional contracts providing for the deferred payments of the lease or rental price.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § [58.1-605](#) or [58.1-606](#).

"Import" and "imported" are words applicable to tangible personal property imported into the Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from the Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Integrated process," when used in relation to semiconductor manufacturing, means a process that begins with the research or development of semiconductor products, equipment, or processes, includes the handling and storage of raw materials at a plant site, and continues to the point that the product is packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing, any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be deemed used as part of the integrated process if its use contributes, before, during, or after production, to higher product quality, production yields, or process efficiencies. Except as otherwise provided by law, such term shall not mean general maintenance or administration.

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected world-wide network of computer networks.

"Internet service" means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.

"Manufacturing, processing, refining, or conversion" includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished or completed for sale and conveyed to a warehouse at the production site, and also includes equipment and supplies used for production line testing and quality control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and magazine printing when such activities are performed by the publisher of any newspaper or magazine for sale daily or regularly at average intervals not exceeding three months.

The determination whether any manufacturing, mining, processing, refining or conversion activity is industrial in nature shall be made without regard to plant size, existence or size of finished product inventory, degree of mechanization, amount of capital investment, number of employees or other factors relating principally to the size of the business. Further, "industrial in nature" shall include, but not be limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in

the Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

"Modular building" means, but shall not be limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are intended to become real property, primarily constructed at a location other than the permanent site, built to comply with the Virginia Industrialized Building Safety Law (§ [36-70](#) et seq.) as regulated by the Virginia Department of Housing and Community Development, and shipped with most permanent components in place to the site of final assembly. For purposes of this chapter, a modular building shall not include a mobile office as defined in § [58.1-2401](#) or any manufactured building subject to and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

"Modular building manufacturer" means a person or corporation who owns or operates a manufacturing facility and is engaged in the fabrication, construction and assembling of building supplies and materials into modular buildings, as defined in this section, at a location other than at the site where the modular building will be assembled on the permanent foundation and may or may not be engaged in the process of affixing the modules to the foundation at the permanent site.

"Modular building retailer" means any person who purchases or acquires a modular building from a modular building manufacturer, or from another person, for subsequent sale to a customer residing within or outside of the Commonwealth, with or without installation of the modular building to the foundation at the permanent site.

"Motor vehicle" means a "motor vehicle" as defined in § [58.1-2401](#), taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ [58.1-2400](#) et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid. "Motor vehicle" does not include any all-terrain vehicle, moped, or off-road motorcycle all as defined in § [46.2-100](#). The taxes under this chapter or pursuant to the authority granted under this chapter shall apply to such all-terrain vehicles, mopeds, and off-road motorcycles.

"Occasional sale" means a sale of tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided such sale or

exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

"Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for purposes of this chapter only, shall also include Internet service regardless of whether the provider of such service is also a telephone common carrier.

"Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of such term shall mean the same as the singular.

"Prewritten program" means a computer program that is prepared, held or existing for general or repeated sale or lease, including a computer program developed for in-house use and subsequently sold or leased to unrelated third parties.

"Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute railroad rolling stock.

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and shall include any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such regulations shall be personally liable for payment of the tax.

The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep

records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair; and (iv) the separately stated charge for equipment available for lease or purchase by a provider of satellite television programming to the customer of such programming. Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons. The terms "retail sale" and a "sale at retail" also shall specifically include the separately stated charge made for supplies used during automotive repairs whether or not there is transfer of title or possession of the supplies and whether or not the supplies are attached to the automobile. The purchase of such supplies by an automotive repairer for sale to the customer of such repair services shall be deemed a sale for resale.

The term "transient" shall not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with the Commonwealth or not. Further, a purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a transient; provided, however, that the term or time period involved is for seven years or more.

The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.

"Retailer" means every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in the Commonwealth.

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the price of the meal. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring, lighting, equipment, and all other property used to reduce contamination or to control airflow, temperature, humidity, vibration, or other

environmental conditions required for the integrated process of semiconductor manufacturing.

"Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii) the related accessories, components, pedestals, bases, or foundations used in connection with the operation of the equipment, without regard to the proximity to the equipment, the method of attachment, or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control testing of product, materials, equipment, or processes; or the measurement of equipment performance or production parameters regardless of where or when the quality control, testing, or measuring activity takes place, how the activity affects the operation of equipment, or whether the equipment and supplies come into contact with the product.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of business.

"Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and (ii) manufactured signs.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. The term does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone. The term does not include any sale determined to be a gift transaction, subject to tax under § [58.1-604.6](#).

"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein defined.

"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities which are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process, but not including ancillary activities such as general maintenance or administration. When used in relation to mining, it shall refer to the activities specified above, and in addition, any reclamation activity of the land previously mined by the mining company required by state or federal law.

"Video programmer" means a person or entity that provides video programming to end-user subscribers.

"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator including, but not limited to, Internet service.

B. Notwithstanding the definitions in subsection A, to the extent that conformity to any remote collection authority legislation enacted by the Congress of the United States shall so require, the words and terms used in this chapter related to the minimum simplification requirements shall have the same meaning as provided in such federal legislation.

Code 1950, §§ 58-441.2, 58-441.3, 58-441.6; 1966, c. 151; 1972, c. 680; 1973, c. 313; 1974, c. 431; 1976, cc. 375, 489, 666, 712, 764, 770; 1977, cc. 247, 504; 1978, cc. 50, 82, 181, 505, 656, 665, 706, 784, 819; 1979, cc. 148, 205, 555, 556, 557, 558, 561, 562, 564, 572, 575; 1980, cc. 81, 610, 611, 617, 618, 621, 631, 753, 756; 1981, cc. 398, 400, 405, 409, 416, 599; 1982, cc. 533, 546, 547, 636, 649; 1983, cc. 100, 184, 384, 414, 557, 565, 599; 1984, cc. 419, 522, 675, 683, 690, 693; 1985, c. 473; 1986, c. 22; 1988, c. 899; 1989, cc. 581, 739; 1995, c. [96](#); 1999, cc. [138](#), [187](#), [723](#), [981](#); 2000, c. [425](#); 2004, c. [60](#); 2005, cc. [121](#), [122](#), [355](#); 2006, cc. [519](#), [541](#), [568](#), [602](#); 2007, c. [751](#); 2013, cc. [766](#), [783](#); 2014, c. [359](#); 2015, c. [252](#); 2017, c. [104](#).

§58.1-602. (Contingent expiration date) Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be

deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly. "Gross proceeds" does not include finance charges, carrying charges, service charges, or interest from credit extended on the lease or rental of tangible personal property under conditional lease or rental contracts or other conditional contracts providing for the deferred payments of the lease or rental price.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal

diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § [58.1-605](#) or [58.1-606](#).

"Import" and "imported" are words applicable to tangible personal property imported into the Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from the Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Integrated process," when used in relation to semiconductor manufacturing, means a process that begins with the research or development of semiconductor products, equipment, or processes, includes the handling and storage of raw materials at a plant site, and continues to the point that the product is packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing, any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be deemed used as part of the integrated process if its use contributes, before, during, or after production, to higher product quality, production yields, or process efficiencies. Except as otherwise provided by law, such term shall not mean general maintenance or administration.

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected world-wide network of computer networks.

"Internet service" means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.

"Manufacturing, processing, refining, or conversion" includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished or completed for sale and conveyed to a warehouse at the production site, and also

includes equipment and supplies used for production line testing and quality control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and magazine printing when such activities are performed by the publisher of any newspaper or magazine for sale daily or regularly at average intervals not exceeding three months.

The determination whether any manufacturing, mining, processing, refining or conversion activity is industrial in nature shall be made without regard to plant size, existence or size of finished product inventory, degree of mechanization, amount of capital investment, number of employees or other factors relating principally to the size of the business. Further, "industrial in nature" shall include, but not be limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

"Modular building" means, but shall not be limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are intended to become real property, primarily constructed at a location other than the permanent site, built to comply with the Virginia Industrialized Building Safety Law (§ [36-70](#) et seq.) as regulated by the Virginia Department of Housing and Community Development, and shipped with most permanent components in place to the site of final assembly. For purposes of this chapter, a modular building shall not include a mobile office as defined in § [58.1-2401](#) or any manufactured building subject to and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

"Modular building manufacturer" means a person or corporation who owns or operates a manufacturing facility and is engaged in the fabrication, construction and assembling of building supplies and materials into modular buildings, as defined in this section, at a location other than at the site where the modular building will be assembled on the permanent foundation and may or may not be engaged in the process of affixing the modules to the foundation at the permanent site.

"Modular building retailer" means any person who purchases or acquires a modular building from a modular building manufacturer, or from another person, for subsequent sale to a customer residing within or outside of the Commonwealth, with or without installation of the modular building to the foundation at the permanent site.

"Motor vehicle" means a "motor vehicle" as defined in § [58.1-2401](#), taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ [58.1-2400](#) et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid. "Motor vehicle" does not include any all-terrain vehicle, moped, or off-road motorcycle all as defined in § [46.2-100](#). The taxes under this chapter or pursuant to the authority granted under this chapter shall apply to such all-terrain vehicles, mopeds, and off-road motorcycles.

"Occasional sale" means a sale of tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

"Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for purposes of this chapter only, shall also include Internet service regardless of whether the provider of such service is also a telephone common carrier.

"Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of such term shall mean the same as the singular.

"Prewritten program" means a computer program that is prepared, held or existing for general or repeated sale or lease, including a computer program developed for in-house use and subsequently sold or leased to unrelated third parties.

"Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute railroad rolling stock.

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and shall include any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale must be made in strict

compliance with regulations applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such regulations shall be personally liable for payment of the tax.

The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair; and (iv) the separately stated charge for equipment available for lease or purchase by a provider of satellite television programming to the customer of such programming. Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons. The terms "retail sale" and a "sale at retail" also shall specifically include the separately stated charge made for supplies used during automotive repairs whether or not there is transfer of title or possession of the supplies and whether or not the supplies are attached to the automobile. The purchase of such supplies by an automotive repairer for sale to the customer of such repair services shall be deemed a sale for resale.

The term "transient" shall not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with the Commonwealth or not. Further, a purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a specific real

estate project on an ongoing basis throughout its term shall not be deemed a transient; provided, however, that the term or time period involved is for seven years or more.

The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.

"Retailer" means every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in the Commonwealth.

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the price of a meal, but

only to the extent that such mandatory gratuity or service charge does not exceed 20% of the price of the meal. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring, lighting, equipment, and all other property used to reduce contamination or to control airflow, temperature, humidity, vibration, or other environmental conditions required for the integrated process of semiconductor manufacturing.

"Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii) the related accessories, components, pedestals, bases, or foundations used in connection with the operation of the equipment, without regard to the proximity to the equipment, the method of attachment, or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control testing of product, materials, equipment, or processes; or the measurement of equipment performance or production parameters regardless of where or when the quality control, testing, or measuring activity takes place, how the activity affects the operation of equipment, or whether the equipment and supplies come into contact with the product.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of business.

"Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and (ii) manufactured signs.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. The term does not include the exercise of

any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone. The term does not include any sale determined to be a gift transaction, subject to tax under § [58.1-604.6](#).

"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein defined.

"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities which are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process, but not including ancillary activities such as general maintenance or administration. When used in relation to mining, it shall refer to the activities specified above, and in addition, any reclamation activity of the land previously mined by the mining company required by state or federal law.

"Video programmer" means a person or entity that provides video programming to end-user subscribers.

"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator including, but not limited to, Internet service.

Code 1950, §§ 58-441.2, 58-441.3, 58-441.6; 1966, c. 151; 1972, c. 680; 1973, c. 313; 1974, c. 431; 1976, cc. 375, 489, 666, 712, 764, 770; 1977, cc. 247, 504; 1978, cc. 50, 82, 181, 505, 656, 665, 706, 784, 819; 1979, cc. 148, 205, 555, 556, 557, 558, 561, 562, 564, 572, 575; 1980, cc. 81, 610, 611, 617, 618, 621, 631, 753, 756; 1981, cc. 398, 400, 405, 409, 416, 599; 1982, cc. 533, 546, 547, 636, 649; 1983, cc. 100, 184, 384, 414, 557, 565, 599; 1984, cc. 419, 522, 675, 683, 690, 693; 1985, c. 473; 1986, c. 22; 1988, c. 899; 1989, cc. 581, 739; 1995, c. [96](#); 1999, cc. [138](#), [187](#), [723](#), [981](#); 2000, c. [425](#); 2004, c. [60](#); 2005, cc. [121](#), [122](#), [355](#); 2006, cc. [519](#), [541](#), [568](#), [602](#); 2007, c. [751](#); 2013, c. [783](#); 2014, c. [359](#); 2015, c. [252](#); 2017, c. [104](#).

§58.1-602.1. Repealed.

Repealed by Acts 1995, c. [200](#).

§58.1-603. (Contingent expiration date -- see note) Imposition of sales tax.

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages

in the business of selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of 4.3 percent:

1. Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this Commonwealth.
2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to such business.
3. Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.
4. Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in [§ 58.1-602](#).
5. Of the gross sales of any services that are expressly stated as taxable within this chapter.

Code 1950, § 58-441.4; 1966, c. 151; 1984, c. 675; 1986, Sp. Sess., c. 12; 2004, Sp. Sess. I, c. [3](#); 2013, c. [766](#).

§58.1-603. (Contingent effective date -- see note) Imposition of sales tax.

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004:

1. Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this Commonwealth.

2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to such business.
3. Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.
4. Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in [§ 58.1-602](#).
5. Of the gross sales of any services which are expressly stated as taxable within this chapter.

Code 1950, § 58-441.4; 1966, c. 151; 1984, c. 675; 1986, Sp. Sess., c. 12; 2004, Sp. Sess. I, c. [3](#).

§58.1-603.1. (Contingent expiration date) Additional state sales tax in certain counties and cities.

In addition to the sales tax imposed pursuant to [§ 58.1-603](#), there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 ([§ 15.2-4200](#) et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail sales tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met. Such tax shall not be levied upon food purchased for human consumption as defined in [§ 58.1-611.1](#). Such tax shall be added to the rate of the state sales tax imposed pursuant to [§ 58.1-603](#) in each such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under [§ 58.1-622](#) shall be allowed for the tax imposed under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax under [§ 58.1-603](#).

The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § [33.2-2509](#). In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § [33.2-2600](#). For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

2013, c. [766](#); 2016, c. [305](#).

§58.1-604. (Contingent expiration date -- see note*) Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of 4.3 percent:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property that has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).
2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.
3. A transaction taxed under § [58.1-603](#) shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.

4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.

5. (Contingent repeal date -- see note) The use tax shall not apply to out-of-state mail order catalog purchases totaling \$100 or less during any calendar year.

Code 1950, §§ 58-441.5, 58-441.9; 1966, c. 151; 1984, c. 675; 1986, Sp. Sess., c. 12; 1995, c. [385](#); 2004, Sp. Sess. I, c. [3](#); 2013, c. [766](#).

§58.1-604. (Contingent effective date -- see note*) Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property which has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).

2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.

3. A transaction taxed under § [58.1-603](#) shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.

4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.

5. The use tax shall not apply to out-of-state mail order catalog purchases totaling \$100 or less during any calendar year.

Code 1950, §§ 58-441.5, 58-441.9; 1966, c. 151; 1984, c. 675; 1986, Sp. Sess., c. 12; 1995, c. [385](#); 2004, Sp. Sess. I, c. [3](#).

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§58.1-604.01. (Contingent expiration date) Additional state use tax in certain counties and cities.

In addition to the use tax imposed pursuant to § [58.1-604](#), there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ [15.2-4200](#) et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more, as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail use tax at the rate of

0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met. Such tax shall not be levied upon food purchased for human consumption as defined in § [58.1-611.1](#). Such tax shall be added to the rate of the state use tax imposed pursuant to § [58.1-604](#) in such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § [58.1-622](#) shall be allowed for the tax described under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax under § [58.1-604](#).

The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § [33.2-2509](#). In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § [33.2-2600](#). For any additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

2013, c. [766](#); 2016, c. [305](#).

§58.1-604.1. (Contingent expiration date -- see note*) Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for use in performing contracts.

In addition to the use tax levied pursuant to § [58.1-604](#) and notwithstanding the provisions of § [58.1-611](#), a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this Commonwealth for use in constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any part thereof. The rate of tax is 4.3 percent on all tangible personal property except motor vehicles, which shall be taxed at the rate set forth in § [58.1-2402](#); aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000. However, the total rate of the state use tax in any county or city for which the tax under § [58.1-](#)

[604.01](#) is imposed shall be 5.0 percent on all tangible personal property except motor vehicles, which shall be taxed at the rate set forth in § [58.1-2402](#); aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000.

For purposes of this section, "motor vehicle" means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment or any vehicle designed primarily for use in work off the highway.

The tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this Commonwealth bears to the total useful life thereof. For purposes of this section, "use" means use, storage, consumption and "stand-by" time occasioned by weather conditions, controversies or other causes. The tax shall be computed upon the basis of the relative time each item of equipment is in this Commonwealth rather than upon the basis of actual use. In the absence of satisfactory evidence as to the period of use intended in this Commonwealth, it will be presumed that such property will remain in this Commonwealth for the remainder of its useful life, which shall be determined in accordance with the experiences and practices of the building and construction trades.

A transaction taxed under § [58.1-604](#), [58.1-605](#), [58.1-1402](#), [58.1-1502](#), [58.1-1736](#), or [58.1-2402](#) shall not also be taxed under this section, nor shall the same transaction be taxed more than once under any section.

1988, c. 379; 2004, Sp. Sess. I, c. [3](#); 2011, cc. [405](#), [639](#); 2013, c. [766](#).

§58.1-604.1. (Contingent effective date -- see note*) Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for use in performing contracts.

In addition to the use tax levied pursuant to § [58.1-604](#) and notwithstanding the provisions of § [58.1-611](#), a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this Commonwealth for use in constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system,

drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any part thereof. The rate of tax is three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004, on all tangible personal property except motor vehicles, which shall be taxed at the rate of three percent; aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000.

For purposes of this section, the words "motor vehicle" mean any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment or any vehicle designed primarily for use in work off the highway.

The tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this Commonwealth bears to the total useful life thereof. For purposes of this section, the word "use" means use, storage, consumption and "stand-by" time occasioned by weather conditions, controversies or other causes. The tax shall be computed upon the basis of the relative time each item of equipment is in this Commonwealth rather than upon the basis of actual use. In the absence of satisfactory evidence as to the period of use intended in this Commonwealth, it will be presumed that such property will remain in this Commonwealth for the remainder of its useful life, which shall be determined in accordance with the experiences and practices of the building and construction trades.

A transaction taxed under § [58.1-604](#), [58.1-605](#), [58.1-1402](#), [58.1-1502](#), [58.1-1736](#) or [58.1-2402](#) shall not also be taxed under this section, nor shall the same transaction be taxed more than once under any section.

1988, c. 379; 2004, Sp. Sess. I, c. [3](#); 2011, cc. [405](#), [639](#).

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other

Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any sub-fund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§58.1-604.2. Filing return; payment of tax.

Before any property subject to the use tax is brought into this Commonwealth for use as provided in § [58.1-604.1](#), the owner, or, if the property is leased, the lessee shall register with the Tax Commissioner or the local commissioner of the revenue, if the local commissioner elects to provide such service.

After registration, the taxpayer shall file quarterly reports on forms furnished by the Tax Commissioner reporting such property brought, imported or caused to be brought into this Commonwealth during the preceding quarter together with remittance of the amount of tax due. Such reports are to be filed on or before the fifteenth of the month following the quarter in which such property was brought into this Commonwealth.

1988, c. 379; 2011, cc. [663](#), [674](#).

§58.1-604.3. Exemptions.

The use tax imposed by this section shall not apply to any property brought into this Commonwealth by a resident of another state, if such state does not impose a similar use tax on Virginia contractors, nor shall the tax apply to the use in this Commonwealth of any motor vehicle, machine or machinery previously purchased at retail for use in another state and actually placed into substantial use in another state before being brought, imported or caused to be brought into this Commonwealth by the owner thereof for use in constructing or repairing its own buildings, structures or other property.

1988, c. 379.

§58.1-604.4. Not effective.

Not effective.

§58.1-604.6. Gift transactions.

A. For purposes of this section, a gift transaction means a retail sale resulting from an order for tangible personal property placed by any means by any person that is for delivery to a recipient, other than the purchaser, located in another state. A gift transaction does not include a business transaction between the purchaser and recipient or a transaction whereby the purchaser is contractually obligated to provide the tangible personal property to the recipient.

B. In cases involving a sale qualifying as a gift transaction, a dealer registered for the collection of the tax in the state of the recipient may, upon approval by the Tax Commissioner, elect to collect the tax imposed by the state of the recipient or the tax imposed under this chapter. If the dealer elected to collect the tax imposed by the state of the recipient, the dealer shall provide notice of such election to the Tax Department on a form prescribed by the Tax Department which must be approved by the Tax Commissioner. In the event that the dealer is not registered for the collection of the tax in the state of the recipient, and such dealer holds a valid certificate of registration for the collection of the tax imposed under this chapter, such dealer shall collect the tax imposed under this chapter.

2005, c. [355](#).

§58.1-605. (Contingent expiration date) To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ [58.1-603](#) and [58.1-604](#) and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § [58.1-622](#) shall be allowed on a local sales tax.

C. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating

its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

D. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next two months as follows: one-half of the total adjustment shall be included in the payments for the next two months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the error. A correction and

adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

G. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last estimate of school age population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

H. One-half of such payments to counties are subject to the further qualification, other than as set out in subsection G above, that in any county wherein is situated any incorporated town not constituting a separate special school district which has complied with its charter provisions providing for the election of its council and mayor for a period of at least four years immediately prior to the adoption of the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of each such town bears to the school age population of the entire county, based on the latest estimate provided by the Weldon Cooper Center for Public Service. The preceding requirement pertaining to the time interval between compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city. If the school age population of any such town not constituting a separate special school district is increased by the annexation of territory or otherwise since the last estimate of school age population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

I. Notwithstanding the provisions of subsection H, the board of supervisors of a county may, in its discretion, appropriate funds to any incorporated town not constituting a separate school district within such county which has not complied with the provisions of its charter relating to the elections of its council and mayor, an amount not to exceed the amount it would have received from the tax imposed by this chapter if such election had been held.

J. It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under subsection G or H of this section be located in a county which does not levy a general retail sales tax under the provisions of this law, such town may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to all the provisions of this section generally applicable to cities and counties. Any tax levied under the authority of this subsection shall in no case continue to be levied on or after the effective date of a county ordinance imposing a general retail sales tax in the county within which such town is located.

Code 1950, §§ 58-441.49, 58-441.49:2; 1966, c. 151; 1968, c. 638; 1982, c. 555; 1984, cc. 675, 695; 1997, cc. [245](#), [725](#); 2004, Sp. Sess. I, c. [3](#); 2007, c. [896](#); 2008, cc. [484](#), [488](#); 2010, cc. [386](#), [629](#); 2012, c. [831](#).

§58.1-605. (Contingent effective date -- see note) To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ [58.1-603](#) and [58.1-604](#) and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § [58.1-622](#) shall be allowed on a local sales tax.

C. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified

copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

D. Prior to any change in the rate of the local sales and use tax, the Tax Commissioner shall provide remote sellers and single and consolidated providers with at least 30 days' notice. Any change in the rate of local sales and use tax shall only become effective on the first day of a calendar quarter. Failure to provide notice pursuant to this section shall require the Commonwealth and the locality to hold the remote seller or single or consolidated provider harmless for collecting the tax at the immediately preceding effective rate for any period of time prior to 30 days after notification is provided.

E. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

F. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

G. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments

are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next two months as follows: one-half of the total adjustment shall be included in the payments for the next two months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

H. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last estimate of school age population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

I. One-half of such payments to counties are subject to the further qualification, other than as set out in subsection H, that in any county wherein is situated any incorporated town not constituting a separate special school district which has complied with its charter provisions providing for the election of its council and mayor for a period of at least four years immediately prior to the adoption of the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of each such town bears to the school age population of the entire county, based on the latest estimate provided by the Weldon Cooper Center for Public Service. The preceding requirement pertaining to the time interval between compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city. If the school age population of any such town not constituting a separate special school district is increased by the annexation of territory or otherwise since the last estimate of school age population provided by the

Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

J. Notwithstanding the provisions of subsection I, the board of supervisors of a county may, in its discretion, appropriate funds to any incorporated town not constituting a separate school district within such county which has not complied with the provisions of its charter relating to the elections of its council and mayor, an amount not to exceed the amount it would have received from the tax imposed by this chapter if such election had been held.

K. It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under subsection H or I be located in a county which does not levy a general retail sales tax under the provisions of this law, such town may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to all the provisions of this section generally applicable to cities and counties. Any tax levied under the authority of this subsection shall in no case continue to be levied on or after the effective date of a county ordinance imposing a general retail sales tax in the county within which such town is located.

Code 1950, §§ 58-441.49, 58-441.49:2; 1966, c. 151; 1968, c. 638; 1982, c. 555; 1984, cc. 675, 695; 1997, cc. [245](#), [725](#); 2004, Sp. Sess. I, c. [3](#); 2007, c. [896](#); 2008, cc. [484](#), [488](#); 2010, cc. [386](#), [629](#); 2012, c. [831](#); 2013, c. [766](#).

§58.1-606. (Contingent expiration date -- see note*) To what extent and under what conditions cities and counties may levy local use tax; collection thereof by Commonwealth and return of revenues to the cities and counties.

A. The council of any city and the governing body of any county which has levied or may hereafter levy a city or county sales tax under § [58.1-605](#) may levy a city or county use tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except that no discount under § [58.1-622](#) shall be allowed on a local use tax.

B. The council of any city and the governing body of any county desiring to impose a local use tax under this section may do so in the manner following:

1. If the city or county has previously imposed the local sales tax authorized by § [58.1-605](#), the local use tax may be imposed by the council or governing body by the adoption of a resolution by a majority of all the members thereof, by a recorded yeas and nays vote, stating its purpose and referring to this section, and providing that the local use tax shall become effective on the first day of a month at least 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption. The resolution authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision of law, including any charter provision.

2. If the city or county has not imposed the local sales tax authorized by § [58.1-605](#), the local use tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections B and C of § [58.1-605](#).

C. Any local use tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax.

D. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is unable accurately to assign any shipment to a particular city or county, the local use tax on the

tangible personal property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any city or county.

F. Local use tax revenue shall be distributed among the cities and counties for which it is collected, respectively, as shown by the records of the Department, and the procedure shall be the same as that prescribed for distribution of local sales tax revenue under § [58.1-605](#). The local use tax revenue that is not accurately assignable to a particular city or county shall be distributed monthly by the appropriate state authorities among the cities and counties in this Commonwealth imposing the local use tax upon the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax was in effect in the taxable month involved, as shown by the records of the Department, and computed with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed among such cities and counties, respectively, in the month of distribution. Notwithstanding any other provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use tax. Any significant changes to the method of local use tax distribution shall be phased in over a five-year period. Distribution information shall be shared with the affected localities prior to implementation of the changes.

G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as provided in § [58.1-605](#) with respect to local sales tax revenue.

Code 1950, § 58-441.49:1; 1968, c. 191; 1984, c. 675; 1999, c. [156](#); 2004, Sp. Sess. I, c. [3](#); 2007, c. [896](#); 2008, cc. [484](#), [488](#).

§58.1-606. (Contingent effective date -- see note*) To what extent and under what conditions cities and counties may levy local use tax; collection thereof by Commonwealth and return of revenues to the cities and counties.

A. The council of any city and the governing body of any county which has levied or may hereafter levy a city or county sales tax under § [58.1-605](#) may levy a city or county use tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except that no discount under § [58.1-622](#) shall be allowed on a local use tax.

B. The council of any city and the governing body of any county desiring to impose a local use tax under this section may do so in the manner following:

1. If the city or county has previously imposed the local sales tax authorized by § [58.1-605](#), the local use tax may be imposed by the council or governing body by the adoption of a resolution by a majority of all the members thereof, by a recorded yeas and nays vote, stating its purpose and referring to this section, and providing that the local use tax shall become effective on the first day of a month at least 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption. The resolution authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision of law, including any charter provision.

2. If the city or county has not imposed the local sales tax authorized by § [58.1-605](#), the local use tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections B and C of § [58.1-605](#).

C. Any local use tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax.

D. Prior to any change in the rate of the local sales and use tax, the Tax Commissioner shall provide remote sellers and single and consolidated providers with at least 30 days' notice. Any change in the rate of local sales and use tax shall only become effective on the first day of a calendar quarter. Failure to provide notice pursuant to this section shall require the Commonwealth and the locality to hold the remote seller or single or consolidated provider harmless for collecting the tax at the immediately preceding effective rate for any period of time prior to 30 days after notification is provided.

E. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are

subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

F. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible personal property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any city or county.

G. Local use tax revenue shall be distributed among the cities and counties for which it is collected, respectively, as shown by the records of the Department, and the procedure shall be the same as that prescribed for distribution of local sales tax revenue under § [58.1-605](#). The local use tax revenue that is not accurately assignable to a particular city or county shall be distributed monthly by the appropriate state authorities among the cities and counties in this Commonwealth imposing the local use tax upon the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax was in effect in the taxable month involved, as shown by the records of the Department, and computed with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed among such cities and counties, respectively, in the month of distribution. Notwithstanding any other provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use tax. Any significant changes to the method of local use tax distribution shall be phased in over a five-year period. Distribution information shall be shared with the affected localities prior to implementation of the changes.

H. All local use tax revenue shall be used, applied or disbursed by the cities and counties as provided in § [58.1-605](#) with respect to local sales tax revenue.

Code 1950, § 58-441.49:1; 1968, c. 191; 1984, c. 675; 1999, c. [156](#); 2004, Sp. Sess. I, c. [3](#); 2007, c. [896](#); 2008, cc. [484](#), [488](#); 2013, c. [766](#).

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other

Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any sub-fund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§58.1-607. Moving residence or business into Commonwealth.

The use tax shall not apply to tangible personal property purchased outside this Commonwealth for use outside this Commonwealth by a then nonresident natural person or a business entity not actually doing business within this Commonwealth, who later brings such tangible personal property into this Commonwealth in connection with his establishment of a permanent residence or business in this Commonwealth, provided that such property was purchased more than six months prior to the date it was first brought into this Commonwealth or prior to the establishment of such residence or business, whichever first occurs. This section shall not apply to tangible personal property temporarily brought into this Commonwealth for the performance of contracts for the construction, reconstruction, installation, repair, or for any other service with respect to real estate or fixtures thereon.

Code 1950, § 58-441.10; 1966, c. 151; 1984, c. 675.

§58.1-608. Repealed.

Repealed by Acts 1993, c. 310 .

§58.1-608.1. Refund authorized for certain building materials.

A. From July 1, 1993, through June 30, 2004, any organization meeting the following conditions and criteria may apply to the Department of Taxation for a refund of any taxes paid on tangible personal property pursuant to this chapter:

1. The organization is exempt from taxation under § 501(c)(3) of the Internal Revenue Code;

2. The organization is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land; and

3. The homes are sold at cost on a nondiscriminatory basis to persons who otherwise would be unable to afford to buy a home through conventional means.

B. Notwithstanding the provisions of subsection A, an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code may apply for a refund of any sales and use tax paid on tangible personal property used to repair or rehabilitate homes owned and occupied by low-income persons who could not otherwise afford to finance the rehabilitation or repair of their homes.

C. The Department of Taxation may require that any organization submit sales tax receipts along with the refund application to qualify for the refund authorized pursuant to this section.

D. The provisions of this section do not apply to any organization to the extent that the organization already is exempt from taxes imposed on tangible personal property by this chapter pursuant to § [58.1-609.11](#).

1989, c. 739; 1990, c. 349; 1993, c. 647; 1994, c. [728](#); 1999, cc. [12](#), [334](#); 2000, c. [493](#).

§58.1-608.2. Repealed.

Repealed by Acts 2003, cc. [757](#) and [758](#), effective July 1, 2004.

§58.1-608.3. Entitlement to certain sales tax revenues.

A. As used in this section, the following words and terms have the following meanings, unless some other meaning is plainly intended:

"Bonds" means any obligations of a municipality for the payment of money.

"Cost," as applied to any public facility or to extensions or additions to any public facility, includes: (i) the purchase price of any public facility acquired by the municipality or the cost of acquiring all of the capital stock of the corporation owning the public facility and the amount to be paid to discharge any obligations in order to vest title to the public facility or any part of it in the municipality; (ii) expenses incident to determining the feasibility or practicability of the public facility; (iii) the cost of plans and specifications, surveys and estimates of costs and of revenues; (iv) the cost of all land, property, rights, easements and franchises acquired; (v) the cost of improvements, property or equipment; (vi) the cost of engineering, legal and other professional services; (vii) the cost of construction or reconstruction; (viii) the cost of

all labor, materials, machinery and equipment; (ix) financing charges; (x) interest before and during construction and for up to one year after completion of construction; (xi) start-up costs and operating capital; (xii) payments by a municipality of its share of the cost of any multijurisdictional public facility; (xiii) administrative expense; (xiv) any amounts to be deposited to reserve or replacement funds; and (xv) other expenses as may be necessary or incident to the financing of the public facility. Any obligation or expense incurred by the public facility in connection with any of the foregoing items of cost may be regarded as a part of the cost.

"Municipality" means any county, city, town, authority, commission, or other public entity.

"Public facility" means (i) any auditorium, coliseum, convention center, or conference center, which is owned by a Virginia county, city, town, authority, or other public entity and where exhibits, meetings, conferences, conventions, seminars, or similar public events may be conducted; (ii) any hotel which is owned by a foundation whose sole purpose is to benefit a baccalaureate public institution of higher education in the Commonwealth and which is attached to and is an integral part of such facility, together with any lands reasonably necessary for the conduct of the operation of such events; (iii) any hotel which is attached to and is an integral part of such facility; (iv) any hotel that is adjacent to a convention center owned by a public entity and where the hotel owner enters into a public-private partnership whereby the locality contributes infrastructure, real property, or conference space; or (v) a sports complex consisting of a minor league baseball stadium and related tournament, training, and parking facilities, where a municipality owns a component of the sports complex. However, such public facility must be located in the City of Fredericksburg, City of Hampton, City of Lynchburg, City of Newport News, City of Norfolk, City of Portsmouth, City of Richmond, City of Roanoke, City of Salem, City of Staunton, City of Suffolk, City of Virginia Beach, City of Winchester, or Town of Wise. Any property, real, personal, or mixed, which is necessary or desirable in connection with any such auditorium, coliseum, convention center, sports complex, or conference center, including, without limitation, facilities for food preparation and serving, parking facilities, and administration offices, is encompassed within this definition. However, structures commonly referred to as "shopping centers" or "malls" shall not constitute a public facility hereunder. A public facility shall not include residential condominiums, townhomes, or other residential units. In addition, only a new public facility, or a public facility which will undergo a substantial and significant

renovation or expansion, shall be eligible under subsection C. A new public facility is one whose construction began after December 31, 1991. A substantial and significant renovation entails a project whose cost is at least 50 percent of the original cost of the facility being renovated and shall have begun after December 31, 1991. A substantial and significant expansion entails an increase in floor space of at least 50 percent over that existing in the preexisting facility and shall have begun after December 31, 1991; or an increase in floor space of at least 10 percent over that existing in a public facility that qualified as such under this section and was constructed after December 31, 1991.

"Sales tax revenues" means such tax collections realized under the Virginia Retail Sales and Use Tax Act (§ [58.1-600](#) et seq.), as limited herein. "Sales tax revenues" does not include the revenue generated by (i) the 0.5 percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly which shall be paid to the Transportation Trust Fund as defined in § [33.2-1524](#), (ii) the 1.0 percent of the state sales and use tax revenue distributed among the counties and cities of the Commonwealth pursuant to subsection D of § [58.1-638](#) on the basis of school age population, or (iii) any sales and use tax revenues generated by increases or allocation changes imposed by the 2013 Session of the General Assembly.

B. Notwithstanding the definition of "public facility" in subsection A, a development project that meets the requirements for a "development of regional impact" set forth herein shall be deemed to be a public facility under the provisions of this section. The locality in which the public facility is located shall be entitled to all sales tax revenues generated by transactions taking place at such public facility solely to pay the cost of any bonds issued to pay the cost, or portion thereof, of such public facility pursuant to subsection C. For purposes of this subsection, the development of regional impact must be located in the City of Bristol.

For purposes of this subsection, a "development of regional impact" means a development project (i) towards which the locality contributes infrastructure or real property as part of a public-private partnership with the developer that is equal to at least 20 percent of the aggregate cost of development, (ii) that is reasonably expected to require a capital investment of at least \$50 million, (iii) that is reasonably expected to generate at least \$5 million annually in state sales and use tax revenue from sales within the development, (iv) that is reasonably expected to attract at least one million visitors annually, (v) that is reasonably expected to create at least 2,000

permanent jobs, (vi) that is located in a locality that had a rate of unemployment at least three percentage points higher than the statewide average in November 2011, and (vii) that is located in a locality that is adjacent to a state that has adopted a Border Region Retail Tourism Development District Act. Within 30 days from the date of notification by a locality that it intends to contribute infrastructure or real property as part of a public-private partnership with the developer of a development of regional impact, the Department of Taxation shall review the findings of the locality with respect to clauses (i) through (vi) and shall file a written report with the Chairmen of the House Committee on Finance, the House Committee on Appropriations, and the Senate Committee on Finance.

C. Any municipality which has issued bonds (i) after December 31, 1991, but before January 1, 1996, (ii) on or after January 1, 1998, but before July 1, 1999, (iii) on or after January 1, 1999, but before July 1, 2001, (iv) on or after July 1, 2000, but before July 1, 2003, (v) on or after July 1, 2001, but before July 1, 2005, (vi) on or after July 1, 2004, but before July 1, 2007, (vii) on or after July 1, 2009, but before July 1, 2012, (viii) on or after January 1, 2011, but prior to July 1, 2015, or (ix) on or after January 1, 2013, but prior to July 1, 2017, to pay the cost, or portion thereof, of any public facility shall be entitled to all sales tax revenues generated by transactions taking place in such public facility. In the case of a public facility described in clause (v) of the definition of public facility, all such sales tax revenues shall be applied solely to repayment of the bonds issued to pay the cost, or portion thereof, of the municipality-owned component of the sports complex. Such entitlement shall continue for the lifetime of such bonds, or any refinancing or refunding thereof, but in no event shall such entitlement exceed 35 years from the initial date that any bonds were issued to pay the cost, or a portion thereof, of any public facility, and all such sales tax revenues shall be applied to repayment of the bonds. The State Comptroller shall remit such sales tax revenues to the municipality on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation to calculate the actual net sales tax revenues derived from the public facility. The State Comptroller shall make such remittances to eligible municipalities, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ [58.1-600](#) et seq.). No such remittances shall be made until construction is completed and, in the case of a renovation or expansion, until the governing body of the municipality has certified that the renovation or expansion is completed; however, in the case of any public facility consisting of more than one

building or structure, such remittances shall be made on a quarterly basis beginning with the first quarter in which any sales tax revenue is generated by transactions taking place at any building or structure within such public facility, whether or not construction of all or any portion, phase, building, or structure of such public facility has been completed.

D. Nothing in this section shall be construed as authorizing the pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, for the payment of any bonds. Any appropriation made pursuant to this section shall be made only from sales tax revenues derived from the public facility for which bonds may have been issued to pay the cost, in whole or in part, of such public facility.

1995, c. [173](#); 1996, cc. [105](#), [819](#); 1998, cc. [492](#), [497](#); 1999, cc. [141](#), [184](#); 2000, c. [474](#); 2001, c. [522](#); 2004, cc. [506](#), [566](#), [568](#); 2006, cc. [581](#), [608](#); 2009, cc. [7](#), [47](#), [93](#), [499](#), [836](#); 2011, c. [274](#); 2012, cc. [678](#), [789](#), [830](#); 2013, cc. [568](#), [724](#), [766](#); 2014, cc. [551](#), [718](#).

§58.1-608.4. Suspension of exemption.

Any organization or entity exempt from the tax imposed by this chapter, or imposed pursuant to the authority granted in § [58.1-605](#) or § [58.1-606](#), that knows or should have known that an associate, employee, volunteer, other individual or entity has used its tax exemption certificate/letter to make unlawful purchases in the aggregate in excess of \$1,000 in any calendar year, shall have its tax exemption suspended in accordance with § [58.1-623.1](#).

2002, c. [775](#).

§58.1-609. Repealed.

Repealed by Acts 1993, c. 310 .

§58.1-609.1. Governmental and commodities exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ [58.1-605](#) and [58.1-606](#) shall not apply to the following:

1. Fuels which are subject to the tax imposed by Chapter 22 (§ [58.1-2200](#) et seq.). Persons who are refunded any such fuel tax shall, however, be subject to the tax imposed by this chapter, unless such taxes would be specifically exempted pursuant to any provision of this section.
2. Motor vehicles, trailers, semitrailers, mobile homes and travel trailers.

3. Gas, electricity, or water when delivered to consumers through mains, lines, or pipes.
4. Tangible personal property for use or consumption by the Commonwealth, any political subdivision of the Commonwealth, or the United States. This exclusion shall not apply to sales and leases to privately owned financial and other privately owned corporations chartered by the United States. Further, this exemption shall not apply to tangible personal property which is acquired by the Commonwealth or any of its political subdivisions and then transferred to private businesses for their use in a facility or real property improvement to be used by a private entity or for non-governmental purposes other than tangible personal property acquired by the Herbert H. Bateman Advanced Shipbuilding and Carrier Integration Center and transferred to a Qualified Shipbuilder as defined in the third enactment of Chapter 790 of the 1998 Acts of the General Assembly.
5. Aircraft subject to tax under Chapter 15 (§ [58.1-1500](#) et seq.).
6. a. Motor fuels and alternative fuels for use in a commercial watercraft, as defined in § [58.1-2201](#), upon which a fuel tax is refunded pursuant to § [58.1-2259](#).
b. Fuels transactions upon which a fuel tax is refunded pursuant to subdivision A 22 of § [58.1-2259](#).
7. Sales by a government agency of the official flags of the United States, the Commonwealth of Virginia, or of any county, city or town.
8. Materials furnished by the State Board of Elections pursuant to §§ [24.2-404](#) through [24.2-407](#).
9. Watercraft as defined in § [58.1-1401](#).
10. Tangible personal property used in and about a marine terminal under the supervision of the Virginia Port Authority for handling cargo, merchandise, freight and equipment. This exemption shall apply to agents, lessees, sublessees or users of tangible personal property owned by or leased to the Virginia Port Authority and to property acquired or used by the Authority or by a nonstock, nonprofit corporation that operates a marine terminal or terminals on behalf of the Authority.
11. Sales by prisoners confined in state correctional facilities of artistic products personally made by the prisoners as authorized by § [53.1-46](#).

12. Tangible personal property for use or consumption by the Virginia Department for the Blind and Vision Impaired or any nominee, as defined in § [51.5-60](#), of such Department.

13. [Expired.]

14. Tangible personal property sold to residents and patients of the Virginia Veterans Care Center at a canteen operated by the Department of Veterans Services.

15. Tangible personal property for use or consumption by any nonprofit organization whose members include the Commonwealth and other states and which is organized for the purpose of fostering interstate cooperation and excellence in government.

16. Tangible personal property purchased for use or consumption by any soil and conservation district which is organized in accordance with the provisions of Article 3 (§ [10.1-506](#) et seq.) of Chapter 5 of Title 10.1.

17. Tangible personal property sold or leased to Alexandria Transit Company, Greater Lynchburg Transit Company, GRTC Transit System, or Greater Roanoke Transit Company, or to any other transit company that is owned, operated, or controlled by any county, city, or town, or any combination thereof, that provides public transportation services, and/or tangible personal property sold or leased to any county, city, or town, or any combination thereof, that is transferred to any of the companies set forth in this subdivision owned, operated, or controlled by any county, city, or town, or any combination thereof, that provides public transportation services.

18. (Expires July 1, 2022) Qualified products designated as Energy Star or WaterSense with a sales price of \$2,500 or less per product purchased for noncommercial home or personal use. The exemption provided by this subdivision shall apply only to sales occurring during the three-day period that begins each year on the first Friday in August and ends at 11:59 p.m. on the following Sunday.

For the purposes of this exemption, an Energy Star qualified product is any dishwasher, clothes washer, air conditioner, ceiling fan, light bulb, dehumidifier, programmable thermostat, or refrigerator, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's requirements under the Energy Star program. For the purposes of this exemption, WaterSense qualified products are those that have been recognized as being water efficient

by the WaterSense program sponsored by the U.S. Environmental Protection Agency as indicated by a WaterSense label.

19. (Effective until January 1, 2018) On or after July 1, 2015, but before January 1, 2019, gold, silver, or platinum bullion whose sales price exceeds \$1,000. Each piece of gold, silver, or platinum need not exceed \$1,000, provided that the sales price of one entire transaction of such pieces exceeds \$1,000. "Gold, silver, or platinum bullion " means gold, silver, or platinum, and any combination thereof, that has gone through a refining process and is in a state or condition such that its value depends on its mass and purity and not on its form, numismatic value, or other value. Gold, silver, or platinum bullion may contain other metals or substances, provided that the other substances by themselves have minimal value compared with the value of the gold, silver, or platinum. "Gold, silver, or platinum bullion " does not include jewelry or works of art.

19. (Effective January 1, 2018) Effective through June 30, 2022, gold, silver, or platinum bullion or legal tender coins whose sales price exceeds \$1,000. Each piece of gold, silver, or platinum or legal tender coin need not exceed \$1,000, provided that the sales price of one entire transaction of such pieces exceeds \$1,000. "Gold, silver, or platinum bullion" means gold, silver, or platinum, and any combination thereof, that has gone through a refining process and is in a state or condition such that its value depends on its mass and purity and not on its form, numismatic value, or other value. Gold, silver, or platinum bullion may contain other metals or substances, provided that the other substances by themselves have minimal value compared with the value of the gold, silver, or platinum. "Legal tender coins" means coins of any metal content issued by a government as a medium of exchange or payment of debts. "Gold, silver, or platinum bullion" and "legal tender coins" do not include jewelry or works of art.

20. Tangible personal property sold by a sheriff at a correctional facility pursuant to § [53.1-127.1](#) and sales of prepared food within such correctional facility.

1993, c. 310; 1995, cc. [617](#), [664](#); 1998, c. [812](#); 1999, cc. [401](#), [471](#), [762](#), [776](#); 2000, cc. [487](#), [493](#), [729](#), [758](#); 2002, c. [877](#); 2003, cc. [657](#), [670](#); 2005, cc. [46](#), [116](#); 2007, cc. [176](#), [817](#); 2008, c. [554](#); 2011, c. [165](#); 2012, cc. [95](#), [276](#); 2015, cc. [42](#), [382](#), [620](#), [629](#); 2016, cc. [34](#), [392](#); 2017, cc. [48](#), [445](#).

§58.1-609.2. Agricultural exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ [58.1-605](#) and [58.1-606](#) shall not apply to the following:

1. Commercial feeds; seeds; plants; fertilizers; liming materials; breeding and other livestock; semen; breeding fees; baby chicks; turkey poults; rabbits; quail; llamas; bees; agricultural chemicals; fuel for drying or curing crops; baler twine; containers for fruit and vegetables; farm machinery; medicines and drugs sold to a veterinarian provided they are used or consumed directly in the care, medication, and treatment of agricultural production animals or for resale to a farmer for direct use in producing an agricultural product for market; tangible personal property, except for structural construction materials to be affixed to real property owned or leased by a farmer, necessary for use in agricultural production for market and sold to or purchased by a farmer or contractor; and agricultural supplies provided the same are sold to and purchased by farmers for use in agricultural production, which also includes beekeeping and fish, quail, rabbit and worm farming for market.
2. Every agricultural commodity or kind of seafood sold or distributed by any person to any other person who purchases not for direct consumption but for the purpose of acquiring raw products for use or consumption in the process of preparing, finishing, or manufacturing such agricultural or seafood commodity for the ultimate retail consumer trade, except when such agricultural or seafood commodity is actually sold or distributed as a marketable or finished product to the ultimate consumer. "Agricultural commodity," for the purposes of this subdivision, means horticultural, poultry, and farm products, livestock and livestock products, and products derived from bees and beekeeping.
3. Livestock and livestock products, poultry and poultry products, and farm and agricultural products, when produced by the farmer and used or consumed by him and the members of his family.
4. Machinery, tools, equipment, materials or repair parts therefor or replacement thereof; fuel or supplies; and fishing boats, marine engines installed thereon or outboard motors used thereon, and all replacement or repair parts in connection therewith; provided the same are sold to and purchased by watermen for use by them in extracting fish, bivalves or crustaceans from waters for commercial purposes.
5. Machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy or supplies, and cereal grains and other feed ingredients, including, but not limited to, drugs, vitamins, minerals, nonprotein nitrogen, and other supplements or

additives, used directly in making feed for sale or resale. Making of feed shall include the mixing of liquid ingredients.

6. Machinery or tools and repair parts therefor or replacements thereof, fuel, power, energy or supplies, used directly in the harvesting of forest products for sale or for use as a component part of a product to be sold. Harvesting of forest products shall include all operations prior to the transport of the harvested product used for (i) removing timber or other forest products from the harvesting site, (ii) complying with environmental protection and safety requirements applicable to the harvesting of forest products, (iii) obtaining access to the harvesting site, and (iv) loading cut timber or other forest products onto highway vehicles for transportation to storage or processing facilities.

7. Agricultural produce, as defined in § [3.2-4738](#), and eggs, as described in § [3.2-5305](#), raised and sold by an individual at local farmers markets and roadside stands, when such individual's annual income from such sales does not exceed \$1,000.

1993, c. 310; 1994, cc. [365](#), [381](#); 1999, c. [229](#); 2006, cc. [331](#), [361](#); 2011, c. [466](#); 2013, c. [223](#).

§58.1-609.3. Commercial and industrial exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ [58.1-605](#) and [58.1-606](#) shall not apply to the following:

1. Personal property purchased by a contractor which is used solely in another state or in a foreign country, which could be purchased by such contractor for such use free from sales tax in such other state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or country.

2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of tangible personal property for resale where such industrial materials either enter into the production of or become a component part of the finished product; (ii) industrial materials that are coated upon or impregnated into the product at any stage of its being processed, manufactured, refined, or converted for resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to produce a

publication described in subdivision 3 of § [58.1-609.6](#) whether it is ultimately sold at retail or for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in processing, manufacturing, refining, mining or converting products for sale or resale. The provisions of this subsection do not apply to the drilling or extraction of oil, gas, natural gas and coalbed methane gas. In addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment, or any other tangible personal property used by a public service corporation in the generation of electric power, except for raw materials that are inputs to production of electricity, including fuel, or for machinery, tools, and equipment used to generate energy derived from sunlight or wind. The exemption for machinery, tools, and equipment used to generate energy derived from sunlight or wind shall expire June 30, 2027.

3. Tangible personal property sold or leased to a public service corporation engaged in business as a common carrier of property or passengers by railway, for use or consumption by such common carrier directly in the rendition of its public service.

4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of the United States or its territories or possessions, or in foreign commerce between ports in the Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or tangible personal property used directly in the building, conversion or repair of the ships or vessels covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used exclusively or principally in interstate or foreign commerce.

5. Tangible personal property purchased for use or consumption directly and exclusively in basic research or research and development in the experimental or laboratory sense.

6. Notwithstanding the provisions of subdivision 20 of § [58.1-609.10](#), all tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier providing scheduled air service on a continuing

basis to one or more Virginia airports at least one day per week, for use or consumption by such airline directly in the rendition of its common carrier service.

7. Meals furnished by restaurants or food service operators to employees as a part of wages.

8. Tangible personal property including machinery and tools, repair parts or replacements thereof, and supplies and materials used directly in maintaining and preparing textile products for rental or leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile products.

9. Certified pollution control equipment and facilities as defined in § [58.1-3660](#), except for any equipment that has not been certified to the Department of Taxation by a state certifying authority pursuant to such section.

10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption directly in the rendition of their services.

11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or photocopying of products for sale or resale.

12. From July 1, 1994, and ending July 1, 2022, raw materials, fuel, power, energy, supplies, machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as defined in § [45.1-361.1](#). For the purposes of this section, "drilling," "extraction," and "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a usable condition consistent with commercial practices, and the gathering and transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law.

13. Beginning July 1, 1997, (i) the sale, lease, use, storage, consumption, or distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or space station of any kind possessing space flight capability, including the components thereof, irrespective of whether such facility, system,

vehicle, satellite, or station is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (ii) the sale, lease, use, storage, consumption or distribution of tangible personal property placed on or used aboard any orbital or suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind, irrespective of whether such tangible personal property is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (iii) fuels of such quality not adapted for use in ordinary vehicles, being produced for, sold and exclusively used for space flight when used to conduct spaceport activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and equipment purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods and services provided to operate and maintain launch facilities, launch equipment, payload processing facilities and payload processing equipment used to conduct spaceport activities.

For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a facility owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.

The exemptions provided by this subdivision shall not be denied by reason of a failure, postponement or cancellation of a launch of any orbital or suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind or the destruction of any launch vehicle or any components thereof.

14. Semiconductor cleanrooms or equipment, fuel, power, energy, supplies, or other tangible personal property used primarily in the integrated process of designing, developing, manufacturing, or testing a semiconductor product, a semiconductor manufacturing process or subprocess, or semiconductor equipment without regard to whether the property is actually contained in or used in a cleanroom environment, touches the product, is used before or after production, or is affixed to or incorporated into real estate.

15. Semiconductor wafers for use or consumption by a semiconductor manufacturer.

16. Railroad rolling stock when sold or leased by the manufacturer thereof.

17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter ending November 2007, for the processing, storage,

retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware when part of a new investment of at least \$75 million in such exempt property, when such investment results in the creation of at least 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such investment was made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership Authority entered into or amended between January 1, 2008, and December 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The exemption shall not apply to any computer software sold separately from the computer equipment, nor shall it apply to general building improvements or fixtures.

18. Beginning July 1, 2010, and ending June 30, 2035, computer equipment or enabling software purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware, including chillers and backup generators used or to be used in the operation of the equipment exempted in this paragraph, provided that such computer equipment or enabling software is purchased or leased for use in a data center that (i) is located in a Virginia locality, (ii) results in a new capital investment on or after January 1, 2009, of at least \$150 million, and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs by the data center operator and the tenants of the data center, collectively, associated with the operation or maintenance of the data center provided that such jobs pay at least one and one-half times the prevailing average wage in that locality. The requirement of at least 50 new jobs is reduced to 25 new jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at least 150 percent of the average statewide unemployment rate for such year as determined by the Virginia Economic Development Partnership or is located in an enterprise zone. This exemption applies to the data center operator and the tenants of the data center if they collectively meet the requirements listed in this section. Prior to claiming such exemption, any qualifying person claiming the exemption, including a data center operator on behalf of itself and its tenants, must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority that at a minimum provides the details for determining the amount of capital investment made and the number of new jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations should those goals not be achieved, and any

conditions under which repayment by the qualifying data center or data center tenant claiming the exemption may be required. In addition, the exemption shall apply to any such computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the initial investment. The exemption shall not apply to any other computer software otherwise taxable under Chapter 6 of Title 58.1 that is sold or leased separately from the computer equipment, nor shall it apply to general building improvements or other fixtures.

19. If the preponderance of their use is in the manufacture of beer by a brewer licensed pursuant to subdivision 1 or 2 of § [4.1-208](#), (i) machinery, tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy, or supplies; (ii) materials for future processing, manufacturing, or conversion into beer where such materials either enter into the production of or become a component part of the beer; and (iii) materials, including containers, labels, sacks, cans, bottles, kegs, boxes, drums, or bags for future use, for packaging the beer for shipment or sale.

1993, c. 310; 1994, cc. [365](#), [381](#); 1995, cc. [101](#), [204](#), [719](#); 1996, c. [816](#); 1997, c. [834](#); 2001, cc. [429](#), [468](#), [769](#); 2003, c. [859](#); 2004, Sp. Sess. I, c. [3](#); 2006, cc. [385](#), [519](#), [524](#), [541](#), [618](#); 2007, c. [751](#); 2008, cc. [558](#), [764](#); 2010, cc. [784](#), [826](#); 2011, cc. [183](#), [286](#); 2012, cc. [613](#), [655](#); 2013, c. [10](#); 2016, cc. [343](#), [346](#), [673](#), [709](#), [712](#); 2017, c. [714](#).

§58.1-609.4. Repealed.

Repealed by Acts 2003, cc. [757](#) and [758](#), effective July 1, 2004.

§58.1-609.5. Service exemptions.

The tax imposed by this chapter or pursuant to the authority granted in § [58.1-605](#) or [58.1-606](#) shall not apply to the following:

1. Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made; services rendered by repairmen for which a separate charge is made; and services not involving an exchange of tangible personal property which provide access to or use of the Internet and any other related electronic communication service, including software, data, content and other information services delivered electronically via the Internet.
2. An amount separately charged for labor or services rendered in installing, applying, remodeling, or repairing property sold or rented.
3. Transportation charges separately stated.

4. Separately stated charges for alterations to apparel, clothing and garments.
5. Charges for gift wrapping services performed by a nonprofit organization.
6. An amount separately charged for labor or services rendered in connection with the modification of prewritten programs as defined in § [58.1-602](#).
7. Custom programs as defined in § [58.1-602](#).
8. The sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for more than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space or accommodations are regularly furnished to transients for a consideration.
9. Beginning January 1, 1996, maintenance contracts, the terms of which provide for both repair or replacement parts and repair labor, shall be subject to tax upon one-half of the total charge for such contracts only. Persons providing maintenance pursuant to such a contract may purchase repair or replacement parts under a resale certificate of exemption. Warranty plans issued by an insurance company, which constitute insurance transactions, are subject to the provisions of subdivision 1 above.

1993, c. 310; 1994, c. [595](#); 1998, c. [481](#); 2004, c. [607](#); 2006, c. [474](#); 2013, c. [90](#).

§58.1-609.6. Media-related exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ [58.1-605](#) and [58.1-606](#) shall not apply to the following:

1. Leasing, renting or licensing of copyright audio or video tapes, and films for public exhibition at motion picture theaters or by licensed radio and television stations.
2. Broadcasting equipment and parts and accessories thereto and towers used or to be used by commercial radio and television companies, wired or land based wireless cable television systems, common carriers or video programmers using an open video system or other video platform provided by telephone common carriers, or concerns which are under the regulation and supervision of the Federal Communications Commission and amplification, transmission and distribution equipment used or to be used by wired or land based wireless cable television systems, or open video systems or other video systems provided by telephone common carriers.

3. Any publication issued daily, or regularly at average intervals not exceeding three months, and advertising supplements and any other printed matter ultimately distributed with or as part of such publications; however, newsstand sales of the same are taxable. As used in this subdivision, the term "newsstand sales" shall not include sales of back copies of publications by the publisher or his agent.

4. Catalogs, letters, brochures, reports, and similar printed materials, except administrative supplies, the envelopes, containers and labels used for packaging and mailing same, and paper furnished to a printer for fabrication into such printed materials, when stored for 12 months or less in the Commonwealth and distributed for use without the Commonwealth. As used in this subdivision, "administrative supplies" includes, but is not limited to, letterhead, envelopes, and other stationery; and invoices, billing forms, payroll forms, price lists, time cards, computer cards, and similar supplies. Notwithstanding the provisions of subdivision 5 or the definition of "advertising" contained in § [58.1-602](#), (i) any advertising business located outside the Commonwealth which purchases printing from a printer within the Commonwealth shall not be deemed the user or consumer of the printed materials when such purchases would have been exempt under this subdivision, and (ii) from July 1, 1995, through June 30, 2002, and beginning July 1, 2002, and ending July 1, 2022, any advertising business which purchases printing from a printer within the Commonwealth shall not be deemed the user or consumer of the printed materials when such purchases would have been exempt under subdivision 3 or this subdivision, provided that the advertising agency shall certify to the Tax Commissioner, upon request, that such printed material was distributed outside the Commonwealth and such certification shall be retained as a part of the transaction record and shall be subject to further review by the Tax Commissioner.

5. Advertising as defined in § [58.1-602](#).

6. Beginning July 1, 1995, and ending July 1, 2022:

a. (i) The lease, rental, license, sale, other transfer, or use of any audio or video tape, film or other audiovisual work where the transferee or user acquires or has acquired the work for the purpose of licensing, distributing, broadcasting, commercially exhibiting or reproducing the work or using or incorporating the work into another such work; (ii) the provision of production services or fabrication in connection with the production of any portion of such audiovisual work, including, but not limited to, scriptwriting, photography, sound, musical composition, special effects, animation,

adaptation, dubbing, mixing, editing, cutting and provision of production facilities or equipment; or (iii) the transfer or use of tangible personal property, including, but not limited to, scripts, musical scores, storyboards, artwork, film, tapes and other media, incident to the performance of such services or fabrication; however, audiovisual works and incidental tangible personal property described in clauses (i) and (iii) shall be subject to tax as otherwise provided in this chapter to the extent of the value of their tangible components prior to their use in the production of any audiovisual work and prior to their enhancement by any production service; and

b. Equipment and parts and accessories thereto used or to be used in the production of such audiovisual works.

7. Beginning July 1, 1998, and ending July 1, 2022, textbooks and other educational materials withdrawn from inventory at book-publishing distribution facilities for free distribution to professors and other individuals who have an educational focus.

1993, c. 310; 1994, c. [446](#); 1995, cc. [101](#), [171](#), [719](#); 1997, cc. [307](#), [717](#), [822](#), [824](#); 1998, cc. [645](#), [812](#); 2002, cc. [183](#), [228](#), [777](#); 2003, cc. [911](#), [916](#); 2004, cc. [63](#), [101](#), [590](#), [606](#), [821](#); 2007, cc. [58](#), [604](#); 2008, cc. [138](#), [545](#); 2012, cc. [275](#), [411](#), [477](#); 2017, cc. [54](#), [412](#), [441](#).

§58.1-609.7. Repealed.

Repealed by Acts 2003, cc. [757](#) and [758](#), effective July 1, 2004.

§58.1-609.10. Miscellaneous exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ [58.1-605](#) and [58.1-606](#) shall not apply to the following:

1. Artificial or propane gas, firewood, coal or home heating oil used for domestic consumption. "Domestic consumption" means the use of artificial or propane gas, firewood, coal or home heating oil by an individual purchaser for other than business, commercial or industrial purposes. The Tax Commissioner shall establish by regulation a system for use by dealers in classifying individual purchases for domestic or nondomestic use based on the principal usage of such gas, wood, coal or oil. Any person making a nondomestic purchase and paying the tax pursuant to this chapter who uses any portion of such purchase for domestic use may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for a refund of the tax paid on the domestic use portion.

2. An occasional sale, as defined in § [58.1-602](#). A nonprofit organization that is eligible to be granted an exemption on its purchases pursuant to § [58.1-609.11](#), and that is otherwise eligible for the exemption pursuant to this subdivision, shall be exempt pursuant to this subdivision on its sales of (i) food, prepared food and meals and (ii) tickets to events that include the provision of food, prepared food and meals, so long as such sales take place on fewer than 24 occasions in a calendar year.
3. Tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to such business, including a simultaneous purchase and taxable leaseback.
4. Delivery of tangible personal property outside the Commonwealth for use or consumption outside of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be deemed to be delivery of goods for use or consumption outside of the Commonwealth.
5. Tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.
6. Tangible personal property purchased for use or consumption in the performance of maintenance and repair services at Nuclear Regulatory Commission-licensed nuclear power plants located outside the Commonwealth.
7. Beginning July 1, 1997, and ending July 1, 2006, a professional's provision of original, revised, edited, reformatted or copied documents, including but not limited to documents stored on or transmitted by electronic media, to its client or to third parties in the course of the professional's rendition of services to its clientele.
8. School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use by students attending a college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.
9. Medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass cases, and contact lens storage containers when distributed free of charge,

all solutions or sterilization kits or other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when distributed free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of licensed physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for use by a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in his professional practice, regardless of whether such practice is organized as a sole proprietorship, partnership, or professional corporation, or any other type of corporation in which the shareholders and operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician assistants engaged in the practice of medicine, optometry, or nursing; medicines and drugs purchased for use or consumption by a licensed hospital, nursing home, clinic, or similar corporation not otherwise exempt under this section; and samples of prescription drugs and medicines and their packaging distributed free of charge to authorized recipients in accordance with the federal Food, Drug, and Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). With the exceptions of those medicines and drugs used for agricultural production animals that are exempt to veterinarians under subdivision 1 of § [58.1-609.2](#), any veterinarian dispensing or selling medicines or drugs on prescription shall be deemed to be the user or consumer of all such medicines and drugs.

10. Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, other durable medical equipment and devices, and related parts and supplies specifically designed for those products; and insulin and insulin syringes, and equipment, devices or chemical reagents that may be used by a diabetic to test or monitor blood or urine, when such items or parts are purchased by or on behalf of an individual for use by such individual. Durable medical equipment is equipment that (i) can withstand repeated use, (ii) is primarily and customarily used to serve a medical purpose, (iii) generally is not useful to a person in the absence of illness or injury, and (iv) is appropriate for use in the home.

11. Drugs and supplies used in hemodialysis and peritoneal dialysis.

12. Special equipment installed on a motor vehicle when purchased by a handicapped person to enable such person to operate the motor vehicle.

13. Special typewriters and computers and related parts and supplies specifically designed for those products used by handicapped persons to communicate when such equipment is prescribed by a licensed physician.

14. a. (i) Any nonprescription drugs and proprietary medicines purchased for the cure, mitigation, treatment, or prevention of disease in human beings and (ii) any samples of nonprescription drugs and proprietary medicines distributed free of charge by the manufacturer, including packaging materials and constituent elements and ingredients.

b. The terms "nonprescription drugs" and "proprietary medicines" shall be defined pursuant to regulations promulgated by the Department of Taxation. The exemption authorized in this subdivision shall not apply to cosmetics.

15. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

16. Tangible personal property purchased by nonprofit churches that are exempt from taxation under § 501(c)(3) of the Internal Revenue Code, or whose real property is exempt from local taxation pursuant to the provisions of § [58.1-3606](#), for use (i) in religious worship services by a congregation or church membership while meeting together in a single location and (ii) in the libraries, offices, meeting or counseling rooms or other rooms in the public church buildings used in carrying out the work of the church and its related ministries, including kindergarten, elementary and secondary schools. The exemption for such churches shall also include baptistries; bulletins, programs, newspapers and newsletters that do not contain paid advertising and are used in carrying out the work of the church; gifts including food for distribution outside the public church building; food, disposable serving items, cleaning supplies and teaching materials used in the operation of camps or conference centers by the church or an organization composed of churches that are exempt under this subdivision and which are used in carrying out the work of the church or churches; and property used in caring for or maintaining property owned by the church including, but not limited to, mowing equipment; and building materials installed by the church, and for which the church does not contract with a person or entity to have installed, in the public church buildings used in carrying out the work of the church

and its related ministries, including, but not limited to worship services; administrative rooms; and kindergarten, elementary, and secondary schools.

17. Medical products and supplies, which are otherwise taxable, such as bandages, gauze dressings, incontinence products and wound-care products, when purchased by a Medicaid recipient through a Department of Medical Assistance Services provider agreement.

18. Beginning July 1, 2007, and ending July 1, 2012, multifuel heating stoves used for heating an individual purchaser's residence. "Multifuel heating stoves" are stoves that are capable of burning a wide variety of alternative fuels, including, but not limited to, shelled corn, wood pellets, cherry pits, and olive pits.

19. Fabrication of animal meat, grains, vegetables, or other foodstuffs when the purchaser (i) supplies the foodstuffs and they are consumed by the purchaser or his family, (ii) is an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code, or (iii) donates the foodstuffs to an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code.

20. Beginning July 1, 2018, and ending July 1, 2022, parts, engines, and supplies used for maintaining, repairing, or reconditioning aircraft or any aircraft's avionics system, engine, or component parts. This exemption shall not apply to tools and other equipment not attached to or that does not become a part of the aircraft. For purposes of this subdivision, "aircraft" shall include both manned and unmanned systems.

1993, c. 310; 1995, cc. [617](#), [719](#); 1997, cc. [631](#), [822](#); 1998, c. [812](#); 1999, cc. [762](#), [776](#), [1040](#); 2000, cc. [346](#), [493](#), [505](#); 2001, c. [860](#); 2003, cc. [757](#), [758](#); 2004, cc. [515](#), [536](#); 2006, cc. [217](#), [331](#), [338](#), [361](#); 2007, cc. [84](#), [758](#); 2008, c. [569](#); 2009, cc. [36](#), [338](#), [833](#); 2010, cc. [784](#), [826](#), [866](#); 2017, c. [714](#).

§58.1-609.11. Exemptions for nonprofit entities.

A. Any nonprofit organization that holds a valid certificate of exemption from the Department of Taxation, or any nonprofit church that holds a valid self-executing certificate of exemption, that exempts it from collecting or paying state and local retail sales or use taxes as of June 30, 2003, pursuant to § [58.1-609.4](#), [58.1-609.7](#), [58.1-609.8](#), [58.1-609.9](#), or [58.1-609.10](#), as such sections are in effect on June 30, 2003, shall remain exempt from the collection or payment of such taxes under the same terms and conditions as provided under such sections as such sections existed on

June 30, 2003, until: (i) July 1, 2007, for such entities that were exempt under § [58.1-609.4](#); (ii) July 1, 2008, for such entities that were exempt under § [58.1-609.7](#); (iii) July 1, 2004, for the first one-half of such entities that were exempt under § [58.1-609.8](#), except churches, which will remain exempt under the same criteria and procedures in effect for churches on June 30, 2003; (iv) July 1, 2005, for the second one-half of such entities that were exempt under § [58.1-609.8](#); and (v) July 1, 2006, for such entities that were exempt under § [58.1-609.9](#) or under § [58.1-609.10](#). At the end of the applicable period of such exemptions, to maintain or renew an exemption for the period of time set forth in subsection E, each entity must follow the procedures set forth in subsection B and meet the criteria set forth in subsection C. Provided, however, that any entity that was exempt from collecting sales and use tax shall continue to be exempt from such collection, and any entity that was exempt from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C. Provided further, however, that an educational institution doing business in the Commonwealth which provides a face-to-face educational experience in American government and was exempt pursuant to subdivision 4 of § [58.1-609.4](#) from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C.

B.1. On and after July 1, 2004, in addition to the organizations described in subsection A, and except as restricted in subdivision 2, the tax imposed by this chapter or pursuant to the authority granted in §§ [58.1-605](#) and [58.1-606](#) shall not apply to purchases of tangible personal property for use or consumption by any nonprofit entity that, pursuant to this section, (i) files an appropriate application with the Department of Taxation, (ii) meets the applicable criteria, and (iii) is issued a certificate of exemption from the Department of Taxation for the period of time covered by the certificate.

2. If the entity that is exempt under this section is exempt from federal income tax under § 501(c)(19) of the Internal Revenue Code, or has annual gross receipts less than \$5,000 and is organized for at least one of the purposes set forth in § 501(c)(19) of the Internal Revenue Code, then the exemption under this section for such entity shall not apply to purchases of tangible personal property that are used primarily (i)

for social and recreational activities for members or (ii) for providing insurance benefits to members or members' dependents.

C. To qualify for the exemption under subsection B, a nonprofit entity must meet the applicable criteria under this subsection as follows:

1. a. The entity is exempt from federal income taxation (i) under § 501(c)(3) of the Internal Revenue Code; (ii) under § 501(c)(4) of the Internal Revenue Code and is organized for a charitable purpose; or (iii) under § 501(c)(19) of the Internal Revenue Code; or

b. The entity has annual gross receipts less than \$5,000, and the entity is organized for at least one of the purposes set forth in § 501(c)(3) of the Internal Revenue Code, one of the charitable purposes set forth in § 501(c)(4) of the Internal Revenue Code, or one of the purposes set forth in § 501(c)(19) of the Internal Revenue Code; and

2. The entity is in compliance with all applicable state solicitation laws, and where applicable, provides appropriate verification of such compliance; and

3. The entity's annual general administrative costs, including salaries and fundraising, relative to its annual gross revenue, under generally accepted accounting principles, is not greater than 40 percent; and

4. If the entity's gross annual revenue was at least \$750,000 in the previous year, then the entity must provide a financial review performed by an independent certified public accountant. However, for any entity with gross annual revenue of at least \$1 million in the previous year, the Department may require that the entity provide a financial audit performed by an independent certified public accountant. If the Department specifically requires an entity with gross annual revenue of at least \$1 million in the previous year to provide a financial audit performed by an independent certified public accountant, then the entity shall provide such audit in order to qualify for the exemption under this section, which audit shall be in lieu of the financial review; and

5. If the entity filed a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then it must provide a copy of such form to the Department of Taxation; and

6. If the entity did not file a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then the entity must provide the following information:

a. A list of the Board of Directors or other responsible agents of the entity, composed of at least two individuals, with names and addresses where the individuals physically can be found; and

b. The location where the financial records of the entity are available for public inspection.

D. On and after July 1, 2004, in addition to the criteria set forth in subsection C, the Department of Taxation shall ask each entity for the total taxable purchases made in the preceding year, unless such records are not available through no fault of the entity. If the records are not available through no fault of the entity, then the entity must provide such information to the Department the following year. No information provided pursuant to this subsection (except the failure to provide available information) shall be a basis for the Department of Taxation to refuse to exempt an entity.

E. Any entity that is determined under subsections B, C, and D by the Department of Taxation to be exempt from paying sales and use tax shall also be exempt from collecting sales and use tax, at its election, if (i) the entity is within the same class of organization of any entity that was exempt from collecting sales and use tax on June 30, 2003, or (ii) the entity is organized exclusively to foster, sponsor, and promote physical education, athletic programs, and contests for youths in the Commonwealth.

F. The duration of each exemption granted by the Department of Taxation shall be no less than five years and no greater than seven years. During the period of such exemption, the failure of an exempt entity to maintain compliance with the applicable criteria set forth in subsection C shall constitute grounds for revocation of the exemption by the Department. At the end of the period of such exemption, to maintain or renew the exemption, each entity must provide the Department of Taxation the same information as required upon initial exemption and meet the same criteria.

G. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required.

2003, cc. [757](#), [758](#); 2004, cc. [515](#), [536](#); 2005, cc. [42](#), [89](#); 2007, cc. [698](#), [704](#), [709](#); 2009, cc. [24](#), [106](#), [526](#); 2016, c. [487](#).

§58.1-609.12. Reports to General Assembly on tax exemptions studies.

A. The Tax Commissioner shall determine the fiscal, economic and policy impact of each sales and use tax exemption set out in §§ [58.1-609.10](#) and [58.1-609.11](#) and

report such findings to the chairmen of the House and Senate Finance Committees and the chairman of the House Appropriations Committee no later than December 1 of each year. Subgroups of the exemptions shall be reviewed in periodic cycles and reports issued on a rotating basis in accordance with a schedule determined by the Tax Commissioner, excluding the sales and use tax exemptions for nonprofit entities provided by § [58.1-609.11](#), which shall be reviewed and reported on annually. When such reports have been completed for each subgroup of the sales and use tax exemptions, the Tax Commissioner shall repeat the process beginning with the subgroup of exemptions for which a report was made in 2007. No exemption shall be analyzed under the provisions of this section more frequently than once every five years, excluding the annual fiscal impact of the sales and use tax exemptions for nonprofit entities, which shall be studied each year.

B. When the Tax Commissioner investigates and analyzes the tax exemptions in § [58.1-609.10](#), the following information shall be considered and included in the report:

1. Estimate of foregone state and local revenues as a direct result of the exemption;
2. Beneficiaries of the exemption;
3. Direct or indirect local, state, or federal government assistance received by the persons or entities granted the exemption, to the extent such information is reasonably available;
4. The extent to which the comparable person, entity, property, service, or industry is exempt from the retail sales and use tax in other states, particularly states contiguous to the Commonwealth;
5. Any external statutory, constitutional, or judicial mandates supporting the exemption;
6. Other Virginia taxes to which the person, entity, property, service, or industry is subject;
7. Similar taxpayers who are not entitled to a retail sales and use tax exemption; and
8. Other criteria, facts or circumstances that may be relevant to the exemption.

C. When the Tax Commissioner investigates and analyzes the tax exemptions in § [58.1-609.11](#), he shall report on the extent to which the person, entity, property, ser-

vice, or industry is exempt from the retail sales and use tax in other states, particularly states contiguous to the Commonwealth.

D. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required to be reported under this section.

2005, c. [853](#); 2006, c. [559](#); 2009, c. [24](#).

§58.1-609.13. (Contingent repeal -- see note) Exceptions to § 58.1-609.10.

Notwithstanding the provisions of subdivision 1 of § [58.1-609.10](#), the tax imposed by a county, city or town pursuant to §§ [58.1-605](#) and [58.1-606](#) shall apply to artificial or propane gas, firewood, coal or home heating oil used for domestic consumption as defined in subdivision 1 of § [58.1-609.10](#), unless exempted by a duly adopted ordinance of the local governing body of a county, city or town. The provisions of this section shall not apply to fuel for domestic consumption purchased by churches organized not for profit and (i) which are exempt from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) whose real property is exempt from local taxation pursuant to the provisions of § [58.1-3606](#).

1993, c. 310 .

§58.1-610. Contractors.

A. Any person who contracts orally, in writing, or by purchase order, to perform construction, reconstruction, installation, repair, or any other service with respect to real estate or fixtures thereon, and in connection therewith to furnish tangible personal property, shall be deemed to have purchased such tangible personal property for use or consumption. Any sale, distribution, or lease to or storage for such person shall be deemed a sale, distribution, or lease to or storage for the ultimate consumer and not for resale, and the dealer making the sale, distribution, or lease to or storage for such person shall be obligated to collect the tax to the extent required by this chapter.

B. Any person who contracts to perform services in this Commonwealth and is furnished tangible personal property for use under the contract by the person, or his agent or representative, for whom the contract is performed, and a sales or use tax has not been paid to this Commonwealth by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used, and shall pay a use tax based on the fair market value of the tangible personal property so used, irrespective of whether or not any right, title or interest in

the tangible personal property becomes vested in the contractor. This subsection, however, shall not apply to the industrial materials exclusion or the other industrial exclusions set out in § [58.1-609.3](#), including those set out in subdivisions 2, 3 and 4 thereof; the media-related exemptions set out in subdivision 2 of § [58.1-609.6](#); the governmental exclusions set out in subdivision 4 of § [58.1-609.1](#); the agricultural exclusions set forth in subdivision 1 of § [58.1-609.2](#); or the exclusion for baptistries set forth in § [58.1-609.10](#).

C. Any person who contracts orally, in writing, or by purchase order to perform any service in the nature of equipment rental, and the principal part of that service is the furnishing of equipment or machinery which will not be under the exclusive control of the contractor, shall be liable for the sales or use tax on the gross proceeds from such contract to the same extent as the lessor of tangible personal property.

D. Tangible personal property incorporated in real property construction which loses its identity as tangible personal property shall be deemed to be tangible personal property used or consumed within the meaning of this section.

E. Nothing in this section shall be construed to (i) affect or limit the resale exclusion provided for in this chapter, or the industrial materials and other industrial exclusions set out in § [58.1-609.3](#), the exclusion for baptistries set out in § [58.1-609.10](#), or the partial exclusion for the sale of modular buildings as set out in § [58.1-610.1](#), or (ii) impose any sales or use tax with respect to the use in the performance of contracts with the United States, this Commonwealth, or any political subdivision thereof, of tangible personal property owned by a governmental body which actually is not used or consumed in the performance thereof.

F. Notwithstanding the other provisions of this section, any person engaged in the business of furnishing and installing locks and locking devices shall be deemed a retailer of such items and not a using or consuming contractor with respect to them.

G. Notwithstanding the other provisions of this section, any person or entity primarily engaged in the business of furnishing and installing tangible personal property that provides electronic or physical security on real property for the use of a financial institution, shall be deemed a retailer of such personal property, including when such personal property is installed on real property not for the use of a financial institution.

Code 1950, § 58-441.15; 1966, c. 151; 1973, c. 224; 1977, c. 591; 1978, c. 207; 1980, cc. 611, 627; 1984, c. 675; 1986, c. 605; 1989, c. 739; 1992, cc. 404, 415; 1993, c. 310; 2000, c. [425](#); 2003, cc. [757](#), [758](#); 2010, c. [119](#); 2011, cc. [360](#), [851](#); 2017, cc. [436](#), [449](#).

§58.1-610.1. Modular building manufacturers and retailers.

The retail sale of a modular building, as defined by § [58.1-602](#), by a modular building manufacturer or modular building retailer, as defined by § [58.1-602](#), shall be subject to the tax authorized by this chapter upon sixty percent of the retail sales price. If the modular building manufacturer has paid such tax on the cost price of materials incorporated in a modular building that has been constructed for sale without installation, it may credit against the tax shown to be due on the return the amount of sales or use tax paid on the cost of materials used in fabricating such a modular building.

2000, c. [425](#).

§58.1-611. Credit for taxes paid in another state.

A credit shall be granted against the taxes imposed by this chapter with respect to a person's use in this Commonwealth of tangible personal property purchased by him in another state. The amount of the credit shall be equal to the tax paid by him to another state or political subdivision thereof by reason of the imposition of a similar tax on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this chapter.

Code 1950, § 58-441.8; 1966, c. 151; 1984, c. 675.

§58.1-611.1. Rate of tax on sales of food purchased for human consumption.

A. The tax imposed by §§ [58.1-603](#) and [58.1-604](#) on food purchased for human consumption shall be levied and distributed as follows:

1. From January 1, 2000, through midnight on June 30, 2005, the tax rate on such food shall be three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § [58.1-638](#), (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § [58.1-638](#), and (iii) the revenue from the tax at the rate of one and one-half percent shall be used for general fund purposes.
2. On and after July 1, 2005, the tax rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows:

(i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § [58.1-638](#) and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § [58.1-638](#).

B. The provisions of this section shall not affect the imposition of tax on food purchased for human consumption pursuant to §§ [58.1-605](#) and [58.1-606](#).

C. As used in this section, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption. For the purpose of this section, "food purchased for human consumption" shall not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any "dealer," as defined in § [58.1-612](#), is required to apply for and receive a certificate of registration pursuant to § [58.1-613](#).

1999, cc. [366](#), [466](#); 2002, c. [13](#); 2003, c. [806](#); 2004, Sp. Sess. I, c. [3](#); 2005, cc. [487](#), [521](#).

§58.1-611.2. Limited exemption for certain school supplies, clothing, and footwear.

Beginning in 2015, and ending July 1, 2022, for a three-day period that begins each year on the first Friday in August and ends at 11:59 p.m. on the following Sunday, the tax imposed by this chapter or pursuant to the authority granted in § [58.1-605](#) or [58.1-606](#) shall not apply to certain (i) school supplies, including, but not limited to, dictionaries, notebooks, pens, pencils, notebook paper, and calculators, and (ii) clothing and footwear designed to be worn on or about the human body. The tax exemption shall apply to each article of school supplies with a selling price of \$20 or less, and each article of clothing or footwear with a selling price of \$100 or less. Any discount, coupon, or other credit offered either by the retailer or by a vendor of the retailer to reduce the final price to the customer shall be taken into account in determining the selling price for purposes of this exemption.

The Department shall develop guidelines that describe the items of merchandise that qualify for the exemption and make such guidelines available, both electronically and in hard copy, no later than July 15 of each year.

2006, cc. [579](#), [593](#); 2015, c. [382](#); 2017, cc. [26](#), [446](#).

§58.1-611.3. (Expires July 1, 2022) Limited exemption for certain hurricane preparedness equipment.

Beginning in 2015, for a three-day period that begins each year on the first Friday in August and ends at 11:59 p.m. on the following Sunday, the tax imposed by this chapter or pursuant to the authority granted in § [58.1-605](#) or [58.1-606](#) shall not apply to (i) portable generators used to provide light or communications or preserve food in the event of a power outage and; (ii) certain other hurricane preparedness equipment, including, but not limited to, blue ice, carbon monoxide detectors, cell phone batteries, cell phone chargers, gas or diesel fuel tanks, nonelectric food storage coolers, portable self-powered light sources, portable self-powered radios, two-way radios, weather band radios, storm shutter devices, tarpaulins or other flexible water-proof sheeting, ground anchor systems or tie down kits, gas-powered chain saws and chain saw accessories, and packages of AAA cell, AA cell, C cell, D cell, 6 volt, or 9 volt batteries, excluding automobile and boat batteries. As used in this section, "storm shutter" means materials and products manufactured, rated, and marketed specifically for the purpose of preventing window damage from storms. The tax exemption shall apply to each portable generator with a selling price of \$1,000 or less, each gas-powered chainsaw with a selling price of \$350 or less, and each article of other hurricane preparedness equipment with a selling price of \$60 or less. Any discount, coupon, or other credit offered either by the retailer or by a vendor of the retailer to reduce the final price to the customer shall be taken into account in determining the selling price for purposes of this exemption.

The Department shall develop guidelines that describe the items of merchandise that qualify for the exemption and make such guidelines available, both electronically and in hard copy, no later than July 15 of each year.

2007, c. [608](#); 2013, c. [325](#); 2015, c. [382](#).

§58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.

A. The tax levied by §§ [58.1-603](#) and [58.1-604](#) shall be collectible from all persons who are dealers, as hereinafter defined, and who have sufficient contact with the Commonwealth to qualify under subsections (i) B and C or (ii) B and D.

B. The term "dealer," as used in this chapter, shall include every person who:

1. Manufactures or produces tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;
2. Imports or causes to be imported into this Commonwealth tangible personal property from any state or foreign country, for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;
3. Sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, tangible personal property;
4. Has sold at retail, used, consumed, distributed, or stored for use or consumption in this Commonwealth, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal property;
5. Leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transferring title thereto;
6. Is the lessee or rentee of tangible personal property and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto;
7. As a representative, agent, or solicitor, of an out-of-state principal, solicits, receives and accepts orders from persons in this Commonwealth for future delivery and whose principal refuses to register as a dealer under § [58.1-613](#); or
8. Becomes liable to and owes this Commonwealth any amount of tax imposed by this chapter, whether he holds, or is required to hold, a certificate of registration under § [58.1-613](#).

C. A dealer shall be deemed to have sufficient activity within the Commonwealth to require registration under § [58.1-613](#) if he:

1. Maintains or has within this Commonwealth, directly or through an agent or subsidiary, an office, warehouse, or place of business of any nature;
2. Solicits business in this Commonwealth by employees, independent contractors, agents or other representatives;

3. Advertises in newspapers or other periodicals printed and published within this Commonwealth, on billboards or posters located in this Commonwealth, or through materials distributed in this Commonwealth by means other than the United States mail;
 4. Makes regular deliveries of tangible personal property within this Commonwealth by means other than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a common carrier enter this Commonwealth more than 12 times during a calendar year to deliver goods sold by him;
 5. Solicits business in this Commonwealth on a continuous, regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within this Commonwealth or distributed from a location within this Commonwealth;
 6. Solicits business in this Commonwealth by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or marketing activities occurring in this Commonwealth or benefits from the location in this Commonwealth of authorized installation, servicing, or repair facilities;
 7. Is owned or controlled by the same interests which own or control a business located within this Commonwealth;
 8. Has a franchisee or licensee operating under the same trade name in this Commonwealth if the franchisee or licensee is required to obtain a certificate of registration under § [58.1-613](#); or
 9. Owns tangible personal property that is for sale located in this Commonwealth, or that is rented or leased to a consumer in this Commonwealth, or offers tangible personal property, on approval, to consumers in this Commonwealth.
- D. A dealer is presumed to have sufficient activity within the Commonwealth to require registration under § [58.1-613](#) (unless the presumption is rebutted as provided herein) if any commonly controlled person maintains a distribution center, warehouse, fulfillment center, office, or similar location within the Commonwealth that facilitates the delivery of tangible personal property sold by the dealer to its customers. The presumption in this subsection may be rebutted by demonstrating that the activities conducted by the commonly controlled person in the Commonwealth

are not significantly associated with the dealer's ability to establish or maintain a market in the Commonwealth for the dealer's sales. For purposes of this subsection, a "commonly controlled person" means any person that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered, as the dealer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the dealer as a corporation that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered.

E. Notwithstanding any other provision of this section, the following shall not be considered to determine whether a person who has contracted with a commercial printer for printing in the Commonwealth is a "dealer" and whether such person has sufficient contact with the Commonwealth to be required to register under § [58.1-613](#):

1. The ownership or leasing by that person of tangible or intangible property located at the Virginia premises of the commercial printer which is used solely in connection with the printing contract with the person;
2. The sale by that person of property of any kind printed at and shipped or distributed from the Virginia premises of the commercial printer;
3. Activities in connection with the printing contract with the person performed by or on behalf of that person at the Virginia premises of the commercial printer; and
4. Activities in connection with the printing contract with the person performed by the commercial printer within Virginia for or on behalf of that person.

F. In addition to the jurisdictional standards contained in subsections C and D, nothing contained herein (other than subsection E) shall limit any authority which this Commonwealth may enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require the collection of sales and use taxes by any dealer who regularly or systematically solicits sales within this Commonwealth. Furthermore, nothing contained in subsection C shall require any broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher which broadcasts, publishes, or displays or distributes paid commercial advertising in this Commonwealth which is intended to be disseminated primarily to consumers located in this Commonwealth to report or impose any liability to pay any tax imposed under this chapter solely because such broadcaster, printer, outdoor advertising firm, advertising

distributor, or publisher accepted such advertising contracts from out-of-state advertisers or sellers.

G. (Contingent effective date -- see note) Pursuant to any federal legislation that grants states the authority to require remote sellers to collect sales and use tax, the Commonwealth is authorized, as permitted by such federal legislation, to require collection of sales and use tax by any remote seller, or a single or consolidated provider acting on behalf of a remote seller. If the federal legislation has an exemption for sellers whose sales are less than a minimum amount, then in determining such amount, the sales made by all persons related within the meanings of subsections (b) and (c) of § 267 or § 707(b)(1) of the Internal Revenue Code of 1986 shall be aggregated.

Code 1950, § 58-441.12; 1966, c. 151; 1979, c. 573; 1984, c. 675; 1991, cc. 544, 565; 1995, c. [27](#); 2012, c. [590](#); 2013, c. [766](#); 2017, cc. [51](#), [808](#).

§58.1-613. Dealers' certificates of registration.

A. Every person desiring to engage in or conduct business as a dealer in this Commonwealth shall file with the Tax Commissioner or the local commissioner of the revenue, if the local commissioner elects to provide the services authorized under this section, an application for a certificate of registration for each place of business in this Commonwealth.

B. Every application for a certificate of registration shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the Tax Commissioner may require.

C. When the required application has been made, the Tax Commissioner shall issue to each applicant a separate certificate of registration for each place of business within this Commonwealth. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall be at all times conspicuously displayed at the place for which issued.

D. Whenever any person fails to comply with any provision of this chapter or any rule or regulation relating thereto, the Tax Commissioner, upon hearing after giving such person 10 days' notice in writing, specifying the time and place of hearing and requiring him to show cause why his certificate of registration should not be revoked or

suspended, may revoke or suspend any one or more of the certificates of registration held by such person. The notice may be personally served or served by registered mail directed to the last known address of such person.

E. Any person who engages in business as a dealer in this Commonwealth without obtaining a certificate of registration, or after a certificate of registration has been suspended or revoked, and each officer of any corporation which so engages in business shall be guilty of a Class 2 misdemeanor. Each day's continuance in business in violation of this section shall constitute a separate offense.

F. If the holder of a certificate of registration ceases to conduct his business at the place specified in his certificate, the certificate shall thereupon expire, and such holder shall inform the Tax Commissioner in writing within 30 days after he has ceased to conduct such business at such place that he has so ceased. If the holder of a certificate of registration desires to change his place of business to another place in this Commonwealth, he shall so inform the Tax Commissioner in writing and his certificate shall be revised accordingly. The holder of a certificate of registration alternatively may complete the transactions required under this subsection with any local commissioner of the revenue electing to provide the services authorized under this section.

G. This section shall also apply to any person who engages in the business of furnishing any of the things or services taxable under this chapter. Moreover, it shall apply to any person who is liable only for the collection of the use tax.

H. At the request of a local commissioner of revenue, the Tax Commissioner shall provide, on a quarterly basis, a listing of new businesses in the locality which obtained a certificate of registration.

I. A commissioner of the revenue electing to provide the services authorized under this section shall follow the guidelines, rules, or procedures set forth by the Tax Commissioner for providing such services and shall provide the Tax Commissioner on a quarterly basis a list of each certificate of registration he has issued or revised.

Code 1950, § 58-441.16; 1966, c. 151; 1981, cc. 420, 438; 1984, c. 675; 2001, cc. [343](#), [362](#); 2011, cc. [663](#), [674](#).

§58.1-614. (Contingent expiration date -- see note*) Vending machine sales.

A. Notwithstanding the provisions of §§ [58.1-603](#) and [58.1-604](#), whenever a dealer makes sales of tangible personal property through vending machines, or in any other

manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on 5.3 percent of such wholesale purchases. However, any dealer located in any county or city for which the taxes under §§ [58.1-603.1](#) and [58.1-604.01](#) are imposed shall be required to remit an amount based on 6.0 percent of such wholesale purchases.

B. Notwithstanding the provisions of §§ [58.1-605](#) and [58.1-606](#), dealers making sales of tangible personal property through vending machines shall report and remit the one percent local sales and use tax computed as provided in subsection A.

C. The provisions of subsections A and B shall not be applicable to vending machine operators all of whose machines are under contract to nonprofit organizations. Such operators shall report only the gross receipts from machines selling items for more than 10 cents and shall be required to remit an amount based on a percentage of their remaining gross sales established by the Tax Commissioner to take into account the inclusion of sales tax.

D. Notwithstanding any other provisions in this section, when the Tax Commissioner determines that it is impractical to collect the tax in the manner provided by those sections, such dealer shall be required to remit an amount based on a percentage of gross receipts which takes into account the inclusion of the sales tax.

E. The provisions of this section shall not be applicable to any dealer who fails to maintain records satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through vending machines shall obtain a certificate of registration under § [58.1-613](#) in relevant form for each county or city in which he has machines.

Code 1950, § 58-441.34; 1966, c. 151; 1974, c. 389; 1980, c. 755; 1982, c. 219; 1984, c. 675; 1986, Sp. Sess., c. 12; 2004, Sp. Sess. I, c. [3](#); 2013, c. [766](#).

§58.1-614. (Contingent effective date -- see note*) Vending machine sales.

A. Notwithstanding the provisions of §§ [58.1-603](#) and [58.1-604](#), whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on four

and one-half percent through midnight on July 31, 2004, and five percent beginning on and after August 1, 2004, of such wholesale purchases.

B. Notwithstanding the provisions of §§ [58.1-605](#) and [58.1-606](#), dealers making sales of tangible personal property through vending machines shall report and remit the one percent local sales and use tax computed as provided in subsection A of this section.

C. The provisions of subsections A and B of this section shall not be applicable to vending machine operators all of whose machines are under contract to nonprofit organizations. Such operators shall report only the gross receipts from machines selling items for more than 10 cents and shall be required to remit an amount based on a percentage of their remaining gross sales established by the Tax Commissioner to take into account the inclusion of sales tax.

D. Notwithstanding any other provisions in this section, when the Tax Commissioner determines that it is impractical to collect the tax in the manner provided by those sections, such dealer shall be required to remit an amount based on a percentage of gross receipts which takes into account the inclusion of the sales tax.

E. The provisions of this section shall not be applicable to any dealer who fails to maintain records satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through vending machines shall obtain a certificate of registration under § [58.1-613](#) in relevant form for each county or city in which he has machines.

Code 1950, § 58-441.34; 1966, c. 151; 1974, c. 389; 1980, c. 755; 1982, c. 219; 1984, c. 675; 1986, Sp. Sess., c. 12; 2004, Sp. Sess. I, c. [3](#).

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In

the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§58.1-615. (Contingent expiration date -- see note*) Returns by dealers.

A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax shall become effective, transmit to the Tax Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this chapter during the preceding calendar month, and thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or before the twentieth day of each month, for the preceding calendar month. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies 52 to 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

Notwithstanding any other provision of this chapter, a dealer may be required by the Tax Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when, in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or before the twentieth day of the month following the close of the period. Each such return shall contain all information required for monthly returns.

A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

B. [Expired.]

C. Any return required to be filed with the Tax Commissioner under this section shall be deemed to have been filed with the Tax Commissioner on the date that such return is delivered by the dealer to the commissioner of the revenue or the treasurer for the locality in which the dealer is located and receipt is acknowledged by the commissioner of the revenue or treasurer. The commissioner of the revenue or the treasurer shall stamp such date on the return, and shall mail the return to the Tax

Commissioner no later than the following business day. The commissioner of the revenue or the treasurer may collect from the dealer the cost of postage for such mailing.

D. Every dealer who elects to file a consolidated sales tax return for any taxable period and who is required to remit payment by electronic funds transfer pursuant to subsection B of § [58.1-202.1](#) beginning on and after July 1, 2010, shall file his monthly return using an electronic medium prescribed by the Tax Commissioner. A waiver of this requirement may be granted if the Tax Commissioner determines that it creates an unreasonable burden on the dealer.

Code 1950, § 58-441.20; 1966, c. 151; 1972, c. 355; 1984, c. 675; 2003, c. [1042](#); 2004, c. [567](#); 2004, Sp. Sess. I, c. [4](#); 2005, c. [951](#); 2006, Sp. Sess. I, c. [2](#); 2010, cc. [36](#), [151](#).

§58.1-615. (Contingent effective date -- see note*) Returns by dealers.

A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax shall become effective, transmit to the Tax Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this chapter during the preceding calendar month, and thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or before the twentieth day of each month, for the preceding calendar month. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies 52 to 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period. The Tax Commissioner shall not require that more than one return per month be used or filed by any remote seller, single provider, or consolidated provider subject to the sales or use tax.

Notwithstanding any other provision of this chapter, a dealer may be required by the Tax Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when, in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or before the twentieth day of the month following the close of the period. Each such return shall contain all information required for monthly returns.

A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

B. [Expired.]

C. Any return required to be filed with the Tax Commissioner under this section shall be deemed to have been filed with the Tax Commissioner on the date that such return is delivered by the dealer to the commissioner of the revenue or the treasurer for the locality in which the dealer is located and receipt is acknowledged by the commissioner of the revenue or treasurer. The commissioner of the revenue or the treasurer shall stamp such date on the return, and shall mail the return to the Tax Commissioner no later than the following business day. The commissioner of the revenue or the treasurer may collect from the dealer the cost of postage for such mailing.

D. Every dealer who elects to file a consolidated sales tax return for any taxable period and who is required to remit payment by electronic funds transfer pursuant to subsection B of § [58.1-202.1](#) beginning on and after July 1, 2010, shall file his monthly return using an electronic medium prescribed by the Tax Commissioner. A waiver of this requirement may be granted if the Tax Commissioner determines that it creates an unreasonable burden on the dealer.

Code 1950, § 58-441.20; 1966, c. 151; 1972, c. 355; 1984, c. 675; 2003, c. [1042](#); 2004, c. [567](#); 2004, Sp. Sess. I, c. [4](#); 2005, c. [951](#); 2006, Sp. Sess. I, c. [2](#); 2010, cc. [36](#), [151](#); 2013, c. [766](#).

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any sub-fund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§58.1-615.1. Repealed.

Repealed by Acts 2009, c. [781](#), as amended by Acts 2010, c. [872](#), cl. 5, and Acts 2010, c. [874](#), cl. 7, as amended by Acts 2011, c. [890](#).

§58.1-616. Payment to accompany dealer's return.

At the time of transmitting the return required under § [58.1-615](#), the dealer shall remit to the Tax Commissioner the amount of tax due after making appropriate adjustments for purchases returned, repossessions, and accounts uncollectible and charged off as provided in §§ [58.1-619](#), [58.1-620](#) and [58.1-621](#). The tax imposed by this chapter shall for each period become delinquent on the twenty-first day of the succeeding month if not paid.

Code 1950, § 58-441.21; 1966, c. 151; 1972, c. 355; 1984, c. 675.

§58.1-617. Extensions.

The Tax Commissioner for good cause may grant an extension upon written application therefor to the end of the calendar month in which any tax return is due hereunder, or for a period not exceeding thirty days, and no interest or penalty shall be charged, assessed or collected by reason of the granting of any such extension. Where any such extension is granted beyond the end of the calendar month in which any tax return is due hereunder, interest on the tax at a rate determined in accordance with § [58.1-15](#) shall be charged.

Code 1950, § 58-441.26; 1966, c. 151; 1977, c. 396; 1984, c. 675.

§58.1-618. Assessment based on estimate.

A. If any dealer fails to make a return as provided by this chapter, or a return that is false or fraudulent, it shall be the duty of the Tax Commissioner to make an estimate for the taxable period of the retail sales or distributions of such dealer, or of the gross proceeds from leases of tangible personal property, or taxable services by such dealer, or the cost price of all articles of tangible personal property imported by such dealer for use or consumption in the Commonwealth, or storage by such dealer of tangible personal property to be used or consumed in the Commonwealth, and assess the tax, plus such penalties as are provided in this chapter. The Tax Commissioner shall give such dealer ten days' notice in writing requiring such dealer to appear before him with such books, records, and papers as he may require relating to the business of such dealer for such taxable period. The Tax Commissioner may require such dealer or the agents and employees of such dealer to give testimony or to answer interrogatories under oath administered by the Tax Commissioner respecting such sale,

distribution, lease, use, consumption, or storage of tangible personal property, or taxable services, or the failure to make a return thereof as provided in this chapter. If any dealer fails to make any such return or refuses to permit an examination of his books, records, or papers, or to appear and answer questions within the scope of such investigation, the Tax Commissioner is hereby authorized to make the assessment based upon such information as may be available to him and to issue a memorandum of lien under § [58.1-1805](#) for the collection of any such taxes and penalties so found to be due. The assessment so made shall be deemed prima facie correct.

B. If the dealer has imported tangible personal property and fails to produce an invoice showing the sales price of the articles, or the invoice does not reflect the true or actual sales price as defined in this chapter, then the Tax Commissioner shall ascertain, in any manner feasible, the true sales price and assess and collect the tax, with penalties, to the extent such have accrued, on the true sales price as ascertained by him. The assessment so made shall be deemed prima facie correct.

C. In the case of the lease of tangible personal property, if the consideration given or reported by the dealer, in the judgment of the Tax Commissioner, does not represent the true or actual consideration, then the Tax Commissioner is authorized to fix the same and assess and collect the tax thereon in the same manner as above provided, with penalties to the extent such have accrued. The assessment so made shall be deemed prima facie correct.

Code 1950, § 58-441.28; 1966, c. 151; 1984, c. 675; 1985, c. 221.

§58.1-619. Returned goods.

In the event purchases are returned to the dealer by the purchaser or consumer after the tax imposed by this chapter has been collected or charged to the account of the purchaser, the dealer shall be entitled to reimbursement of the amount of tax so collected or charged by him, in the manner prescribed by the Tax Commissioner. The amount of tax so reimbursed to the dealer shall not, however, include the tax paid upon any cash retained by the dealer after such return of merchandise. In case the tax has not been remitted by the dealer, the dealer may deduct the same in submitting his return. The dealer shall be issued an official credit memorandum by the Tax Commissioner equal to the net amount remitted by the dealer for such tax collected. Such memorandum shall be accepted at full face value from the dealer to whom it is issued when such dealer remits subsequent taxes under the provisions of this chapter. In

case the dealer has retired from business and has filed a final return, a refund of tax may be made if the dealer can establish that the tax was not due.

Code 1950, § 58-441.22; 1966, c. 151; 1984, c. 675.

§58.1-620. Repossessions.

A dealer who has paid the tax on tangible personal property sold under a retained title, conditional sale, or similar contract, may take credit for the tax paid by him upon the unpaid balance due him when he repossesses the property, such credit to be reflected in the same manner as the credit for returned purchases under § [58.1-619](#). When such repossessed property is resold, such sale is subject in all respects to this chapter.

Code 1950, § 58-441.23; 1966, c. 151; 1984, c. 675.

§58.1-621. Bad debts.

A. In any return filed under the provisions of this chapter, the dealer may credit, against the tax shown to be due on the return, the amount of sales or use tax previously returned and paid on accounts which are owed to the dealer and which have been found to be worthless within the period covered by the return. The credit, however, shall not exceed the amount of the uncollected sales price determined by treating prior payments on each debt as consisting of the same proportion of sales price, sales tax and other nontaxable charges as in the total debt originally owed to the dealer. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the dealer shall be included in the first return filed after such collection.

B. Notwithstanding any other provision of this section, a dealer whose volume and character of uncollectible accounts, including checks returned for insufficient funds, renders it impractical to substantiate the credit on an account-by-account basis, may, subject to the approval of the Department, utilize an alternative method of substantiating the credit.

Code 1950, § 58-441.24; 1966, c. 151; 1974, c. 202; 1984, c. 675; 2005, c. [355](#).

§58.1-622. Discount.

For the purpose of compensating a dealer holding a certificate of registration under § [58.1-613](#) for accounting for and remitting the tax levied by this chapter, such dealer shall be allowed the following percentages of the first three percent of the tax levied by §§ [58.1-603](#) and [58.1-604](#) and accounted for in the form of a deduction in

submitting his return and paying the amount due by him if the amount due was not delinquent at the time of payment.

Monthly Taxable Sales	Percentage
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\$0 to \$62,500	4%
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\$62,501 to \$208,000	3%
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\$208,001 and above	2%
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The discount allowed by this section shall be computed according to the schedule provided, regardless of the number of certificates of registration held by a dealer.

Code 1950, § 58.441.25; 1966, c. 151; 1984, c. 675; 1986, Sp. Sess., c. 12; 1989, c. 469; 2008, c. [488](#).

§58.1-623. Sales or leases presumed subject to tax; exemption certificates.

A. (Effective until January 1, 2018) All sales or leases are subject to the tax until the contrary is established. The burden of proving that a sale, distribution, lease, or storage of tangible personal property is not taxable is upon the dealer unless he takes from the taxpayer a certificate to the effect that the property is exempt under this chapter.

A. (Effective January 1, 2018) All sales or leases are subject to the tax until the contrary is established. The burden of proving that a sale, distribution, lease, or storage of tangible personal property is not taxable is upon the dealer unless he takes from the taxpayer a certificate to the effect that the property is exempt under this chapter. However, the sale or distribution of cigarettes shall be subject to the provisions of § [58.1-623.2](#) and require a cigarette exemption certificate issued pursuant to § [58.1-623.2](#).

B. The certificate mentioned in this section shall relieve the person who takes such certificate from any liability for the payment or collection of the tax, except upon notice from the Tax Commissioner that such certificate is no longer acceptable. Such certificate shall be signed by and bear the name and address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the taxpayer; shall indicate the general character of the tangible personal property sold, distributed, leased, or stored, or to be sold, distributed, leased, or stored under a blanket exemption certificate; and shall be substantially in such form as the Tax Commissioner may prescribe. If an exemption pertains to a nonprofit organization, other than a nonprofit church, that has qualified for a sales and use tax exemption under §

[58.1-609.11](#), the exemption certificate shall be valid until the scheduled expiration date stated on the exemption certificate.

C. If a taxpayer who gives a certificate under this section makes any use of the property other than an exempt use or retention, demonstration, or display while holding the property for resale, distribution, or lease in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the property or service is first used by him, and the cost of the property to him shall be deemed the sales price of such retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale, distribution, or lease, the taxpayer may elect to pay the tax on the amount of the rental charged, rather than the cost of the property to him.

D. If a taxpayer gives a certificate under this section with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased, but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales or distributions from the mass of commingled goods shall be deemed to be sales or distributions of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold or distributed.

E. If a taxpayer fails to give the dealer at the time of purchase an exemption certificate previously issued by the Department, no interest shall be paid on a subsequent refund claim for any period prior to the date the taxpayer makes a complete refund claim with the Department. This subsection shall not apply to transactions exempted under self-executing certificates of exemption not issued to a specific taxpayer by the Department.

Code 1950, § 58-441.17; 1966, c. 151; 1984, c. 675; 1999, cc. [762](#), [776](#); 2003, cc. [757](#), [758](#); 2016, cc. [303](#), [484](#); 2017, cc. [112](#), [453](#).

§58.1-623.01. Online access to dealers' certificate of registration numbers.

The Department shall provide online access by registered dealers to the names and certificate of registration numbers of dealers who are currently registered for the retail sales and use tax.

2017, c. [49](#).

§58.1-623.1. Misuse of exemption certificates; suspension of exemptions; penalties.

A. Whenever the Tax Commissioner determines that any person has misused an exemption certificate, the Tax Commissioner, after giving such person 10-days' notice in writing specifying the time and place of hearing and requiring him to show cause why the exemption should not be suspended, may suspend the exemption held by such person. The notice may be personally served or served by registered mail directed to the last known address of such person.

B. Any person who knowingly uses or gives an exemption certificate during a period of suspension of an exemption under this section shall be guilty of a Class 1 misdemeanor.

C. It shall be the duty of any person whose exemption is suspended under the provisions of this section to notify each dealer from whom purchases or leases of tangible personal property are made, of the suspension of its exemption, and of the invalidity of any exemption certificates filed with such dealers.

D. In lieu of the suspension of a person's exemption under subsection A, the Tax Commissioner may assess a penalty of up to \$1,000 for the misuse of an exemption certificate by that person or by any other person who, with the consent or knowledge of the exemption holder, has misused the certificate. The penalty shall be assessed and collected as a part of the tax, and the person so assessed may appeal the penalty pursuant to the provisions of Article 2 (§ [58.1-1820](#) et seq.) of Chapter 18 of this title.

E. In any instance in which the Tax Commissioner determines that there has been any misuse of an exemption certificate, the person holding the exemption shall be liable for the full amount of tax, and any interest thereon, applicable to any purchase improperly made with his exemption certificate.

F. The suspension of the exemption shall require that the person pay the full amount of the tax at the time of purchase and apply for a refund of the tax so paid. No interest shall be paid on any such refund. Upon application of the person whose certificate has been suspended, the Tax Commissioner, for good cause shown, may reinstate the person's certificate; however, any such suspension period shall run for at least one year.

G. Notwithstanding § [58.1-3](#), the Tax Commissioner may report any gross misuses of exemption certificates to the Secretary of Finance and the chairmen of the money

committees, for their confidential use, prior to the beginning of the following session of the General Assembly.

1989, c. 12; 1999, cc. [762](#), [776](#); 2002, c. [775](#); 2003, cc. [757](#), [758](#).

§58.1-623.2. Cigarette exemption certificate.

A. (Effective January 1, 2018) 1. Notwithstanding any other provision of law, all sales of cigarettes, as defined in § [58.1-1031](#), bearing Virginia revenue stamps in the Commonwealth shall be subject to the tax until the contrary is established. The burden of proving that a sale is not taxable is upon the dealer unless he takes from the taxpayer a cigarette exemption certificate issued by the Department to the taxpayer to the effect that the cigarettes are exempt under this chapter for the purposes of resale in the Commonwealth.

2. The cigarette exemption certificate mentioned in this section shall relieve the person who takes such certificate from any liability for the payment or collection of the tax on the sale of cigarettes, except upon notice from the Tax Commissioner or the taxpayer that such certificate is no longer acceptable.

3. If a taxpayer who gives a cigarette exemption certificate under this section makes any use of the property other than an exempt use or retention, demonstration, or display while holding the property for resale or distribution in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the property or service is first used by him, and the cost of the property to him shall be deemed the sales price of such retail sale.

B.1. Prior to issuing a cigarette exemption certificate under this section, the Department shall conduct a background investigation on the taxpayer for the certificate. The Department shall not issue a cigarette exemption certificate until at least 30 days have passed from the receipt of the application, unless the taxpayer qualifies for the expedited process set forth in subdivision 3, or any other expedited process set forth in guidelines issued pursuant to subsection L. If the taxpayer does not qualify for the expedited process, the Department shall inspect each location listed in the application and verify that any location that resells cigarettes meets the requirements prescribed in subsection E.

2. A taxpayer shall be required to pay an application fee, not to exceed \$50, to the Department for a cigarette exemption certificate.

3. A taxpayer shall be eligible for an expedited process to receive a cigarette exemption certificate if the taxpayer possesses, at the time of filing an application for a cigarette exemption certificate, (i) an active license, in good standing, issued by the Department of Alcoholic Beverage Control pursuant to Title 4.1, as verified by electronic or other means by the Department, or (ii) an active tobacco products tax distributor's license, in good standing, issued by the Department pursuant to § [58.1-1021.04:1](#). The Department may identify other categories of taxpayers who qualify for an expedited process through guidelines issued pursuant to subsection L. Taxpayers that qualify for an expedited process shall not be subject to the background check or the waiting period set forth in subdivision 1, nor shall such taxpayers be required to pay the application fee set forth in subdivision 2.

4. If a taxpayer has been denied a cigarette exemption certificate, or has been issued a cigarette exemption certificate that has subsequently been suspended or revoked, the Department shall not consider an application from the taxpayer for a new cigarette exemption certificate for six months from the date of the denial, suspension, or revocation.

C. The Department shall deny an application for a cigarette exemption certificate, or suspend or revoke a cigarette exemption certificate previously issued to a taxpayer, if the Department determines that:

1. The taxpayer is a person who is not 18 years of age or older;
2. The taxpayer is a person who is physically unable to carry on the business for which the application for a cigarette exemption certificate is filed, or has been adjudicated incapacitated;
3. The taxpayer has not resided in the Commonwealth for at least one year immediately preceding the application, unless in the opinion of the Department, good cause exists for the taxpayer to have not resided in the Commonwealth for the immediately preceding year;
4. The taxpayer has not established a physical place of business in the Commonwealth, as described in subsection E;
5. A court or administrative body having jurisdiction has found that the physical place of business occupied by the taxpayer, as described in subsection E, does not conform to the sanitation, health, construction, or equipment requirements of the

governing body of the county, city, or town in which such physical place is located, or to similar requirements established pursuant to the laws of the Commonwealth;

6. The physical place of business occupied by the taxpayer, as described in subsection E, is not constructed, arranged, or illuminated so as to allow access to and reasonable observation of, any room or area in which cigarettes are to be sold;

7. The taxpayer is not an authorized representative of the business;

8. The taxpayer made a material misstatement or material omission in the application;

9. The taxpayer has defrauded, or attempted to defraud, the Department, or any federal, state, or local government or governmental agency or authority, by making or filing any report, document, or tax return required by statute or regulation that is fraudulent or contains a false representation of material fact, or the taxpayer has willfully deceived or attempted to deceive the Department, or any federal, state, or local government or governmental agency or authority, by making or maintaining business records required by statute or regulation that are false or fraudulent;

10. The Tax Commissioner has determined that the taxpayer has misused the certificate;

11. The taxpayer has knowingly and willfully allowed any individual, other than an authorized representative, to use the certificate;

12. The taxpayer has failed to comply with or has been convicted under any of the provisions of this chapter or Chapter 10 (§ [58.1-1000](#) et seq.) or any of the rules of the Department adopted or promulgated under the authority of this chapter or Chapter 10; however, no certificate shall be denied, suspended, or revoked on the basis of a failure to file a retail sales and use tax return or remit retail sales and use tax unless the taxpayer is more than 30 days delinquent in any filing or payment and has not entered into an installment agreement pursuant to § [58.1-1817](#); or

13. The taxpayer has been convicted under the laws of any state or of the United States of (i) any robbery, extortion, burglary, larceny, embezzlement, gambling, perjury, bribery, treason, racketeering, money laundering, other crime involving fraud under Chapter 6 (§ [18.2-168](#) et seq.) of Title 18.2, or crime that has the same elements of the offenses set forth in § [58.1-1017](#) or [58.1-1017.1](#), or (ii) a felony.

D. The provisions of § [58.1-623.1](#) shall apply to the suspension and revocation of exemption certificates issued pursuant to this section, mutatis mutandis.

E. A cigarette exemption certificate shall only be issued to a taxpayer who:

1. Has a physical place of business in the Commonwealth, owned or leased by him, where a substantial portion of the sales activity of the retail cigarette sales activity of the business is routinely conducted and that (i) satisfies all local zoning regulations; (ii) has sales and office space of at least 250 square feet in a permanent, enclosed building not used as a house, apartment, storage unit, garage, or other building other than a building zoned for retail business; (iii) houses all records required to be maintained pursuant to § [58.1-1007](#); (iv) is equipped with office equipment, including but not limited to, a desk, a chair, a Point of Sale System, filing space, a working telephone listed in the name of the taxpayer or his business, working utilities, including electricity and provisions for space heating, and an Internet connection and email address; (v) displays a sign and business hours and is open to the public during the listed business hours; and (vi) does not occupy the same physical place of business of any other taxpayer who has been issued a cigarette exemption certificate;

2. Possesses a copy of the (i) corporate charter and articles of incorporation in the case of a corporation, (ii) partnership agreement in the case of a partnership, or (iii) organizational registration from the Virginia State Corporation Commission in the case of an LLC; and

3. Possesses a local business license, if such local business license is required by the locality where the taxpayer's physical place of business is located.

F. A taxpayer with more than one physical place of business shall be required to complete only one application for a cigarette exemption certificate but shall list on the application every physical place of business in the Commonwealth where cigarettes are purchased, stored, or resold by the taxpayer or his affiliate. Upon approval of the application, the Department shall issue a cigarette exemption certificate to the taxpayer. The taxpayer shall be authorized to resell cigarettes only at the locations listed on the application. No cigarette exemption certificate shall be transferrable. For purposes of this subsection, a taxpayer shall be considered to have more than one physical place of business if the taxpayer owns or leases two or more physical locations in the Commonwealth where cigarettes are purchased, stored, or resold.

G. A cigarette exemption certificate issued to a taxpayer shall bear the address of the physical place of business occupied or to be occupied by the taxpayer in conducting the business of purchasing cigarettes in the Commonwealth. In the event that a taxpayer intends to move the physical place of business listed on a certificate to a new location, he shall provide written notice to the Department at least 30 days in advance of the move. A successful inspection of the new physical place of business shall be required by the Department prior to the issuance of a new cigarette exemption certificate bearing the updated address. If the taxpayer intends to change any of the required information relating to the physical places of business contained in the application for the cigarette exemption certificate submitted pursuant to subsection F, the taxpayer shall file an amendment to the application at least 30 days in advance of such change. The certificate with the original address shall become invalid upon the issuance of the new certificate, or 30 days after notice of the move is provided to the Department, whichever occurs sooner. A taxpayer shall not be required to pay a fee to the Department for the issuance of a new cigarette exemption certificate pursuant to this subsection.

H. The privilege of a taxpayer issued a cigarette exemption certificate to purchase cigarettes shall extend to any authorized representative of such taxpayer. The taxpayer issued a cigarette exemption certificate may be held liable for any violation of this chapter, Chapter 10 (§ [58.1-1000](#) et seq.), Chapter 10.1 (§ [58.1-1031](#) et seq.), or any related Department guidelines by such authorized representative.

I. A taxpayer issued a cigarette exemption certificate shall comply with the record-keeping requirements prescribed in § [58.1-1007](#) and shall make such records available for audit and inspection as provided therein. A taxpayer issued a cigarette exemption certificate who fails to comply with such requirements shall be subject to the penalties provided in § [58.1-1007](#).

J. A cigarette exemption certificate granted by the Department shall be valid for five years from the date of issuance. At the end of the five-year period, the cigarette exemption certificate of a taxpayer who qualifies for the expedited application process set forth in subdivision B 3 shall be automatically renewed and no fee shall be required. If a taxpayer does not qualify for the expedited application process, then such taxpayer shall apply to the Department to renew the new cigarette exemption certificate as set forth in subdivision B 1 and shall pay an application fee not to

exceed \$50 as set forth in subdivision B 2; however, the 30-day waiting period set forth in subdivision B 1 shall not apply.

K. No taxpayer issued a cigarette exemption certificate shall display the certificate, or a copy thereof, in the physical place of business where a substantial portion of the retail cigarette sales activity of the business is routinely conducted.

L. The Tax Commissioner shall develop guidelines implementing the provisions of this section, including but not limited to (i) defining categories of taxpayers who qualify for the expedited process, (ii) prescribing the form of the application for the cigarette exemption certificate, (iii) prescribing the form of the application for the expedited cigarette exemption certificate, (iv) establishing procedures for suspending and revoking the cigarette exemption certificate, and (v) establishing procedures for renewing the cigarette exemption certificate. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

M. For the purposes of this section:

"Authorized representative" means an individual who has an ownership interest in or is a current employee of the taxpayer who possesses a valid cigarette exemption certificate pursuant to this section.

2017, cc. [112](#), [453](#).

§58.1-624. Direct payment permits.

A. Notwithstanding any other provision of this chapter, the Tax Commissioner may authorize a manufacturer, mine operator, or public service corporation that is a user, consumer, distributor, or lessee to which sales, distributions, leases, or storage of tangible personal property are made under circumstances which normally make it impossible at the time thereof to determine the manner in which such property will be used by such person, or any person who stores tangible personal property in this Commonwealth for use both within and outside this Commonwealth, to pay any tax levied by this chapter directly to this Commonwealth and waive the collection of the tax by the dealer. No such authority shall be granted or exercised except upon application to the Tax Commissioner and the issuance by the Tax Commissioner of a direct payment permit. If a direct payment permit is granted, then payment of the tax on all sales, distributions, and leases, including sales, distributions, leases, and storage of tangible personal property and sales of taxable services for use known at the time thereof, shall be made directly to the Tax Commissioner by the permit holder.

B. On or before the twentieth day of each month every permit holder shall make and file with the Tax Commissioner a return for the preceding month in the form prescribed by the Tax Commissioner showing the total value of the tangible personal property so used, the amount of tax due from the permit holder, which amount shall be paid to the Tax Commissioner with such return, and such other information as the Tax Commissioner deems necessary. The Tax Commissioner, upon written request by the permit holder, may grant a reasonable extension of time for making and filing returns and paying the tax. Interest on such tax shall be chargeable on every such extended payment at the rate determined in accordance with § [58.1-15](#).

C. A permit granted pursuant to this section shall continue to be valid until surrendered by the holder or cancelled for cause by the Tax Commissioner.

D. Persons who hold a direct payment permit which has not been cancelled shall not be required to pay the tax to the dealer as otherwise herein provided. Such persons shall notify each dealer from whom purchases or leases of tangible personal property are made of their direct payment permit number and that the tax is being paid directly to the Tax Commissioner. Upon receipt of such notice, such dealer shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales, distributions, leases, or storage of tangible personal property to such permit holder. Dealers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each such purchaser may be ascertained.

E. Upon the cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held such permit, and such person shall promptly so notify in writing dealers from whom purchases, leases, and storage of tangible personal property are made of such cancellation or surrender. Upon receipt of such notice, the dealer shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales, distributions, leases, or storage of tangible personal property thereafter made to such person.

Code 1950, § 58-441.33; 1966, c. 151; 1981, c. 95; 1984, c. 675.

§58.1-625. (Effective July 1, 2022) Collection of tax.

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge.

Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer who is not registered under § [58.1-613](#) or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

D. Any dealer who neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by him, his agents, or employees shall be liable for and pay the tax himself, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer who neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

E. (Contingent effective date -- see Editor's note) Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount, including any penalty or interest, if collection of the improper amount is a result of the remote seller, single provider, or consolidated provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § [58.1-601](#).

F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.

Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in § [58.1-611.2](#) not to collect the tax levied by this

chapter or levied under the authority granted in §§ [58.1-605](#) and [58.1-606](#) from the purchaser, and to absorb such tax himself. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner in the same manner as he is for tax collected from a purchaser pursuant to this section.

Code 1950, § 58-441.18; 1966, c. 151; 1972, c. 355; 1979, c. 198; 1984, c. 675; 2006, cc. [579](#), [593](#); 2013, c. [766](#).

§58.1-625. (Effective until July 1, 2022) Collection of tax.

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge.

Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer who is not registered under § [58.1-613](#) or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

D. Any dealer who neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by him, his agents, or employees shall be liable for and pay the tax himself, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer who neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

E. (Contingent effective date -- see note) Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount,

including any penalty or interest, if collection of the improper amount is a result of the remote seller, single provider, or consolidated provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § [58.1-601](#).

F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.

Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in §§ [58.1-611.2](#) and [58.1-611.3](#) or subdivision 18 of § [58.1-609.1](#) not to collect the tax levied by this chapter or levied under the authority granted in §§ [58.1-605](#) and [58.1-606](#) from the purchaser, and to absorb such tax himself. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner in the same manner as he is for tax collected from a purchaser pursuant to this section.

Code 1950, § 58-441.18; 1966, c. 151; 1972, c. 355; 1979, c. 198; 1984, c. 675; 2006, cc. [579](#), [593](#); 2007, cc. [176](#), [608](#), [817](#); 2013, c. [766](#).

§58.1-625.1. Repealed.

Repealed by Acts 2009, cc. [864](#) and [871](#), cl. 5.

§58.1-626. (Effective July 1, 2022) Absorption of tax prohibited.

No person shall advertise or hold out to the public, directly or indirectly, that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of such tax. Any person who violates this section shall be guilty of a Class 2 misdemeanor. The prohibitions contained in this section shall not apply during the time period set out in § [58.1-611.2](#) or during the 14 days immediately preceding such time period for advertisements relating to sales to be made during the time period set out in § [58.1-611.2](#).

Code 1950, § 58-441.19; 1966, c. 151; 1984, c. 675; 2004, Sp. Sess. I, c. [3](#); 2006, cc. [579](#), [593](#).

§58.1-626. (Effective until July 1, 2022) Absorption of tax prohibited.

No person shall advertise or hold out to the public, directly or indirectly, that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of such tax. Any person who violates this section shall be guilty of a Class 2 misdemeanor. The prohibitions contained

in this section shall not apply (i) during the time period set out in § [58.1-611.2](#) or subdivision 18 of § [58.1-609.1](#) or during the 14 days immediately preceding such time period for advertisements relating to sales to be made during the time period set out in § [58.1-611.2](#) or subdivision 18 of § [58.1-609.1](#); and (ii) during the time period set out in § [58.1-611.3](#) or during the 14 days immediately preceding such time period for advertisements relating to sales to be made during the time period set out in § [58.1-611.3](#).

Code 1950, § 58-441.19; 1966, c. 151; 1984, c. 675; 2004, Sp. Sess. I, c. [3](#); 2006, cc. [579](#), [593](#); 2007, cc. [176](#), [608](#), [817](#).

§58.1-627. Repealed.

Repealed by Acts 2004, Sp. Sess. I, c. [3](#), effective September 1, 2004.

§58.1-628.1. Not effective.

Not effective.

§58.1-628.2. Adjustment to the rate of tax imposed under this chapter.

If a dealer can show to the satisfaction of the Tax Commissioner that more than 85 percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of 10 cents or less each and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales that was from sales at prices of 11 cents or more.

2004, Sp. Sess. I, c. [3](#).

§58.1-629. Sale of business.

If any dealer liable for any tax, penalty, or interest levied hereunder sells out his business or stock of goods or quits the business, he shall make a final return and payment within fifteen days after the date of selling or quitting the business. His successors or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of such taxes, penalties, and interest due and unpaid until such former owner produces a receipt from the Tax Commissioner showing that they have been paid or a certificate stating that no taxes, penalties, or interest is due. If the purchaser of a business or stock of goods fails to withhold the purchase money as above provided, he shall be personally liable for the payment of the taxes, penalties, and interest due and unpaid on account of the operation of the business by any former

owner. Nothing herein shall be deemed to qualify or limit the exemption as to such a sale as is covered by subdivision 2 of § [58.1-609.10](#).

Code 1950, § 58-441.30; 1966, c. 151; 1984, c. 675; 1993, c. 310 .

§58.1-630. Bond.

The Tax Commissioner may, when in his judgment it is necessary and advisable so to do in order to secure the collection of the tax levied by this chapter, require any person subject to such tax to file with him a bond, with such surety as the Tax Commissioner determines is necessary to secure the payment of any tax, penalty or interest due or which may become due from such person. In lieu of such bond, securities approved by the Tax Commissioner may be deposited with the State Treasurer, which securities shall be kept in the custody of the State Treasurer, and shall be sold by him, at the request of the Tax Commissioner, at public or private sale if it becomes necessary so to do in order to recover any tax, penalty or interest due the Commonwealth under this chapter. Upon any such sale, the surplus, if any, above the amounts due under this chapter shall be returned to the person who deposited the securities.

Code 1950, § 58-441.31; 1966, c. 151; 1984, c. 675.

§58.1-631. Jeopardy assessment.

If the Tax Commissioner is of the opinion that the collection of any tax or any amount of tax required to be collected and paid under this chapter will be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including penalties. In the case of a tax for a current period, the Tax Commissioner may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the time otherwise allowed by law for filing a return and paying the tax has expired. Assessments provided for in this section shall become immediately due and payable, and if any such tax, penalty or interest is not paid upon demand of the Tax Commissioner, he shall proceed to collect the same by legal process, or, in his discretion, he may require the taxpayer to file such bond as in his judgment may be sufficient to protect the interest of the Commonwealth.

Code 1950, § 58-441.32; 1966, c. 151; 1984, c. 675.

§58.1-632. Memorandum of lien.

The Tax Commissioner is empowered, when any tax becomes delinquent under this chapter, to issue a memorandum of lien for the collection of the tax, penalty and interest from each delinquent taxpayer. Section [58.1-1805](#) shall apply to such memorandum, except that the same may be issued as soon as the tax becomes delinquent.

Code 1950, § 58-441.36; 1966, c. 151; 1984, c. 675.

§58.1-633. Records.

A. Every dealer required to make a return and pay or collect any tax under this chapter shall keep and preserve suitable records of the sales, leases, or purchases, as the case may be, taxable under this chapter, and such other books of account as may be necessary to determine the amount of tax due hereunder, and such other pertinent information as may be required by the Tax Commissioner.

B. In order to aid in the administration and enforcement of the provisions of this chapter, all wholesalers and jobbers in this Commonwealth shall keep a record of all sales of tangible personal property, whether such sales be for cash or on terms of credit. Such records shall include the name and address of the purchaser, the number of the certificate of registration issued to the purchaser, the date of the purchase, the article purchased, and the price at which the article is sold to the purchaser. Any wholesaler or jobber failing to keep such records shall be guilty of a Class 1 misdemeanor. Any person who is both a retailer and a wholesaler or jobber and who fails to keep proper records showing wholesale sales and retail sales separately shall pay the tax as a retailer on both classes of his business.

C. For the purpose of enforcing the collection of the tax levied by this chapter, the Tax Commissioner is authorized to examine the books, records, and other documents of all transportation companies, agencies, firms, or persons as defined herein that conduct their business by truck, rail, water, airplane, or otherwise, in order to determine what dealers are importing or otherwise are shipping articles of tangible personal property which are liable for the tax. If such transportation company, agency, firm or person as defined herein refuses to permit such examination of its or his books, records, and other documents by the Tax Commissioner, as aforesaid, it or he shall be guilty of a Class 1 misdemeanor. The Tax Commissioner may proceed by petitioning the appropriate circuit court to require the transportation company, agency, firm, or person to show cause as to why such books, records, and other documents

should not be examined pursuant to the injunction of the court, and as to why a bond should not be required with proper security in the penalty of not more than \$2,000 conditioned upon compliance with the provisions hereof for a period of not more than 1 year.

Code 1950, § 58-441.29; 1966, c. 151; 1984, c. 675.

§58.1-634. Period of limitations.

The taxes imposed by this chapter shall be assessed within three years from the date on which such taxes became due and payable. In the case of a false or fraudulent return with intent to evade payment of the taxes imposed by this chapter, or a failure to file a return, the taxes may be assessed, or a proceeding in court for the collection of such taxes may be begun without assessment, at any time within six years from such date. The Tax Commissioner shall not examine any person's records beyond the three-year period of limitations unless he has reasonable evidence of fraud, or reasonable cause to believe that such person was required by law to file a return and failed to do so.

Code 1950, § 58-441.38; 1966, c. 151; 1980, c. 633; 1983, c. 104; 1984, c. 675.

§58.1-635. (Contingent expiration date -- see note*) Failure to file return; fraudulent return; civil penalties.

A. When any dealer fails to make any return and pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed thirty percent in the aggregate. In no case, however, shall the penalty be less than ten dollars and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of fifty percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the dealer and collectible by the Tax Commissioner in the same manner as if they were a part of the tax imposed.

B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports his gross sales, gross proceeds or cost price, as the case may be, at fifty percent or less of the actual amount.

C. Interest at a rate determined in accordance with § [58.1-15](#), shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to § [58.1-15](#), after which interest shall accrue as provided therein.

Code 1950, § 58-441.27; 1966, c. 151; 1972, c. 355; 1973, c. 269; 1975, c. 52; 1977, c. 396; 1984, c. 675; 1991, cc. 316, 331 .

§58.1-635. (Contingent effective date -- see note*) Failure to file return; fraudulent return; civil penalties.

A. When any dealer fails to make any return and pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed 30 percent in the aggregate. In no case, however, shall the penalty be less than \$10 and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of 50 percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the dealer and collectible by the Tax Commissioner in the same manner as if they were a part of the tax imposed.

B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports his gross sales, gross proceeds or cost price, as the case may be, at 50 percent or less of the actual amount.

C. Interest at a rate determined in accordance with § [58.1-15](#), shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to § [58.1-15](#), after which interest shall accrue as provided therein.

D. Notwithstanding any other provision of this section, any remote seller, single provider, or consolidated provider who collects an incorrect amount of sales or use tax shall be relieved of any liability, including penalties and interest, if collection of the improper amount is the result of the remote seller, single provider, or consolidated provider's reasonable reliance on information that has been provided by the Commonwealth.

Code 1950, § 58-441.27; 1966, c. 151; 1972, c. 355; 1973, c. 269; 1975, c. 52; 1977, c. 396; 1984, c. 675; 1991, cc. 316, 331; 2013, c. [766](#).

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any sub-fund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§58.1-636. Penalty for failure to file return or making false return.

Any dealer subject to the provisions of this chapter failing or refusing to file a return herein required to be made, or failing or refusing to file a supplemental return or other data required by the Tax Commissioner, or who makes a false or fraudulent return with intent to evade the tax hereby levied, or who makes a false or fraudulent claim for refund, or who gives or knowingly receives a false or fraudulent exemption certificate, or who violates any other provision of this chapter, punishment for which is not otherwise herein provided, shall be guilty of a Class 1 misdemeanor.

Code 1950, § 58-441.39; 1966, c. 151; 1984, c. 675.

§58.1-637. Bad checks.

If any check tendered for any amount due under this chapter is not paid by the bank on which it is drawn and such person fails to pay the Commissioner the amount due the Commonwealth within five days after the Commissioner has given him written notice by registered or certified mail or in person by an agent that such check was returned unpaid, the person by whom such check was tendered shall be guilty of a violation of § [18.2-182.1](#).

Code 1950, § 58-441.35; 1966, c. 151; 1984, c. 675; 1992, c. 763 .

§58.1-638. Disposition of state sales and use tax revenue.

A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax revenue collected under the preceding sections of this chapter.

1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § [33.2-1524](#). Of the funds paid to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund as provided in this section; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund as provided in this section. The Fund's share of such net revenue shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

2. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Port Fund.

a. The Commonwealth Port Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it. Funds may be paid to any authority, locality or commission for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be allocated by the Commonwealth Transportation Board to the Board of Commissioners of the Virginia Port Authority to be used to support port capital needs and the preservation of existing

capital needs of all ocean, river, or tributary ports within the Commonwealth. Expenditures for such capital needs are restricted to those capital projects specified in subsection B of § [62.1-132.1](#).

c. Commonwealth Port Fund revenue shall be allocated by the Board of Commissioners to the Virginia Port Authority in order to foster and stimulate the flow of maritime commerce through the ports of Virginia, including but not limited to the ports of Richmond, Hopewell, and Alexandria.

3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund. The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access for the purposes enumerated in § [5.1-2.16](#), or is owned or leased by the Metropolitan Washington Airports Authority (MWAA), as follows:

Any new funds in excess of \$12.1 million which are available for allocation by the Virginia Aviation Board from the Commonwealth Transportation Fund, shall be allocated as follows: 60 percent to MWAA, up to a maximum annual amount of \$2 million, and 40 percent to air carrier airports as provided in subdivision A 3 a. Except for adjustments due to changes in enplaned passengers, no air carrier airport sponsor, excluding MWAA, shall receive less funds identified under subdivision A 3 a than it received in fiscal year 1994-1995.

Of the remaining amount:

a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased by MWAA, based upon the percentage of enplanements for each airport to total enplanements at all air carrier airports, except airports owned or leased by MWAA. No air carrier airport sponsor, however, shall receive less than \$50,000 nor more than \$2 million per year from this provision.

b. Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever airports on a discretionary basis, except airports owned or leased by MWAA.

c. Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports on a discretionary basis.

3a. There is hereby created in the Department of the Treasury a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the Commonwealth Space Flight Fund. The Commonwealth Space Flight Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it.

a. The amounts allocated to the Commonwealth Space Flight Fund pursuant to § [33.2-1526](#) shall be allocated by the Commonwealth Transportation Board to the Board of Directors of the Virginia Commercial Space Flight Authority to be used to support the capital needs, maintenance, and operating costs of any and all facilities owned and operated by the Virginia Commercial Space Flight Authority.

b. Commonwealth Space Flight Fund revenue shall be allocated by the Board of Directors to the Virginia Commercial Space Flight Authority in order to foster and stimulate the growth of the commercial space flight industry in Virginia.

4. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Mass Transit Fund.

a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. If funds in subdivision 4 b (1)(c) or 4 b (2)(d) are allocated to the construction of a new fixed rail project, such project shall be evaluated according to the process established pursuant to subsection B of § [33.2-214.1](#). Funds may be paid to any local governing body, transportation district commission, or public service corporation for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be used to support the operating, capital, and administrative costs of public transportation at a state share determined by the Commonwealth Transportation Board, and these amounts may be

used to support the capital project costs of public transportation and ridesharing equipment, facilities, and associated costs at a state share determined by the Commonwealth Transportation Board. Capital costs may include debt service payments on local or agency transit bonds. In making these determinations, the Commonwealth Transportation Board shall confer with the Director of the Department of Rail and Public Transportation. In development of the Director's recommendation and subsequent allocation of funds by the Commonwealth Transportation Board, the Director of the Department of Rail and Public Transportation and the Commonwealth Transportation Board shall adhere to the following:

(1) For the distribution of revenues from the Commonwealth Mass Transit Fund, of those revenues generated in 2014 and thereafter, the first \$160 million in revenues or the maximum available revenues if less than \$160 million shall be distributed by the Commonwealth Transportation Board as follows:

(a) Funds for special programs, which shall include ridesharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, shall not exceed 3 percent of the funds pursuant to this section and may be allocated to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:

(i) To finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.

(ii) To finance up to 80 percent of the cost of the development and implementation of projects where the purpose of such project is to enhance the provision and use of public transportation services.

(b) At least 72 percent of the funds shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for the purposes specified in subdivision 4 b.

(c) Twenty-five percent of the funds shall be allocated and distributed utilizing a tiered approach evaluated by the Transit Service Delivery Advisory Committee along with the Director of the Department of Rail and Public Transportation and established by the Commonwealth Transportation Board for capital purposes based on

asset need and anticipated state participation level and revenues. The tier distribution measures may be evaluated by the Transit Service Delivery Advisory Committee along with the Director of the Department of Rail and Public Transportation every three years and, if redefined by the Board, shall be published at least one year in advance of being applied. Funds allocated for debt service payments will be included in the tier that applies to the capital asset that is leveraged.

(d) Transfer of funds from funding categories in subdivisions 4 b (1)(a) and 4 b (1)(c) to 4 b (1)(b) shall be considered by the Commonwealth Transportation Board in times of statewide economic distress or statewide special need.

(2) The Commonwealth Transportation Board shall allocate the remaining revenues after the application of the provisions set forth in subdivision 4 b (1) generated for the Commonwealth Mass Transit Fund for 2014 and succeeding years as follows:

(a) Funds pursuant to this section shall be distributed among operating, capital, and special projects in order to respond to the needs of the transit community.

(b) Of the funds pursuant to this section, at least 72 percent shall be allocated to support operating costs of transit providers and distributed by the Commonwealth Transportation Board based on service delivery factors, based on effectiveness and efficiency, as established by the Commonwealth Transportation Board. These measures and their relative weight shall be evaluated every three years and, if redefined by the Commonwealth Transportation Board, shall be published and made available for public comment at least one year in advance of being applied. In developing the service delivery factors, the Commonwealth Transportation Board shall create for the Department of Rail and Public Transportation a Transit Service Delivery Advisory Committee, consisting of two members appointed by the Virginia Transit Association, one member appointed by the Community Transportation Association of Virginia, one member appointed by the Virginia Municipal League, one member appointed by the Virginia Association of Counties, and three members appointed by the Director of the Department of Rail and Public Transportation, to advise the Department of Rail and Public Transportation in the development of a distribution process for the funds allocated pursuant to this subdivision 4 b (2)(b) and how transit systems can incorporate these metrics in their transit development plans. The Transit Service Delivery Advisory Committee shall elect a Chair. The Department of Rail and Public Transportation shall provide administrative support to the committee. Effective July 1, 2013, the Transit Service Delivery Advisory Committee shall meet at least

annually and consult with interested stakeholders and hold at least one public hearing and report its findings to the Director of the Department of Rail and Public Transportation. Prior to the Commonwealth Transportation Board approving the service delivery factors, the Director of the Department of Rail and Public Transportation along with the Chair of the Transit Service Delivery Advisory Committee shall brief the Senate Committee on Finance, the House Appropriations Committee, and the Senate and House Committees on Transportation on the findings of the Transit Service Delivery Advisory Committee and the Department's recommendation. Before redefining any component of the service delivery factors, the Commonwealth Transportation Board shall consult with the Director of the Department of Rail and Public Transportation, Transit Service Delivery Advisory Committee, and interested stakeholders and provide for a 45-day public comment period. Prior to approval of any amendment to the service delivery measures, the Board shall notify the aforementioned committees of the pending amendment to the service delivery factors and its content.

(c) Funds for special programs, which shall include ridesharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, shall not exceed 3 percent of the funds pursuant to this section and may be allocated to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:

(i) To finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.

(ii) To finance up to 80 percent of the cost of the development and implementation of projects where the purpose of such project is to enhance the provision and use of public transportation services.

(d) Of the funds pursuant to this section, 25 percent shall be allocated and distributed utilizing a tiered approach evaluated by the Transit Service Delivery Advisory Committee along with the Director of Rail and Public Transportation and established by the Commonwealth Transportation Board for capital purposes based on asset need and anticipated state participation level and revenues. The tier distribution measures may be evaluated by the Transit Service Delivery Advisory Committee along with the

Director of Rail and Public Transportation every three years and, if redefined by the Board, shall be published at least one year in advance of being applied. Funds allocated for debt service payments shall be included in the tier that applies to the capital asset that is leveraged.

(e) Transfer of funds from funding categories in subdivisions 4 b (2)(c) and 4 b (2)(d) to 4 b (2)(b) shall be considered by the Commonwealth Transportation Board in times of statewide economic distress or statewide special need.

(f) The Department of Rail and Public Transportation may reserve a balance of up to five percent of the Commonwealth Mass Transit Fund revenues under this subsection in order to assure better stability in providing operating and capital funding to transit entities from year to year.

(3) The Commonwealth Mass Transit Fund shall not be allocated without requiring a local match from the recipient.

c. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be established on the books of the Comptroller and consist of such moneys as are appropriated to it by the General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given, bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political subdivision, another public entity created by an act of the General Assembly, or a private entity as defined in § [33.2-1800](#) and for purposes as enumerated in subdivision 7 of § [33.2-1701](#) or expended by the Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects approved by the Commonwealth Transportation Board. If revenues of the Commonwealth Transit Capital Fund are allocated to the construction of a new fixed rail project, such project shall

be evaluated according to the process established pursuant to subsection B of § [33.2-214.1](#). The Commonwealth Transit Capital Fund shall not be allocated without requiring a local match from the recipient.

d. The Commonwealth Transportation Board may allocate up to three and one-half percent of the funds set aside for the Commonwealth Mass Transit Fund to support costs of project development, project administration, and project compliance incurred by the Department of Rail and Public Transportation in implementing rail, public transportation, and congestion management grants and programs.

5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission (NVTC) to the Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of Arlington and Fairfax and the Cities of Alexandria, Falls Church, and Fairfax in the following manner:

a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC. NVTC shall use 95 percent state aid for these payments.

b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and reliable source of revenue as defined by Public Law 96-184.

6. Notwithstanding any other provision of law, funds allocated to Metro may be disbursed by the Department of Rail and Public Transportation directly to Metro or to any other transportation entity that has an agreement to provide funding to Metro.

B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections C and D.

C. The localities' share of the net revenue distributable under this section among the counties and cities shall be apportioned by the Comptroller and distributed among them by warrants of the Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month during which the net revenue was received into the state treasury. The distribution of the localities' share of such net revenue

shall be computed with respect to the net revenue received into the state treasury during each month, and such distribution shall be made as soon as practicable after the close of each such month.

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis of the latest yearly estimate of the population of cities and counties ages five to 19, provided by the Weldon Cooper Center for Public Service of the University of Virginia. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who are domiciled in orphanages or charitable institutions or who are dependents living on any federal military or naval reservation or other federal property within the school division in which the institutions or federal military or naval reservation or other federal property is located. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for members of the military services who are under 20 years of age within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for individuals receiving services in state hospitals, state training centers, or mental health facilities, persons who are confined in state or federal correctional institutions, or persons who attend the Virginia School for the Deaf and the Blind within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire

county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two percent sales and use tax, up to an annual amount of \$13 million, collected from the sales of hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § [29.1-101](#) and shall be used, in part, to defray the cost of law enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the Capital Improvement Fund, established under § [29.1-101.01](#), is equal to or in excess of \$35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § [29.1-101](#), in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than \$35 million.

F. 1. Of the net revenue generated from the one-half percent increase in the rate of the state sales and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § [58.1-638.1](#) an amount equivalent to one-half of the net revenue generated from such one-half percent increase as provided in this subdivision. The transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the net revenue generated (and collected in the succeeding month) from such one-half percent increase for the month of August 2004 and for each month thereafter.

2. Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the revenue generated by a 0.125 percent sales and use tax shall be distributed to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § [58.1-638.1](#), and be used for the state's share of Standards of Quality basic aid payments.

3. For the purposes of the Comptroller making the required transfers under subdivision 1 and 2, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund.

G. (Contingent expiration date -- see note) Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the following percentages of the revenue generated by a one-half percent sales and use tax, such as that paid to the Transportation Trust Fund as provided in subdivision A 1, shall be paid to the Highway Maintenance and Operating Fund established pursuant to § [33.2-1530](#):

1. For fiscal year 2014, an amount equal to 10 percent;
2. For fiscal year 2015, an amount equal to 20 percent;
3. For fiscal year 2016, an amount equal to 30 percent; and
4. For fiscal year 2017 and thereafter, an amount equal to 35 percent.

The Highway Maintenance and Operating Fund's share of the net revenue distributable under this subsection shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

H. (Contingent expiration date -- see note) 1. The additional revenue generated by increases in the state sales and use tax from Planning District 8 pursuant to §§ [58.1-603.1](#), [58.1-604.01](#), [58.1-604.1](#), and [58.1-614](#) shall be deposited by the Comptroller in the fund established under § [33.2-2509](#).

2. The additional revenue generated by increases in the state sales and use tax from Planning District 23 pursuant to §§ [58.1-603.1](#), [58.1-604.01](#), [58.1-604.1](#), and [58.1-614](#) shall be deposited by the Comptroller in the fund established under § [33.2-2600](#).

3. The additional revenue generated by increases in the state sales and use tax in any other Planning District pursuant to §§ [58.1-603.1](#), [58.1-604.01](#), [58.1-604.1](#), and [58.1-614](#) shall be deposited into special funds that shall be established by appropriate legislation.

4. The net revenues distributable under this subsection shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the appropriate funds on the last day of each month.

I. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

J. The term "net revenue," as used in this section, means the gross revenue received into the general fund or the Transportation Trust Fund of the state treasury under the preceding sections of this chapter, less refunds to taxpayers.

Code 1950, § 58-441.48; 1966, c. 151; 1976, c. 680; 1978, c. 773; 1980, c. 559; 1984, c. 675; 1986, Sp. Sess., c. 12; 1991, cc. 666, 713; 1992, c. 167; 1993, c. 793; 1995, cc. [539](#), [542](#); 1998, cc. [320](#), [905](#), [907](#); 1999, cc. [281](#), [397](#), [898](#); 2000, cc. [694](#), [707](#); 2001, c. [171](#); 2004, Sp. Sess. I, c. [3](#); 2010, cc. [113](#), [386](#), [629](#); 2012, cc. [476](#), [507](#), [779](#), [817](#); 2013, cc. [639](#), [766](#); 2015, cc. [609](#), [684](#).

§58.1-638.1. Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established.

There is hereby created in the state treasury a special permanent, nonreverting, interest-bearing fund to be known as the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund, hereinafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of (i) any sales and use tax revenues transferred pursuant to subsection F of § [58.1-638](#); (ii) any other moneys appropriated to it by the General Assembly; and (iii) such other sums as may be made available to it from any other source, public or private, all of which shall be credited to the Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall remain in the Fund and shall not revert to the general fund.

All amounts credited to the Fund shall be paid to localities in accordance with the general appropriation act to meet the Commonwealth's responsibility for the Standards of Quality prescribed pursuant to Article VIII, Section 2 of the Constitution of Virginia. Any amount paid to a county, city, or town from the Fund shall be taken into account by the governing body of the county, city, or town in setting real estate tax rates.

2004, Sp. Sess. I, c. [3](#).

§58.1-638.2. (Contingent effective date -- see note) Disposition of state and local sales tax revenue collected pursuant to federal legislation granting remote collection authority.

Notwithstanding any provisions of § [58.1-638](#) to the contrary, any state and local sales and use tax revenue collected pursuant to federal legislation granting the Commonwealth authority to compel remote sellers to collect the tax for sales made into the Commonwealth shall be paid in the manner provided in this section:

1. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections F and G of §§ [58.1-605](#) and [58.1-606](#). Each locality shall be required to designate an amount equal to 50 percent of the local sales and use tax distribution to transportation needs.
2. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections C and D of § [58.1-638](#).
3. The sales and use tax revenue generated by a 0.25 percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in § [58.1-638.1](#).
4. The Comptroller shall transfer annually to each locality that levied the local tax on fuels for domestic consumption pursuant to the former § [58.1-609.13](#) an amount to compensate the locality for the locality's revenue loss resulting from cessation of the local authority to impose tax on the sale of fuel for domestic consumption due to the repeal of § [58.1-609.13](#). The amount paid to the locality shall be an amount equal to the locality's revenue from its tax on fuels for domestic consumption in the calendar year prior to the repeal of § [58.1-609.13](#), but the aggregate amount of such revenue paid to all localities shall not exceed \$7.5 million per year. If the total aggregate

amount exceeds \$7.5 million, then each locality shall receive a pro rata portion based on the proportion that the locality's revenue from its tax on fuels for domestic consumption in the calendar year preceding the repeal of § [58.1-609.13](#) is to the total amount of such revenue in all localities that levied such tax.

5. Notwithstanding §§ [58.1-605](#), [58.1-606](#), and [58.1-638](#), all remaining revenue collected pursuant to this section, as estimated by the Department, shall be transferred to the Transportation Trust Fund to be allocated pursuant to § [33.2-1526](#).

2013, c. [766](#).

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any sub-fund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§58.1-638.3. (Contingent expiration date -- see note) Disposition of 0.3 percent state and local sales tax for transportation.

A. The sales and use tax revenue generated by the 0.3 percent sales and use tax increase enacted by the 2013 Session of the General Assembly shall be allocated as follows:

1. An amount equal to a 0.175 percent sales and use tax shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § [33.2-1530](#);
 2. An amount equal to a 0.05 percent sales and use tax shall be deposited into the Intercity Passenger Rail Operating and Capital Fund established under § [33.2-1603](#);
- and

3. An amount equal to a 0.075 percent sales and use tax shall be deposited into the Commonwealth Mass Transit Fund.

B. The net revenues distributable under this section shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the funds set forth in subsection A on the last day of each month.

2013, c. [766](#).

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any sub-fund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§58.1-639. Repealed.

Repealed by Acts 2016, c. [305](#), cl. 2.

Risk-Based Capital Act

§38.2-5500. Applicability.

The provisions of this chapter shall be known as The Risk-Based Capital Act and may be referred to herein as "the Act." The Act shall apply to all persons licensed in the Commonwealth to transact an insurance business pursuant to provisions in Chapter 10 (§ [38.2-1000](#) et seq.), 11 (§ [38.2-1100](#) et seq.), 12 (§ [38.2-1200](#) et seq.), 25 (§

[38.2-2500](#) et seq.), 41 (§ [38.2-4100](#) et seq.), 42 (§ [38.2-4200](#) et seq.), 43 (§ [38.2-4300](#) et seq.), 45 (§ [38.2-4500](#) et seq.), or 61 (§ [38.2-6100](#) et seq.).

1995, c. [789](#); 2000, c. [47](#); 2012, c. [156](#); 2014, c. [309](#).

§38.2-5501. Definitions.

As used in this chapter, the following terms shall have the following meanings:

"Adjusted RBC Report" means an RBC report which has been adjusted by the Commission in accordance with subsection F of § [38.2-5502](#).

"Capital and surplus" or "capital," except when used in the term "risk-based capital" or "adjusted capital," means net worth of a health maintenance organization and, for all other licensees, means surplus to policyholders.

"Corrective Order" means an order issued by the Commission specifying corrective actions which the Commission has determined are required.

"Delinquency proceeding" means any proceeding commenced against a licensee for the purpose of liquidating, rehabilitating, reorganizing or conserving a licensee pursuant to the provisions of Chapter 15 (§ [38.2-1500](#) et seq.).

"Domestic health organization" means a health organization domiciled in this Commonwealth.

"Domestic insurer" means any domestic company which has obtained a license to engage in insurance transactions in this Commonwealth in accordance with the applicable provisions of Chapter 10 (§ [38.2-1000](#) et seq.) or Chapter 41 (§ [38.2-4100](#) et seq.).

"Domestic licensee" means and includes a domestic insurer and a domestic health organization.

"Foreign health organization" means a health organization not domiciled in this Commonwealth which is licensed to do business in this Commonwealth.

"Foreign insurer" means any company not domiciled in this Commonwealth which has obtained a license to engage in insurance transactions in this Commonwealth in accordance with the applicable provisions in Chapter 10 (§ [38.2-1000](#) et seq.) or Chapter 41 (§ [38.2-4100](#) et seq.).

"Foreign licensee" means and includes a foreign insurer and a foreign health organization.

"Health organization" means an insurer that is required by the Commission to use the NAIC's Health Annual Statement blank when filing the annual statement prescribed by § [38.2-1300](#), or a corporation licensed pursuant to Chapter 42 (§ [38.2-4200](#) et seq.) operating a health or hospital services plan in the Commonwealth, or a health maintenance organization or limited health maintenance organization licensed pursuant to Chapter 43 (§ [38.2-4300](#) et seq.), or a corporation licensed pursuant to Chapter 45 (§ [38.2-4500](#) et seq.) and operating a dental or optometric services plan in the Commonwealth, or a dental plan organization licensed pursuant to Chapter 61 (§ [38.2-6100](#) et seq.).

"Licensee" means and includes a life and health insurer, a property and casualty insurer, and a health organization.

"Life and health insurer" means any domestic insurer or foreign insurer, whether known as a life insurer or a property and casualty insurer or a reciprocal or a fraternal benefit society, which is authorized to write any class of life insurance, annuities, or accident and sickness insurance, and is not writing a class of insurance set forth in §§ [38.2-110](#) through [38.2-132](#), provided that "life and health insurer" shall not include any insurer which is required by the Commission to use the NAIC's Health Annual Statement blank when filing the annual statement prescribed by § [38.2-1300](#).

"NAIC" means the National Association of Insurance Commissioners.

"Negative Trend," with respect to a life and health insurer, means a negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the Life RBC Instructions.

"Property and casualty insurer" means any domestic insurer or foreign insurer which is authorized under any chapter of this title to write any class of insurance except a class of life insurance or annuities, provided that "property and casualty insurer" shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers, nor shall it include any insurer which is required by the Commission to use the NAIC's Health Annual Statement blank when filing the annual statement prescribed by § [38.2-1300](#).

"RBC" means risk-based capital.

"RBC Instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC, as such RBC Instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

"RBC Level" means a licensee's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

1. "Company Action Level RBC" means, with respect to any licensee, the product of 2.0 and its Authorized Control Level RBC;
2. "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;
3. "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions;
4. "Mandatory Control Level RBC" means the product of 0.70 and the Authorized Control Level RBC.

"RBC Plan" means a comprehensive financial plan containing the elements specified in subsection B of § [38.2-5503](#). If the Commission rejects the RBC Plan, and it is revised by the licensee, with or without the Commission's recommendation, the plan shall be called the "Revised RBC Plan."

"RBC Report" means the report required in § [38.2-5502](#).

"Total Adjusted Capital" means the sum of:

1. A licensee's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed under § [38.2-1300](#); and
2. Such other items, if any, as the RBC Instructions may provide.

1995, c. [789](#); 2000, c. [47](#); 2007, c. [360](#); 2012, c. [156](#); 2014, c. [309](#).

§38.2-5502. RBC Reports.

A. Every domestic licensee shall, on or prior to each March 1, the "filing date," prepare and submit to the Commission a report of its RBC Levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC Instructions. In addition, every domestic licensee shall file its RBC Report:

1. With the NAIC in accordance with the RBC Instructions; and
2. With the insurance commissioner in any state in which the licensee is authorized to do business, if the insurance commissioner has notified the licensee of its request in writing, in which case, the licensee shall file its RBC Report not later than the later of:

- a. Fifteen days from the receipt of notice to file its RBC Report with that state; or
- b. The filing date.

B. A life and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account, and may adjust for the covariance between, the following risks:

- 1. The risk with respect to the insurer's assets;
- 2. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
- 3. The interest rate risk with respect to the insurer's business; and
- 4. All other business risks and such other relevant risks as are set forth in the RBC Instructions.

Each risk shall be determined in each case by applying the factors in the manner set forth in the RBC Instructions.

C. A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account, and may adjust for the covariance between, the following risks:

- 1. Asset risk;
- 2. Credit risk;
- 3. Underwriting risk; and
- 4. All other business risks and such other relevant risks as are set forth in the RBC Instructions.

Each risk shall be determined in each case by applying the factors in the manner set forth in the RBC Instructions.

D. A health organization's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account, and may adjust for the covariance between, the following risks:

- 1. Asset risk;
- 2. Credit risk;
- 3. Underwriting risk; and

4. All other business risks and such other relevant risks as are set forth in the RBC Instructions.

Each risk shall be determined in each case by applying the factors in the manner set forth in the RBC Instructions.

E. An excess of capital over the amount produced by the risk-based capital requirements contained in this Act and the formulas, schedules and instructions referred to in this Act is desirable in the business of insurance. Accordingly, licensees should seek to maintain capital above the RBC levels required by this Act. Additional capital is used and useful in the insurance business and helps to secure a licensee against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this Act.

F. If a domestic licensee files an RBC Report which in the judgment of the Commission is inaccurate, then the Commission shall adjust the RBC Report to correct the inaccuracy and shall notify the licensee of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report as so adjusted is referred to as an "Adjusted RBC Report."

1995, c. [789](#); 2000, c. [47](#).

§38.2-5503. Company Action Level Event.

A. "Company Action Level Event" means any of the following events:

1. The filing of an RBC Report by a licensee which indicates that:
 - a. The licensee's Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC;
 - b. If a life and health insurer, the insurer has Total Adjusted Capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and has a negative trend;
 - c. If a property and casualty insurer, the insurer has Total Adjusted Capital that is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the Trend Test Calculation included in the Property and Casualty RBC instructions; or

d. If a health organization, the health organization has Total Adjusted Capital that is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the Trend Test Calculation included in the Health RBC instructions;

2. The notification by the Commission to the licensee of an Adjusted RBC Report that indicates the event in subdivision A 1 a, provided the licensee does not challenge the Adjusted RBC Report under § [38.2-5507](#); or

3. If, pursuant to § [38.2-5507](#), the licensee challenges an Adjusted RBC Report that indicates the event in subdivision A 1 a, the notification by the Commission to the licensee that the Commission has, after a hearing, rejected the licensee's challenge.

B. In the event of a Company Action Level Event, the licensee shall prepare and submit to the Commission an RBC Plan which shall:

1. Identify the conditions in the licensee which contribute to the Company Action Level Event;

2. Contain proposals of corrective actions which the licensee intends to take and would be expected to result in the elimination of the Company Action Level Event;

3. Provide projections of the licensee's financial results in the current year and for at least the four succeeding years if the licensee is a life and health insurer or a property and casualty insurer, or at least two succeeding years if the licensee is a health organization, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels. If appropriate, the projections for both new and renewal business shall include separate projections for each major line of business and separately identify each significant income, expense and benefit component;

4. Identify the key assumptions impacting the licensee's projections and the sensitivity of the projections to the assumptions; and

5. Identify the quality of, and problems associated with, the licensee's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

C. The RBC Plan shall be submitted:

1. Within forty-five days of the Company Action Level Event; or
2. If the licensee challenges an Adjusted RBC Report pursuant to § [38.2-5507](#), within forty-five days after notification to the licensee that the Commission has, after a hearing, rejected the licensee's challenge.

D. Within sixty days after the submission by a licensee of an RBC Plan to the Commission, the Commission shall notify the licensee whether the RBC Plan shall be implemented or is, in the judgment of the Commission, unsatisfactory. If the Commission determines the RBC Plan is unsatisfactory, the notification to the licensee shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC Plan satisfactory, in the judgment of the Commission. Upon notification from the Commission, the licensee shall prepare a Revised RBC Plan, which may incorporate by reference any revisions proposed by the Commission, and shall submit the Revised RBC Plan to the Commission:

1. Within forty-five days after the notification from the Commission; or
2. If the licensee challenges the notification from the Commission under § [38.2-5507](#), within forty-five days after a notification to the licensee that the Commission has, after a hearing, rejected the licensee's challenge.

E. In the event of a notification by the Commission to a licensee that the licensee's RBC Plan or Revised RBC Plan is unsatisfactory, the Commission may at the Commission's discretion, subject to the licensee's right to a hearing under § [38.2-5507](#), specify in the notification that the notification constitutes a Regulatory Action Level Event.

F. Every domestic licensee that files an RBC Plan or Revised RBC Plan with the Commission shall file a copy of the RBC Plan or Revised RBC Plan with the insurance commissioner in any state in which the licensee is authorized to do business if:

1. Such state has an RBC provision substantially similar to subsection A of § [38.2-5508](#); and
2. The insurance commissioner of that state has notified the licensee of its request for the filing in writing, in which case the licensee shall file a copy of the RBC Plan or Revised RBC Plan in that state no later than the later of:
 - a. Fifteen days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state; or

b. The date on which the RBC Plan or Revised RBC Plan is filed under subsection C of § [38.2-5504](#).

1995, c. [789](#); 2000, c. [47](#); 2007, c. [360](#); 2012, c. [156](#).

§38.2-5504. Regulatory Action Level Event.

A. "Regulatory Action Level Event" means, with respect to any licensee, any of the following events:

1. The filing of an RBC Report by the licensee which indicates that the licensee's Total Adjusted Capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;
2. The notification by the Commission to a licensee of an Adjusted RBC Report that indicates the event in subdivision A 1, provided the licensee does not challenge the Adjusted RBC Report under § [38.2-5507](#);
3. If, pursuant to § [38.2-5507](#), the licensee challenges an Adjusted RBC Report that indicates the event in subdivision A 1, the notification by the Commission to the licensee that the Commission has, after a hearing, rejected the licensee's challenge;
4. The failure of the licensee to file an RBC Report by the filing date, unless the licensee has provided an explanation for such failure which is satisfactory to the Commission and has cured the failure within ten days after the filing date;
5. The failure of the licensee to submit an RBC Plan to the Commission within the time period set forth in subsection C of § [38.2-5503](#);
6. Notification by the Commission to the licensee that:
 - a. The RBC Plan or Revised RBC Plan submitted by the licensee is, in the judgment of the Commission, unsatisfactory; and
 - b. Such notification constitutes a Regulatory Action Level Event with respect to the licensee, provided the licensee has not challenged the determination under § [38.2-5507](#);
7. If, pursuant to § [38.2-5507](#), the licensee challenges a determination by the Commission under subdivision A 6, the notification by the Commission to the licensee that the Commission has, after a hearing, rejected such challenge;
8. Notification by the Commission to the licensee that the licensee has failed to adhere to its RBC Plan or Revised RBC Plan, but only if such failure has a substantial

adverse effect on the ability of the licensee to eliminate the Company Action Level Event in accordance with its RBC Plan or Revised RBC Plan and the Commission has so stated in the notification, provided the licensee has not challenged the determination under § [38.2-5507](#); or

9. If, pursuant to § [38.2-5507](#), the licensee challenges a determination by the Commission under subdivision A 8, the notification by the Commission to the licensee that the Commission has, after a hearing, rejected the challenge.

B. In the event of a Regulatory Action Level Event, the Commission shall:

1. Require the licensee to prepare and submit an RBC Plan or, if applicable, a Revised RBC Plan;

2. Perform such examination or analysis as the Commission deems necessary of the assets, liabilities and operations of the licensee including a review of its RBC Plan or Revised RBC Plan; and

3. Subsequent to the examination or analysis, issue a corrective order specifying such corrective actions as the Commission shall determine are required. In determining corrective actions, the Commission may take into account such factors as are deemed relevant with respect to the licensee based upon the Commission's examination or analysis of the assets, liabilities and operations of the licensee, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC Instructions.

C. The RBC Plan or Revised RBC Plan shall be submitted:

1. Within forty-five days after the occurrence of the Regulatory Action Level Event;

2. If the licensee challenges an Adjusted RBC Report pursuant to § [38.2-5507](#) and the challenge is not frivolous in the judgment of the Commission, within forty-five days after the notification to the licensee that the Commission has, after a hearing, rejected the licensee's challenge; or

3. If the licensee challenges a Revised RBC Plan under § [38.2-5507](#) and the challenge is not frivolous in the judgment of the Commission, within forty-five days after notification to the licensee that the Commission has, after a hearing, rejected the licensee's challenge.

D. The Commission may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the Commission to review the

licensee's RBC Plan or Revised RBC Plan, examine or analyze the assets, liabilities and operations, including contractual relationships, of the licensee and formulate the corrective order with respect to the licensee. The fees, costs and expenses relating to consultants shall be borne by the affected licensee or such other party as directed by the Commission.

1995, c. [789](#); 2000, c. [47](#).

§38.2-5505. Authorized Control Level Event.

A. "Authorized Control Level Event" means any of the following events:

1. The filing of an RBC Report by the licensee which indicates that the licensee's Total Adjusted Capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC;
2. The notification by the Commission to the licensee of an Adjusted RBC Report that indicates the event in subdivision A 1, provided the licensee does not challenge the Adjusted RBC Report under § [38.2-5507](#);
3. If, pursuant to § [38.2-5507](#), the licensee challenges an Adjusted RBC Report that indicates the event in subdivision A 1, the notification by the Commission to the licensee that the Commission has, after a hearing, rejected the licensee's challenge;
4. The failure of the licensee to respond, in a manner satisfactory to the Commission, to a corrective order, provided the licensee has not challenged the corrective order under § [38.2-5507](#); or
5. If the licensee has challenged a corrective order under § [38.2-5507](#) and the Commission has, after a hearing, rejected the challenge or modified the corrective order, the failure of the licensee to respond, in a manner satisfactory to the Commission, to the corrective order subsequent to rejection or modification by the Commission.

B. In the event of an Authorized Control Level Event with respect to a licensee, the Commission shall:

1. Take such actions as are required under § [38.2-5504](#) regarding a licensee with respect to which a Regulatory Action Level Event has occurred; or
2. If the Commission deems it to be in the best interests of the policyholders and creditors of the licensee and of the public, take such actions as are necessary to cause the licensee to be placed under regulatory control under the provisions of Chapter 15 (§ [38.2-1500](#) et seq.). In the event the Commission takes such actions, the Authorized

Control Level Event shall be deemed an indication of a hazardous financial condition which serves as sufficient grounds for the Commission to commence delinquency proceedings, and the receiver appointed in conjunction with such proceedings shall have the rights, powers and duties with respect to the licensee as are set forth in Chapter 15 or any order of liquidation, rehabilitation or conservation entered pursuant thereto. In the event the Commission takes actions under this subdivision pursuant to an Adjusted RBC Report, the licensee shall be entitled to such protections as are afforded to licensees under the appropriate provisions of this title pertaining to summary proceedings.

1995, c. [789](#); 2000, c. [47](#).

§38.2-5506. Mandatory Control Level Event.

A. "Mandatory Control Level Event" means any of the following events:

1. The filing of an RBC Report which indicates that the licensee's Total Adjusted Capital is less than its Mandatory Control Level RBC;
2. The notification by the Commission to the licensee of an Adjusted RBC Report that indicates the event in subdivision A 1, provided the licensee does not challenge the Adjusted RBC Report under § [38.2-5507](#); or
3. If, pursuant to § [38.2-5507](#), the licensee challenges an Adjusted RBC Report that indicates the event in subdivision A 1, notification by the Commission to the licensee that the Commission has, after a hearing, rejected the licensee's challenge.

B. In the event of a Mandatory Control Level Event:

1. With respect to a life and health insurer, the Commission shall take actions as are necessary to place the insurer under regulatory control pursuant to the provisions of Chapter 15 (§ [38.2-1500](#) et seq.). In that event, the Mandatory Control Level Event shall be deemed an indication of a hazardous financial condition which serves as sufficient grounds for the Commission to commence delinquency proceedings, and the receiver appointed in conjunction with such proceedings, shall have the rights, powers and duties with respect to the insurer as are set forth in Chapter 15 or any order of liquidation, rehabilitation or conservation entered thereunder. If the Commission takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to such protections as are afforded to insurers under the appropriate provisions of this title pertaining to summary proceedings. Notwithstanding any of the foregoing, the Commission may forego action for up to ninety days after the

Mandatory Control Level Event if the Commission finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety-day period.

2. With respect to a property and casualty insurer, the Commission shall take actions as are necessary to place the insurer under regulatory control pursuant to the provisions of Chapter 15, or, in the case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue to run-off under the supervision of the Commission. In either event, the Mandatory Control Level Event shall be deemed an indication of a hazardous financial condition which serves as sufficient grounds for the Commission to commence delinquency proceedings, and the receiver appointed in conjunction with such proceedings, shall have the rights, powers and duties with respect to the insurer as are set forth in Chapter 15 or any order of liquidation, rehabilitation, or conservation entered thereunder. If the Commission takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to such protections as are afforded to insurers under the appropriate provisions of this title pertaining to summary proceedings. Notwithstanding any of the foregoing, the Commission may forego action for up to ninety days after the Mandatory Control Level Event if the Commission finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety-day period.

3. With respect to a health organization, the Commission shall take actions as are necessary to place the health organization under regulatory control pursuant to and in accordance with applicable provisions in Chapter 15 (§ [38.2-1500](#) et seq.) and §§ [38.2-4214.1](#), [38.2-4317](#), or § [38.2-4509.1](#) of this title. In that event, the Mandatory Control Level Event shall be deemed an indication of a hazardous financial condition which serves as sufficient grounds for the Commission to commence delinquency proceedings, and the receiver appointed in conjunction with such proceedings shall have the rights, powers and duties with respect to the licensee as are set forth in Chapter 15, or any order of liquidation, rehabilitation or conservation entered thereunder. If the Commission takes actions pursuant to an adjusted RBC Report, the health organization shall be entitled to such protections as are afforded to the licensee under the appropriate provisions of this title pertaining to summary proceedings. Notwithstanding any of the foregoing, the Commission may forego action for up to ninety days after the Mandatory Control Level Event if the Commission finds there is

a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety-day period.

1995, c. [789](#); 2000, c. [47](#).

§38.2-5507. Hearings.

A. A licensee shall have the right to a confidential hearing, on a record before the Commission, at which the licensee may challenge any determination or action by the Commission, upon:

1. Notification to a licensee by the Commission of an Adjusted RBC Report;
2. Notification to a licensee by the Commission that (i) the licensee's RBC Plan or Revised RBC Plan is unsatisfactory and (ii) such notification constitutes a Regulatory Action Level Event with respect to such licensee;
3. Notification to a licensee by the Commission that the licensee has failed to adhere to its RBC Plan or Revised RBC Plan and that such failure has a substantial adverse effect on the ability of the licensee to eliminate the Company Action Level Event with respect to the licensee in accordance with its RBC Plan or Revised RBC Plan; or
4. Notification to a licensee by the Commission of a Corrective Order with respect to the licensee.

B. The licensee shall notify the Commission of its request for a hearing within five days after the notification by the Commission under subdivision 1, 2, 3 or 4 of subsection A. Upon receipt of the licensee's request for a hearing, the Commission shall set a date for the hearing, which date shall be no less than ten nor more than thirty days after the date of the licensee's request.

1995, c. [789](#); 2000, c. [47](#).

§38.2-5508. Confidentiality; prohibition on announcements; prohibition on use in ratemaking.

A. All RBC Plans and RBC Reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, which are filed with the Commission with respect to any domestic licensee or foreign licensee, constitute information that might be damaging to the licensee if made available to its competitors, and therefore shall be kept confidential by the Commission. This information shall not be made public nor shall it be subject to subpoena, other than by the Commission and then only for the purpose of enforcement actions taken by

the Commission pursuant to this Act or any other provision of the insurance laws of this Commonwealth; however, the Commission may at its discretion disclose such confidential information to (i) a regulatory official of any state or country; (ii) the NAIC, its affiliate or its subsidiary; or (iii) a law-enforcement authority of any state or country. Any such disclosure by the Commission shall not constitute a waiver of confidentiality of such plans, reports, and information. As used in this subsection, RBC Reports and RBC Plans shall include the results or report of any examination or analysis of a licensee performed by the Commission pursuant to the provisions of this Act or by the insurance regulatory officials of another state pursuant to the provisions of a substantially similar risk-based capital statute.

B. The comparison of a licensee's Total Adjusted Capital to any of its RBC Levels is a regulatory tool which may indicate the need for possible corrective action with respect to the licensee, and is not intended as a means to rank licensees generally. Therefore, except as otherwise required under the provisions of this Act, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement ranking any licensee relative to other licensees solely on the basis of comparisons between Total Adjusted Capital and RBC Levels or any component derived in the calculation of RBC Levels, by any licensee, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. If any materially false statement comparing a licensee's Total Adjusted Capital to its RBC Levels, or any of them, or a misleading comparison of any other amount to the licensee's RBC Levels is published in any written publication and the licensee is able to demonstrate to the Commission with substantial proof the falsity or misleading nature of such statement, as the case may be, then the licensee may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false or misleading statement.

C. RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC Plans are intended solely for use by the Commission in monitoring the solvency of licensees and the need for possible corrective action with respect to licensees and shall not be used by the Commission for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the Commission to calculate or derive

any elements of an appropriate premium level or rate of return for any line of insurance which a licensee or any affiliate is authorized to write.

1995, c. [789](#); 2000, c. [47](#); 2001, c. [519](#).

§38.2-5509. Supplemental provisions; rules; exemption.

A. The provisions of this Act are supplemental to any other provisions of the laws of this Commonwealth, and shall not preclude or limit any other powers or duties of the Commission, the Commissioner of Insurance, or any of the Commission's employees or agents under such laws, including, but not limited to, the provisions of §§ [38.2-1038](#) and [38.2-1040](#), or §§ [38.2-4316](#) A 7 and [38.2-4317](#), and Chapter 15 (§ [38.2-1500](#) et seq.) and any regulations issued thereunder.

B. The Commission may adopt reasonable rules necessary for the implementation of this Act.

C. The Commission may exempt from the application of this Act any domestic property and casualty insurer which:

1. Writes direct business only in this Commonwealth;
2. Writes direct annual premiums of \$2 million or less; and
3. Assumes no reinsurance in excess of five percent of direct premium written.

D. The Commission may exempt from the application of this Act an insurer organized and operating under the laws of this Commonwealth and licensed pursuant to the provisions of Chapter 25 (§ [38.2-2500](#) et seq.) of this title.

E. The Commission may exempt from the application of this Act a domestic health organization that writes direct business only in this Commonwealth and assumes no reinsurance in excess of five percent of direct premium written, and either (i) writes direct annual premiums of two million dollars or less for comprehensive medical coverages or (ii) is licensed pursuant to Chapter 45 and covers less than 2,000 lives. As used in this subsection, "comprehensive medical coverages" means contracts providing basic health care services and Medicare and Medicaid risk coverages or policies providing hospital, surgical, major medical, Medicare risk and Medicaid risk coverages. Medicare supplement need not be included and premiums for administrative services shall not be included.

1995, c. [789](#); 2000, c. [47](#).

§38.2-5510. Foreign licensees.

A. Any foreign licensee shall, upon the written request of the Commission, submit to the Commission an RBC Report as of the end of the calendar year just ended not later than the later of:

1. The date an RBC Report would be required to be filed by a domestic licensee under this Act; or

2. Fifteen days after the request is received by the foreign licensee.

Any foreign licensee shall, at the written request of the Commission, promptly submit to the Commission a copy of any RBC Plan that is filed with the insurance commissioner of any other state.

B. In the event of a Company Action Level Event, Regulatory Action Level Event or Authorized Control Level Event with respect to any foreign licensee as determined under the RBC statute applicable in the state of domicile of the licensee, or, if no RBC provision is in force in that state, under the provisions of this Act, if the insurance commissioner of the state of domicile of the foreign licensee fails to require the foreign licensee to file an RBC Plan in the manner specified under the RBC statute, or, if no RBC provision is in force in the state, under § [38.2-5503](#) hereof, the Commission may require the foreign licensee to file an RBC Plan with the Commission. In such event, the failure of the foreign licensee to file an RBC Plan with the Commission shall be grounds to order the licensee to cease writing new insurance business in this Commonwealth or to suspend, revoke or refuse to issue a license pursuant to § [38.2-1040](#).

C. In the event of a Mandatory Control Level Event with respect to any foreign licensee, if no domiciliary receiver has been appointed with respect to the foreign licensee under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign licensee, the Commission may deem such licensee in a condition where any further transaction of business will be hazardous to its policyholders, creditors, members, subscribers, stockholders, or to the public, and an action may be instituted and conducted pursuant to the provisions of Chapter 15 (§ [38.2-1500](#) et seq.) and, if applicable, §§ [38.2-4214.1](#), [38.2-4317](#), or [38.2-4509.1](#), and the occurrence of the Mandatory Control Level Event shall be considered adequate grounds for the application for such action.

1995, c. [789](#); 2000, c. [47](#).

§38.2-5511. Immunity.

There shall be no liability on the part of, and no cause of action shall arise against, the Commission, the Commissioner of Insurance, or any of the Commission's employees or agents, acting in good faith, for any action taken by them in the performance of their powers and duties under this Act.

1995, c. [789](#).

§38.2-5512. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§38.2-5513. Notices.

All notices by the Commission to a licensee which may result in regulatory action hereunder shall be effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission shall be effective upon the licensee's receipt of such notice.

1995, c. [789](#); 2000, c. [47](#).

§38.2-5514. Phase-in provision.

For RBC Reports required to be filed by insurers with respect to 1994, the following requirements shall apply in lieu of the provisions of §§ [38.2-5503](#), [38.2-5504](#), [38.2-5505](#) and [38.2-5506](#):

1. In the event of a Company Action Level Event with respect to a domestic insurer, the Commission shall take no regulatory action hereunder.
2. In the event of a Regulatory Action Level Event under subdivision A 1, A 2 or A 3 of § [38.2-5504](#), the Commission shall take the actions required under § [38.2-5503](#).
3. In the event of a Regulatory Action Level Event under subdivision 4, 5, 6, 7, 8 or 9 of subsection A of § [38.2-5504](#) or an Authorized Control Level Event, the Commission shall take the actions required under § [38.2-5504](#) with respect to the insurer.
4. In the event of a Mandatory Control Level Event with respect to an insurer, the Commission shall take the actions required under § [38.2-5505](#) with respect to the insurer.

1995, c. [789](#).

§38.2-5515. Expired.

Expired.

Sanitation Districts Law of 1938 - Tidal

Waters

§21-141. Short title.

This chapter may be known, designated and cited as the "Sanitation Districts Law of Nineteen Hundred and Thirty-Eight."

1938, p. 510; Michie Code 1942, § 1560hh.

§21-142. Definitions.

Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

- (1) The term "district" means a sanitation district created and existing pursuant to §§ [21-145](#) to [21-153](#) or heretofore or hereafter created by a special act of the General Assembly for the purpose of taking advantage of the provisions of this chapter;
- (2) The term "commission," except where the context requires reference to the board or commission mentioned and provided for in § [21-157](#), means the body corporate and politic comprising a district and its inhabitants created and existing pursuant to § [21-154](#);
- (3) The term "chairman" means the chairman of a commission;
- (4) The term "sewage disposal system" or "facilities," used in relation to a commission, means the sewers, conduits, pipelines pumping and ventilating stations, treatment plants and works, and other plants, structures, boats, conveyances and other real and personal property operated by the commission for the purposes of the commission;
- (5) The term "tidal waters of the district" means the waters within the district affected by the ebb and flow of the tide and also, in the event that the commission shall, pursuant to § [21-216](#), enter into any contract or agreement with any county, city or town in whole or in part outside of the district, and for so long as such contract or agreement shall remain in force, the waters within such county, city or town, which are affected by the ebb and flow of the tide, and the waters within one mile of such county, city or town which are affected by the ebb and flow of the tide are not included within the boundaries of any other county, city or town, or within the boundaries of any other sanitation district;

- (6) The term "industrial wastes" means liquid or other wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resource;
- (7) The term "sewage" means the water-carried wastes created in and carried, or to be carried, away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public building, together with such surface or ground water and industrial wastes as may be present;
- (8) The term "pollution" means the condition of water resulting from any of the following acts:
- (a) Unreasonably contaminating such water;
 - (b) Rendering such water unclean or impure;
 - (c) Rendering such water directly or indirectly injurious to public health, or unfit for public use;
 - (d) Rendering such water harmful for cattle, stock or other animals;
 - (e) Rendering such water deleterious to, or unfit for, fish or shellfish, or fish or shellfish propagation, or aquatic animals, or plant life in said water;
 - (f) Rendering such water unfit for commercial use;
 - (g) Rendering such water unclean or impure to such an extent that fish or shellfish taken therefrom are unfit for human consumption;
- (9) The term "Governor" means the Governor of the Commonwealth of Virginia;
- (10) The term "construct" includes construct, reconstruct, replace, improve and repair;
- (11) The term "person" includes an individual, partnership, association, or corporation;
- (12) The term "governing body" shall mean the board of supervisors, board of county commissioners, council or other local legislative body, board, commission, or other legislative authority having charge of the finances of any county, city or town;
- (13) The term "town" means an incorporated town;
- (14) The term "county" means a county exclusive of that portion thereof lying within the boundaries of an incorporated town.

1938, p. 510; 1942, p. 598; Michie Code 1942, § 1560ii.

§21-143. Ordering and conduct of elections.

Every order made pursuant to this chapter requiring the opening of a poll and the taking of the sense of the qualified voters of a district or proposed sanitation district on a question, shall designate the question and a date for holding such election not less than thirty days from the date of such order, and may be directed as writs of election are directed for an election district, or to fill a vacancy in the General Assembly or in Congress. It shall be the duty of the regular election officers of the counties and cities in whole or in part embraced within the district or proposed sanitation district to cause to be printed and distributed in the manner prescribed by law for printing and distributing other ballots the proper number of ballots which shall be separate from any other ballots. The ballots shall set forth the question designated in such order and shall be in substantially the following form:

(Here shall appear the question designated in the order)

☐ YES

☐ NO

To vote "Yes" on the question, place a checkmark (✓) or cross (+ or ✕) in the space opposite the word "Yes"; to vote "No" on the question, place a checkmark (✓) or cross (+ or ✕) in the space opposite the word "No."

The regular election officers, at the time designated in such order, shall open the polls at the various voting places in the district or proposed sanitation district and at any other voting places at which any qualified voter of the district or proposed sanitation district is entitled to vote, and shall conduct such election and close the polls in such manner as is provided by law in other elections. The ballots shall be counted, and returns made and canvassed and the results ascertained and made known as in other elections, and the results certified by the commissioners of election to the Secretary of the Commonwealth, all in such manner as to show the respective numbers of affirmative and negative votes cast at the election. The Secretary of the Commonwealth shall record and tabulate the reports of the commissioners of election and shall certify the result of the election to the court which made the order authorizing and requiring such election.

1938, p. 528; Michie Code 1942, § 1560fff.

§21-144. Court proceedings.

Whenever in this chapter the circuit court of any county, or the corporation court of any city, is authorized to accept any petitions or papers, make any order, hold any hearing, hear, consider and determine any question or do any other act or thing, such court, or a judge thereof in vacation, may do and perform the same.

1938, p. 529; Michie Code 1942, § 1560ggg.

§21-145. Territory which may be embraced in district.

Any integral body of territory within which are situated waters affected by the ebb and flow of the tide and none of which is embraced within any other sanitation district may, under the conditions and upon the taking and completion of the proceedings provided in this article, be created a sanitation district. Every part of the boundary of such a sanitation district shall either (1) coincide with the boundary of a county, city or town or (2) bisect a county, city or town, or (3) be located within one mile of the boundary of a county, city or town, or (4) consist of a straight line connecting two points each of which lies upon a boundary of one of the three types hereinabove described.

1938, p. 511; Michie Code 1942, § 1560jj.

§21-146. Notice of hearing on petition for creation.

Upon the presentation of a petition complying with the requirements of this article, praying for the creation of a sanitation district, fixing the boundaries thereof and naming the counties, cities and towns which in whole or in part are to be embraced therein, the circuit court of any such county, or of any county in which any such town is situated, or the corporation court of any such city shall make an order filing such petition and fixing a day for a hearing by such court on such petition and the question of the creation of the proposed sanitation district. Such order shall direct notice of such hearing to be given by publication once a week for at least three consecutive weeks beginning at least twenty-eight days prior to the day of such hearing in some newspaper or newspapers, named in such order, having general circulation in the proposed sanitation district. Such notice shall set forth the petition as filed, but need not set forth the signatures or exhibits thereto, and shall state the time and place of hearing and that at such hearing all persons desiring to controvert the allegations of such petition or question the conformity thereof to this article will be heard and all objections to the creation of the proposed sanitation district considered.

1938, p. 511; Michie Code 1942, § 1560jj.

§21-147. Contents of petition.

Every such petition shall pray for the creation of the proposed sanitation district, shall set forth the name of the proposed sanitation district (which shall include the words "sanitation district"), shall fix the boundaries thereof, shall name the cities and counties and towns which are in whole or in part to be embraced therein and shall contain an allegation (1) that the proposed sanitation district includes within its territorial limits waters affected by the ebb and flow of the tide which are polluted, (2) that no part of the proposed sanitation district is within the territorial limits of an existing sanitation district, (3) that the proposed sanitation district is an integral whole and does not completely surround any territory not included in the proposed or some existing sanitation district, (4) that the creation of the proposed sanitation district in accordance with this chapter will provide a means for abating or preventing the pollution of tidal waters of the proposed sanitation district and will benefit all the property within the proposed sanitation district, (5) that the creation of the proposed sanitation district has been approved by the State Health Commissioner as providing a practical means for abating or preventing the pollution of the tidal waters of the proposed sanitation district, and (6) that the petition has been approved and the prayer thereof joined in by each city, county and town which is in whole or in part embraced within the proposed sanitation district, expressed by resolution adopted by the vote of a majority of the governing body thereof.

1938, p. 512; Michie Code 1942, § 1560jj.

§21-148. Signatures on petition.

Every such petition shall be signed by not less than 200 qualified voters of the proposed sanitation district, including not less than 50 qualified voters of each city and county and town in whole or in part embraced within the proposed sanitation district.

1938, p. 512; Michie Code 1942, § 1560jj.

§21-149. Hearing and determination; ordering election.

Any person interested may answer the petition and make defense thereto, and at such hearing all persons interested or desiring to controvert the allegations of the petition or question the conformity thereof to this article or object to the creation of the proposed sanitation district shall be heard. If upon such hearing the court shall not be satisfied that the allegations of the petition are sustained and that the petition conforms to the provisions of this article, it shall make an order denying and dismissing the petition. If upon such hearing the court shall be satisfied that the

allegations of the petition are sustained and that the petition conforms to the provisions of this article and that all of the property in the proposed sanitation district will be benefited by the creation of the proposed sanitation district and that the public interest will be served and the public health protected by such creation, it shall make an order determining such matters and requiring the opening of a poll and the taking of the sense of the qualified voters of the proposed sanitation district in accordance with § [21-143](#) on the question of the creation of the proposed sanitation district. The question so submitted shall be "Do you favor the creation of the (inserting name of the proposed sanitation district stated in the said petition)?"

1938, p. 512; Michie Code 1942, § 1560jj.

§21-150. Order when election favors establishment.

If upon the certification of the result of such election made by the Secretary of the Commonwealth to such court, it shall appear that a majority of the qualified voters of the proposed sanitation district voting at the election shall have voted "yes" and in favor of the creation of the proposed sanitation district, the court shall make and enter of record an order stating such result, and thereupon the territory defined in the petition, less such parts thereof as shall be excluded pursuant to the provisions of § [21-151](#), shall be and constitute a sanitation district for all the purposes of this article, known and designated by the name stated in the petition.

1938, p. 513; Michie Code 1942, § 1560jj.

§21-151. Exclusion from district of county, city or town voting against establishment.

If upon the certification of the results of the election provided for in § [21-150](#) it shall appear that a majority of the qualified voters of any county or of any city or of any town voting on the question at the election, shall have voted "no" against the creation of the proposed sanitation district, then the territory included within the limits of such county or of such city, or of such town, shall be excluded from, and shall not constitute a part of the district.

1938, p. 513; Michie Code 1942, § 1560jj.

§21-152. Approval of State Health Commissioner.

The State Health Commissioner is authorized, upon being satisfied that the creation of a proposed sanitation district will provide a practical means for abating or pre-

venting the pollution of the tidal waters of the proposed sanitation district, to approve, as above referred to, the creation of the proposed sanitation district.

1938, p. 513; Michie Code 1942, § 1560jj.

§21-153. Governing bodies may adopt resolutions.

The governing body of each city and county and town is authorized, in its discretion, to adopt resolutions, as above referred to, approving and joining in the prayer of petitions for the creation of a proposed sanitation district.

1938, p. 513; Michie Code 1942, § 1560jj.

§21-154. Incorporation of district; name and style.

Each district heretofore or hereafter created pursuant to this chapter or pursuant to a special act of the General Assembly, and the inhabitants of its territory as the same has been or may be established and from time to time altered pursuant to a law, is hereby created as a body corporate and politic under the name and style of, and to be known by, the name of the district with the word "commission" appended.

1938, p. 513; 1942, p. 600; Michie Code 1942, § 1560kk; 1944, p. 72; 1946, p. 528.

§21-155. Powers of commission.

Each commission, constituting a corporation is hereby invested with the rights, powers and authority and charged with the duties set forth in this chapter, and shall constitute a political subdivision of the Commonwealth established as a governmental instrumentality to provide for the public health and welfare.

1942, p. 600; Michie Code 1942, § 1560kk; 1944, p. 72; 1946, p. 528.

§21-156. Exemption of bonds from taxation.

The bonds of such district or commission, and the property owned or operated by such district or commission shall be exempt from all taxation, and the interest on the bonds shall take the same status under tax laws as the interest on bonds of other political subdivisions of the Commonwealth.

1942, p. 600; Michie Code 1942, § 1560kk; 1944, p. 72; 1946, p. 528.

§21-157. Creation of board or commission to control corporation.

In and for each district, a board or commission is hereby created to manage and control the functions, affairs and property of the corporation and to exercise all of the rights, powers and authority and perform all of the duties conferred or imposed upon the corporation. Except as a special act creating the district shall otherwise provide,

such board or commission shall consist of five members, residents of the district, appointed by the Governor. Except as a special act creating the district shall otherwise provide, in making the original appointments, one of the members shall be appointed for a term of one year, one for a term of two years, one for a term of three years and two for terms of four years each; subsequent appointments shall be made for a term of four years, except appointments to fill vacancies which shall be for the unexpired terms.

1942, p. 600; Michie Code 1942, § 1560kk; 1944, p. 73; 1946, p. 528.

§21-158. Officers of board or commission.

The board or commission shall elect from its members a chairman, whose term of office as such shall be one year, and who shall be eligible for reelection. Such commission under such rules as it may adopt, may elect one of its members vice-chairman, and may appoint a secretary, who need not be a member of the commission, and a treasurer or secretary-treasurer, who shall not be a member of the commission. In the event that the commission appoints a treasurer or secretary-treasurer, his compensation shall be fixed by the commission.

1938, p. 514; 1942, p. 600; Michie Code 1942, § 1560kk; 1944, p. 73; 1946, p. 528.

§21-159. Compensation and expenses of commission members.

The members of the commission shall receive no salary, but shall be paid their necessary traveling and other expenses incurred in attendance upon meetings of the commission or while otherwise engaged in the discharge of their duties under this chapter, and the sum of \$10 per diem for each day or portion thereof in which they are engaged in the performance of such duties, but the total of such per diem compensation so received by any member during any one year shall not exceed \$300.

1938, p. 514; 1942, p. 600; Michie Code 1942, § 1560kk; 1944, p. 73; 1946, p. 528.

§21-160. Meetings of commission.

Regular meetings of the commission shall be held at least once every month at such time and place as the commission shall from time to time prescribe. Special meetings of the commission shall be held upon one day's mailed notice, or actual notice otherwise given, to each member of the commission upon call of the chairman or of any two members of the commission, at such time and at such place within the district as such notice may specify, or at such other time and place with or without notice as all of the members of the commission may expressly approve.

1938, p. 514; 1942, p. 600; Michie Code 1942, § 1560kk; 1944, p. 73; 1946, p. 529.

§21-161. Quorum.

Three members of the commission shall constitute a quorum, and the vote of three members of the commission shall be necessary to take any action.

1938, p. 514; 1942, p. 601; Michie Code 1942, § 1560kk; 1944, p. 73; 1946, p. 529.

§21-162. Suspension or removal of members of commission.

Members of the commission may be suspended or removed by the Governor at his pleasure.

1938, p. 514; 1942, p. 601; Michie Code 1942, § 1560kk; 1944, p. 73; 1946, p. 529.

§21-163. Oath and bond of members of commission.

Each member of the commission shall, before entering upon the discharge of his duties under this chapter, take and subscribe the oath of office required by Article II, Section 7 of the Constitution of Virginia, and give bond payable to the Commonwealth in form approved by the Attorney General, in such penalty as shall be fixed from time to time by the Governor, with some surety or guaranty company duly authorized to do business in Virginia and approved by the Governor, as security, conditioned upon the faithful discharge of his duties. The premium of such bonds shall be paid by the commission and the bonds shall be filed with and preserved by the Comptroller.

1938, p. 514; 1942, p. 601; Michie Code 1942, § 1560kk; 1944, p. 73; 1946, p. 529.

§21-164. Repealed.

Repealed by Acts 1970, c. 463.

§21-165. Manner of letting contracts.

All contracts, except in cases of emergency, over \$5,000 that the commission may let for construction or materials shall be let after public advertising. The commission shall advertise for bids for the work or materials at least ten days prior to the letting of any contracts therefor. The advertisement shall state the place where bidders may examine the plans and specifications and the time and place where bids for the work or materials will be opened. Each bidder shall accompany his bid with a certified check, payable to the commission, for a reasonable sum to be fixed by the commission, as a guarantee that if the contract is awarded to him, he will enter into a contract with the commission for doing the work or furnishing the materials. The contract shall be let to the lowest responsible bidder, and the successful bidder shall give

bond or other security for the faithful performance of the contract, in such form and amount as the chairman may require. The commission is authorized to reject any and all bids. In the event that all bids are rejected, the commission shall advertise for new bids as in the first instance. All bids and contracts shall be public records. The commission is authorized, in its discretion, to do any and all such work by force account.

1938, p. 515; 1942, p. 601; Michie Code 1942, § 1560kk; 1944, p. 74; 1946, p. 529.

§21-166. How power of eminent domain exercised.

The powers of condemnation or eminent domain conferred on the commission by this chapter shall be exercised by the board or commission under the same conditions and provisions and in accordance with the same procedure as in the case of the exercise of similar powers by the governing bodies of counties and cities or towns so far as they can be applied to the same.

1938, p. 515; 1942, p. 601; Michie Code 1942, § 1560kk; 1944, p. 74; 1946, p. 530.

§21-167. County, city or town not liable for act of commission.

No pecuniary liability of any kind shall be imposed upon any county, city or town constituting any part of any district because of any act, agreement, contract, tort, malfeasance, misfeasance, or nonfeasance, by or on the part of the commission of such district, or any member of such commission, or its agents, servants and employees, except as otherwise provided in this chapter with reference to contracts and agreements between the commission and any county, city or town.

1938, p. 515; 1942, p. 602; Michie Code 1942, § 1560kk; 1944, p. 74; 1946, p. 530.

§21-168. Enumeration of powers of commission.

Every commission shall have the following powers:

- (1) To adopt and have a common seal and to alter the same at pleasure;
- (2) To sue and be sued;
- (3) In the name of the commission and on its behalf, to acquire, hold and dispose of its fees, rents and charges and other revenues;
- (4) In the name of the commission but for the cities, counties and towns in whole or in part embraced within the district, to acquire, hold, and dispose of other personal property for the purposes of the commission;

(5) In the name of the commission but for the cities, counties and towns in whole or in part embraced within the district, to acquire by purchase, gift, condemnation or otherwise, real property or rights or easements therein, necessary or convenient for the purposes of the commission, subject to mortgages, deeds of trust, or other liens or otherwise, and to hold and to use the same, and to dispose of property so acquired no longer necessary for the purposes of the commission;

(6) To borrow money for the purposes of the commission and to issue therefor its bonds, and to provide for and secure the payment of its bonds and the rights of the holders thereof, and to fund or refund its bonds by the issuance of bonds hereunder;

(7) To accept gifts or grants or real or personal property, money, material, labor or supplies for the purposes of the commission and to make and perform such agreements and contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants;

(8) To enter on any lands, waters and premises for the purpose of making surveys, borings, soundings and examinations for the purposes of the commission;

(9) To make and enforce rules and regulations for the management and regulation of its business and affairs and for the use, maintenance and operation of its facilities and properties, and to amend the same;

(10) To do and perform any acts and things authorized by this chapter under, through or by means of its own officers, agents and employees, or by contracts with any persons;

(11) To execute any and all instruments and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the commission or to carry out the powers expressly given in this chapter; and

(12) To sell, lease as lessor, transfer, or dispose of all or any part of its property and facilities in such a manner and upon such terms as the commission may determine to be in the best interest of the district.

1938, p. 515; Michie Code 1942, § 1560ll; 1991, c. 549 .

§21-169. Relief from pollution to be purpose of commission.

The purposes of every commission shall be the relief of the tidal waters of the district from pollution and the consequent improvement of conditions affecting the public health and the natural oyster beds, rocks and shoals.

1938, p. 516; Michie Code 1942, § 1560mm.

§21-170. Acquisition and use of pipes, sewers, plants, stations, etc.

Every commission is authorized and directed to acquire, in the name of the commission but for the cities, counties and towns in whole or in part embraced within the district, by purchase, gift, condemnation or otherwise, and, notwithstanding the provisions of any charter, or ordinance or resolution of any county, city or town to the contrary, to construct, maintain, operate and use such trunk, intercepting and outlet sewers, conduits, pipelines, pumping and ventilating stations, treatment plants or works at such places, and such other plants, structures, boats and conveyances, as in the judgment of the commission will provide an effective and satisfactory method for promoting the purposes of the commission.

1938, p. 516; Michie Code 1942, § 1560mm.

§21-171. Collection from public sewage systems.

The commission is authorized and directed when in the judgment of the commission its sewage disposal system, or part thereof, will permit, to collect from any and all public sewage systems within the district all sewage and treat and dispose of the same in such manner as to promote the purposes of the commission.

1938, p. 517; Michie Code 1942, § 1560mm.

§21-172. Use of public sewer and disposal facilities.

In order to carry out and effectuate the purposes of the commission, every commission is authorized to enter upon and use and connect with any existing public drains, sewers, conduits, pipelines, pumping and ventilating stations and treatment plants or works or any other public property of a similar nature within the district, deemed proper by the commission in the exercise of the powers and performance of the duties set forth in this chapter, and, if deemed necessary by the commission, close off and seal outlets and outfalls therefrom. The commission shall not, however, take possession of any such treatment plant unless it acquires the same by purchase, condemnation or otherwise.

1938, p. 523; Michie Code 1942, § 1560ss.

§21-173. Use of public places.

In order to carry out and effectuate the purposes of the commission, every commission is authorized to construct and operate its trunk, intercepting and outlet sewers, conduits and pipelines, along, over, under and in any streets, alleys, highways

and other public places within the district. In so constructing its facilities, it shall see that the public use of such streets, alleys, highways and other public places is not unnecessarily interrupted or interfered with and that such streets, alleys, highways and other public places are restored to their former usefulness and condition within a reasonable time; to this end the commission shall cooperate with the Commonwealth Transportation Board and the appropriate officers of the respective counties, cities and towns having an interest in such matters.

1938, p. 523; Michie Code 1942, § 1560tt.

§21-174. Special contracts for disposal of sewage and other wastes.

(a) Every commission is authorized to enter into contracts with the United States of America, or with any department, institution or agency thereof, on such terms and conditions as the commission may approve, providing for or relating to the treatment and disposal of sewage or industrial wastes of or originating in or on any reservation, property, institution, building, or structure within the district owned or under the control of the United States of America, or any department, institution or agency thereof, by means of the sewage disposal system or such other facilities as the commission may determine to provide for such purpose, or in such other manner as the contract may provide.

(b) Every commission is authorized to provide, construct, operate and maintain facilities for the treatment and disposal of industrial wastes originating in the district, and to enter into contracts with any person, on such terms and conditions as the commission may approve, providing for or relating to the treatment and disposal of any such industrial wastes.

(c) Every commission is authorized to enter into contracts with any person owning or operating any sewer system within the district or engaged in treatment or disposal of sewage or industrial wastes originating in the district, on such terms and conditions as the commission may approve, providing for or relating to the treatment and disposal of any sewage or industrial wastes collected in such sewer system or by such person.

1938, p. 524; Michie Code 1942, § 1560yy.

§21-175. Approval of disposal methods.

The method proposed to be used by a commission for treating and disposing of sewage and industrial wastes so as to prevent the pollution of the tidal waters of the

district, and any substantial change in such method, shall, before being finally adopted or used by the commission, be approved by the State Health Commissioner as effective and satisfactory for the purpose intended.

1938, p. 523; Michie Code 1942, § 1560uu.

§21-176. Prohibition of sale or encumbrance of system.

Neither the commission nor any of the counties, cities or towns in whole or in part embraced within the district shall have power to mortgage, pledge, encumber or otherwise dispose of any part of the sewage disposal system of a commission, except such part or parts thereof as may be no longer necessary for the purposes of the commission, whether the same shall originally have been acquired by such commission or by one of the counties, cities or towns. The provisions of this section shall be deemed to constitute a contract with the holders of the bonds of the commission. The sewage disposal system of a commission shall be exempt from any and all liability which may be incurred by, or imposed upon, the commission, or any county, city or town, which, in whole or in part, constitutes any part of any district.

However, a commission may sell, lease as lessor, transfer, or dispose of all or any of its property and facilities in such a manner and upon such terms as the commission may determine to be in the best interest of the district, on the condition that the commission meet and discharge all of the requirements of the bonds issued by the commission, together with all principal, interest, costs and expenses.

1938, p. 523; Michie Code 1942, § 1560vv; 1991, c. 549 .

§21-177. Agents and employees of commission.

The commission is authorized, except as otherwise provided in § [21-158](#), to appoint all agents and employees of the commission, dismiss them, fix their salaries or remuneration, assign their positions and titles, define their respective powers and duties, and require them or any of them to give bond payable to the Commonwealth in such penalty as shall be fixed by the commission conditioned upon the faithful discharge of their duties. Any salary or remuneration payable to any agent or employee in excess of \$1,200 per annum shall first be approved by the Governor.

1938, p. 523; Michie Code 1942, § 1560rr; 1946, p. 530.

§21-178. Funds of commission.

(a) All moneys of a commission, whether derived from the sale of bonds or other obligations or from the collection of fees, rents and other charges charged by the

commission or from any contract of the commission or from any other source shall be collected, received, held, secured and disbursed in accordance with any contract of the commission relating thereto. The following provisions of this section shall be applicable to any such moneys only if and to the extent that they are consistent with such contract or contracts of the commission.

(b) Such moneys shall not be required to be paid into the state treasury or into the treasury or to any officer of any county, city or town.

(c) All such moneys shall be deposited by the commission in a separate bank account or accounts, appropriately designated, in such banks or trust companies as may be designated by the commission.

(d) All deposits of such moneys shall be secured by bonds or other direct unlimited obligations of the United States or of the Commonwealth or of any county, city or town of the Commonwealth or of the commission of a market value at least equal at all times to the amount of such deposits, and all banks and trust companies are authorized to give such security for such deposits.

1938, p. 524; Michie Code 1942, § 1560ww.

§21-179. Accounts and records.

Every commission shall keep and preserve complete and accurate accounts and records of all moneys received and disbursed by it and of all of its business and operations and of all property and funds owned or managed by it or under its control, and shall prepare and transmit to the Governor and to the governing body of each city, county and town which is in whole or in part embraced within the district, annually and at such other times as the Governor shall require, complete and accurate reports as to the state and content of such accounts and records, together with such information with respect thereto as the Governor may require.

1938, p. 524; 1940, p. 624; Michie Code 1942, § 1560xx.

§21-180. Authorization.

Every commission is authorized to charge and collect fees, rents, or other charges for the use and services of the sewage disposal system. Such fees, rents and charges may be charged to and collected from any person contracting for the same or from the owner or lessee or tenant, or some or all of them, who uses or occupies any real estate which directly or indirectly is or has been connected with the sewage disposal system, or from or on which originates or has originated sewage or industrial wastes,

or either, which directly or indirectly have entered or will enter the sewage disposal system, and the owner or lessee or tenant of any such real estate shall pay such fees, rents and charges to the commission at the time when and place where such fees, rents and charges are due and payable.

1938, p. 517; 1940, p. 622; Michie Code 1942, § 1560nn.

§21-181. Uniformity and basis.

Such fees, rents and charges being in the nature of use or service charges, shall as nearly as the commission shall deem practicable and equitable, be uniform throughout the district for the same type, class and amount of use or service of the sewage disposal system, and may be based or computed either on the consumption of water on or in connection with the real estate, making due allowance for commercial use of water, or on the number and kind of water outlets on or in connection with the real estate or on the number and kind of plumbing or sewage fixtures or facilities on or in connection with the real estate, or on the number or average number of persons residing or working on or otherwise connected or identified with the real estate or on any other factors determining the type, class and amount of use or service of the sewage disposal system, or on any combination of such factors.

1938, p. 517; 1940, p. 622; Michie Code 1942, § 1560nn.

§21-182. Schedule.

The commission shall prescribe and from time to time when necessary revise a schedule of such fees, rents and charges which shall comply with the terms of any contract of the commission with the holders of bonds of the commission made pursuant to §§ [21-192](#) and [21-194](#) and in any event shall be such that the revenues of the commission will at all times be adequate to pay all expenses of operation and maintenance of the sewage disposal system of the commission, necessary to preserve the system and to assure its operation as a going concern, including reserves, insurance, extensions, and replacements, and to pay punctually the principal of and interest on any bonds or other indebtedness of the commission and to maintain adequate reserves or sinking funds therefor. The schedule shall be so prescribed and from time to time revised by the commission after public hearing which shall be held by the commission upon such public notice as the commission may determine to be reasonable.

1938, p. 517; 1940, p. 622; Michie Code 1942, § 1560nn.

§21-183. Time and place of payment.

The commission shall likewise fix and determine the time or times when and the place or places where such fees, rents and charges shall be due and payable and may require that such fees, rents and charges shall be paid in advance for periods of not more than six months.

A copy of the schedules of all fees, rents and charges in effect shall at all times be kept on file at the principal office of the commission, and such schedules shall at all reasonable times be open to public inspection.

1938, p. 518; 1940, p. 622; Michie Code 1942, § 1560nn.

§21-184. Effect of failure to pay.

In the event that the fees, rents or charges charged by the commission for the use and services of the sewage disposal system by or in connection with any real estate shall not be paid as and when due, then and at that time interest shall begin to accrue thereon at the rate of one per centum per month and the owner, lessee or tenant, as the case may be of such real estate shall, until such fees, rents and charges shall be paid with such interest to the date of payment, cease to dispose of sewage or industrial waste originating from or on such real estate by discharge thereof directly or indirectly into the sewage disposal system, and if such owner, lessee or tenant shall not cease such disposal within two months thereafter, it shall be the duty of each county, city, town and other public corporation, board or body supplying water to or selling water for use on, such real estate, within five days after receipt of notice of such facts from the commission, to cease supplying water to, and selling water for use on, such real estate. If such county, city, town or other public corporation, board or body shall not within such time cease supplying water to, and selling water for use on, such real estate, the commission may shut off the supply of water to such real estate and for such purpose, may enter on any lands, waters and premises of such county, city, town or other public corporation, board, or body, or of any person. The water supply to or for any person, or for use on real estate of any person, shall not be shut off or stopped under the provisions of this section, if the State Health Commissioner, upon application of the local board of health or health officer of the county, city or town wherein such water is supplied or such real estate is located, shall have found and shall certify to the authorities charged with the responsibility of ceasing to supply or sell such water, or to shut off the supply of such water, that ceasing to supply or shutting off such water supply will endanger the health of such person and the health of others in such county, city or town.

1938, p. 518; 1940, p. 623; Michie Code 1942, § 1560nn.

§21-185. Register.

The commission shall keep and preserve a complete register, or registers, open to public inspection, of all fees, rents and other charges which have been charged by the commission to the owners or lessees or tenants of any real estate for the use and services of the sewage disposal system and have become due and payable and have not been paid. Such register or registers shall be kept in such place or places as the commission shall determine.

1938, p. 518; 1940, p. 623; Michie Code 1942, § 1560nn.

§21-186. Appeal from action fixing fees, etc.

From any action of the sanitation commission in prescribing fees, rents and charges, or either of them, pursuant to the provisions of this chapter, an appeal may be taken upon the petition of any county or city constituting a part of the district, or upon petition of any 50 persons, resident or doing business in the district, to the State Corporation Commission. At least 60 days prior to filing such petition with the State Corporation Commission, such county, city or interested parties shall notify the sanitation commission of such intended petition and of the fees, rents and charges complained of, in order that the sanitation commission may be afforded an opportunity to make such changes in such fees, rents and charges as it shall deem proper. After such petition shall have been filed with the State Corporation Commission and after such county or city or other petitioners shall have, if required by the State Corporation Commission, executed and filed with the State Corporation Commission a bond payable to the Commonwealth and sufficient in amount, but not in excess of \$5,000, and security to insure the prompt payment of all costs which may be assessed against such county or city or other petitioners, and after such county or city or other petitioners shall have caused to be published in at least one newspaper, designated by the commission and of general circulation within the district, such notice of such appeal as shall be prescribed by the State Corporation Commission, the State Corporation Commission is authorized to make such examinations and studies, to hold such hearings as may be required, to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the State Corporation Commission or any officer or agent thereof, to administer oaths and to take testimony thereunder, and to fix in accordance with the provisions of this chapter applicable to the sanitation commission, subject to the right of

further appeal by the sanitation commission or the interested parties to the Supreme Court, such fees, rents and charges. In each such appeal proceeding the State Corporation Commission shall ascertain the costs incurred by it, including in such costs actual expenses incurred and a fair apportionment of overhead expenses, and shall assess the same against either the petitioner or petitioners, or the sanitation commission, or shall apportion the costs between the petitioner or petitioners and the sanitation commission, according to principles applicable in courts of equity.

1940, p. 623; Michie Code 1942, § 1560nn; 2010, c. [343](#).

§21-187. Actions for collection.

The commission shall have the right to recover the amount of any fees, rents or other charges charged by the commission to the owner or lessee or tenant or contracting party, as set forth in § [21-180](#), for the use and services of the sewage disposal system by or in connection with such real estate and of the interest which may accrue thereon, by any action, suit or proceeding permitted by law or in equity.

1938, p. 525; 1940, p. 624; Michie Code 1942, § 1560zz.

§21-188. Contracts for collection.

Any commission, and any county, city or town in whole or in part embraced within the district, are authorized to enter into a contract or contracts on such terms and conditions as such contract or contracts may contain, providing for the collection by such county, city or town and payment over to the commission of the fees, rents or other charges or to be charged by the commission to the owners or lessees or tenants of real estate within such county, city or town, or providing for the payment to the commission by such county, city or town of a sum or sums of money in lieu of all or part of the fees, rents and other charges which would otherwise be charged by the commission to the owners or lessees or tenants of real estate within such county, city or town. Such county, city or town is vested with powers to do everything necessary or proper to carry out and perform every such contract, including the same powers with respect to fees, rents and other charges as are conferred by this chapter upon a commission, and to provide for the payment or discharge of any obligation thereunder by the same means and in the same manner as any other of its obligations, except that no tax shall be levied on real estate for such obligation. The commission is authorized to reduce ratably in accordance with such contract the fees, rents and other charges which would otherwise be charged by the commission to the owners or lessees or tenants of real estate within such county, city or town, but

nothing in this section or any such contract shall be construed to prevent the commission from charging to and collecting from such owners or lessees or tenants of such real estate, in the same manner as provided for such fees, rents and other charges, any deficiency in any payment agreed to be made by such county, city or town.

1938, p. 526; Michie Code 1942, § 1560aaa.

§21-189. Outstanding bonds not to exceed ten million dollars.

Bonds of a commission shall at no time be outstanding in a principal amount in excess of \$10 million.

1938, p. 519; 1942, p. 604; Michie Code 1942, § 1560oo.

§21-190. Election prior to issuance.

No bonds shall be issued by a commission, except to fund or refund bonds theretofore issued and thus to redeem a previous liability, unless the qualified voters of the district shall approve by a majority vote of the qualified voters voting in an election the issuance of the bonds. Whenever the commission shall determine by resolution that it is advisable to issue bonds for the purposes of the commission, such resolution shall be certified to the circuit court of a county or corporation court of a city in whole or in part embraced within the district and the court shall thereupon make an order requiring the opening of a poll and the taking of the sense of the qualified voters of the district in accordance with § [21-143](#) on the question of issuing the bonds in not exceeding the amount stated in such resolution. The question so submitted shall be "Do you favor the issuance of not exceeding \$..... bonds of the sanitation district commission (inserting the amount of bonds stated in such resolution and the name of the commission)?" If upon the certification of the result of the election made by the Secretary of the Commonwealth to the court, it shall appear that a majority of the qualified voters of the district voting at the election shall have voted "yes" and in favor of the issuance of the bonds, the court shall make and enter of record an order stating such result and thereupon the commission shall have power in accordance with this article to issue bonds in not exceeding the amount stated in such resolution and, in anticipation of the issuance of such bonds, to borrow money on temporary loan and issue temporary bonds therefor.

1938, p. 519; 1942, p. 604; Michie Code 1942, § 1560oo.

§21-191. Other matters determined by resolution.

All other matters relating to the issuing of such bonds, and all matters relating to the contracting of debt, borrowing of money and issuing of other bonds and obligations shall be determined by resolution of the commission.

1938, p. 519; 1942, p. 604; Michie Code 1942, § 1560oo.

§21-192. Form and contents.

Bonds shall be authorized by resolution of the commission, and shall be issued from time to time in one or more series, be in such form, bear such date or dates, mature at such time or times not more than forty years from the date of issuance thereof, bear interest at such rate or rates not exceeding six per centum per annum, be in such denomination, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, be subject to acceleration of maturity on such contingencies and terms, and be subject to such terms of redemption with or without premium, as such resolution shall provide.

1938, p. 519; 1942, p. 604; Michie Code 1942, § 1560oo.

§21-193. How sold.

Such bonds may be sold at public or private sale for such price or prices as the commission shall determine, provided the interest cost to maturity of the money received from any such bonds simultaneously sold shall not exceed an average of six per centum per annum.

1938, p. 519; 1942, p. 605; Michie Code 1942, § 1560oo.

§21-194. Resolutions may be part of contract with bondholders.

Any resolutions of the commission authorizing any bonds may contain provisions, which shall be a part of the contract with the several holders of such bonds and accordingly subject to amendment by mutual agreement of the commission and the holders of all of such bonds, as to:

(1) Pledging, setting aside, depositing or trusteeing any or all revenues or funds of the commission to secure the payment of the principal of or interest on such bonds or other bonds of the commission or the payment of expenses of construction, operation or maintenance of the sewage disposal system, including provisions giving priority, notwithstanding any provision or rule of law otherwise to the contrary, to the obligation to perform such contractual provisions to secure payment of such principal or interest over any or all other obligations and liabilities of the commission;

- (2) Payment of the principal of or interest on such bonds or other bonds of the commission, and the sources and methods thereof;
- (3) The fees, rents and other charges to be established and collected by the commission, the collection and enforcement of the same, and the use, disposition and application of the amounts collected;
- (4) The setting aside of reserves and sinking funds and the source, regulation, application and disposition thereof;
- (5) The determination or definition of the revenues and income of the commission and of the expenses of operation and maintenance of the sewage disposal system;
- (6) The use, regulation, operation, maintenance, insurance and disposition of the sewage disposal system, facilities and other property of the commission;
- (7) Restrictions on the power of the commission to limit and regulate the use of the sewage disposal system, facilities and other property of the commission;
- (8) Limitations on the purposes to which the proceeds of such bonds or other bonds of the commission may be applied;
- (9) The construction and completion of all or any part of the sewage disposal system or any facilities of the commission;
- (10) Limitations on the issuance of additional bonds or on the indebtedness of the commission;
- (11) The procedure, if any, by which the terms of any contract with the holders of such bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given or evidenced;
- (12) Payment of costs or expenses incident to the enforcement of such bonds or of the provisions of such resolution or of any contract with the holders of such bonds, in accordance with this article; or
- (13) Any other matter which the commission shall determine to be necessary in order to carry out and effectuate the purposes of the commission.

1938, p. 520; 1942, p. 605; Michie Code 1942, § 1560oo.

§21-195. Negotiability.

Any provisions of law to the contrary notwithstanding, any bonds or temporary bonds issued pursuant to the authority of this chapter shall be deemed to be fully negotiable within the meaning and for all the purposes of Title 8.3A.

1938, p. 521; 1942, p. 606; Michie Code 1942, § 1560.

§21-196. Liability of Commonwealth, county, city or town.

The bonds, notes and other obligations, and any indebtedness, of a commission shall not be in any way a debt or liability of the Commonwealth, or of any county, city or town in whole or in part embraced within the district and shall not create or constitute any indebtedness, liability or obligation of the Commonwealth or of any such county, city or town, either legal, moral or otherwise, and nothing in this chapter contained shall be construed to authorize a commission or district to incur any indebtedness on behalf of or in any way to obligate the Commonwealth or any county, city or town, in whole or in part embraced within the district.

1938, p. 528; Michie Code 1942, § 1560ddd.

§21-197. No personal liability.

Neither the members of the commission, nor any person executing any bonds or temporary bonds shall be liable personally on the bonds or temporary bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

1938, p. 521; 1942, p. 606; Michie Code 1942, § 1560oo.

§21-198. Purchase by commission.

The commission is authorized, out of any funds available therefor, to purchase any bonds of the commission at a price not more than the redemption price thereof on the next succeeding redemption date or, if such bonds be not redeemable, the principal amount thereof, together with, in either case, interest accrued to the date of purchase.

1938, p. 521; 1942, p. 606; Michie Code 1942, § 1560oo.

§21-199. Bonds constitute legal investments.

Any bonds issued pursuant to the authority of this chapter are hereby made securities in which all public officers and bodies of this Commonwealth and all political subdivisions thereof, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, in the Commonwealth, may properly and legally invest funds in their control.

1938, p. 528; Michie Code 1942, § 1560eee.

§21-200. Special remedies of bondholders.

(a) The provisions of this section shall be applicable to a series of bonds of a commission only if the resolution or resolutions authorizing such series of bonds shall provide in substance that the holders of the bonds of such series shall be entitled to all the benefits, and be subject to the provisions of this section.

(b) In the event that the commission shall default in the payment of the principal of or interest on any bonds of such series after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the commission shall fail or refuse to comply with the provisions of this chapter relating to or affecting the payment or security of such bonds or the collection of fees, rents or charges, or other revenues therefor, or shall fail or refuse to carry out and perform the terms of any contract with the holders of any of such bonds, and such failure or refusal shall continue for a period of thirty days after written notice of its existence and nature to the commission the holders of twenty-five per centum in aggregate principal amount of such bonds then outstanding, by instrument or instruments filed with the Governor and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of all bonds of such series for the purposes herein provided.

(c) Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of the bonds of such series then outstanding shall, in his or its name:

(1) By mandamus or other suit, action or proceeding at law or in equity, enforce all rights of the holders of such bonds, including the right to require the commission to collect fees, rents and other charges adequate to carry out any agreement as to, or pledge of, such fees, rents or other charges, or the revenues therefrom, and to require the commission to carry out and perform the terms of any contract with the holders of such bonds or its duties under this chapter;

(2) Bring suit upon all or any part of such bonds;

(3) By action or suit in equity, require the commission to account as if it were the trustee of an express trust for the holders of such bonds;

(4) By action or suit in equity, enjoin any act or thing which may be unlawful or in violation of the rights of the holders of such bonds;

(5) Declare all such bonds due and payable, whether or not in advance of maturity, and, if all defaults shall be made good, then with the consent of the holders of twenty-five per centum of the principal amount of such bonds then outstanding, annul such declaration and its consequences, provided that before declaring such bonds due and payable, the trustee shall first give thirty days' notice in writing to the commission.

(d) If the resolution or resolutions authorizing such series of bonds shall contain the provision authorized by subsection (a) of this section and shall further provide in substance that any trustee appointed pursuant to this section shall have the powers provided by this subsection, then such trustee, whether or not all of the bonds of such series shall have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter upon and take possession of any facilities or property operated by the commission, any of the revenues from the operation of which are pledged for the security of such bonds, and operate and maintain the same and fix, charge, collect and receive all fees, rents and other charges and other revenues thereafter arising from such operation in the same manner as the commission itself might do, and shall deposit all moneys collected in a separate account and apply the same in accordance with the duties and contracts of the commission in such manner as the court appointing such receiver shall direct.

(e) In any suit, action or proceeding by such trustee, the fees, counsel fees and expenses of such trustee and of the receiver, if any, shall constitute taxable costs and disbursements, and all costs and disbursements, allowed by the court shall be a first charge upon any fees, rents and other charges, and revenues of the commission pledged for the payment or security of such bonds.

(f) Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of the holders of the bonds of such series in the enforcement and protection of their rights.

1938, p. 521; Michie Code 1942, § 1560pp.

§21-200.1. Bonds mutilated, lost or destroyed.

Should any bond issued by the commission become mutilated or be lost or destroyed, the commission may cause a new bond of like date, number and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of, such mutilated bond and its interest coupons, or in lieu of and in substitution for such

lost or destroyed bond and its unmatured interest coupons. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost or destroyed bond (1) has paid the reasonable expense and charges in connection therewith and (2) in the case of a lost or destroyed bond, has filed with the chairman of the commission satisfactory evidence that such bond was lost or destroyed and that the holder was the owner thereof and (3) has furnished indemnity satisfactory to the commission.

1962, c. 207.

§21-201. Interim certificates.

Pending the preparation, execution and delivery of definitive bonds of the commission to the purchaser of such bonds, interim certificates or other obligations may be issued by the commission to the purchaser. Such interim certificates or obligations shall be in such form and contain such terms, conditions and provisions as the commission issuing the same may determine.

1938, p. 522; Michie Code 1942, § 1560qq.

§21-202. Inviolability of rights and remedies.

The Commonwealth does pledge to and agree with the holders of any bonds or other obligations issued by any commission pursuant to this chapter that the Commonwealth will not limit or alter the rights hereby vested in such commission to charge and collect such fees, rents and charges and other revenues as may be convenient or necessary in order to comply with the terms and provisions of any contract or contracts made by such commission with such holders, or in any way impair the rights and remedies of such holders, until the bonds and other obligations, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders are fully met and discharged.

1938, p. 529; Michie Code 1942, § 1560hhh.

§21-203. Notice of intention to withdraw.

Any county or city in whole or in part embraced within a district either heretofore or hereafter created by or pursuant to any special act of the General Assembly may, by resolution adopted by its governing body and filed with the commission within six months after the creation of the district, give notice of its intention to consider withdrawing from the district. If such notice be given in the manner aforesaid then no

election on the question of the issuance of bonds of the commission shall be held until at least one year after the creation of the district.

1940, p. 620; 1942, p. 602; Michie Code 1942, § 1560kk1.

§21-204. Right to withdraw and set up separate district.

If after the giving of such notice and within one year after the creation of the district such county or city shall have taken all proceedings and performed all acts necessary for the authorization of the construction, financing and operation by or for it of a separate sewage disposal system, sufficient in the opinion of the State Health Commissioner to prevent the pollution of any of the tidal waters of the district from industrial wastes and sewage arising in or discharged from the county or city, then such county or city shall be entitled to withdraw from the district and shall thereafter cease to be a part of the district for all purposes of this chapter.

1940, p. 620; 1942, p. 602; Michie Code 1942, § 1560kk1.

§21-205. Proof that steps for withdrawal have been taken.

The governing body of any county or city proposing to avail itself of the provisions of this article shall, within one year after the creation of the district, furnish to the commission satisfactory proof showing that it has theretofore taken all proceedings necessary and performed all acts necessary to enable it to construct, finance and operate such proposed separate sewage disposal system; in the event that the commission shall not agree with the governing body of such county or city upon the sufficiency of such proceedings and acts and proof thereof, such governing body may within thirty days petition any circuit or corporation court having jurisdiction in such county or city which shall thereupon be authorized to hear and determine whether or not such county or city has complied with the applicable provisions of § [21-204](#) and entitled itself to withdraw from the district.

1940, p. 620; 1942, p. 602; Michie Code 1942, § 1560kk1.

§21-206. Power of county or city electing to set up separate district.

Any county or city which elects to construct and operate therefor a separate sewage disposal system in accordance with the provisions of § [21-204](#) and the governing body thereof, for the purpose of constructing, financing and operating such sewage disposal system, shall be vested with all the rights and powers and charged with all the duties otherwise vested in and imposed upon the commission with reference to such county or city, including the power to issue its bonds, construct and operate the

sewage disposal system, and fix, charge and collect fees, rents and charges for the use of such sewage disposal system.

1940, p. 620; 1942, p. 602; Michie Code 1942, § 1560kk1.

§21-207. Withdrawal must be within one year.

The transfer and vesting of rights, powers and duties shall be no longer operative if the county or city electing to withdraw shall not entitle itself to withdraw from the district within one year after the creation of the district.

1940, p. 620; 1942, p. 602; Michie Code 1942, § 1560kk1.

§21-208. Additional rights conferred on city or county withdrawing.

The foregoing provisions of § [21-206](#) shall be deemed to confer additional rights and powers upon any such county or city affected, and shall in no wise deprive any such county or city of any rights and powers otherwise vested in and conferred upon such county or city by general law or charter provisions.

1940, p. 620; 1942, p. 602; Michie Code 1942, § 1560kk1.

§21-209. No election on issuance of bonds within six months.

No election upon the question of the issuance of bonds of the commission shall be held within the first six months after the creation of the district. In the event no notice of intention to consider withdrawing from the district, in accordance with the foregoing provisions of §§ [21-203](#) to [21-208](#), is filed with the commission within six months after the creation of the district, then no county or city therein may thereafter avail itself of the provisions of such sections to withdraw from such district.

1940, p. 621; 1942, p. 603; Michie Code 1942, § 1560kk1.

§21-210. Disposal system to be erected by separate district.

Any county or city which elects to construct and operate therein a separate sewage disposal system in accordance with the foregoing provisions of § [21-203](#) shall, within the period hereinafter limited for the construction of such sewage disposal system, construct and provide and have in operation in such county or city a sewage disposal system sufficient in the opinion of the State Health Commissioner to prevent the pollution of any and all tidal waters of the district, and any and all tidal waters within the county or city, from industrial wastes and sewage arising in or discharged from the county or city; and the commission is authorized and empowered to proceed by appropriate court action to require the county or city and the governing body thereof to provide therein such required sewage disposal system. From and after the

expiration of such period, no such county or city nor any public body or person therein shall discharge or suffer to be discharged directly or indirectly into any tidal waters of the district, or tidal waters in such county or city, any sewage, industrial wastes or other refuse which may or will cause or contribute to pollution of any such tidal waters; this provision shall be enforceable in the manner provided for by [§ 21-220](#). The period for the construction of such sewage disposal system, as hereinabove referred to, shall be three years from the creation of the district and such further period of time, not exceeding an additional two years, as the commission, upon application of the governing body of the county or city and after public hearing which shall be held by the commission upon such public notice as the commission may determine to be reasonable, may find to be necessary for completion of such construction by reason of causes which shall not be or have been within the control of such county or city or the governing body thereof.

1940, p. 621; 1942, p. 603; Michie Code 1942, § 1560kk1.

§21-211. City withdrawing to provide for disposal of sewage of county or town.

If any city shall withdraw from the district pursuant to the foregoing provisions of this article, such city, if requested by the commission or the governing body of any county or town adjacent to such city, shall provide by its sewage disposal system for the treatment and disposal of sewage and industrial wastes arising in or discharged from such county or town upon such sewage and industrial wastes being delivered to such city, and shall agree with the commission or such county or town to treat and dispose of such sewage and wastes so delivered at the cost of such treatment and disposal, provided the commission or the county or town affected shall pay to the city the cost of installing any additional sewer main or mains necessitated thereby within such city. If the parties do not agree upon such costs, such costs shall be determined upon petition to the State Corporation Commission which is hereby authorized and directed to make such determination.

1940, p. 621; 1942, p. 603; Michie Code 1942, § 1560kk1.

§21-212. Effect of nonappointment of members of commission on withdrawal.

In the event that the members of the commission shall not be appointed within two months after the creation of the district then the date of the first appointment of such members shall be deemed to be the date of the creation of such district for all the purposes of withdrawal provided by this article.

1940, p. 621; 1942, p. 604; Michie Code 1942, § 1560kk1.

§21-213. Member of commission becoming nonresident because of removal or withdrawal.

If any member of a commission shall, through removal from the district or through any withdrawal or exclusion of any part or parts of any district, cease to reside within the district he shall thereupon be disqualified for holding office as a member of the commission, and the vacancy thus created shall be filled as otherwise provided.

1940, p. 621; 1942, p. 604; Michie Code 1942, § 1560kk1.

§21-214. Plans, maps, etc., to be available to commission.

Each county, city or town in whole or in part embraced within a district shall, at the request of the commission, make available to the commission or the agents or employees thereof, any or all maps, plans, specifications, records, books, accounts or other data or things deemed necessary by the commission in the exercise of its powers and duties under this chapter.

1938, p. 526; Michie Code 1942, § 1560bbb.

§21-215. Payments by county, city or town.

Each county, city, town or other public body shall promptly pay to any commission all fees, rents and charges which the commission may charge to it as owner or lessee or tenant of real estate in accordance with § [21-180](#), and shall provide for the payment thereof in the same manner as other obligations of such county, city, town or public body.

1938, p. 527; Michie Code 1942, § 1560bbb.

§21-216. Contracts with counties, cities and towns outside of district.

Any commission, and any county, city or town in whole or in part outside of the district, is authorized to enter into a contract on such terms and conditions as such contract may contain, providing for or relating to the treatment and disposal of sewage or industrial wastes originating in such county, city or town, by means of the sewage disposal system or such other facilities as the commission may determine to provide for such purpose, and such county, city or town is authorized to do everything necessary or proper to carry out and perform every such contract and to provide for the payment or discharge of any obligation thereunder by the same means and in the same manner as any other of its obligations.

In the event any such contract is entered into in accordance with the provisions of this section, provision shall be made therein whereby the cost of rendering the

services herein referred to, to such county, city or town, will be borne by such county, city or town.

1938, p. 527; Michie Code 1942, § 1560bbb.

§21-217. Powers conferred on counties, cities and towns in addition to other powers.

The powers conferred by this chapter on counties, cities and towns are in addition and supplemental to the powers conferred by any other law, and may be exercised by resolution of the governing bodies thereof without regard to the terms, conditions, requirements, restrictions or other provisions contained in any other law, general or special, or in any charter, except that where fees, rents and charges are fixed by a city or town, that power shall be exercised by ordinance.

1938, p. 527; Michie Code 1942, § 1560bbb.

§21-218. Discharge into tidal waters of matter causing pollution.

No county, city, town or other public body, or person shall discharge, or suffer to be discharged, directly or indirectly into any tidal waters of the district any sewage, industrial wastes or other refuse which may or will cause or contribute to pollution of any tidal waters of the district, provided, that this provision shall be applicable only to such part or parts of the tidal waters of a district as shall be bounded and described in a notice, published in a newspaper or newspapers having, in the aggregate, general circulation in all of the counties and cities within which or bordering upon which such part or parts of the tidal waters of the district are located, to the effect that the commission has provided facilities reasonably sufficient in its opinion for the disposal of sewage, which by discharge from public sewer systems might cause or contribute to pollution of the bounded and described part or parts of such tidal waters, and that pollution of the same is forbidden by law. Such a notice shall constitute prima facie evidence of the existence of facilities sufficient for the disposal of such sewage. The provisions of this section shall not prohibit the disposal of sewage and industrial wastes in the manner in which the same is now being disposed of, or in any other reasonable manner, by any county, city or town, no part of which constitutes a part of any district, or by any person in any such county, city or town, no part of which constitutes a part of any district.

1938, p. 527; Michie Code 1942, § 1560ccc.

§21-219. Discharge of matter injurious to system.

No county, city, town or other public body, or person shall discharge, or suffer to be discharged, directly or indirectly, into the sewage disposal system or any other facilities of or provided by a commission, any matter or thing which is or may be injurious or deleterious to such sewage disposal system or other facilities.

1938, p. 528; Michie Code 1942, § 1560ccc.

§21-220. Remedies to prevent violation.

Any county, city, town or other public body, or person may be restrained, enjoined or otherwise prevented from violating or continuing the violation of any provision of §§ [21-218](#) and [21-219](#) by injunction, mandamus or any other appropriate remedy at law or in equity, by any court of competent jurisdiction, upon action, bill, suit or other proceeding instituted by the commission or by any attorney for the Commonwealth.

1938, p. 528; Michie Code 1942, § 1560ccc.

§21-221. Jurisdiction.

Jurisdiction to enforce the provisions of this article and to grant any remedy or relief authorized by § [21-220](#) shall be in the circuit court of any county and in the corporation court of any city in whole or in part embraced within the district, or within which are located any tidal waters of the district. The remedies, relief and jurisdiction authorized by this section and § [21-220](#) shall be concurrent and cumulative.

1938, p. 528; Michie Code 1942, § 1560ccc.

§21-222. Discharge of sewage from vessel while afloat, etc.

No violation of any provision of this article shall be deemed to occur by reason of the discharge of sewage from any boat or vessel while afloat or on a marine railway or in dry dock.

1938, p. 528; Michie Code 1942, § 1560ccc.

§21-223. Punishment of violations.

Any person violating any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished accordingly.

1938, c. 530; Michie Code 1942, § 1560iii.

Sanitation Districts Law of 1946 -

Nontidal Waters

§21-224. Short title.

This chapter may be known, designated and cited as the "Sanitation Districts Law of Nineteen Hundred and Forty-Six."

1946, p. 346; Michie Suppl. 1946, § 1560iii1.

§21-225. Definitions.

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

- (1) The term "district" means a sanitation district created and existing pursuant to §§ [21-228](#) to [21-236](#) or heretofore or hereafter created by a special act of the General Assembly for the purpose of taking advantage of the provisions of this chapter;
- (2) The term "commission," except where the context requires reference to the board or commission mentioned and provided for in § [21-238](#), means the body corporate or politic comprising a district and its inhabitants created and existing pursuant to § [21-237](#);
- (3) The term "chairman" means the chairman of a commission;
- (4) The term "sewage disposal system" or "facilities," used in relation to a commission, means the sewers, conduits, pipelines, pumping and ventilating stations, treatment plants and works, and other plants, structures, boats, conveyances and other real and personal property operated by the commission for the purposes of the commission;
- (5) The term "waters of the district" means all well defined rivers, creeks or other watercourses or streams within the district, provided they are not "tidal waters of the district" as that term is defined in the sanitation districts law of 1938;
- (6) The term "industrial wastes" means liquid or other wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resource;
- (7) The term "sewage" means the water-carried wastes created in and carried, or to be carried, away from residences, hotels, schools, hospitals, industrial establishments,

commercial establishments or any other private or public building, together with such surface or ground water and industrial wastes as may be present;

(8) The term "pollution" means the condition of water resulting from any of the following acts:

(a) Unreasonably contaminating such water;

(b) Rendering such water unclean or impure;

(c) Rendering such water directly or indirectly injurious to public health, or unfit for public use;

(d) Rendering such water harmful for cattle, stock or other animals;

(e) Rendering such water unfit for commercial use;

(9) The term "construct" includes construct, reconstruct, replace, improve and repair;

(10) The term "person" includes an individual, partnership, association, or corporation;

(11) The term "governing body" shall mean the board of supervisors, board of county commissioners, council or other local legislative body, board, commission, or other legislative authority having charge of the finances of any county, city or town;

(12) The term "town" means an incorporated town;

(13) The term "county" means a county exclusive of that portion thereof lying within the boundaries of an incorporated town.

1946, p. 347; Michie Suppl. 1946, § 1560iii2.

§21-226. Ordering and conduct of elections.

Every order made pursuant to this chapter requiring the opening of a poll and the taking of the sense of the qualified voters of a district or proposed sanitation district on a question shall designate the question and a date for holding such election not less than thirty days from the date of such order, and may be directed as writs of election are directed for an election district, or to fill a vacancy in the General Assembly or in Congress. It shall be the duty of the regular election officers of the counties and cities in whole or in part embraced within the district or proposed sanitation district to cause to be printed and distributed in the manner prescribed by law for printing and distributing other ballots the proper number of ballots which shall be separate from

any other ballots. The ballots shall set forth the question designated in such order and shall be in substantially the following form:

(Here shall appear the question designated in the order)

☐ YES

☐ NO

To vote "Yes" on the question, place a checkmark (✓) or cross (+ or ✕) in the space opposite the word "Yes"; to vote "No" on the question, place a checkmark (✓) or cross (+ or ✕) in the space opposite the word "No."

The regular election officers, at the time designated in such order, shall open the polls at the various voting places in the district or proposed sanitation district and at any other voting places at which any qualified voter of the district or proposed sanitation district is entitled to vote, and shall conduct such election and close the polls in such manner as is provided by law in other elections. The ballots shall be counted and returns made and canvassed and the results ascertained and made known as in other elections, and the results certified by the commissioners of election to the Secretary of the Commonwealth, all in such manner as to show the respective numbers of affirmative and negative votes cast at the election. The Secretary of the Commonwealth shall record and tabulate the reports of the commissioners of election and shall certify the result of the election to the court which made the order authorizing and requiring such election.

1946, p. 364; Michie Suppl. 1946, § 1560iii25.

§21-227. Court proceedings.

Wherever in this chapter the circuit court of any county, or the corporation court of any city, is authorized to accept any petitions or papers, make any order, hold any hearing, hear, consider and determine any question or do any other act or thing, such court, or a judge thereof in vacation, may do and perform the same.

1946, p. 365; Michie Suppl. 1946, § 1560iii26.

§21-228. Territory which may be embraced in district.

Any integral body of territory within which are situated rivers, creeks or other water-courses or streams, not affected by ebb and flow of the tide, and none of which are embraced within any other sanitation district may, under the conditions and upon the taking and completion of the proceedings provided in this article, be created a

sanitation district. Every part of the boundary of such a sanitation district shall either (1) coincide with the boundary of a county, city or town or (2) bisect a county, city or town, or (3) be located within one mile of the boundary of a county, city or town, or (4) consist of a straight line connecting two points each of which lies upon a boundary of one of the three types hereinabove described.

1946, p. 348; Michie Suppl. 1946, § 1560iii3.

§21-229. Notice of hearing on petition for creation.

Upon the presentation of a petition complying with the requirements of this article, praying for the creation of a sanitation district, fixing the boundaries thereof and naming the counties, cities and towns which in whole or in part are to be embraced therein, the circuit court of any such county, or of any county in which any such town is situated, or the corporation court of any such city shall make an order filing such petition and fixing a day for a hearing by such court on such petition and the question of the creation of the proposed sanitation district. Such order shall direct notice of such hearing to be given by publication once a week for at least three consecutive weeks beginning at least twenty-eight days prior to the day of such hearing in some newspaper or newspapers, named in such order, having general circulation in the proposed sanitation district. Such notice shall set forth the petition as filed, but need not set forth the signatures or exhibits thereto, and shall state the time and place of hearing and that at such hearing all persons desiring to controvert the allegations of such petition or question the conformity thereof to this article will be heard and all objections to the creation of the proposed sanitation district considered.

1946, p. 348; Michie Suppl. 1946, § 1560iii3.

§21-230. Contents of petition.

Every such petition shall pray for the creation of the proposed sanitation district, and set forth the name of the proposed sanitation district (which shall include the words "sanitation district"), shall fix the boundaries thereof, shall name the cities and counties and towns which are in whole or in part to be embraced therein and shall contain an allegation (1) that the proposed sanitation district includes within its territorial limits watercourses or streams which are polluted, (2) that no part of the proposed sanitation district is within the territorial limits of an existing sanitation district, (3) that the proposed sanitation district is an integral whole and does not completely surround any territory not included in the proposed or some existing sanitation district, (4) that the creation of the proposed sanitation district in accordance

with this chapter will provide a means for abating or preventing the pollution of waters of the proposed sanitation district and will benefit all the property within the proposed sanitation district, (5) that the creation of the proposed sanitation district has been approved by the State Health Commissioner as providing a practical means for abating or preventing the pollution of the waters of the proposed sanitation district, (6) that the petition has been approved and the prayer thereof joined in by each city, county and town which is in whole or in part embraced within the proposed sanitation district, expressed by resolution adopted by the vote of a majority of the governing body thereof.

1946, p. 348; Michie Suppl. 1946, § 1560iii3.

§21-231. Signatures on petition.

Every such petition shall be signed by not less than 100 qualified voters of the proposed sanitation district, including not less than 25 qualified voters of each city and county and town in whole or in part embraced within the proposed sanitation district.

1946, p. 349; Michie Suppl. 1946, § 1560iii3.

§21-232. Hearing and determination; ordering election.

Any person interested may answer the petition and make defense thereto and at such hearing all persons interested or desiring to controvert the allegations of the petition or question the conformity thereof to this article or object to the creation of the proposed sanitation district shall be heard. If upon such hearing the court shall not be satisfied that the allegations of the petition are sustained and that the petition conforms to the provisions of this article, it shall make an order denying and dismissing the petition. If upon such hearing the court shall be satisfied that the allegations of the petition are sustained and that the petition conforms to the provisions of this article and that all of the property in the proposed sanitation district will be benefited by the creation of the proposed sanitation district and that the public interest will be served and the public health protected by such creation, it shall make an order determining such matters and requiring the opening of a poll and the taking of the sense of the qualified voters of the proposed sanitation district in accordance with [§ 21-226](#) on the question of the creation of the proposed sanitation district. The question so submitted shall be "Do you favor the creation of the (inserting name of the proposed sanitation district stated in the said petition)?"

1946, p. 349; Michie Suppl. 1946, § 1560iii3.

§21-233. Order when election favors establishment.

If upon the certificate of the result of the said election made by the Secretary of the Commonwealth to such court it shall appear that a majority of the qualified voters of the proposed sanitation district voting at the election shall have voted "yes" and in favor of the creation of the proposed sanitation district, the court shall make and enter of record an order stating such result, and thereupon the territory defined in the petition, less such parts thereof as shall be excluded pursuant to the provisions of § [21-234](#) shall be and constitute a sanitation district for all the purposes of this chapter, known and designated by the name stated in the petition.

1946, p. 349; Michie Suppl. 1946, § 1560iii3.

§21-234. Exclusion from district of county, city or town voting against establishment.

If upon the certification of the results of the election provided for in § [21-233](#) it shall appear that a majority of the qualified voters of the portion of any county, or of any city or of any town voting on the question at the election, shall have voted "no" against the creation of the proposed sanitation district, then the territory included within the limits of such county or of such city, or of such town, shall be excluded from, and shall not constitute a part of such district.

1946, p. 349; Michie Suppl. 1946, § 1560iii3.

§21-235. Approval of State Health Commissioner.

The State Health Commissioner is authorized, upon being satisfied that the creation of a proposed sanitation district will provide a practical means for abating or preventing the pollution of the waters of the proposed sanitation district, to approve, as above referred to, the creation of the proposed sanitation district.

1946, p. 349; Michie Suppl. 1946, § 1560iii3.

§21-236. Governing bodies may adopt resolutions.

The governing body of each city and county and town is authorized, in its discretion, to adopt resolutions, as above referred to, approving and joining in the prayer of petitions for the creation of a proposed sanitation district.

1946, p. 350; Michie Suppl. 1946, § 1560iii3.

§21-237. Creation.

In and for each district heretofore or hereafter created pursuant to this chapter or pursuant to a special act of the General Assembly, a commission is hereby created as a

body corporate, invested with the rights, powers and authority and charged with the duties set forth in this chapter. The commission shall be known by the name of the district, except that the word "commission" shall be substituted for the word "district." Except as a special act creating the district shall otherwise provide, the commission shall consist of seven members, residents of the district, appointed by the State Health Commissioner, in the manner hereinafter provided, who shall notify each governing body immediately after such appointments. Representation on the commission shall be apportioned among the political segments of the district on a population basis so far as it may be practical to do so; but each political segment, however, shall be entitled to at least one representative on the commission; and all appointments thereto shall be made by the State Health Commissioner from a list of not less than one nor more than five names furnished to him by the respective governing bodies of each political segment of the district. Except as a special act creating the district shall otherwise provide, in making the original appointments, one of the members shall be appointed for a term of one year, two for a term of two years, two for a term of three years, and two for terms of four years each; subsequent appointments shall be made for a term of four years, except appointments to fill vacancies which shall be for the unexpired terms. Members of the commission shall hold office until their successors have been duly appointed and qualified.

1946, p. 350; Michie Suppl. 1946, § 1560iii4.

§21-238. Officers of commission.

The commission, at its organization meeting and thereafter at its first meeting in each calendar year, shall elect one of the members of the commission, chairman thereof. The commission under such rules as it may adopt, may elect one of its members vice-chairman, and may appoint a secretary, or secretary-treasurer, who shall not be a member of the commission; in the event that the commission appoints a secretary-treasurer, his compensation shall be fixed by the commission.

1946, p. 350; Michie Suppl. 1946, § 1560iii4.

§21-239. Compensation and expenses of members.

The members of the commission, including the chairman, shall receive no salary, but shall be paid their necessary traveling and other expenses incurred in attendance upon meetings of the commission or while otherwise engaged in the discharge of their duties under this chapter, and the sum of \$10 per diem for each day or portion thereof in which they are engaged in the performance of such duties, but the total of

such per diem compensation so received by any member during any one year shall not exceed \$300.

1946, p. 350; Michie Suppl. 1946, § 1560iii4.

§21-240. Meetings.

Regular meetings of the commission shall be held at least once every month at such time and place as the commission shall from time to time prescribe. Special meetings of the commission shall be held upon one day's mailed notice, or actual notice otherwise given, to each member of the commission upon call of the chairman or of any two members of the commission, at such time and at such place within the district as such notice may specify, or at such other time and place with or without notice as all of the members of the commission may expressly approve.

1946, p. 350; Michie Suppl. 1946, § 1560iii4.

§21-241. Quorum.

Four members of the commission shall constitute a quorum, and the vote of four members of the commission shall be necessary to take any action.

1946, p. 351; Michie Suppl. 1946, § 1560iii4.

§21-242. Suspension or removal of members.

Members of the commission may be suspended or removed by the State Health Commissioner at his pleasure.

1946, p. 352; Michie Suppl. 1946, § 1560iii4.

§21-243. Oath and bond of members.

Each member of the commission shall, before entering upon the discharge of his duties under this chapter, take and subscribe the oath of office required by Article II, Section 7 of the Constitution of Virginia, and give bond payable to the Commonwealth of Virginia in form approved by the Attorney General, in such penalty as shall be fixed from time to time by the State Health Commissioner, with some surety or guaranty company duly authorized to do business in Virginia and approved by the State Health Commissioner, as security, conditioned upon the faithful discharge of his duties. The premium of such bonds shall be paid by the commission and the bonds shall be filed with and preserved by the Comptroller.

1946, p. 351; Michie Suppl. 1946, § 1560iii4; 1971, Ex. Sess., c. 1.

§21-244. Repealed.

Repealed by Acts 1970, c. 463.

§21-245. Manner of letting contracts.

All contracts, except in cases of emergency, over \$5,000 that the commission may let for construction or materials shall be let after public advertising. The commission shall advertise for bids for the work or materials at least ten days prior to the letting of any contracts therefor. The advertisement shall state the place where bidders may examine the plans and specifications and the time and place where bids for the work or materials will be opened. Each bidder shall accompany his bid with a certified check payable to the commission, for a reasonable sum to be fixed by the commission, as a guarantee that if the contract is awarded to him, he will enter into a contract with the commission for doing the work or furnishing the materials. The contract shall be let to the lowest responsible bidder, and the successful bidder shall give bond or other security for the faithful performance of the contract, in such form and amount as the chairman may require. The commission is authorized to reject any and all bids. In the event that all bids are rejected, the commission shall advertise for new bids as in the first instance. All such bids and contracts shall be public records. The commission is authorized, in its discretion, to do any and all such work by force account.

1946, p. 351; Michie Suppl. 1946, § 1560iii4.

§21-246. How power of eminent domain exercised.

The powers of condemnation or eminent domain conferred on the commission by this chapter shall be exercised by the commission under the same conditions and provisions and in accordance with the same procedure as in the case of the exercise of similar powers by the boards of supervisors of counties or the councils of cities or towns so far as they can be applied to the same.

1946, p. 351; Michie Suppl. 1946, § 1560iii4.

§21-247. County, city or town not liable for act of commission.

No pecuniary liability of any kind shall be imposed upon any county, city or town constituting any part of any district because of any act, agreement, contract, tort, malfeasance, misfeasance, or nonfeasance, by or on the part of the commission of such district, or any member of such commission, or its agents, servants and employees, except as otherwise provided in this chapter with reference to contracts and agreements between the commission and any such county, city or town.

1946, p. 352; Michie Suppl. 1946, § 1560iii4.

§21-248. Enumeration of powers of commission.

Every commission shall have the following powers:

1. To adopt and have a common seal and to alter the same at pleasure;
2. To sue and to be sued;
3. In the name of the commission and on its behalf, to acquire, hold and dispose of its fees, rents and charges and other revenues;
4. In the name of the commission but for the cities, counties and towns in whole or in part embraced within the district, to acquire, hold, and dispose of other personal property for the purposes of the commission;
5. In the name of the commission but for the cities, counties and towns in whole or in part embraced within the district, to acquire by purchase, gift, condemnation or otherwise, real property or rights or easements therein, necessary or convenient for the purposes of the commission, subject to mortgages, deeds of trust, or other liens or otherwise, and to hold and to use the same, and to dispose of property so acquired no longer necessary for the purposes of the commission; provided that the right of condemnation granted herein shall be subject to the same provisions as are provided in § [25.1-102](#) concerning the condemnation of any property belonging to a corporation possessing the power of eminent domain by another public service corporation;
6. To borrow money for the purposes of the commission and to issue therefor its bonds, and to provide for and secure the payment of its bonds and the rights of the holders thereof, and to fund or refund its bonds by the issuance of bonds hereunder;
7. To accept gifts or grants or real or personal property, money, material, labor or supplies for the purposes of the commission and to make and perform such agreements and contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants;
8. To enter on any lands, waters and premises for purpose of making surveys, borings, soundings and examinations for the purposes of the commission;
9. To make and enforce rules and regulations for the management and regulation of its business and affairs and for the use, maintenance and operation of its facilities and properties, and to amend the same;

10. To do and perform any acts and things authorized by this chapter under, through or by means of its own officers, agents and employees, or by contracts with any person; and

11. To execute any and all instruments and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the commission or to carry out the powers expressly given in this chapter.

1946, p. 352; Michie Suppl. 1946, § 1560iii5; 2003, c. [940](#).

§21-249. Relief from pollution to be purpose of commission.

The purposes of every commission shall be the relief of the waters of the district from pollution and the consequent improvement of conditions affecting the public health.

1946, p. 353; Michie Suppl. 1946, § 1560iii6.

§21-250. Acquisition and use of pipes, sewers, plants, stations, etc.

Every commission is authorized and directed to acquire, in the name of the commission but for the cities, counties and towns in whole or in part embraced within the district, by purchase, gift, condemnation or otherwise, and, notwithstanding the provisions of any charter, ordinance or resolution of any county, city or town to the contrary, to construct, maintain, operate and use such trunk, intercepting and outlet sewers, conduits, pipelines, pumping and ventilating stations, treatment plants or works at such places, and such other plants, structures, boats and conveyances, as in the judgment of the commission will provide an effective and satisfactory method for promoting the purposes of the commission.

1946, p. 353; Michie Suppl. 1946, § 1560iii6.

§21-251. Collection from public sewage systems.

The commission is authorized and directed when in the judgment of the commission its sewage disposal system, or part thereof, will permit, to collect from any and all public sewage systems within the district all sewage and treat and dispose of the same in such manner as to promote the purposes of the commission.

1946, p. 353; Michie Suppl. 1946, § 1560iii6.

§21-252. Use of public sewer and disposal facilities.

In order to carry out and effectuate the purposes of the commission, every commission is authorized to enter upon and use and connect with any existing public drains, sewers, conduits, pipelines, pumping and ventilating stations and treatment

plants or works or any other public property of a similar nature within the district, deemed proper by the commission in the exercise of the powers and performance of the duties set forth in this chapter, and, if deemed necessary by the commission, close off and seal outlets and outfalls therefrom. The commission shall not, however, take possession of any such treatment plant unless it acquires the same by purchase, condemnation or otherwise.

1946, p. 360; Michie Suppl. 1946, § 1560iii12.

§21-253. Use of public places.

In order to carry out and effectuate the purposes of the commission, every commission is authorized to construct and operate its trunk, intercepting and outlet sewers, conduits and pipelines, along, over, under and in any streets, alleys, highways and other public places within the district. In so constructing its facilities, it shall see that the public use of such streets, alleys, highways and other public places is not unnecessarily interrupted or interfered with and that such streets, alleys, highways and other public places are restored to their former usefulness and condition within a reasonable time; to this end the commission shall cooperate with the Commonwealth Transportation Board and the appropriate officers of the respective counties, cities and towns having an interest in such matters.

1946, p. 360; Michie Suppl. 1946, § 1560iii13.

§21-254. Special contracts for disposal of sewage and other wastes.

(a) Every commission is authorized to enter into contracts with the United States of America, or with any department, institution or agency thereof, on such terms and conditions as the commission may approve, providing for or relating to the treatment and disposal of sewage or industrial wastes of or originating in or on any reservation, property, institution, building or structure within the district owned or under the control of the United States of America, or any department, institution or agency thereof, by means of the sewage disposal system or such other facilities as the commission may determine to provide for such purpose, or in such other manner as such contract may provide.

(b) Every commission is authorized to provide, contract, operate and maintain facilities for the treatment and disposal of industrial wastes originating in the district, and to enter into contracts with any person, on such terms and conditions as the commission may approve, providing for or relating to the treatment and disposal of any such industrial wastes.

(c) Every commission is authorized to enter into contracts with any person owning or operating any sewer system within the district or engaged in treatment or disposing of sewage or industrial wastes originating in the district, on such terms and conditions as the commission may approve, providing for or relating to the treatment and disposal of any sewage or industrial wastes collected in such sewer system or by such person.

(d) Every commission is authorized to enter into contracts with the owner of property adjoining its district on such terms and conditions as such commission may approve, providing for or relating to the treatment and disposal of sewage or industrial wastes of or originating in or on such adjoining property by means of the sewage disposal system or such other facilities as such commission may determine to provide for such purpose, or in such other manner as such contract may provide.

1946, p. 361; Michie Suppl. 1946, § 1560iii18; 1968, c. 194.

§21-255. Approval of disposal methods.

The method proposed to be used by a commission for treating and disposing of sewage and industrial wastes so as to prevent the pollution of the waters of the district, and any substantial change in such methods, shall, before being finally adopted or used by the commission, be approved by the State Health Commissioner as effective and satisfactory for the purpose intended.

1946, p. 360; Michie Suppl. 1946, § 1560iii14.

§21-256. Prohibition of sale or encumbrance of system.

Neither the commission nor any of the counties, cities or towns in whole or in part embraced within the district shall have power to mortgage, pledge, encumber or otherwise dispose of any part of the sewage disposal system of a commission, except such part or parts thereof as may be no longer necessary for the purposes of the commission, whether the same shall originally have been acquired by such commission or by one of the counties, cities or towns. The provisions of this section shall be deemed to constitute a contract with the holders of bonds of the commission. The sewage disposal system of a commission shall be exempt from any and all liability which may be incurred by, or imposed upon, the commission, or any county, city or town, which, in whole or in part, constitutes any part of any district.

1946, p. 360; Michie Suppl. 1946, § 1560iii15.

§21-257. Agents and employees of commission.

The commission is authorized to appoint a general manager for the district, prescribe his duties and fix his salary, such general manager to be responsible to the commission and to serve at its pleasure. The general manager shall appoint all other agents and employees of the commission, except as otherwise provided in § [21-238](#), dismiss them, fix their salaries or remuneration within the limits authorized by the commission, assign their positions and titles, define their respective powers and duties, and require them, or any of them, to give bond payable to the Commonwealth of Virginia in such penalty as shall be fixed by the commission, conditioned upon the faithful discharge of their duties.

1946, p. 359; Michie Suppl. 1946, § 1560iii11.

§21-258. Funds of commission.

(a) All moneys of a commission, whether derived from the sale of bonds or other obligations or from the collection of fees, rents and other charges by the commission or from any contract of the commission or from any other source shall be collected, received, held, secured and disbursed in accordance with any contract of the commission relating thereto. The following provisions of this section shall be applicable to any such moneys only if and to the extent that they are consistent with such contract or contracts of the commission.

(b) Such moneys shall not be required to be paid into the state treasury or into the treasury or to any officer of any county, city or town.

(c) All such moneys shall be deposited by the commission in a separate bank account or accounts, appropriately designated, in such banks or trust companies as may be designated by the commission.

(d) All deposits of such moneys shall be secured by bonds or other direct unlimited obligations of the United States or of the Commonwealth of Virginia or of any county, city or town of the Commonwealth or of the commission of a market value at least equal at all times to the amount of such deposits, and all banks and trust companies are authorized to give such security for such deposits.

1946, p. 360; Michie Suppl. 1946, § 1560iii16.

§21-259. Accounts and records.

Every commission shall keep and preserve complete and accurate accounts and records of all moneys received and disbursed by it and of all of its business and operations and of all property and funds owned or managed by it or under its control,

and shall prepare and transmit to the State Health Commissioner and to the governing body of each city, county and town which is in whole or in part embraced within the district, annually and at such other times as the State Health Commissioner shall require, complete and accurate reports as to the state and content of such accounts and records, together with such information with respect thereto as the State Health Commissioner may require.

1946, p. 361; Michie Suppl. 1946, § 1560iii17.

§21-260. Authority to collect fees, rents or other charges.

Every commission is hereby authorized and empowered to charge and collect fees, rents, or other charges for the use and services of the sewage disposal system. Such fees, rents and charges may be charged to and collected from any person contracting for the same or from the owner or lessee or tenant, or some or all of them, who use or occupy any real estate which directly or indirectly is or has been connected with the sewage disposal system, or from or on which originates or has originated sewage or industrial wastes, or either, which directly or indirectly have entered or will enter the sewage disposal system, and the owner or lessee or tenant of any such real estate shall pay such fees, rents and charges to the commission at the time when, and place where, such fees, rents and charges are due and payable.

1946, p. 353; Michie Suppl. 1946, § 1560iii7.

§21-261. Uniformity and basis.

Such fees, rents and charges being in the nature of use or service charges, shall as nearly as the commission shall deem practicable and equitable, be uniform throughout the district for the same type, class and amount of use or service of the sewage disposal system, and may be based or computed either on the consumption of water on or in connection with the real estate, making due allowance for commercial use of water, or on the number and kind of water outlets on or in connection with the real estate or on the number and kind of plumbing or sewage fixtures or facilities on or in connection with the real estate, or on the number or average number of persons residing or working on or otherwise connected or identified with the real estate to or on any other factors determining the type, class and amount of use or service of the sewage disposal system, or on any combination of such factors.

1946, p. 353; Michie Suppl. 1946, § 1560iii7.

§21-262. Schedule.

The commission shall prescribe and from time to time when necessary revise a schedule of such fees, rents and charges which shall comply with the terms of any contract of the commission with the holders of bonds of the commission made pursuant to §§ [21-269](#) to [21-275](#) and in any event shall be such that the revenues of the commission will at all times be adequate to pay all expenses of operation and maintenance of the sewage disposal system of the commission, necessary to preserve the system and to assure its operation as a going concern, including reserves, insurance, extensions, and replacements, and to pay punctually the principal of and interest on any bonds or other indebtedness of the commission and to maintain adequate reserves or sinking funds therefor. The schedule shall be so prescribed and from time to time revised by the commission after public hearing which shall be held by the commission upon such public notice as the commission may determine to be reasonable.

1946, p. 354; Michie Suppl. 1946, § 1560iii7.

§21-263. Time and place of payment.

The commission shall likewise fix and determine the time or times when and the place or places where such fees, rents and charges shall be due and payable and may require that such fees, rents and charges shall be paid in advance for periods of not more than six months.

A copy of the schedules of all fees, rents and charges in effect shall at all times be kept on file at the principal office of the commission, and such schedules shall at all reasonable times be open to public inspection.

1946, p. 354; Michie Suppl. 1946, § 1560iii7.

§21-264. Effect of failure to pay.

In the event that the fees, rents or charges charged by the commission for the use and services of the sewage disposal system by or in connection with any real estate shall not be paid as and when due, then and at that time interest shall begin to accrue thereon at the rate of one per centum per month and the owner, lessee or tenant, as the case may be of such real estate shall, until such fees, rents and charges shall be paid with such interest to the date of payment, cease to dispose of sewage or industrial waste originating from or on such real estate by discharge thereof directly or indirectly into the sewage disposal system, and if such owner, lessee or tenant shall not cease such disposal within two months thereafter it shall be the duty of each county, city, town and other public corporation, board or body supplying water

to or selling water for use on, such real estate, within five days after receipt of notice of such facts from the commission, to cease supplying water to, and selling water for use on, such real estate. If such county, city, town or other public corporation, board or body shall not within such time cease supplying water to, and selling water for use on, such real estate, the commission may shut off the supply of water to such real estate and for such purpose, may enter on any lands, waters and premises of such county, city, town or other public corporation, board or body, or of any person. The water supply to or for any person, or for use on real estate of any person, shall not be shut off or stopped under the provisions of this section, if the State Health Commissioner, upon application of the local board of health or health officer of the county, city or town wherein such water is supplied or such real estate is located, shall have found and shall certify to the authorities charged with the responsibility of ceasing to supply or sell such water, or to shut off the supply of such water, that ceasing to supply or shutting off such water supply will endanger the health of such person and the health of others in such county, city or town.

1946, p. 354; Michie Suppl. 1946, § 1560iii7.

§21-265. Register.

The commission shall keep and preserve a complete register, or registers, open to public inspection, of all fees, rents and other charges which have been charged by the commission to the owners or lessees or tenants of any real estate for the use and services of the sewage disposal system and have become due and payable and have not been paid. Such register or registers shall be kept in such place or places as the commission shall determine.

1946, p. 355; Michie Suppl. 1946, § 1560iii7.

§21-266. Appeal from action fixing fees, etc.

From any action of the sanitation commission in prescribing fees, rents and charges, or either of them, pursuant to the provisions of this chapter, an appeal may be taken upon the petition of any county, city or town constituting a part of the district, or upon petition of any fifty persons, resident or doing business in the district, to the State Corporation Commission. At least sixty days prior to filing such petition with the State Corporation Commission, such county, city or town or interested parties shall notify the sanitation commission of such intended petition and of the fees, rents and charges complained of, in order that the sanitation commission may be afforded an opportunity to make such changes in such fees, rents and charges as it

shall deem proper. After such petition shall have been filed with the State Corporation Commission and after such county, city or town or other petitioners shall have, if required by the State Corporation Commission, executed and filed with the State Corporation Commission a bond payable to the Commonwealth and sufficient in amount, but not in excess of \$500, and security to insure the prompt payment of all costs which may be assessed against such county, city or town or other petitioners and after such county, city or town or other petitioners shall have caused to be published in at least one newspaper, designated by the State Corporation Commission and of general circulation within the district, such notice of such appeal as shall be prescribed by the State Corporation Commission, the State Corporation Commission is authorized to make such examinations and studies, to hold such hearings as may be required, to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the State Corporation Commission or any officer or agent thereof, to administer oaths and to take testimony thereunder, and to fix in accordance with the provisions of this chapter applicable to the sanitation commission, subject to the right of further appeal by the sanitation commission or the interested parties to the Supreme Court, such fees, rents and charges. In each such proceeding the State Corporation Commission shall ascertain the costs incurred by it, including in such costs actual expenses incurred and a fair apportionment of overhead expenses, and shall assess the same against either the petitioner or petitioners, or the sanitation commission, or shall apportion the costs between the petitioner or petitioners and the sanitation commission, according to principles applicable in courts of equity.

1946, p. 355; Michie Suppl. 1946, § 1560iii7.

§21-267. Actions for collection.

The commission shall have the right to recover the amount of any fees, rents or other charges charged by the commission to the owner or lessee or tenant or contracting party, as set forth in § [21-260](#), for the use and services of the sewage disposal system by or in connection with such real estate and of the interest which may accrue thereon, by any action, suit or proceeding permitted by law or in equity.

1946, p. 362; Michie Suppl. 1946, § 1560iii19.

§21-268. Contracts for collection.

Any commission, and any county, city or town in whole or in part embraced within the district, are authorized to enter into a contract or contracts on such terms and

conditions as such contract or contracts may contain, providing for the collection by such county, city or town and payment over to the commission of the fees, rents or other charges charged or to be charged by the commission to the owners or lessees or tenants of real estate within such county, city or town, or providing for the payment to the commission by such county, city or town of a sum or sums of money in lieu of all or part of the fees, rents and other charges which would otherwise be charged by the commission to the owners or lessees or tenants of real estate within such county, city or town. Such county, city or town is vested with powers to do everything necessary or proper to carry out and perform every such contract, including the same powers with respect to fees, rents and other charges as are conferred by this chapter upon a commission, and to provide for the payment or discharge of any obligation thereunder by the same means and in the same manner as any other of its obligations, except that no tax shall be levied on real estate for such obligation. The commission is authorized to reduce ratably in accordance with such contract the fees, rents and other charges which would otherwise be charged by the commission to the owners or lessees or tenants of real estate within such county, city or town, but nothing in this section or any such contract shall be construed to prevent the commission from charging to and collecting from such owners or lessees or tenants of such real estate, in the same manner as provided for such fees, rents and other charges, any deficiency in any payment agreed to be made by such county, city or town.

1946, p. 362; Michie Suppl. 1946, § 1560iii20.

§21-269. Outstanding bonds not to exceed ten million dollars.

Bonds of a commission shall at no time be outstanding in a principal amount in excess of \$10 million.

1946, p. 356; Michie Suppl. 1946, § 1560iii8.

§21-270. Election prior to issuance.

No bonds shall be issued by a commission, except to fund or refund bonds theretofore issued and thus to redeem a previous liability, unless the qualified voters of the district shall approve by a majority vote of the qualified voters voting in an election the issuance of the bonds. Whenever the commission shall determine by resolution that it is advisable to issue bonds for the purposes of the commission, such resolution shall be certified to the circuit court of a county or corporation court of a city in whole or in part embraced within the district and the court shall thereupon make an order requiring the opening of a poll and the taking of the sense of the

qualified voters of the district in accordance with § [21-226](#) on the question of issuing the bonds in not exceeding the amount stated in such resolution. The question so submitted shall be "Do you favor the issuance of not exceeding \$_____ bonds of the _____ sanitation district commission (inserting the amount of bonds stated in such resolution and the name of the commission)?" If upon the certification of the result of the election made by the Secretary of the Commonwealth to the court, it shall appear that a majority of the qualified voters of the district voting at the election shall have voted "yes" and in favor of the issuance of the bonds, the court shall make and enter of record an order stating such result and thereupon the commission shall have power in accordance with this article to issue bonds in not exceeding the amount stated in such resolution and, in anticipation of the issuance of such bonds, to borrow money on temporary loan and issue temporary bonds therefor.

1946, p. 356; Michie Suppl. 1946, § 1560iii8.

§21-271. Other matters determined by resolution.

All other matters relating to the issuing of such bonds, and all matters relating to the contracting of debt, borrowing of money and issuing of other bonds and obligations shall be determined by resolution of the commission.

1946, p. 356; Michie Suppl. 1946, § 1560iii8.

§21-272. Form and contents.

Bonds shall be authorized by resolution of the commission, and shall be issued from time to time in one or more series, be in such form, bear such date or dates, mature at such time or times not more than forty years from the date of issuance thereof, bear interest at such rate or rates not exceeding six per centum per annum, be in such denominations, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, be subject to acceleration of maturity on such contingencies and terms, and be subject to such terms of redemption with or without premium, as such resolution shall provide.

1946, p. 356; Michie Suppl. 1946, § 1560iii8.

§21-273. How sold.

Such bonds may be sold at public or private sale for such price or prices as the commission shall determine, provided the interest cost to maturity of the money received from any such bonds simultaneously sold shall not exceed an average of six per centum per annum.

1946, p. 356; Michie Suppl. 1946, § 1560iii8.

§21-274. Resolutions may be part of contract with bondholders.

Any resolutions of the commission authorizing any bonds may contain provisions, which shall be a part of the contract with the several holders of such bonds and accordingly subject to amendment by mutual agreement of the commission and the holders of all of such bonds, as to:

- (1) Pledging, setting aside, depositing or trusteeing any or all revenues or funds of the commission to secure the payment of the principal of or interest on such bonds or other bonds of the commission or the payment of expenses of construction, operation or maintenance of the sewage disposal system, including provisions giving priority, notwithstanding any provision or rule of law otherwise to the contrary, to the obligation to perform such contractual provisions to secure payment of such principal or interest over any or all other obligations and liabilities of the commission;
- (2) Payment of the principal of or interest on such bonds or other bonds of the commission, and the sources and methods thereof;
- (3) The fees, rents and other charges to be established and collected by the commission, the collection and enforcement of the same, and the use, disposition and application of the amounts collected;
- (4) The setting aside of reserves and sinking funds and the source, regulation, application and disposition thereof;
- (5) The determination or definition of the revenues and income of the commission and of the expenses of operation and maintenance of the sewage disposal system;
- (6) The use, regulation, operation, maintenance, insurance and disposition of the sewage disposal facilities and other property of the commission;
- (7) Restrictions on the power of the commission to limit and regulate the use of the sewage disposal system, facilities and other property of the commission;
- (8) Limitations on the purposes to which the proceeds of such bonds or other bonds of the commission may be applied;
- (9) The construction and completion of all or any part of the sewage disposal system or any facilities of the commission;
- (10) Limitations on the issuance of additional bonds or on the indebtedness of the commission;

(11) The procedure, if any, by which the terms of any contract with the holders of such bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given or evidenced;

(12) Payment of costs or expenses incident to the enforcement of such bonds or of the provisions of such resolution or of any contract with the holders of such bonds, in accordance with this article; or

(13) Any other matter which the commission shall determine to be necessary in order to carry out and effectuate the purposes of the commission.

1946, p. 357; Michie Suppl. 1946, § 1560iii8.

§21-275. Negotiability.

Any provisions of law to the contrary notwithstanding, any bonds or temporary bonds issued pursuant to the authority of this chapter shall be deemed to be fully negotiable within the meaning and for all the purposes of Title 8.3A.

1946, p. 357; Michie Suppl. 1946, § 1560iii8.

§21-276. Liability of Commonwealth, county, city or town on bonds.

The bonds, notes and other obligations, and any indebtedness, of a commission shall not be in any way a debt or liability of the Commonwealth, or of any county, city or town in whole or in part embraced within the district and shall not create or constitute any indebtedness, liability or obligation of the Commonwealth or of any such county, city or town, either legal, moral or otherwise and nothing in this chapter contained shall be construed to authorize a commission or district to incur any indebtedness on behalf of or in any way to obligate the Commonwealth or any county, city or town, in whole or in part embraced within the district.

1946, p. 364; Michie Suppl. 1946, § 1560iii23.

§21-277. No personal liability on bonds.

Neither the members of the commission, nor any person executing any bonds or temporary bonds shall be liable personally on the bonds or temporary bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

1946, p. 358; Michie Suppl. 1946, § 1560iii8.

§21-278. Purchase of bonds by commission.

The commission is authorized, out of any funds available therefor, to purchase any bonds of the commission.

1946, p. 358; Michie Suppl. 1946, § 1560iii8.

§21-279. Bonds constitute legal investments.

Any bonds issued pursuant to the authority of this chapter are hereby made securities in which all public officers and bodies of this Commonwealth and all political subdivisions thereof, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, in the Commonwealth, may properly and legally invest funds in their control.

1946, p. 364; Michie Suppl. 1946, § 1560iii24.

§21-280. Special remedies of bondholders.

(a) The provisions of this section shall be applicable to a series of bonds of a commission only if the resolution or resolutions authorizing such series of bonds shall provide in substance that the holders of the bonds of such series shall be entitled to all the benefits, and be subject to the provisions of this section.

(b) In the event that the commission shall default in the payment of the principal of or interest on any bonds of such series after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the commission shall fail or refuse to comply with the provisions of this chapter relating to or affecting the payment or security of such bonds or the collection of fees, rents or charges, or other revenues therefor, or shall fail or refuse to carry out and perform the terms of any contract with the holders of any of such bonds, and such failure or refusal shall continue for a period of thirty days after written notice of its existence and nature to the commission the holders of twenty-five per centum in aggregate principal amount of such bonds then outstanding, by instrument or instruments filed with the Governor of the Commonwealth of Virginia and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of all bonds of such series for the purposes herein provided.

(c) Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of the bonds of such series then outstanding shall, in his or its name:

(1) By mandamus or other suit, action or proceeding at law or in equity, enforce all rights of the holders of such bonds, including the right to require the commission to collect fees, rents and other charges adequate to carry out any agreement as to, or pledge of, such fees, rents or other charges, or the revenues therefrom, and to require the commission to carry out and perform the terms of any contract with the holders of such bonds or its duties under this chapter;

(2) Bring suit upon all or any part of such bonds;

(3) By action or suit in equity, require the commission to account as if it were the trustee of an express trust for the holders of such bonds;

(4) By action or suit in equity, enjoin any act or thing which may be unlawful or in violation of the rights of the holders of such bonds;

(5) Declare all such bonds due and payable, whether or not in advance of maturity, and, if all defaults shall be made good, then with the consent of the holders of twenty-five per centum of the principal amount of such bonds then outstanding, annul such declaration and its consequences, provided that before declaring such bonds due and payable, the trustee shall first give thirty days' notice in writing to the commission.

(d) If the resolution or resolutions authorizing such series of bonds shall contain the provision authorized by subsection (a) of this section and shall further provide in substance that any trustee appointed pursuant to this section shall have the powers provided by subsection (c) of this section, then such trustee, whether or not all of the bonds of such series shall have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter upon and take possession of any facilities or property operated by the commission any of the revenues from the operation of which are pledged for the security of such bonds, and operate and maintain the same and fix, charge, collect and receive all fees, rents and other charges and other revenues thereafter arising from such operation in the same manner as the commission itself might do, and shall deposit all moneys collected in a separate account and apply the same in accordance with the duties and contracts of the commission in such manner as the court appointing such receiver shall direct.

(e) In any suit, action or proceeding by such trustee, the fees, counsel fees and expenses of such trustee and of the receiver, if any, shall constitute taxable costs and disbursements, and all costs and disbursements, allowed by the court shall be a first

charge upon any fees, rents and other charges, and revenues of the commission pledged for the payment or security of such bonds.

(f) Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of the holders of the bonds of such series in the enforcement and protection of their rights.

1946, p. 358; Michie Suppl. 1946, § 1560iii9.

§21-280.1. Bonds mutilated, lost or destroyed.

Should any bond issued by the commission become mutilated or be lost or destroyed the commission may cause a new bond of like date, number and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of, such mutilated bond and its interest coupons, or in lieu of and in substitution for such lost or destroyed bond and its unmatured interest coupons. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost or destroyed bond (1) has paid the reasonable expenses and charges in connection therewith and (2) in the case of a lost or destroyed bond, has filed with the chairman of the commission satisfactory evidence that such bond was lost or destroyed and that the holder was the owner thereof and (3) has furnished indemnity satisfactory to the commission.

1962, c. 204.

§21-281. Inviolability of rights and remedies.

The Commonwealth does pledge to and agree with the holders of any bonds or other obligations issued by any commission pursuant to this chapter that the Commonwealth will not limit or alter the rights hereby vested in such commission to charge and collect such fees, rents and charges and other revenues as may be convenient or necessary in order to comply with the terms and provisions of any contract or contracts made by such commission with such holders, or in any way impair the rights and remedies of such holders, until the bonds and other obligations, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders are fully met and discharged.

1946, p. 365; Michie Suppl. 1946, § 1560iii27.

§21-282. Interim certificates.

Pending the preparation, execution and delivery of definitive bonds of the commission to the purchaser of such bonds, interim certificates or other obligations may be issued by the commission to the purchaser. Such interim certificates or obligations shall be in such form and contain such terms, conditions and provisions as the commission issuing the same may determine.

1946, p. 359; Michie Suppl. 1946, § 1560iii10.

§21-283. Plans, maps, etc., to be available to commission.

Each county, city or town in whole or in part embraced within a district shall, at the request of the commission, make available to the commission or the agents or employees thereof, any or all maps, plans, specifications, records, books, accounts or other data or things deemed necessary by the commission in the exercise of its powers and duties under this chapter.

1946, p. 362; Michie Suppl. 1946, § 1560iii21.

§21-284. Payments by county, city or town.

Each county, city, town or other public body shall promptly pay to any commission all fees, rents and charges which the commission may charge to it as owner or lessee or tenant of real estate in accordance with § [21-260](#) and shall provide for the payment thereof in the same manner as other obligations of such county, city, town or public body.

1946, p. 362; Michie Suppl. 1946, § 1560iii21.

§21-285. Contracts with counties, cities and towns outside of district.

Any commission, and any county, city or town in whole or in part outside of the district, is authorized to enter into a contract or contracts on such terms and conditions as such contract may contain, providing for or relating to the treatment and disposal of sewage or industrial wastes originating in such county, city or town, by means of the sewage disposal system or such other facilities as the commission may determine to provide for such purpose, and such county, city or town is authorized to do everything necessary or proper to carry out and perform every such contract and to provide for the payment or discharge of any obligation thereunder by the same means and in the same manner as any other of its obligations.

In the event any such contract is entered into in accordance with the provisions of this section, provision shall be made therein whereby the cost of rendering the ser-

vices herein referred to, to such county, city or town, will be borne by such county, city or town.

1946, p. 362; Michie Suppl. 1946, § 1560iii21.

§21-286. Additional powers conferred on counties, cities and towns.

The powers conferred by this chapter on counties, cities and towns are in addition and supplemental to the powers conferred by any other law, and may be exercised by resolution of the governing bodies thereof without regard to the terms, conditions, requirements, restrictions or other provisions contained in any other law, general or special, except the State Water Control Law passed at the 1946 regular session of the General Assembly, or in any charter, except that where fees, rents and charges are fixed by a city or town, that power shall be exercised by ordinance.

1946, p. 363; Michie Suppl. 1946, § 1560iii21.

§21-287. Discharge into waters of matter causing pollution.

No county, city, town or other public body, or person shall discharge, or suffer to be discharged, directly or indirectly into any waters of the district any sewage, industrial wastes or other refuse which may or will cause or contribute to pollution of any waters of the district, provided, that this provision shall be applicable only to such part or parts of the waters of a district as shall be bounded and described in a notice, published in a newspaper or newspapers having, in the aggregate, general circulation in all of the counties and cities within which or bordering upon which such part or parts of the waters of the district are located, to the effect that the commission has provided facilities reasonably sufficient in its opinion for the disposal of sewage, which by discharge from public sewer systems might cause or contribute to pollution of the bounded and described part or parts of such waters, and that pollution of the same is forbidden by law. Such a notice shall constitute prima facie evidence of the existence of facilities sufficient for the disposal of such sewage. The provisions of this section shall not prohibit the disposal of sewage and industrial wastes in the manner in which the same is now being disposed of, or in any other reasonable manner, by any county, city or town, no part of which constitutes a part of any district, or by any person in any such county, city or town, no part of which constitutes a part of any district.

1946, p. 363; Michie Suppl. 1946, § 1560iii22.

§21-288. Discharge of matter injurious to system.

No county, city, town or other public body, or person shall discharge, or suffer to be discharged, directly or indirectly, into the sewage disposal system or any other facilities of or provided by a commission, any matter or thing which is or may be injurious or deleterious to such sewage disposal system or other facilities.

1946, p. 363; Michie Suppl. 1946, § 1560iii22.

§21-289. Jurisdiction.

Jurisdiction to enforce the provisions of the two preceding sections and to grant any remedy or relief authorized by this article shall be in the circuit court of any county and in the corporation court of any city in whole or in part embraced within the district, or within which are located any waters of the district. The remedies, relief and jurisdiction authorized by this section shall be concurrent and cumulative.

1946, p. 364; Michie Suppl. 1946, § 1560iii22.

§21-290. Punishment of violations.

Any person violating any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished accordingly.

1946, p. 365; Michie Suppl. 1946, § 1560iii28.

Securities Act

§13.1-501. Definitions.

A. When used in this chapter, unless the context otherwise requires:

"Agent" means any individual who, as a director, officer, partner, associate, employee or sales representative of a broker-dealer or issuer, effects or undertakes to effect sales of securities, otherwise than on behalf of (i) an issuer either offering a security exempted by subdivision 1, 2, 3, 4, 7, 9, or 10 of subsection A of § [13.1-514](#) or effecting a transaction with a "qualified purchaser" as defined by the United States Securities and Exchange Commission or (ii) a broker-dealer effecting in this Commonwealth transactions limited to those transactions described in § 15(h)(2) of the Securities Exchange Act of 1934.

"Broker-dealer" means any person engaged in the business of selling any type of security other than an interest or unit in a condominium as defined in subdivision (c) of § [55-79.2](#) or cooperative housing corporation for the account of others or for his

own account otherwise than with or through a broker-dealer or agent, but does not include an issuer or an agent. A bank or trust subsidiary formed under Article 3 (§ [6.2-1047](#) et seq.) of Chapter 10 of Title 6.2 shall not be considered to be a broker-dealer because the bank or trust subsidiary formed under Article 3 (§ [6.2-1047](#) et seq.) of Chapter 10 of Title 6.2 engages in any one or more of the activities specified in subparagraph (i), (ii), (iii), (iv), (v), (vi), (viii), (ix) or (x) of § 3(a)(4)(B) or in § 3(a)(5)(C) of the Securities Exchange Act of 1934 under the conditions described in connection with such laws.

"Commission" means the State Corporation Commission.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

"Cooperative housing corporation" means a corporation in which each member is entitled, solely by reason of his membership in the corporation, to occupy for dwelling purposes a house or an apartment in a building owned or leased or to be owned or leased by the corporation or to purchase a dwelling constructed or to be constructed by the corporation. The corporation shall not be or intend to be engaged in any business or activity other than the ownership, leasing, management, or construction of residential properties for its members, except to the extent that such business or activity is incidental to the ownership, leasing, management, or construction of residential properties. The securities of the corporation shall be issued only in connection with the sale or lease of dwelling units to persons who are or thereupon become members of the corporation and shall be transferable by the purchasers only in connection with the transfer of such dwelling units or leases to other persons who are or thereupon become members.

"Federal covered advisor" means any person who is registered or required to be registered under § 203 of the Investment Advisers Act of 1940 as an "investment adviser."

"Federal covered security" means any security described as a "covered security" in § 18 of the Securities Act of 1933.

"Guaranteed" means guaranteed as to payment of principal, interest or dividends.

"Investment advisor" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the

value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. Investment advisor also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment advisor" does not include (i) an investment advisor representative; (ii) a bank, a bank holding company as defined in the Bank Holding Company Act of 1956 which is not an investment company, a trust subsidiary organized under Article 3 (§ [6.2-1047](#) et seq.) of Chapter 10 of Title 6.2, a savings institution, a credit union, or a trust company; (iii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (iv) a broker-dealer or his agent whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific situation of each client; (vi) any person that is a federal covered advisor; or (vii) such other persons not within the intent of this definition, as the Commission may designate by rule or determine by order pursuant to § [13.1-525](#).

"Investment advisor representative" means any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who is employed by or associated with (a) an investment advisor registered or required to be registered under this chapter and who does any of the following: (i) makes any recommendations or otherwise renders advice regarding securities, (ii) manages accounts or portfolios of clients, (iii) determines which recommendations or advice regarding securities should be given, (iv) prepares reports or analyses concerning securities, (v) solicits, offers or negotiates for the sale of or sells investment advisory services, or (vi) supervises employees who perform any of the foregoing; or (b) a federal covered advisor, subject to the limitations of § 203 A of the Investment Advisers Act of 1940, as the Commission may designate by rule or order. "Investment advisor representative" does not include such other persons employed by or associated with either an investment advisor or a federal

covered advisor not within the intent of this definition as the Commission may designate by rule or determine by order pursuant to § [13.1-525](#).

"Issuer" means any person who issues or proposes to issue a security, except that:

1. With respect to certificates of deposit, voting trust certificates or collateral trust certificates, and with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions, or of the fixed, restricted management or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of manager;
2. With respect to equipment trust certificates or like securities, "issuer" means the person by whom the equipment is or is to be used;
3. With respect to oil, gas or other mineral leases, rights or royalties or interests therein, "issuer" means the owner of any such lease, right, royalty or interest (whether whole or fractional) who creates financial interests therein for the purpose of offering to more than five persons.

"Nonissuer distribution" means any transaction not directly or indirectly for the benefit of the issuer.

"Offer" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

"Person" means an individual, a partnership, a corporation, an unincorporated association, a government, a subdivision of a government, or a trust in which the interests of the beneficiaries are evidenced by securities.

"Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

"Securities Act of 1933," "Securities Exchange Act of 1934," "Bank Holding Company Act of 1956," "Investment Advisers Act of 1940," and "Investment Company Act of 1940" mean the federal statutes of those names as now or hereafter amended.

"Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate of subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; oil, gas or other mineral lease, right or royalty, or any interest therein; or, in general, any interest or instrument commonly known as a "security," or any certificate of

interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. However, this definition shall not apply to any insurance policy, endowment policy, annuity contract, variable annuity contract or any contract or agreement in relation to and in consequence of any such policy or contract, issued by an insurance company subject to the supervision or control of the Commission's Bureau of Insurance when the form of such policy or contract has been duly filed with the Bureau as now or hereafter required by law.

"State" means any state, territory or possession of the United States, including the District of Columbia and Puerto Rico.

B. For the purposes of Article 4 (§ [13.1-507](#) et seq.) of this chapter, the terms defined in this section shall not include negotiations or agreements between the issuer and any underwriter or among underwriters; or any transaction by the pledgee of a security unless made directly or indirectly for the benefit of the issuer.

C. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be deemed to constitute part of the subject of the purchase and to have been offered and sold for value.

D. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same issuer or of another person, and every sale or offer, of a security which gives the holder thereof a present or future right or privilege to convert the security into another security of the same issuer or of another person, shall be deemed to include an offer of such other security.

Code 1950, § 13-106; 1956, c. 428; 1966, c. 186; 1974, cc. 409, 479; 1975, c. 75; 1976, c. 229; 1987, c. 678; 1988, c. 536; 1990, c. 5; 1991, cc. 223, 418; 1992, c. 19; 1997, c. [279](#); 1998, c. [22](#); 2001, c. [722](#).

§13.1-502. Unlawful offers and sales.

It shall be unlawful for any person in the offer or sale of any securities, directly or indirectly,

- (1) To employ any device, scheme or artifice to defraud, or
- (2) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) To engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

1956, c. 428.

§13.1-503. Unlawful advice.

A. It shall be unlawful for any person who receives directly or indirectly any consideration from another person primarily for advising such other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,

1. To employ any device, scheme, or artifice to defraud such other person,
2. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon such other person,
3. Acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this subdivision shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment advisor in relation to such transaction, or
4. To engage in dishonest or unethical practices as the Commission may define by rule.

B. In the solicitation of advisory clients, it shall be unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

C. Except as may be permitted by rule or order of the Commission, it shall be unlawful for any investment advisor to enter into, extend, or renew any investment advisory contract unless it provides in writing:

1. That the investment advisor shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

2. That no assignment of the contract may be made by the investment advisor without the consent of the other party to the contract; and
3. That the investment advisor, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

D. Subdivision 1 of subsection C of this section shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date.

E. "Assignment" as used in subdivision 2 of subsection C of this section includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. If the investment advisory is a partnership, no assignment of an investment advisory contract is considered to result from the death of withdrawal of a minority of the members of the investment advisor having only a minority interest in the business of the investment advisor, or from the admission to the investment advisor of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

F. The Commission may by rule or order adopt exemptions from subdivision 3 of subsection A and subdivisions 1, 2 and 3 of subsection C of this section where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

1956, c. 428; 1987, c. 678.

§13.1-504. Registration.

A. It shall be unlawful for any person to transact business in this Commonwealth as (i) a broker-dealer or an agent, except in transactions exempted by subsection B of § [13.1-514](#), unless he is so registered under this chapter; (ii) an investment advisor or investment advisor representative unless he is so registered under this chapter; or (iii) a federal covered advisor unless he has filed such documents and paid such fee as the Commission by rule or order may require.

B. The registration of an agent shall be deemed effective only so long as he is connected with a specified broker-dealer registered under this chapter or a specified issuer. When an agent begins or terminates a connection with a broker-dealer or

issuer, both the agent and the broker-dealer or issuer shall promptly notify the Commission. An agent who changes his connection from one broker-dealer or issuer to another shall be required to file a new application for registration and pay the necessary fee in accordance with § [13.1-505](#). It shall be unlawful for any broker-dealer or issuer to employ an unregistered agent. No agent shall be employed by more than one broker-dealer or issuer, except pursuant to such rules or regulations as the Commission shall prescribe.

C. The registration of an investment advisor representative shall be deemed effective only so long as he is connected with an investment advisor registered under this chapter or a federal covered advisor. When an investment advisor representative begins or terminates a connection with an investment advisor, the investment advisor shall promptly notify the Commission. When an investment advisor representative begins or terminates a connection with a federal covered advisor, the investment advisor representative shall promptly notify the Commission. An investment advisor representative who changes his connection from one investment advisor or federal covered advisor to another shall be required to file a new application for registration and pay the necessary fee in accordance with § [13.1-505](#). It shall be unlawful for (i) any person who is required to be registered as an investment advisor under this chapter to employ an unregistered investment advisor representative or (ii) a federal covered advisor to employ, supervise, or associate with an unregistered investment advisor representative having a place of business in the Commonwealth. No investment advisor representative shall be employed by more than one investment advisor or federal covered advisor except pursuant to such rules or regulations as the Commission shall prescribe.

1956, c. 428; 1974, cc. 374, 479; 1979, c. 312; 1982, c. 407; 1987, c. 678; 1991, cc. 223, 281, 418; 1997, c. [279](#); 1998, cc. [22](#), [255](#); 2003, c. [595](#); 2007, c. [458](#).

§13.1-504.1. Brokerage services of savings and loan associations, savings banks or service corporations of either; when registration not required.

A savings and loan association or a savings bank, or the service corporation of either, may enter into an agreement with any person or entity which is a registered broker-dealer under the applicable provisions of this chapter and under the Securities Exchange Act of 1934, for the purpose of making brokerage services available to customers of the association or savings bank. The existence of such an agreement shall not of itself be sufficient to require employees of the association, savings bank or

service corporation to register as an agent under the provisions of this article, so long as the employees' activities with regard to such brokerage services are limited to the providing of clerical or ministerial services.

1984, c. 334.

§13.1-504.2. Broker-dealer services provided by credit unions; when registration not required.

A credit union may enter into an agreement with any person or entity which is a registered broker-dealer under this chapter and under the Securities Exchange Act of 1934, for the purpose of making brokerage services available to members of the credit union. The existence of such an agreement shall not of itself be sufficient to require employees of the credit union to register as an agent under the provisions of this article, so long as the employees' activities with regard to such brokerage services are limited to the providing of clerical or ministerial services.

1988, c. 338.

§13.1-505. Procedure for registration.

A. A broker-dealer, investment advisor, investment advisor representative or agent may be registered after filing with the Commission, or any entity designated by order or rule of the Commission, an application containing such relevant information as the Commission may require. He shall be registered if the Commission finds that:

1. He is a person (and, in the case of a corporation or partnership, the natural persons who are the officers, directors or partners or who otherwise control such corporation or partnership are persons) of good character and reputation;
2. He intends to maintain his business records in accordance with the rules of the Commission;
3. His business knowledge and conduct and his financial responsibility are such that he is a suitable person to engage in the business;
4. He has supplied all information required by the Commission;
5. He is not subject to the revocation provisions of § [13.1-506](#); and
6. He has paid the necessary fee.

B. The Commission may require as a condition of registration or renewal of registration the filing by a broker-dealer or investment advisor of a reasonable surety or other bond conditioned as the Commission may require for the protection of

investors not in any case exceeding \$25,000 in penalty amount as evidence of financial responsibility except that no bond shall be required where the net worth of the broker-dealer or investment advisor exceeds \$25,000.

C. The Commission may require as a condition of registration the passing of a written examination as evidence of knowledge of the securities or investment advisory business.

D. All registrations and renewals thereof shall expire annually in accordance with rules and regulations promulgated by the Commission.

E. Each application for a renewal of a registration shall be filed with the Commission or any entity designated by order or rule of the Commission. Upon application for a renewal of a registration, the Commission shall have jurisdiction to determine, as of such time, the propriety of the renewal registration.

F. Each application for a registration or renewal of a registration as a broker-dealer or investment advisor shall be accompanied by a nonrefundable fee of \$200, payable to the Treasurer of Virginia or any entity designated by order or rule of the Commission.

G. Each application for a registration or renewal of a registration as an agent or investment advisor representative shall be accompanied by a nonrefundable fee of not less than thirty and not more than fifty dollars, as established by order or rule of the Commission, payable to the Treasurer of Virginia or any entity designated by order or rule of the Commission.

H. For the purposes of registration as a broker-dealer or an investment advisor, a partnership shall be treated as the same partnership so long as two or more members of the partnership named in the application continue the business without change of location, if the partnership, within one month after a change in the partnership, files with the Commission a copy of a certificate filed in compliance with § [50-74](#).

I. The Commission shall either grant or deny each application for registration within thirty days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the Commission may extend such period as much as ninety days by giving written notice to the applicant. No more than three such extensions may be made on any one application. An extension of the initial thirty-day period, not to exceed ninety days, shall be granted upon written request of the applicant.

J. A renewal of registration shall be granted as a matter of course upon receipt of the proper application and fee together with any surety bond that the Commission may pursuant to subsection B require unless the registration was, or the renewal would be, subject to revocation under § [13.1-506](#).

1956, c. 428; 1974, cc. 382, 479; 1980, c. 222; 1981, c. 244; 1984, c. 771; 1987, c. 678; 1990, c. 5; 1991, c. 281; 1992, c. 18; 1997, c. [279](#).

§13.1-505.1. Post-registration provisions.

With respect to investment advisors, the Commission may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the Commission in its discretion, information furnished to clients or prospective clients of an investment advisor that would be in compliance with the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

1987, c. 678; 1997, c. [279](#).

§13.1-506. Revocation of registration.

The Commission may, by order entered after a hearing on notice duly served on the defendant not less than thirty days before the date of the hearing, revoke the registration of a broker-dealer, investment advisor, investment advisor representative or agent, or refuse to renew a registration if an application for renewal has been or is to be filed, if it finds that such an order is in the public interest and that such broker-dealer, investment advisor or any partner, officer or director of such broker-dealer or investment advisor, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by such broker-dealer or investment advisor or that such agent or investment advisor representative:

1. Has engaged in any fraudulent transaction;
2. Is insolvent, or in danger of becoming insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature;
3. Is a person for whom a conservator or guardian has been appointed and is acting;

4. Has been convicted, within or without this Commonwealth, of any misdemeanor involving a security or any aspect of the securities or investment advisory business or any felony;
5. Has failed to furnish information or records requested by the Commission concerning his conduct of the securities or investment advisory business; or
6. [Repealed.]
7. Has failed to conduct his securities or investment advisory business in accordance with the rules of the Commission.

1956, c. 428; 1974, c. 479; 1981, c. 244; 1987, c. 678; 1997, c. [921](#).

§13.1-507. Registration requirement; exemptions.

It shall be unlawful for any person to offer or sell any security unless (i) the security is registered under this chapter, (ii) the security or transaction is exempted by this chapter, or (iii) the security is a federal covered security.

Code 1950, § 13-110; 1956, c. 428; 1997, c. [279](#); 2003, c. [595](#).

§13.1-508. Registration by notification.

A. The following securities may be registered by notification:

1. Any security whose issuer (which, for the purposes of this subsection, shall include any predecessor by merger, consolidation or acquisition of assets) has been in continuous operation for at least five years if there has been no default within the past three fiscal years in the payment of principal, interest or dividends on any security of the issuer with a fixed maturity or a fixed interest or dividend provision, and (where the security being registered does not have a fixed maturity or a fixed interest or dividend provision) (a) the issuer is a corporation which has assets of at least \$500,000 after deduction of depreciation and other reserves, which has a net worth of at least \$10,000, which is incorporated under the laws of this Commonwealth and which conducts a substantial portion of its business in this Commonwealth, or (b) the issuer during its past three fiscal years has had average net earnings applicable to all securities without a fixed maturity or a fixed interest or dividend provision (whether of one or more classes) outstanding at the date when the registration statement is filed (i) aggregating at least five percent of the amount of such outstanding securities as measured by their maximum public offering price or their market price on a day within 30 days of the date of filing the registration statement, whichever is higher, or their book value on a day within 90 days of the date of filing the

registration statement if there is neither a readily determinable market price nor a public offering price or (ii) if no such securities are outstanding, then aggregating at least five percent of the amount of such securities then offered for sale based upon the maximum price at which such securities are to be offered for sale; and all accounting determinations required by this section shall be made in accordance with generally accepted accounting practices. Noncumulative preferred stock shall be deemed for the purposes of this subsection a security with a fixed dividend provision.

2. Any security registered for nonissuer distribution if (i) any security of the same class has ever been registered or (ii) the security being registered was originally issued pursuant to an exemption in this chapter.

B. A registration statement under this section shall state the facts showing eligibility of the securities for registration by notification, the amount and maximum offering price of the securities proposed to be offered in this Commonwealth, and a copy of any prospectus to be used in connection with the offering. It shall be accompanied by a fee of 1/20 of one percent of the maximum offering price of the securities proposed to be offered in this Commonwealth; provided that the fee shall not be less than \$100 nor more than \$250.

C. If no stop order is in effect and no proceeding for the issuance of a stop order is pending, a registration statement under this section shall automatically become effective at three o'clock in the afternoon of the second full business day after filing of the registration statement or the last amendment thereto or at such earlier time as the Commission may determine by order, letter, telegram, or electronic means.

D. The Commission may require that a prospectus be used in connection with the offering. If the Commission requires the use of a prospectus, it shall be unlawful to sell any security registered under this section except upon delivery of a prospectus to each person to whom an offer is made. The prospectus shall contain such information specified in subsection (b) of § [13.1-510](#) as may be designated by the Commission as necessary for the protection of investors and such additional information as the Commission may require.

1956, c. 428; 1981, c. 168; 1984, c. 771; 1993, c. 179; 2003, c. [595](#).

§13.1-509. Registration by coordination.

A. Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination

if no stop order or refusal order is in effect against such registration statement and no proceeding looking toward such an order is pending.

B. A registration statement under this section shall consist of the prospectus filed under the Securities Act of 1933 together with all amendments or supplements thereto and a statement of the amount and maximum offering price of the securities proposed to be offered in this Commonwealth. The Commission may require that it also include the articles of incorporation and bylaws, any agreements with underwriters, any indenture or any other instrument governing the issuance of the security to be registered, a specimen of the security and any other information documents filed under the Securities Act of 1933. The registration statement shall be accompanied by a fee of one-twentieth of one percent of the maximum aggregate offering price of the securities proposed to be offered in this Commonwealth; provided that the fee shall not be less than \$200 nor more than \$700, except that in the case of a unit investment trust, as that term is defined in the Investment Company Act of 1940, the fee shall not be less than \$400 nor more than \$1,000.

C. A registration statement under this section shall automatically become effective at the moment the federal registration statement becomes effective if all of the following conditions are satisfied: (i) No stop order is in effect and no proceeding for the issuance of a stop order is pending and (ii) the registration statement and all amendments other than a final amendment (hereinafter termed the "price amendment") which is limited substantially to information concerning the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price have been on file with the Commission, or any entity designated by order or rule of the Commission, for at least three full business days. Unless the definitive information concerning price and other matters dependent thereon has been so on file with the Commission or such entity, the registrant shall promptly notify the Commission by telephone, telegram, or electronic means of the date and time when the federal registration statement became effective and the content of the federal price amendment, if any, and shall promptly file a post-effective amendment containing the information in the federal price amendment but exclusive of exhibits. Failure to receive such notification or such post-effective amendment if required shall be grounds for the entry of a stop order retroactively denying effectiveness to the registration statement, without notice or hearing, if the Commission promptly notifies the registrant by telephone, telegram, or electronic means (and promptly confirms by letter, telegram, or

electronic means when it notifies by telephone) of the issuance of such an order. If the registrant proves that he complied with the requirements of this subsection as to notice and post-effective amendment, the stop order shall be void as of the time of its entry. The Commission may, by order, letter, telegram, or electronic means, accelerate the effectiveness of any registration statement and may waive any or all of the conditions specified in clause (ii) above. If the federal registration has become effective before all of such conditions have been satisfied and they are not so waived, the registration statement under this section shall automatically become effective as soon as all of such conditions have been satisfied.

1956, c. 428; 1984, c. 771; 1990, c. 90; 1994, c. [10](#); 2003, c. [595](#).

§13.1-510. Registration by qualification.

(a) Any security may be registered by qualification.

(b) A registration statement under this section shall contain that part of the following information as required by the Commission:

(1) With respect to the issuer and any significant subsidiary: its name, address and form of organization; the state (or foreign jurisdiction) and date of its organization; the general character of its business; and a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) With respect to every director and officer of the issuer (or person occupying a similar status or performing similar functions): his name, address and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within ninety days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(3) With respect to persons covered by subdivision (2) of this subsection: the remuneration paid during the past twelve months and estimated to be paid during the ensuing twelve months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries and affiliates) to all such persons in the aggregate;

- (4) With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision (2) of this subsection other than his occupation;
- (5) With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision (2) of this subsection, any amount paid to him within such period or intended to be paid to him and the consideration for any such payment;
- (6) With respect to any person other than the issuer on whose behalf any part of the offering is to be made: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;
- (7) The capitalization and long term debt (on both a current and a pro forma basis) of the issuer and any subsidiary, including (i) a description of each class of security outstanding or being registered or otherwise offered, and (ii) a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill or anything else) for which the issuer or any such subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;
- (8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any portion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than cash; the estimated aggregate underwriting and selling discounts or commissions and finder's fees (including separately cash, securities, contracts or anything else of value to accrue to the underwriters in connection with the offering) or, if such discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finders' fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms

have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which such proceeds are to be used by the issuer; the amount to be used for each purpose; the order of priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve such purposes; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with such acquisition and the amounts of such commissions and any other expense in connection with such acquisition (including the cost of borrowing money to finance such acquisition);

(10) A description of any stock options (or other security options) outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivisions (2), (4), (5), (6) or (8) of this subsection and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(11) The dates of, parties to and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(12) A copy of any prospectus, pamphlet, circular, form letter, advertisement or sales literature intended as of the effective date to be used in connection with the offering;

(13) A specimen of the security being registered; a copy of the issuer's articles of incorporation and bylaws (or their substantial equivalents) as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) An opinion of counsel as to the legality of the security being registered which shall state whether the security when sold will be legally issued, fully paid and nonassessable, and, if a debt security, a binding obligation of the issuer;

(15) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if such business were the registrant;

(16) Such additional information as the Commission may require.

(c) A registration statement shall state the amount of securities to be offered in this Commonwealth and shall be accompanied by a filing fee of one-tenth of one percent of the maximum aggregate offering price at which the securities are proposed to be offered in this Commonwealth; provided that the fee shall not be less than \$250 nor more than \$500.

(d) A registration statement under this section shall become effective when the Commission so orders.

(e) It shall be unlawful to sell any security registered under this section that constitutes the whole or a part of an unsold allotment or subscription by a broker-dealer as a participant in the underwriting of such securities except upon delivery to the purchaser of a prospectus. The prospectus shall contain such part of the information specified in subsection (b) as may be designated by the Commission as necessary for the protection of investors.

(f) The Commission shall have authority in its discretion to require that sales be made only pursuant to a subscription contract the form of which shall have been filed as an exhibit to the registration statement. If the Commission requires a subscription contract, it shall be unlawful to sell any security registered under this section except pursuant to such a subscription contract duly signed by the purchaser, a copy of which shall be delivered to him.

(g) [Repealed.]

(h) If any prospectus, document or exhibit filed as provided in this section discloses that any of the securities sought to be registered by qualification, or as much as twenty-five percent of any class of the securities of the issuer to be outstanding, were or are intended to be issued for any patent right, copyright, trademark, process, formula, goodwill or other intangible assets, or for organization or promotion fees or expenses, the Commission may require that such securities shall be delivered in escrow to some satisfactory depository under an escrow agreement. The owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until the issuer in any period of thirty-six consecutive months earns an annual average of six percent of the public offering price times all shares of common stock then outstanding plus those to be outstanding through the exercise of warrants or options as computed under normal and customary accounting procedures or upon order of the Commission, when no circumstance is apparent which, in the opinion of the Commission, would warrant continuation of the escrow. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full. If any securities sought to be registered by qualification are to be sold for the account of the issuer, and not by underwriters who have or at the time of offering shall have purchased such securities from the issuer, the Commission may require that the proceeds from the sale of such securities be delivered in escrow to some satisfactory depository until all or a reasonable portion of the total securities originally proposed to be offered and sold shall have been sold and paid for.

For the purposes of this section, such securities shall be deemed to have been sold and paid for at such time as the subscribers therefor deliver to, or for the benefit of, the issuer, an amount equal to the purchase price specified for such securities either in cash, a draft, check or note (other than any such instrument which is drawn without recourse) or any combination thereof.

1956, c. 428; 1982, c. 362; 1983, c. 517; 1984, c. 771; 1993, c. 180 .

§13.1-511. Effectiveness and reports.

A registration statement filed under this article may be filed by the issuer, any other person on whose behalf the offer is to be made or by any registered broker-dealer. When securities are registered, they may be offered and sold by the issuer, by such other person or by any registered broker-dealer, whether or not named in the

registration statement. Every registration statement shall remain effective until revoked by the Commission or until terminated upon request of the registrant with the consent of the Commission. So long as a registration statement remains effective, all outstanding securities of the same class shall be considered to be registered for the purpose of any nonissuer distribution. So long as the registration statement remains effective, the Commission may require the registrant to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement. The Commission may require such information to be included in the prospectus.

1956, c. 428; 1991, c. 223; 2003, c. [595](#).

§13.1-512. Repealed.

Repealed by Acts 2003, c. [595](#).

§13.1-513. Stop orders.

(a) The Commission may issue a stop order denying effectiveness to, or revoking the effectiveness of, any registration statement if it finds that such an order is in the public interest and that:

- (1) The registration statement together with any amendments, or any report filed by the registrant or any other document filed in connection with the registration statement contained any statement which was, at the time and in the circumstances in which it was made, false or misleading with respect to any material fact or omitted to state any material fact required to be stated therein;
- (2) The applicant or registrant or any agent, partner, officer or director of the applicant or registrant (or any person occupying a similar status or performing similar functions) or any person directly or indirectly controlling or controlled by the applicant or registrant has violated, in connection with the offering, any provision of this chapter or of any other law applicable to the offering, or any rule, order or condition lawfully imposed under this chapter;
- (3) Any person specified in subdivision (2) of this subsection has failed to furnish any information lawfully requested by the Commission;
- (4) The right to sell the securities which are the subject of the registration statement has been denied or revoked or is suspended under any federal act applicable to the offering (and such denial, revocation or suspension is still in effect);

- (5) The issuer is insolvent, either in the sense that its liabilities exceed its assets or in the sense that it cannot meet its obligations as they mature;
 - (6) The issuer's business includes or probably will include activities which are forbidden by law;
 - (7) The offering has worked or tended to work a fraud upon investors or probably will so operate; or
 - (8) Where a security is to be or has been registered by notification, it is not eligible for such registration.
- (b) No stop order shall be entered without reasonable notice to the applicant or registrant.
- (c) In any proceeding under this section, the Commission may refrain from issuing or, after issuing, may revoke a stop order on condition that the persons against whom it is directed correct the matters complained of on which it is based.

1956, c. 428; 1960, c. 71.

§13.1-514. Exemptions.

A. The following securities are exempted from the securities registration requirements of this chapter:

1. Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;
2. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by such issuer or guarantor;
3. Any security issued by and representing an interest in or a debt of, or guaranteed by, the International Bank for Reconstruction and Development, or any national bank, or any bank or trust company organized under the laws of any state or trust subsidiary organized under the provisions of Article 3 (§ [6.2-1047](#) et seq.) of Chapter 10 of Title 6.2;

4. Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or savings bank, or by any savings and loan association or savings bank which is organized under the laws of this Commonwealth;
5. Any security issued or guaranteed by an insurance company licensed to transact insurance business in this Commonwealth;
6. Any security issued by any credit union, industrial loan association or consumer finance company which is organized under the laws of this Commonwealth and is supervised and examined by the Commission;
7. Any security issued or guaranteed by any railroad, other common carrier or public service company supervised as to its rates and the issuance of its securities by a governmental authority of the United States, any state, Canada or any Canadian province;
8. Any security which is listed or approved for listing upon notice of issuance on the New York Stock Exchange or the American Stock Exchange or any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants admitted to trading in any of said exchanges; or any warrant or right to subscribe to any of the foregoing securities;
9. Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace, or any renewal thereof which is likewise limited, or any guaranty of such paper or of any such renewal;
10. Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan. The Commission may by rule or order, as to any security issued pursuant to such plan, specify or designate persons eligible to participate in such plan;
11. Any security issued by a cooperative association organized as a corporation under the laws of this Commonwealth;
12. Any security listed on an exchange registered with the United States Securities and Exchange Commission or quoted on an automated quotation system operated by a national securities association registered with the United States Securities and

Exchange Commission and approved by regulations of the State Corporation Commission;

13. Any security issued by any issuer organized under the laws of any foreign country and approved by rule or regulation of the Commission.

B. The following transactions are exempted from the securities, broker-dealer and agent registration requirements of this chapter except as expressly provided in this subsection:

1. Any isolated transaction by the owner or pledgee of a security, whether effected through a broker-dealer or not, which is not directly or indirectly for the benefit of the issuer;

2. Any nonissuer distribution by a registered broker-dealer and its registered agent of a security that has been outstanding in the hands of the public for the past five years, if the issuer in each of the past three fiscal years has lawfully paid dividends on its common stock aggregating at least four percent of its current market price;

3. Any transaction by a registered broker-dealer and its registered agent pursuant to an unsolicited order or offer to buy;

4. Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels, if the entire indebtedness secured thereby is offered and sold as a unit;

5. Any transaction in his official capacity by a receiver, trustee in bankruptcy or other judicially appointed officer selling securities pursuant to court order;

6. Any offer or sale to a corporation, investment company or pension or profit-sharing trust or to a broker-dealer;

7. a. Any sale of its securities by an issuer or any sale of securities by a registered broker-dealer and its registered agent acting on behalf of an issuer if, after the sale, such issuer has not more than 35 security holders, and if its securities have not been offered to the general public by advertisement or solicitation; or

b. To the extent the Commission by rule or order permits, any sale of its securities by an issuer or any sale of securities by a registered broker-dealer and its registered agent acting on behalf of an issuer to not more than 35 persons in the Commonwealth during any period of 12 consecutive months, whether or not the issuer or any purchaser is then present in the Commonwealth, if the issuer or broker-dealer

reasonably believes that all the purchasers in the Commonwealth are purchasing for investment, and if the securities have not been offered to the general public by advertisement or general solicitation. The Commission may, by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, increase or decrease the number of purchasers permitted, or waive the condition relating to their investment intent. The Commission may assess and collect in connection with any filing pursuant to this exemption a non-refundable fee not to exceed \$250.

With respect to this subdivision 7, and except to the extent the Commission by rule or order may otherwise permit, the number of security holders of an issuer or the number of purchasers from an issuer, as the case may be, shall not be deemed to include the security holders of any other corporation, partnership, limited liability company, unincorporated association or trust unless it was organized to raise capital for the issuer. Notwithstanding the provisions of subdivision 15, the merger or consolidation of corporations, partnerships, limited liability companies, unincorporated associations or other entities shall be a violation of this chapter if the surviving or new entity has more than 35 security holders or purchasers and all the securities of the parties thereto were issued under this exemption, unless all of the parties thereto have been engaged in transacting business for more than two years prior to the merger or consolidation;

8. Any transaction pursuant to an offer to existing security holders of the issuer including holders of transferable warrants issued to existing security holders and exercisable within 90 days of their issuance, if either (i) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this Commonwealth or (ii) the issuer first notifies the Commission in writing of the terms of the offer and the Commission does not by order disallow the exemption within five full business days after the date of the receipt of the notice;

9. Any offer (but not a sale) of a security for which registration statements have been filed, but are not effective, under both this chapter and the Securities Act of 1933; but this exemption shall not apply while a stop order is in effect or, after notice to the issuer, while a proceeding or examination looking toward such an order is pending under either act;

10. The issuance of not more than three shares of common stock to one or more of the incorporators of a corporation and the initial transfer thereof;
11. Sales of an issue of bonds, aggregating \$150,000 or less, secured by a first lien deed of trust on realty situated in Virginia, to 30 persons or less who are residents of Virginia;
12. Any offer or sale of any interest in any partnership, corporation, association or other entity created solely to provide residential housing located in the Commonwealth, provided that such offer or sale is by the issuer or by a real estate broker or real estate agent duly licensed in Virginia;
13. The Commission is authorized to create by rule a limited offering exemption, the purpose of which shall be to further the objectives of compatibility with similar exemptions from federal securities regulation and uniformity among the states; providing that such rule shall not exempt broker-dealers or agents from the registration requirements of this chapter, except in the case of an agent of the issuer who either (i) receives no sales commission directly or indirectly for offering or selling the securities or (ii) effects transactions in a security exempt from registration under the Securities Act of 1933 pursuant to rules and regulations promulgated under § 4(2) thereof. Any filing made with the Commission pursuant to any exemption created under this subdivision shall be accompanied by a \$250 fee;
14. The issuance of any security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or in a security;
15. Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, sale of assets, or exchange of securities;
16. Any offer or sale of a security issued by a Virginia church if the offer and sale are only to its members and the security is offered and sold only by its members who are Virginia residents and who do not receive remuneration or compensation directly or indirectly for offering or selling the security;
17. Any offer or sale of securities issued by a professional business entity (as defined in subsection A of § [13.1-1102](#)) to a person licensed or otherwise legally authorized

to render within this Commonwealth the same professional services (as defined in subsection A of § [13.1-1102](#)) rendered by the professional business entity. Notwithstanding the foregoing, nothing in this subdivision shall be deemed to provide that shares of stock, partnership or membership interests or other representations of ownership in a professional business entity are securities except to the extent otherwise provided by subsection A of this section;

18. Any offer that is communicated on the Internet, World Wide Web or similar proprietary or common carrier electronic system and that is in compliance with requirements prescribed by rule or order of the Commission;

19. To the extent the Commission by rule or order permits, any offer or sale to an accredited investor, as defined by the Commission, if the issuer reasonably believes before the sale that the accredited investor, either alone or with the accredited investor's representative, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the prospective investment. The Commission may assess and collect in connection with any filing pursuant to this exemption a nonrefundable fee not to exceed \$250;

20. Any transaction by a bank pursuant to an unsolicited offer or order to buy or sell any security, provided such transaction is not effected by an employee of the bank who is also an employee of a broker-dealer;

21. (Expires July 1, 2020) To the extent the Commission by rule or order permits, any security issued by an entity formed, organized, or existing under the laws of the Commonwealth, if:

a. The offering of the security is conducted in accordance with § 3(a)(11) of the Securities Act of 1933 and Rule 147 adopted under the Securities Act of 1933;

b. The offer and sale of the security are made only to residents of Virginia;

c. The aggregate price of securities in an offering under this exemption does not exceed \$2 million, which sum the Commission, by rule or order, may increase or decrease;

d. The total consideration paid by any purchaser of securities in an offering under this exemption does not exceed \$10,000, unless the purchaser is an accredited investor as defined by Rule 501 of the U.S. Securities and Exchange Commission's Regulation D (17 C.F.R. § 230.501). The Commission, by rule or order, may increase

or decrease such limit on the total consideration to be paid by any purchaser of securities in an offering under this exemption;

e. No compensation is paid to employees, agents, or other persons for the solicitation of, or based on the sale of, securities in connection with an offering of securities under this exemption to any person who is not registered as a broker-dealer or agent, except to the extent permitted by rule or order of the Commission;

f. Neither the issuer nor any person related to the issuer is subject to disqualification as established by the Commission by rule or order; and

g. The security is sold in an offering conducted in compliance with any conditions established by rule or order of the Commission, which may include:

(1) Restrictions on the nature of the issuer;

(2) Limitations on the number and manner of offerings;

(3) Disclosures required to be provided to investors, including disclosures of risk factors related to the issuer and the offering;

(4) Requirements that all proceeds received from purchasers be placed in escrow in a depository institution located in the Commonwealth until the minimum amount of the offering is raised;

(5) Filings with the Commission of notices and other materials related to the offering; and

(6) Requirements regarding the preparation and submission of the issuer's financial statements, including (i) the form and content of such statements and (ii) whether such statements are required to be audited or reviewed by an independent certified public accountant in accordance with generally accepted accounting principles.

The Commission may assess and collect in connection with any filing pursuant to this exemption a nonrefundable fee in an amount to be set by the Commission by rule or order, provided such amount shall not exceed \$500; and

22. Any offer or sale of securities conducted in accordance with Tier 2 of federal Regulation A (17 CFR 230.251 to 230.263) promulgated under § 3(b)(2) of the Securities Act of 1933 (U.S. Securities and Exchange Commission Release No. 33-9741, 80 Fed. Reg. 21806) to the extent such securities are preempted from the registration requirements of this chapter pursuant to Tier 2 of federal Regulation A. The Commission shall by rule or order prescribe any filings with the Commission of notices, renewals,

and other materials. The Commission may assess and collect in connection with any filing pursuant to this exemption a nonrefundable filing fee not to exceed \$500. The Commission shall provide information on its website regarding the differences between the exemption provided pursuant to this subdivision and the exemption provided pursuant to subdivision 21.

C. In any proceeding under this chapter, the burden of proving an exemption shall be upon the person claiming it.

Code 1950, § 13-113; 1956, c. 428; 1966, c. 186; 1970, c. 286; 1972, c. 683; 1974, cc. 86, 830; 1975, cc. 75, 500; 1976, c. 656; 1977, c. 111; 1978, c. 397; 1981, cc. 347, 356, 362; 1982, c. 262; 1983, cc. 231, 516; 1984, cc. 298, 771; 1989, c. 388; 1990, c. 6; 1991, c. 223; 1993, c. 75; 1995, cc. [208](#), [213](#), [235](#); 1996, c. [16](#); 1997, cc. [279](#), [538](#); 1999, c. [92](#); 2001, c. [722](#); 2003, c. [595](#); 2007, c. [457](#); 2015, cc. [354](#), [400](#); 2016, c. [260](#).

§13.1-514.1. Exemption of certain securities by order of Commission.

A. The Commission may by order exempt from the other provisions of this chapter any security that the Commission finds:

1. Is to be offered and sold as part of a community undertaking to attract new business or industry to the community, or to establish or continue financial assistance to an existing business or industry in the community;
2. Is sponsored by the local chamber of commerce, by a local industrial development corporation or by other groups of representative local businessmen; and
3. Is to be sold mainly to persons interested in the development of the community by salesmen who receive no compensation for offering and selling the security.

B. The Commission may also exempt any security it finds that is to be offered and sold by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association.

C. The Commission may, by rule, exempt an offer, but not a sale, of a security from the securities and agent registration requirements of this chapter made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for the security. The rulemaking proceeding shall give due consideration to the provisions of the national pilot project of the North American Securities Administrators Association, Inc., relating to the solicitations of indications of interest prior to the filing of a registration statement. The written

documents, broadcasts and oral representations related to solicitation of an indication of interest made to potential investors are subject to the anti-fraud provisions of § [13.1-502](#). If the Commission determines that such exemption should not be granted, it shall set forth the findings and conclusions upon which its decision is based in its order.

1960, c. 71; 1976, c. 656; 1993, c. 75; 1994, cc. [184](#), [355](#); 1995, c. [245](#); 1997, c. [289](#).

§13.1-514.2. Primacy of Virginia law to be maintained.

A. Pursuant to section 6(c) of the federal Philanthropy Protection Act of 1995, Pub. L. 104-62, the laws of the Commonwealth of Virginia, which are referred to in subsections (a) and (b) of section 6 of the aforementioned federal law, shall not be preempted by such section.

B. On and after July 1, 1997, the provisions of this chapter together with any subsequent amendments thereto shall retain primacy and shall apply in all administrative and judicial actions.

1997, c. [145](#).

§13.1-515. Advertising.

The Commission may require, subject to the limitations of § 222 of the Investment Advisers Act of 1940, in any particular case, any person who has published or circulated any advertisement or sales literature regarding a security, other than a federal covered security as defined in § 18(b)(2) of the Securities Act of 1933, or an investment advisory service to file copies thereof with the Commission.

1956, c. 428; 1987, c. 678; 1997, c. [279](#).

§13.1-516. Misleading filings.

It shall be unlawful for any person willfully to make or cause to be made, in any document filed with the Commission or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances in which it is made, false or misleading in any material respect.

1956, c. 428.

§13.1-517. Consent to service of process.

Every nonresident registered as a broker-dealer, investment advisor, investment advisor representative or agent shall appoint in writing the clerk of the Commission as his agent upon whom may be served any process, notice, order or demand. Every

nonresident issuer of a security registered hereunder who sells such security in this Commonwealth shall be deemed to have appointed the clerk of the Commission as his agent upon whom may be served, in any matter arising under this chapter, any process, notice, order or demand. Service may be made on the clerk in accordance with § [12.1-19.1](#). A foreign corporation that has complied with § [13.1-759](#) or § [13.1-767](#) need not comply with this section.

Code 1950, §§ 13-144, 13-145; 1956, c. 428; 1958, c. 564; 1987, c. 678; 1990, c. 263; 1991, c. 672 .

§13.1-518. Investigations; confidentiality of information and documents.

A. The Commission may make such investigations within or outside of this Commonwealth as it deems necessary to determine whether any person has violated or is about to violate the provisions of this chapter or any order, rule or injunction of the Commission, and may require any broker-dealer, investment advisor, investment advisor representative, issuer or agent subject to the investigation to pay the actual costs of the investigation. The Commission shall have power to issue subpoenas and subpoenas duces tecum to require the attendance of any person and the production of any papers for the purposes of such investigation. No person shall be excused from testifying on the ground that his testimony would tend to incriminate him, but if, after asserting his claim of the privilege, he is required to testify, he shall not be prosecuted or penalized on account of any transactions concerning which he does testify.

B. Information or documents obtained or prepared by any member, subordinate or employee of the Commission in the course of any examination or investigation conducted pursuant to the provisions of this chapter shall be deemed confidential and shall not be disclosed to the public. However, nothing contained herein shall be interpreted to prohibit or limit (i) the publication of the findings, decisions, orders, judgments or opinions of the Commission; (ii) the use of any such information or documents in proceedings by or before the Commission or a hearing examiner appointed by the Commission; (iii) the disclosure of any such information or documents to any quasi-governmental entity substantially associated with law enforcement or the securities or investment advisory business approved by rule of the Commission; or (iv) the disclosure of any such information or documents to any governmental entity approved by rule of the Commission, or to any attorney for the Commonwealth, or to the Attorney General of Virginia.

Code 1950, § 13-134; 1956, c. 428; 1979, c. 379; 1987, c. 678; 1992, c. 157 .

§13.1-518.1. Broker-dealers and investment advisors to file certain reports with Commission.

Every broker-dealer and investment advisor registered under this chapter shall file all reports made by such broker-dealers or investment advisors as the Commission, by rule, may require.

1974, c. 381; 1997, c. [279](#).

§13.1-519. Injunctions.

The Commission shall have all the power and authority of a court of record as provided in Article IX, Section 3 of the Constitution of Virginia to issue a temporary or a permanent injunction against any violation or attempted violation of any provision of this chapter or any order, rule, or regulation of the Commission issued pursuant to this chapter. For the violation of any injunction or order issued under this chapter it shall have the same power to punish for contempt as a court of equity.

Code 1950, § 13-137; 1956, c. 428; 1971, Ex. Sess., c. 1; 1992, c. 468; 1997, c. [279](#).

§13.1-520. Crimes.

A. Any person who shall knowingly and willfully make, or cause to be made, any false statement in any book of account or other paper of any person subject to the provisions of this chapter, or knowingly and willfully exhibit any false paper to the Commission, or who shall knowingly and willfully commit any act declared unlawful by this chapter, with the intent to defraud any purchaser of securities or user of investment advisory services or with intent to deceive the Commission as to any material fact for the purpose of inducing the Commission to take any action or refrain from taking any action pursuant to this chapter, shall be guilty of a Class 4 felony.

B. Any person who shall knowingly make or cause to be made any false statement in any book of account or other paper of any person subject to the provisions of this chapter or exhibit any false paper to the Commission or who shall commit any act declared unlawful by this chapter shall be guilty of a Class 1 misdemeanor.

C. Prosecutions under this section shall be instituted by indictments in the courts of record having jurisdiction of felonies within three years from the date of the offense.

Code 1950, §§ 13-152, 13-155; 1956, c. 428; 1977, c. 484; 1987, c. 678.

§13.1-520.1. Commission may transmit record or complaint to locality where violation occurred.

The Commission may transmit the record of any proceeding or any complaint involving any violation of this Act to the attorney for the Commonwealth in the county or city wherein the violation occurred.

1974, c. 253.

§13.1-521. Violations punishable by the Commission.

A. The Commission may, by judgment entered after a hearing on 30 days' notice to the defendant, if it is proved that the defendant has knowingly made any misrepresentation of a material fact for the purpose of inducing the Commission to take any action or to refrain from taking action, or has violated any provision of this chapter or any order, rule, or regulation of the Commission issued pursuant to this chapter, impose a civil penalty not exceeding \$10,000, which shall be collectible by the process of the Commission as provided by law.

B. In addition to imposing the penalty set forth in subsection A, or without imposing such penalty, the Commission may, in any such case, revoke any authority or registration issued by the Commission to or at the instance of the defendant.

C. Each sale of a security contrary to the provisions of this chapter shall constitute a separate violation. The Commission may in any such case under subsection A order the seller to rescind any such sale and to make restitution to the purchaser and the Commission shall consider such rescission and restitution in determining whether a penalty should be imposed on him on account of that illegal sale, and if so, the amount of such penalty.

D. Each investment advisory contract, transaction or activity contrary to the provisions of this chapter shall constitute a separate violation. The Commission may in any such case under subsection A order the investment advisor or investment advisor representative to rescind any such contract or transaction and to make restitution to the user of the investment advisory service and the Commission shall consider such rescission and restitution in determining whether a penalty should be imposed on him on account of that illegal contract, transaction or activity and, if so, the amount of such penalty.

E. The provisions of subsections C and D of this section regarding rescission and restitution apply only to this chapter.

Code 1950, § 13-153; 1956, c. 428; 1987, c. 678; 1990, c. 31; 2000, c. [166](#); 2009, c. [566](#).

§13.1-522. Civil liabilities.

A. Any person who: (i) sells a security in violation of §§ [13.1-502](#), [13.1-504](#) A, [13.1-507](#) (i) or (ii), [13.1-510](#) (e) or (f), or (ii) sells a security by means of an untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to the person purchasing such security from him who may sue either at law or in equity to recover the consideration paid for such security, together with interest thereon at the annual rate of six percent, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of such security, or for the substantial equivalent in damages if he no longer owns the security.

B. Any person who (i) engages in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities in willful and material violation of § [13.1-503](#), subsection A of § [13.1-504](#), or of any rule or order under § [13.1-505.1](#), or (ii) receives, directly or indirectly, any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice or course of business which operates or would operate as a fraud or deceit on such other person, shall be liable to that person who may sue either at law or in equity to recover the consideration paid for such advice and any loss due to such advice, together with interest thereon at the annual rate of six percent from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice and any other economic advantage.

C. Every person who directly or indirectly controls a person liable under subsection A or B of this section, including every partner, officer, or director of such a person, every person occupying a similar status or performing similar functions, every employee of such a person who materially aids in the conduct giving rise to the liability, and every broker-dealer, investment advisor, investment advisor representative or agent who materially aids in such conduct shall be liable jointly and severally with

and to the same extent as such person, unless able to sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

D. No suit shall be maintained to enforce any liability created under this section unless brought within two years after the transaction upon which it is based; provided, that, if any person liable by reason of subsection A, B or C of this section makes a written offer, before suit is brought, to refund the consideration paid and any loss due to any investment advice provided by such person, together with interest thereon at the annual rate of six percent, less the amount of any income received on the security or resulting from such advice, or to pay damages if the purchaser no longer owns the security, no purchaser or user of the investment advisory service shall maintain a suit under this section who has refused or failed to accept such offer within thirty days of its receipt.

E. Any tender specified in this section may be made at any time before entry of judgment.

F. Any condition, stipulation or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of this chapter or of any rule or order thereunder shall be void.

G. The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

Code 1950, § 13-150; 1956, c. 428; 1987, c. 678; 1997, c. [279](#).

§13.1-523. Rules and forms.

A. The Commission shall have authority from time to time to make, amend and rescind such rules and forms as may be necessary to carry out the provisions of this chapter, including rules and forms governing registration statements, applications and reports, and defining accounting, technical and trade terms used in this chapter insofar as such definitions are not inconsistent with the provisions of this chapter. Among other things, the Commission shall have authority, for the purposes of this chapter, to prescribe the content and form of financial statements and to direct whether they should be certified by independent public or certified accountants. For the purpose of rules and forms, the Commission may classify securities, persons and

matters within its jurisdiction and prescribe different requirements for different classes.

B. All such rules and forms shall be available for distribution at the office of the Commission either in printed or electronic format.

C. No provision of this chapter imposing any liability shall apply to any act done or omitted in conformity with any rule of the Commission, notwithstanding that such rule may, after such act or omission, be amended, rescinded or found for any reason to be invalid.

1956, c. 428; 2003, c. [595](#).

§13.1-523.1. Commission authority to regulate securities and investment advisory activities.

A. The Commission shall have all the power, authority and jurisdiction reserved to or conferred upon the states by the federal National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (1996)) to regulate securities and investment advisory activities, including the authority to require the registration of persons and securities, the filing of documents, notices, reports and information, and the payment of fees, and to exercise its administrative, investigative, judicial and legislative powers with respect thereto. The Commission shall have the authority to make, amend and rescind such rules and forms in conformance with the National Securities Markets Improvement Act of 1996 as may be necessary for the regulation of securities and investment advisory activities and transactions within its jurisdiction.

B. The Commission may by rule or order, with respect to any security that is a federal covered security under § 18(b)(4)(C) of the Securities Act of 1933, require the issuer to file a notice together with a consent to service of process where (i) the principal place of business of the issuer is in the Commonwealth or (ii) purchasers of 50 percent or more of the securities sold by the issuer pursuant to an offering made in reliance on § 18(b)(4)(C) of the Securities Act of 1933 are residents of the Commonwealth. The Commission may assess and collect in connection with any filing pursuant to this subsection a nonrefundable filing fee not to exceed \$100.

1997, c. [279](#); 2017, c. [754](#).

§13.1-524. Certain records of Commission available to public; admissibility of copies; destruction.

The information contained in or filed with any registration statement, application or report shall be available to the public at the office of the Commission. Copies thereof certified by the clerk under the seal of the Commission shall be admissible in evidence in lieu of the originals, and the originals shall not be removed from the office of the Commission. But papers, documents and files may be destroyed by the Commission when, in its opinion, they no longer serve any useful purpose.

1956, c. 428.

§13.1-525. Official interpretations.

The Commission shall have jurisdiction, upon written application, payment of a filing fee of \$500 and submission of such data as may be necessary for the purpose, to determine whether or not (i) a particular security or transaction is exempt from the registration requirements of this chapter, (ii) the offer or sale of a particular security would be lawful, or (iii) a person is an investment advisor or an investment advisor representative. Its determination shall be made by order, which, subject to the right of appeal, shall be conclusive on the same state of facts in any court in which the matter may come for adjudication, whether in a civil or a criminal case.

Code 1950, § 13-112; 1956, c. 428; 1984, c. 771; 1992, c. 19 .

§13.1-525.1. Fees to cover expense of regulation.

The fees paid into the state treasury under this chapter, except for fees and funds collected for the Literary Fund, shall be deposited into a special fund and specifically accounted for and used by the State Corporation Commission to defray the costs of supervising, implementing, and administering the provisions of this chapter and Chapters 6 (§ [13.1-528](#) et seq.) and 8 (§ [13.1-557](#) et seq.) of this title, and Chapters 6.1 (§ [59.1-92.1](#) et seq.) and 7 (§ [59.1-93](#) et seq.) of Title 59.1. Included in the Commission's costs shall be a reasonable margin in the nature of a reserve fund. All excesses of fees collected exceeding these costs shall revert to the general fund.

1987, c. 434.

§13.1-526. Transition.

Registrations of dealers and agents under prior law shall continue as registrations as broker-dealers and agents under this chapter until April 30 following the effective date of this chapter. Licenses issued under § 13-128 of the Code of 1950 shall continue in effect until April 30 following the effective date of this chapter. The exemption provided for regularly established dealers by § 13-113 (11), whenever the

requirements of §§ 13-116 to 13-121 inclusive have been complied with prior to the effective date of this chapter, shall continue in effect until April 30 following the effective date of this chapter and all securities for which a registration is in effect pursuant to that exemption on the effective date of the repeal of § 13-113 (11) shall be deemed to have been registered by notification under this chapter. But such registrations, licenses and exemptions may be terminated by the Commission for causes justifying termination of registrations under this chapter.

1956, c. 428.

§13.1-527. Short title.

This chapter may be cited as the Securities Act.

1956, c. 428.

§13.1-527.01. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§13.1-527.1. Division created; duties.

There is hereby created in the office of the Attorney General a Division of Securities Counsel.

The duties of such Division shall be to provide legal and technical assistance to an attorney for the Commonwealth, in the preparation for a prosecution of and the prosecution of a violation of this title; provided, however, such assistance shall be rendered only upon the request of the attorney for the Commonwealth.

1974, c. 253.

§13.1-527.2. Attorneys, employees and consultants.

The Attorney General may employ and fix the salaries of such attorneys, employees and consultants, within the amounts appropriated to the Attorney General for providing legal service for the Commonwealth, as he may deem necessary for the operation of the Division of Securities Counsel to carry out its functions.

1974, c. 253.

§13.1-527.3. Commission to provide technical assistance.

The State Corporation Commission shall provide technical assistance to the Division of Securities Counsel in its investigation and preparation of a prosecution under the provisions of this title.

1974, c. 253.

Small Investor-Owned Telephone Utility Act

§56-531. Definitions.

As used in this chapter, which may be cited as the "Small Investor-Owned Telephone Utility Act":

"Commission" means the "State Corporation Commission."

"Small investor-owned telephone utility" means any investor-owned public utility (other than a cooperative) which serves fewer than 100,000 access lines in Virginia and which owns, manages, or controls any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages, either directly or indirectly, to or for the public.

1986, c. 337; 1987, c. 295; 1998, c. [64](#).

§56-532. Tariff filings.

A. Any change in any rate, toll, charge, fee, rule, or regulation (hereafter collectively referred to as tariffs) of a small investor-owned telephone utility shall become effective thirty days after notice has been mailed to each customer unless:

1. A protest or objection is filed by the lesser of 5 percent or 150 customers subject to a small investor-owned telephone utility's tariffs; or
2. The Commission acts, on its own motion, to investigate the utility's tariffs after at least thirty days' notice by the utility to the Commission and to the public.

B. Whenever the lesser of 5 percent or 150 customers subject to a small investor-owned telephone utility's tariffs file a protest or objection to any change in any schedule of that utility's tariffs, the Commission may suspend the enforcement of any or all of the proposed tariffs for a period not exceeding 150 days from the date of the filing of those tariffs with the Commission and shall convene a hearing to determine whether the proposed tariffs are reasonable and just. At the conclusion of the hearing, the Commission may fix and order substituted tariffs as shall be just and reasonable.

C. Notice of the suspension of any proposed tariff and the scheduling of a hearing shall be given by the Commission to the small investor-owned telephone utility prior to the expiration of the thirty days' notice to the Commission and to the public as prescribed in subsection A of this section. If the proceeding has not been concluded and an order made at the expiration of the suspension period, after notice to the Commission by the utility making the filing, the proposed tariffs shall go into effect. Where increased rates, tolls, or charges are thus made effective, the Commission shall by order:

1. Require the small investor-owned telephone utility to furnish a bond, which at the Commission's discretion may bear interest at a rate specified by the Commission, in order to refund any amounts ordered by the Commission;
2. Require the utility to keep detailed accounts of all amounts received by reason of such increase; and
3. Upon completion of the hearing and decision, order the small investor-owned telephone utility to refund the portion of such increased rates, tolls, or charges found by the Commission's decision to be unjustified.

D. The Commission may, acting on its own motion, suspend the utility's proposed tariffs. The Commission shall give notice of its intention to suspend the proposed tariffs to the small investor-owned telephone utility within thirty days' notice after the filing of these proposed tariffs.

E. The Commission is authorized to promulgate any rules necessary to implement this section.

1986, c. 337.

§56-533. Regulation by State Corporation Commission.

Every small investor-owned telephone utility shall be subject to Chapters 1 (§ [56-1](#) et seq.), 2 (§ [56-49](#) et seq.), 10 (§ [56-232](#) et seq.), 10.1 (§ [56-265.1](#) et seq.), 10.3 (§ [56-265.14](#) et seq.) and 15 (§ [56-458](#) et seq.) of this title, except that the obligations of small investor-owned telephone utilities as to tariff filings shall be defined by this chapter. Small investor-owned telephone utilities shall also be subject to Chapters 3 (§ [56-55](#) et seq.) and 4 (§ [56-76](#) et seq.) of this title when they have affiliated interests as defined in § [56-76](#).

1986, c. 337.

§56-534. Construction of chapter; conflicting laws.

This chapter is to be liberally construed, and any provisions of other laws in conflict with the provisions of this chapter shall not apply to small investor-owned telephone utilities operating hereunder.

1986, c. 337.

Small Water or Sewer Public Utility Act

§56-265.13:1. Short title.

This chapter may be cited as the "Small Water or Sewer Public Utility Act."

1986, c. 323.

§56-265.13:2. Definitions.

As used in this chapter:

"Commission" shall mean the "State Corporation Commission."

"Service" shall mean any product or commodity furnished by a small water or sewer utility, as well as its equipment, apparatus, appliances and facilities devoted to the functions in which that utility is engaged to the use and accommodation of the public.

1986, c. 323.

§56-265.13:3. Applicability of chapter.

This chapter shall apply to every certificated water or sewer public utility company or water and sewer public utility company (i) with gross annual operating revenues of less than one million dollars or (ii) that is owned by the property owners' association of the subdivision served by the public utility.

In case of a company with gross annual revenues of \$500,000 or more, (i) the Commission may suspend a proposed increase in rates for a period not exceeding 150 days from the date of the filing of the proposed rate increase and (ii) notwithstanding any other provision of this chapter, such company shall be subject to Chapter 4 (§ [56-76](#) et seq.) of Title 56.

1986, c. 323; 1993, c. 369; 1997, c. [143](#).

§56-265.13:4. Rates and services.

A small water or sewer utility shall be required to furnish reasonably adequate services and facilities, subject to the regulation of the Commission. The charges made by any small water or sewer utility for any service rendered shall be (i) uniform as to all persons or corporations using such service under like conditions and (ii) nondiscriminatory, reasonable and just. Every charge for service found to be otherwise shall be unlawful. Reasonable and just charges for service within the meaning of this section shall be the lowest charges as shall produce sufficient revenues to pay all lawful and necessary expenses incident to:

1. The operation of the system, including maintenance costs, operating charges, and interest charges on bonds or other obligations;
2. The providing for the liquidation of bonds or other evidence of indebtedness and the attraction of capital;
3. The providing of adequate funds to be used as working capital, as well as reasonable reserves and funds for making replacements, which may be escrowed and used only as working capital if the Commission so directs as a result of a proceeding conducted pursuant to § [56-265.13:6](#);
4. The providing for the payment of taxes that may be assessed against the small water or sewer utility or its property; and
5. Compensation of owners of the utility for their capital or property invested in the system, if any, and for their time and other resources expended in the operation of the system not otherwise recovered under subdivisions 1 through 4 of this section.

1986, c. 323.

§56-265.13:5. Notice of rate changes.

A. A small water or sewer utility shall make a copy of its current rates, charges, fees, rules and regulations available for public inspection during regular business office hours in its designated business office where bills can be paid.

B. Unless a small water or sewer utility notifies in writing all of its customers of any changes in its rates, charges, fees, rules and regulations at least forty-five days in advance of any change in any one of them, the utility shall not make any such changes. A copy of such notification shall be forwarded to the Commission at the same time as provided to the customers. The notice to the customers shall identify the nature of the change, the effective date of the change, and in the case of changes in rates, fees, and charges, shall identify the new rates, fees, and charges.

1986, c. 323; 1994, c. [313](#).

§56-265.13:6. Public hearing on application; prohibition of multiple rate increases within any 12-month period.

A. Upon application to the Commission by at least 25 percent of all customers affected by a rate change or by 250 affected customers, whichever number is lesser, or by the small water or sewer utility itself, or by the Commission, upon its own motion, a hearing shall be held after at least 30 days' notice to the small water or sewer utility and to its customers. The Commission may order such improvements or changes in service, measurements, practices, acts, rates, charges, fees, and rules and regulations of such utility as are just and reasonable.

When a hearing is ordered, the Commission shall have the authority to suspend such rates, charges, fees, and rules and regulations for no more than 60 days or to declare them to be interim, or both. Interim rates, fees, and charges shall be subject to refund with interest until such time as the Commission has made its final determination in the proceeding. Upon completion of the hearing and decision, the Commission may order such public utility to refund, with interest at a rate set by the Commission, the portion of such rates, charges, or fees found not justified by its decision.

B. A small water or sewer utility shall not implement an increase in the utility's rates or charges more than once within any 12-month period. This limitation shall not prohibit applications for increases in rates or charges pursuant to § [56-245](#).

C. If the change in rates, fees, and charges results in an increase of 50 percent or greater of the small water or sewer utility's annual revenues, the small water or sewer utility shall file the financial data required by the Commission's rules under this chapter simultaneously with providing notice of such change as prescribed by subsection B of § [56-265.13:5](#), and, if a hearing is ordered, the Commission shall expedite the hearing on the change in rates, fees, and charges. The Commission shall also direct that the funds produced by the increase in rates, fees, and charges shall be held in escrow by the small water or sewer utility until the Commission has rendered its decision, at which time the funds held in escrow shall either be released to the small water or sewer utility or refunded to its customers. The Commission may, however, allow the funds held in escrow to be used as necessary to comply with environmental or health laws or regulations or to allow the small water or sewer utility to provide adequate service to its customers.

1986, c. 323; 1990, cc. 410, 431; 1994, c. [313](#); 1996, c. [15](#); 2003, c. [385](#).

§56-265.13:6.1. Appointment of receiver; penalty.

A. The Commission may, either upon petition of two-thirds of the affected customers or upon petition of its staff or upon a petition of the Board of Health, appoint a receiver to operate a small water or sewer utility which is unable or unwilling to provide adequate service to its customers. The utility shall be deemed to be unable or unwilling to provide adequate service if the Commission finds, after notice to the utility and the Department of Health and hearing, that:

1. The utility has failed to supply water or sewer service to a majority of the consumers for five days or more during the preceding three months for reasons within the control of the water and sewer utility; or
2. The Department of Health has certified that the utility has not met Department standards regarding the provision of an adequate quality and quantity of public drinking water and the Department of Health has found that the utility is unwilling to take action to meet these standards; or
3. The utility is grossly mismanaged; or
4. The utility has failed to comply with an order of the Commission to provide adequate service to the customers.

Upon appointment, the receiver shall take possession of the assets of the utility and operate them in the best interests of the customers. Control of and responsibility for the utility shall remain in the receiver until the utility can, in the best interests of customers, be returned to the original owners, transferred to new owners, or liquidated, whichever the Commission may determine to be in the public interest.

B. The provisions of §§ [8.01-583](#) through [8.01-590](#) shall apply mutatis mutandis. The receiver shall be empowered to make application to the Commission for temporary and permanent rate increases and changes in the utility's rules and regulations.

C. If the Commission determines that the utility's actions that caused it to be placed under the control and responsibility of the receiver, under this section, were due to intentional misappropriation or wrongful diversion of the assets or income of such utility or to other willful misconduct by any director, officer, or manager of the utility, it may require such director, officer, or manager to make restitution to the utility. In addition to the foregoing, any such director, officer, manager, or affiliate that commits such misappropriation or wrongful diversion or fails, neglects, or refuses to obey

an order, rule, direction, or requirement of the Commission to make restitution to the utility shall be subject to a civil penalty of no more than \$500 for each offense, and each day of such conduct shall constitute a separate offense.

1994, c. [311](#).

§56-265.13:7. Regulation by State Corporation Commission.

A. Every small water or sewer utility subject to this chapter shall be subject only to the following provisions: §§ [56-234.4](#), [56-236](#), [56-239](#), [56-245](#), [56-245.1](#), [56-246](#), [56-247.1](#) through [56-248](#), [56-249](#) through [56-249.2](#), [56-250](#), [56-254](#), [56-256](#) through [56-265](#), and Chapters 1 (§ [56-1](#) et seq.), 2 (§ [56-49](#) et seq.), 5 (§ [56-88](#) et seq.) and 10.1 (§ [56-265.1](#) et seq.) of Title 56. Small water or sewer utilities shall not be subject to Chapters 3 (§ [56-55](#) et seq.) and 4 (§ [56-76](#) et seq.) of Title 56.

B. The Commission is authorized to promulgate any rules necessary to implement this chapter.

1986, c. 323; 1992, c. 376; 1994, c. [313](#); 1996, c. [48](#).

State and Local Government Conflict of Interests Act

§2.2-3100. Policy; application; construction.

The General Assembly, recognizing that our system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers and employees, finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests. To that end and for the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests, the General Assembly enacts this State and Local Government Conflict of Interests Act so that the standards of conduct for such officers and employees may be uniform throughout the Commonwealth.

This chapter shall supersede all general and special acts and charter provisions which purport to deal with matters covered by this chapter except that the provisions of §§

[15.2-852](#), [15.2-2287](#), [15.2-2287.1](#), and [15.2-2289](#) and ordinances adopted pursuant thereto shall remain in force and effect. The provisions of this chapter shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of this title and ordinances adopted pursuant to § [2.2-3104.2](#) regulating receipt of gifts.

The provisions of this chapter do not preclude prosecution for any violation of any criminal law of the Commonwealth, including Articles 2 (Bribery and Related Offenses, § [18.2-438](#) et seq.) and 3 (Bribery of Public Servants and Party Officials, § [18.2-446](#) et seq.) of Chapter 10 of Title 18.2, and do not constitute a defense to any prosecution for such a violation.

This chapter shall be liberally construed to accomplish its purpose.

1987, Sp. Sess., c. 1, § 2.1-639.1; 1990, c. 672; 2001, c. [844](#); 2003, c. [694](#); 2008, c. [532](#); 2014, cc. [792](#), [804](#).

§2.2-3100.1. Copy of chapter; review by officers and employees.

Any person required to file a disclosure statement of personal interests pursuant to subsections A or B of § [2.2-3114](#), subsections A or B of § [2.2-3115](#) or § [2.2-3116](#) shall be furnished by the public body's administrator a copy of this chapter within two weeks following the person's election, reelection, employment, appointment or reappointment.

All officers and employees shall read and familiarize themselves with the provisions of this chapter.

2004, cc. [134](#), [392](#).

§2.2-3101. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Affiliated business entity relationship" means a relationship, other than a parent-subsidiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or

control between the business entities. Factors that may be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person owns or manages the two entities, there are common or commingled funds or assets, the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis, or there is otherwise a close working relationship between the entities.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. The candidate shall become subject to the provisions of this chapter upon the filing of a statement of qualification pursuant to § [24.2-501](#). The State Board of Elections or general registrar shall notify each such candidate of the provisions of this chapter. Notification made by the general registrar shall consist of information developed by the State Board of Elections.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly or a political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the officer's or employee's own governmental agency.

"Council" means the Virginia Conflict of Interest and Ethics Advisory Council established in § [30-355](#).

"Employee" means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in subsection A of § [13.1-501](#), or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of

transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly received and reported pursuant to Chapter 9.3 (§ [24.2-945](#) et seq.) of Title 24.2; (v) any gift related to the private profession or occupation or volunteer service of an officer or employee or of a member of his immediate family; (vi) food or beverages consumed while attending an event at which the filer is performing official duties related to his public service; (vii) food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service; (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act (§ [24.2-945](#) et seq.); (xi) travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state; (xii) travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House Committee on Rules or its Chairman or the Senate Committee on Rules or its Chairman; (xiii) travel related to an official meeting of, or any meal provided for attendance at such meeting by, the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment; (xiv) gifts with a value of less than \$20; (xv) attendance at a reception or similar function where food, such as hors d'oeuvres, and beverages that can be conveniently consumed by a person while standing or walking are offered; or (xvi) gifts from relatives or personal friends. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother,

sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee's brother's or sister's spouse or the donee's son-in-law or daughter-in-law. For the purpose of this definition, "personal friend" does not include any person that the filer knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ [2.2-418](#) et seq.) of Chapter 4 of Title 2.2; (b) a lobbyist's principal as defined in § [2.2-419](#); (c) for an officer or employee of a local governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or an employee; or (d) for an officer or employee of a state governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the Commonwealth. For purposes of this definition, "person, organization, or business" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System are "governmental agencies" for purposes of this chapter.

"Immediate family" means (i) a spouse and (ii) any other person who resides in the same household as the officer or employee and who is a dependent of the officer or employee.

"Officer" means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office. Unless the context requires otherwise, "officer" includes members of the judiciary.

"Parent-subsidiary relationship" means a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a

business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$5,000 annually; (iv) ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv).

"Personal interest in a contract" means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where (a) an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity or (b) an officer, employee, or elected member of a local governing body is appointed by such local governing body to serve on a governmental agency, or an officer, employee, or elected member of a separate local governmental agency formed by a local governing body is appointed to serve on a governmental agency, and the personal interest in the transaction of the governmental agency is the result of the salary, other compensation, fringe benefits, or benefits provided by the local governing body or the separate governmental agency to the officer, employee, elected member, or member of his immediate family.

"State and local government officers and employees" shall not include members of the General Assembly.

"State filer" means those officers and employees required to file a disclosure statement of their personal interests pursuant to subsection A or B of § [2.2-3114](#).

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

1987, Sp. Sess., c. 1, § 2.1-639.2; 1988, c. 536; 1992, c. 865; 1993, c. 303; 1994, cc. [74](#), [724](#); 1995, c. [495](#); 1996, c. [77](#); 1997, c. [641](#); 2001, c. [844](#); 2003, c. [694](#); 2004, cc. [134](#), [392](#); 2012, cc. [345](#), [771](#); 2013, c. [475](#); 2014, cc. [792](#), [804](#); 2015, cc. [763](#), [777](#); 2016, cc. [773](#), [774](#); 2017, cc. [829](#), [832](#).

§2.2-3102. Application.

This article applies to generally prohibited conduct that shall be unlawful and to state and local government officers and employees.

1987, Sp. Sess., c. 1, § 2.1-639.3; 2001, c. [844](#).

§2.2-3103. Prohibited conduct.

No officer or employee of a state or local governmental or advisory agency shall:

1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an officer or employee. This prohibition shall not apply to the acceptance of special benefits that may be authorized by law;
2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;
3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;
4. Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public;
5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official

duties. This subdivision shall not apply to any political contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9.3 (§ [24.2-945](#) et seq.) of Title 24.2;

6. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;

7. Accept any honoraria for any appearance, speech, or article in which the officer or employee provides expertise or opinions related to the performance of his official duties. The term "honoraria" shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time. The prohibition in this subdivision shall apply only to the Governor, Lieutenant Governor, Attorney General, Governor's Secretaries, and heads of departments of state government;

8. Accept a gift from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties;

9. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties; or

10. Use his public position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law, provided, however, that this subdivision shall not restrict the authority of any public employer to govern conduct of its employees, and to take disciplinary action, in accordance with applicable law, and provided further that this subdivision shall not limit the authority of a constitutional officer to discipline or discharge an employee with or without cause.

1987, Sp. Sess., c. 1, § 2.1-639.4; 1994, cc. [663](#), [815](#), [851](#); 2001, c. [844](#); 2006, cc. [787](#), [892](#); 2015, c. [574](#).

§2.2-3103.1. Certain gifts prohibited.

A. For purposes of this section:

"Person, organization, or business" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

"Widely attended event" means an event at which at least 25 persons have been invited to attend or there is a reasonable expectation that at least 25 persons will attend the event and the event is open to individuals (i) who are members of a public, civic, charitable, or professional organization, (ii) who are from a particular industry or profession, or (iii) who represent persons interested in a particular issue.

B. No officer or employee of a local governmental or advisory agency or candidate required to file the disclosure form prescribed in § [2.2-3117](#) or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of \$100 or any combination of gifts with an aggregate value in excess of \$100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Article 3 (§ [2.2-418](#) et seq.) of Chapter 4; (ii) a lobbyist's principal as defined in § [2.2-419](#); or (iii) a person, organization, or business who is or is seeking to become a party to a contract with the local agency of which he is an officer or an employee. Gifts with a value of less than \$20 are not subject to aggregation for purposes of this prohibition.

C. No officer or employee of a state governmental or advisory agency or candidate required to file the disclosure form prescribed in § [2.2-3117](#) or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of \$100 or any combination of gifts with an aggregate value in excess of \$100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Article 3 (§ [2.2-418](#) et seq.) of Chapter 4; (ii) a lobbyist's principal as defined in § [2.2-419](#); or (iii) a person, organization, or business who is or is seeking to become a party to a contract with the state governmental or advisory agency of which he is an officer or an employee or over which he has the authority to direct such agency's activities. Gifts with a value of less than \$20 are not subject to aggregation for purposes of this prohibition.

D. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive a gift of food

and beverages, entertainment, or the cost of admission with a value in excess of \$100 when such gift is accepted or received while in attendance at a widely attended event and is associated with the event. Such gifts shall be reported on the disclosure form prescribed in § [2.2-3117](#).

E. Notwithstanding the provisions of subsections B and C, such officer or employee or a member of his immediate family may accept or receive a gift from a foreign dignitary with a value exceeding \$100 for which the fair market value or a gift of greater or equal value has not been provided or exchanged. Such gift shall be accepted on behalf of the Commonwealth or a locality and archived in accordance with guidelines established by the Library of Virginia. Such gift shall be disclosed as having been accepted on behalf of the Commonwealth or a locality, but the value of such gift shall not be required to be disclosed.

F. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive certain gifts with a value in excess of \$100 from a person listed in subsection B or C if such gift was provided to such officer, employee, or candidate or a member of his immediate family on the basis of a personal friendship. Notwithstanding any other provision of law, a person listed in subsection B or C may be a personal friend of such officer, employee, or candidate or his immediate family for purposes of this subsection. In determining whether a person listed in subsection B or C is a personal friend, the following factors shall be considered: (i) the circumstances under which the gift was offered; (ii) the history of the relationship between the person and the donor, including the nature and length of the friendship and any previous exchange of gifts between them; (iii) to the extent known to the person, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iv) whether the donor has given the same or similar gifts to other persons required to file the disclosure form prescribed in § [2.2-3117](#) or [30-111](#).

G. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive gifts of travel, including travel-related transportation, lodging, hospitality, food or beverages, or other thing of value, with a value in excess of \$100 that is paid for or provided by a person listed in subsection B or C when the officer, employee, or candidate has submitted a request for approval of such travel to the Council and has received the

approval of the Council pursuant to § [30-356.1](#). Such gifts shall be reported on the disclosure form prescribed in § [2.2-3117](#).

H. During the pendency of a civil action in any state or federal court to which the Commonwealth is a party, the Governor or the Attorney General or any employee of the Governor or the Attorney General who is subject to the provisions of this chapter shall not solicit, accept, or receive any gift from any person that he knows or has reason to know is a person, organization, or business that is a party to such civil action. A person, organization, or business that is a party to such civil action shall not knowingly give any gift to the Governor or the Attorney General or any of their employees who are subject to the provisions of this chapter.

I. The \$100 limitation imposed in accordance with this section shall be adjusted by the Council every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, rounded to the nearest whole dollar.

J. The provisions of this section shall not apply to any justice of the Supreme Court of Virginia, judge of the Court of Appeals of Virginia, judge of any circuit court, or judge or substitute judge of any district court. However, nothing in this subsection shall be construed to authorize the acceptance of any gift if such acceptance would constitute a violation of the Canons of Judicial Conduct for the State of Virginia.

2014, cc. [792](#), [804](#); 2015, cc. [763](#), [777](#); 2017, cc. [829](#), [832](#).

§2.2-3103.2. Return of gifts.

No person shall be in violation of any provision of this chapter prohibiting the acceptance of a gift if (i) the gift is not used by such person and the gift or its equivalent in money is returned to the donor or delivered to a charitable organization within a reasonable period of time upon the discovery of the value of the gift and is not claimed as a charitable contribution for federal income tax purposes or (ii) consideration is given by the donee to the donor for the value of the gift within a reasonable period of time upon the discovery of the value of the gift provided that such consideration reduces the value of the gift to an amount not in excess of \$100 as provided in subsection B or C of § [2.2-3103.1](#).

2015, cc. [763](#), [777](#).

§2.2-3104. Prohibited conduct for certain officers and employees of state government.

For one year after the termination of public employment or service, no state officer or employee shall, before the agency of which he was an officer or employee, represent a client or act in a representative capacity on behalf of any person or group, for compensation, on matters related to legislation, executive orders, or regulations promulgated by the agency of which he was an officer or employee. This prohibition shall be in addition to the prohibitions contained in § [2.2-3103](#).

For the purposes of this section, "state officer or employee" shall mean (i) the Governor, Lieutenant Governor, Attorney General, and officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not, who are regularly employed on a full-time salaried basis; those officers and employees of executive branch agencies who report directly to the agency head; and those at the level immediately below those who report directly to the agency head and are at a payband 6 or higher and (ii) the officers and professional employees of the legislative branch designated by the joint rules committee of the General Assembly. For the purposes of this section, the General Assembly and the legislative branch agencies shall be deemed one agency.

To the extent this prohibition applies to the Governor's Secretaries, "agency" means all agencies assigned to the Secretary by law or by executive order of the Governor.

Any person subject to the provisions of this section may apply to the Council or Attorney General, as provided in § [2.2-3121](#) or [2.2-3126](#), for an advisory opinion as to the application of the restriction imposed by this section on any post-public employment position or opportunity.

1994, cc. [727](#), [776](#), § 2.1-639.4:1; 2001, c. [844](#); 2013, c. [648](#); 2014, cc. [792](#), [804](#); 2015, cc. [763](#), [777](#).

§2.2-3104.01. Prohibited conduct; bids or proposals under the Virginia Public Procurement Act, Public-Private Transportation Act, and Public-Private Education Facilities and Infrastructure Act; loans or grants from the Commonwealth's Development Opportunity Fund.

A. Neither the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, shall knowingly solicit or accept a contribution, gift, or other item with a value greater than \$50 from any bidder,

offeror, or private entity, or from an officer or director of such bidder, offeror, or private entity, who has submitted a bid or proposal to an executive branch agency that is directly responsible to the Governor pursuant to the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.), the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.), or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.)(i) during the period between the submission of the bid and the award of the public contract under the Virginia Public Procurement Act or (ii) following the submission of a proposal under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002 until the execution of a comprehensive agreement thereunder.

B. The provisions of this section shall apply only for public contracts, proposals, or comprehensive agreements where the stated or expected value of the contract is \$5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding as set forth in § [2.2-4302.1](#).

C. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater, and the contribution, gift, or other item shall be returned to the donor. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund and shall be used exclusively to fund the Council.

2010, c. [732](#); 2011, c. [624](#); 2013, c. [583](#); 2015, cc. [763](#), [777](#); 2016, c. [641](#).

§2.2-3104.02. Prohibited conduct for constitutional officers.

In addition to the prohibitions contained in § [2.2-3103](#), no constitutional officer shall, during the one year after the termination of his public service, act in a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was an officer.

The provisions of this section shall not apply to any attorney for the Commonwealth.

Any person subject to the provisions of this section may apply to the attorney for the Commonwealth for the jurisdiction where such person was elected as provided in § [2.2-3126](#), for an advisory opinion as to the application of the restriction imposed by this section on any post-public employment position or opportunity.

2011, c. [591](#).

§2.2-3104.1. Exclusion of certain awards from scope of chapter.

The provisions of this chapter shall not be construed to prohibit or apply to the acceptance by (i) any employee of a local government, or (ii) a teacher or other employee of a local school board of an award or payment in honor of meritorious or exceptional services performed by the teacher or employee and made by an organization exempt from federal income taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code .

2001, c. [48](#), § 2.1-639.4:2; 2008, cc. [478](#), [497](#).

§2.2-3104.2. Ordinance regulating receipt of gifts.

The governing body of any county, city, or town may adopt an ordinance setting a monetary limit on the acceptance of any gift by the officers, appointees or employees of the county, city or town and requiring the disclosure by such officers, appointees or employees of the receipt of any gift.

2003, c. [694](#).

§2.2-3105. Application.

This article proscribes certain conduct relating to contracts by state and local government officers and employees. The provisions of this article shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of this title.

1987, Sp. Sess., c. 1, § 2.1-639.5; 2001, c. [844](#); 2003, c. [694](#).

§2.2-3106. Prohibited contracts by officers and employees of state government and Eastern Virginia Medical School.

A. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract with the governmental agency of which he is an officer or employee, other than his own contract of employment.

B. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract with any other governmental agency of state government unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as set forth in § [2.2-4302.1](#) or [2.2-4302.2](#) or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not apply to:

1. An employee's personal interest in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over the employment or the employment activities of the member of his immediate family and the employee is not in a position to influence those activities;
2. The personal interest of an officer or employee of a public institution of higher education or the Eastern Virginia Medical School in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are engaged in teaching, research or administrative support positions at the educational institution or the Eastern Virginia Medical School, (ii) the governing board of the educational institution finds that it is in the best interests of the institution or the Eastern Virginia Medical School and the Commonwealth for such dual employment to exist, and (iii) after such finding, the governing board of the educational institution or the Eastern Virginia Medical School ensures that the officer or employee, or the immediate family member, does not have sole authority to supervise, evaluate or make personnel decisions regarding the other;
3. An officer's or employee's personal interest in a contract of employment with any other governmental agency of state government;
4. Contracts for the sale by a governmental agency or the Eastern Virginia Medical School of services or goods at uniform prices available to the general public;
5. An employee's personal interest in a contract between a public institution of higher education in the Commonwealth or the Eastern Virginia Medical School and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him solely because he has authored or otherwise created such textbooks or materials;
6. An employee's personal interest in a contract with his or her employing public institution of higher education to acquire the collections or scholarly works owned by the employee, including manuscripts, musical scores, poetry, paintings, books or other materials, writings, or papers of an academic, research, or cultural value to the institution, provided the president of the institution approves the acquisition of such collections or scholarly works as being in the best interests of the institution's public mission of service, research, or education;

7. Subject to approval by the board of visitors, an employee's personal interest in a contract between the Eastern Virginia Medical School or a public institution of higher education in the Commonwealth that operates a school of medicine or dentistry and a not-for-profit nonstock corporation that operates a clinical practice within such public institution of higher education or the Eastern Virginia Medical School and of which such employee is a member or employee;

8. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract for research and development or commercialization of intellectual property between a public institution of higher education in the Commonwealth or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the employee's personal interest has been disclosed to and approved by such public institution of higher education or the Eastern Virginia Medical School prior to the time at which the contract is entered into; (ii) the employee promptly files a disclosure statement pursuant to § [2.2-3117](#) and thereafter files such statement annually on or before January 15; (iii) the institution has established a formal policy regarding such contracts, approved by the State Council of Higher Education or, in the case of the Eastern Virginia Medical School, a formal policy regarding such contracts in conformity with any applicable federal regulations that has been approved by its board of visitors; and (iv) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the Commonwealth disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth; or

9. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract between a public institution of higher education in the Commonwealth or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the personal interest has been disclosed to the institution or the Eastern Virginia Medical School prior to the time the contract is entered into; (ii) the employee files a disclosure statement pursuant to § [2.2-3117](#) and thereafter annually on or before January 15; (iii) the employee does not

participate in the institution's or the Eastern Virginia Medical School's decision to contract; (iv) the president of the institution or the Eastern Virginia Medical School finds and certifies in writing that the contract is for goods and services needed for quality patient care, including related medical education or research, by the institution's medical center or the Eastern Virginia Medical School, its affiliated teaching hospitals and other organizations necessary for the fulfillment of its mission, including the acquisition of drugs, therapies and medical technologies; and (v) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the Commonwealth disclosing each open contract entered subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth.

D. Notwithstanding the provisions of subdivisions C 8 and C 9, if the research and development or commercialization of intellectual property or the employee's personal interest in a contract with a business is subject to policies and regulations governing conflicts of interest promulgated by any agency of the United States government, including the adoption of policies requiring the disclosure and management of such conflicts of interests, the policies established by the Eastern Virginia Medical School pursuant to such federal requirements shall constitute compliance with subdivisions C 8 and C 9, upon notification by the Eastern Virginia Medical School to the Secretary of the Commonwealth by January 31 of each year of evidence of their compliance with such federal policies and regulations.

E. The board of visitors may delegate the authority granted under subdivision C 8 to the president of the institution. If the board elects to delegate such authority, the board shall include this delegation of authority in the formal policy required by clause (iii) of subdivision C 8. In those instances where the board has delegated such authority, on or before December 1 of each year, the president of the relevant institution shall file a report with the relevant board of visitors disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern

Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, the details of how revenues are to be dispersed, and any other information requested by the board of visitors.

1987, Sp. Sess., c. 1, § 2.1-639.6; 1989, c. 74; 1991, c. 470; 1993, c. 876; 1995, c. [403](#); 1998, c. [838](#); 2001, c. [844](#); 2002, cc. [87](#), [478](#); 2003, c. [646](#); 2006, c. [839](#); 2013, c. [583](#); 2015, cc. [763](#), [777](#); 2016, cc. [773](#), [774](#).

§2.2-3107. Prohibited contracts by members of county boards of supervisors, city councils and town councils.

A. No person elected or appointed as a member of the governing body of a county, city or town shall have a personal interest in (i) any contract with his governing body, or (ii) any contract with any governmental agency that is a component part of his local government and which is subject to the ultimate control of the governing body of which he is a member, or (iii) any contract other than a contract of employment with any other governmental agency if such person's governing body appoints a majority of the members of the governing body of the second governmental agency.

B. The provisions of this section shall not apply to:

1. A member's personal interest in a contract of employment provided (i) the officer or employee was employed by the governmental agency prior to July 1, 1983, in accordance with the provisions of the former Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) of Title 2.1 as it existed on June 30, 1983, or (ii) the employment first began prior to the member becoming a member of the governing body;
2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or
3. A contract awarded to a member of a governing body as a result of competitive sealed bidding where the governing body has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the governing body. However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the governing body, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

1987, Sp. Sess., c. 1, § 2.1-639.7; 2001, c. [844](#).

§2.2-3108. Prohibited contracts by members of school boards.

A. No person elected or appointed as a member of a local school board shall have a personal interest in (i) any contract with his school board or (ii) any contract with any governmental agency that is subject to the ultimate control of the school board of which he is a member.

B. The provisions of this section shall not apply to:

1. A member's personal interest in a contract of employment provided the employment first began prior to the member becoming a member of the school board;
2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or
3. A contract awarded to a member of a school board as a result of competitive sealed bidding where the school board has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the school board. However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the school board, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

1996, c. [548](#), § 2.1-639.7:1; 2001, c. [844](#).

§2.2-3109. Prohibited contracts by other officers and employees of local governmental agencies.

A. No other officer or employee of any governmental agency of local government, including a hospital authority as defined in § [2.2-3109.1](#), shall have a personal interest in a contract with the agency of which he is an officer or employee other than his own contract of employment.

B. No officer or employee of any governmental agency of local government, including a hospital authority as defined in § [2.2-3109.1](#), shall have a personal interest in a contract with any other governmental agency that is a component of the government of his county, city or town unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as set forth in § [2.2-4302.1](#) or [2.2-4302.2](#) or is awarded as a result of a procedure embodying competitive principles as authorized by subdivision A 10 or 11 of § [2.2-4343](#) or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not apply to:

1. An employee's personal interest in additional contracts for goods or services, or contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over (i) the employment or the employment activities of the member of his immediate family and (ii) the employee is not in a position to influence those activities or the award of the contract for goods or services;
2. An officer's or employee's personal interest in a contract of employment with any other governmental agency that is a component part of the government of his county, city or town;
3. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public;
4. Members of local governing bodies who are subject to § [2.2-3107](#);
5. Members of local school boards who are subject to § [2.2-3108](#); or
6. Any ownership or financial interest of members of the governing body, administrators, and other personnel serving in a public charter school in renovating, lending, granting, or leasing public charter school facilities, as the case may be, provided such interest has been disclosed in the public charter school application as required by § [22.1-212.8](#).

1987, Sp. Sess., c. 1, § 2.1-639.8; 1996, c. [548](#); 2001, c. [844](#); 2004, c. [530](#); 2009, c. [862](#); 2013, c. [583](#); 2015, c. [699](#).

§2.2-3109.1. Prohibited contracts; additional exclusions for contracts by officers and employees of hospital authorities.

A. As used in this section, "hospital authority" means a hospital authority established pursuant to Chapter 53 (§ [15.2-5300](#) et seq.) of Title 15.2 or an Act of Assembly.

B. The provisions of § [2.2-3109](#) shall not apply to:

1. The personal interest of an officer or employee of a hospital authority in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are licensed members of the medical profession or hold administrative support positions at the hospital authority, (ii) the governing board of the hospital authority finds that it is in the best interests of the hospital authority and the county, city, or town for such dual employment to exist, and (iii)

after such finding, the governing board of the hospital authority ensures that neither the officer or employee, nor the immediate family member, has sole authority to supervise, evaluate, or make personnel decisions regarding the other;

2. Subject to approval by the governing board of the hospital authority, an officer or employee's personal interest in a contract between his hospital authority and a professional entity that operates a clinical practice at any medical facilities of such other hospital authority and of which such officer or employee is a member or employee;

3. Subject to approval by the relevant governing body, an officer or employee's personal interest in a contract for research and development or commercialization of intellectual property between the hospital authority and a business in which the employee has a personal interest, provided (i) the officer or employee's personal interest has been disclosed to and approved by the hospital authority prior to the time at which the contract is entered into; (ii) the officer or employee promptly files a disclosure statement pursuant to § [2.2-3117](#) and thereafter files such statement annually on or before January 15; (iii) the local hospital authority has established a formal policy regarding such contracts in conformity with any applicable federal regulations that has been approved by its governing body; and (iv) no later than December 31 of each year, the local hospital authority files an annual report with the Virginia Conflict of Interest and Ethics Advisory Council disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the hospital authority's employee responsible for administering each contract, the details of such hospital authority's commitment or investment of resources or finances for each contract, and any other information requested by the Virginia Conflict of Interest and Ethics Advisory Council; or

4. Subject to approval by the relevant governing body, an officer or employee's personal interest in a contract between the hospital authority and a business in which the officer or employee has a personal interest, provided (i) the personal interest has been disclosed to the hospital authority prior to the time the contract is entered into; (ii) the officer or employee files a disclosure statement pursuant to § [2.2-3117](#) and thereafter annually on or before January 15; (iii) the officer or employee does not participate in the hospital authority's decision to contract; (iv) the president or chief executive officer of the hospital authority finds and certifies in writing that the contract is for goods and services needed for quality patient care, including related

medical education or research, by any of the hospital authority's medical facilities or any of its affiliated organizations, or is otherwise necessary for the fulfillment of its mission, including but not limited to the acquisition of drugs, therapies, and medical technologies; and (v) no later than December 31 of each year, the hospital authority files an annual report with the Virginia Conflict of Interest and Ethics Advisory Council disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the hospital authority's employee responsible for administering each contract, the details of the hospital authority's commitment or investment of resources or finances for each contract, and any other information requested by the Virginia Conflict of Interest and Ethics Advisory Council.

C. Notwithstanding the provisions of subdivisions B 3 and B 4, if the research and development or commercialization of intellectual property or the officer or employee's personal interest in a contract with a business is subject to policies and regulations governing conflicts of interest promulgated by any agency of the United States government, including the adoption of policies requiring the disclosure and management of such conflicts of interest, the policies established by the hospital authority pursuant to such federal requirements shall constitute compliance with subdivisions B 3 and B 4, upon notification by the hospital authority to the Virginia Conflict of Interest and Ethics Advisory Council by January 31 of each year of evidence of its compliance with such federal policies and regulations.

D. The governing body may delegate the authority granted under subdivision B 2 to the president or chief executive officer of hospital authority. If the board elects to delegate such authority, the board shall include this delegation of authority in the formal policy required by clause (iii) of subdivision B 3. In those instances where the board has delegated such authority, on or before December 1 of each year, the president or chief executive officer of the hospital authority shall file a report with the relevant governing body disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the hospital authority's employee responsible for administering each contract, the details of the hospital authority's commitment or investment of resources or finances for each contract, the details of how revenues are to be dispersed, and any other information requested by the governing body.

2015, c. [699](#); 2016, cc. [773](#), [774](#).

§2.2-3110. Further exceptions.

A. The provisions of Article 3 (§ [2.2-3106](#) et seq.) shall not apply to:

1. The sale, lease or exchange of real property between an officer or employee and a governmental agency, provided the officer or employee does not participate in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof;

2. The publication of official notices;

3. Contracts between the government or school board of a county, city, or town with a population of less than 10,000 and an officer or employee of that county, city, or town government or school board when the total of such contracts between the government or school board and the officer or employee of that government or school board or a business controlled by him does not exceed \$5,000 per year or such amount exceeds \$5,000 and is less than \$25,000 but results from contracts arising from awards made on a sealed bid basis, and such officer or employee has made disclosure as provided for in § [2.2-3115](#);

4. An officer or employee whose sole personal interest in a contract with the governmental agency is by reason of income from the contracting firm or governmental agency in excess of \$5,000 per year, provided the officer or employee or a member of his immediate family does not participate and has no authority to participate in the procurement or letting of such contract on behalf of the contracting firm and the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of his governmental agency or he disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;

5. When the governmental agency is a public institution of higher education, an officer or employee whose personal interest in a contract with the institution is by reason of an ownership in the contracting firm in excess of three percent of the contracting firm's equity or such ownership interest and income from the contracting firm is in excess of \$5,000 per year, provided that (i) the officer or employee's ownership interest, or ownership and income interest, and that of any immediate family member in the contracting firm is disclosed in writing to the president of the

institution, which writing certifies that the officer or employee has not and will not participate in the contract negotiations on behalf of the contracting firm or the institution, (ii) the president of the institution makes a written finding as a matter of public record that the contract is in the best interests of the institution, (iii) the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of the institution or disqualifies himself as a matter of public record, and (iv) does not participate on behalf of the institution in negotiating the contract or approving the contract;

6. Except when the governmental agency is the Virginia Retirement System, contracts between an officer's or employee's governmental agency and a public service corporation, financial institution, or company furnishing public utilities in which the officer or employee has a personal interest, provided the officer or employee disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;

7. Contracts for the purchase of goods or services when the contract does not exceed \$500;

8. Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency;

9. An officer or employee whose sole personal interest in a contract with his own governmental agency is by reason of his marriage to his spouse who is employed by the same agency, if the spouse was employed by such agency for five or more years prior to marrying such officer or employee; or

10. Contracts entered into by an officer or employee or immediate family member of an officer or employee of a soil and water conservation district created pursuant to Article 3 (§ [10.1-506](#) et seq.) of Chapter 5 of Title 10.1 to participate in the Virginia Agricultural Best Management Practices Cost-Share Program (the Program) established in accordance with § [10.1-546.1](#) or to participate in other cost-share programs for the installation of best management practices to improve water quality. This subdivision shall not apply to subcontracts or other agreements entered into by an officer or employee of a soil and water conservation district to provide services for implementation of a cost-share contract established under the Program or such other cost-share programs.

B. Neither the provisions of this chapter nor, unless expressly provided otherwise, any amendments thereto shall apply to those employment contracts or renewals thereof or to any other contracts entered into prior to August 1, 1987, which were in compliance with either the former Virginia Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) or the former Comprehensive Conflict of Interests Act, Chapter 40 (§ 2.1-599 et seq.) of Title 2.1 at the time of their formation and thereafter. Those contracts shall continue to be governed by the provisions of the appropriate prior Act. Notwithstanding the provisions of subdivision (f)(4) of former § 2.1-348 of Title 2.1 in effect prior to July 1, 1983, the employment by the same governmental agency of an officer or employee and spouse or any other relative residing in the same household shall not be deemed to create a material financial interest except when one of such persons is employed in a direct supervisory or administrative position, or both, with respect to such spouse or other relative residing in his household and the annual salary of such subordinate is \$35,000 or more.

1987, Sp. Sess., c. 1, § 2.1-639.9; 1990, c. 51; 1993, c. 303; 1994, cc. [450](#), [713](#); 1997, c. [641](#); 2001, c. [844](#); 2006, c. [839](#); 2010, cc. [301](#), [304](#); 2016, cc. [351](#), [531](#); 2017, cc. [150](#), [546](#), [829](#), [832](#).

§2.2-3111. Application.

This article proscribes certain conduct by state and local government officers and employees having a personal interest in a transaction.

1987, Sp. Sess., c. 1, § 2.1-639.10; 2001, c. [844](#).

§2.2-3112. Prohibited conduct concerning personal interest in a transaction; exceptions.

A. Each officer and employee of any state or local governmental or advisory agency who has a personal interest in a transaction shall disqualify himself from participating in the transaction if (i) the transaction has application solely to property or a business or governmental agency in which he has a personal interest or a business that has a parent-subsidary or affiliated business entity relationship with the business in which he has a personal interest or (ii) he is unable to participate pursuant to subdivision B 1, 2, or 3. Any disqualification under the provisions of this subsection shall be recorded in the public records of the officer's or employee's governmental or advisory agency. The officer or employee shall disclose his personal interest as required by subsection E of § [2.2-3114](#) or subsection F of § [2.2-3115](#) and shall not vote or in any manner act on behalf of his agency in the transaction. The officer or

employee shall be prohibited from (i) attending any portion of a closed meeting authorized by the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.) when the matter in which he has a personal interest is discussed and (ii) discussing the matter in which he has a personal interest with other governmental officers or employees at any time.

B. An officer or employee of any state or local government or advisory agency who has a personal interest in a transaction may participate in the transaction:

1. If he is a member of a business, profession, occupation, or group of three or more persons the members of which are affected by the transaction, and he complies with the declaration requirements of subsection F of § [2.2-3114](#) or subsection H of § [2.2-3115](#);

2. When a party to the transaction is a client of his firm if he does not personally represent or provide services to such client and he complies with the declaration requirements of subsection G of § [2.2-3114](#) or subsection I of § [2.2-3115](#); or

3. If it affects the public generally, even though his personal interest, as a member of the public, may also be affected by that transaction.

C. Disqualification under the provisions of this section shall not prevent any employee having a personal interest in a transaction in which his agency is involved from representing himself or a member of his immediate family in such transaction provided he does not receive compensation for such representation and provided he complies with the disqualification and relevant disclosure requirements of this chapter.

D. Notwithstanding any other provision of law, if disqualifications of officers or employees in accordance with this section leave less than the number required by law to act, the remaining member or members shall constitute a quorum for the conduct of business and have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members. Notwithstanding any provisions of this chapter to the contrary, members of a local governing body whose sole interest in any proposed sale, contract of sale, exchange, lease or conveyance is by virtue of their employment by a business involved in a proposed sale, contract of sale, exchange, lease or conveyance, and where such member's or members' vote is essential to a constitutional majority required pursuant to Article VII, Section 9 of the

Constitution of Virginia and § [15.2-2100](#), such member or members of the local governing body may vote and participate in the deliberations of the governing body concerning whether to approve, enter into or execute such sale, contract of sale, exchange, lease or conveyance. Official action taken under circumstances that violate this section may be rescinded by the agency on such terms as the interests of the agency and innocent third parties require.

E. The provisions of subsection A shall not prevent an officer or employee from participating in a transaction merely because such officer or employee is a party in a legal proceeding of a civil nature concerning such transaction.

F. The provisions of subsection A shall not prevent an employee from participating in a transaction regarding textbooks or other educational material for students at state institutions of higher education, when those textbooks or materials have been authored or otherwise created by the employee.

G. The provisions of this section shall not prevent any justice of the Supreme Court of Virginia, judge of the Court of Appeals of Virginia, judge of any circuit court, judge or substitute judge of any district court, member of the State Corporation Commission, or member of the Virginia Workers' Compensation Commission from participating in a transaction where such individual's participation involves the performance of adjudicative responsibilities as set forth in Canon 3 of the Canons of Judicial Conduct for the State of Virginia. However, nothing in this subsection shall be construed to authorize such individual's participation in a transaction if such participation would constitute a violation of the Canons of Judicial Conduct for the State of Virginia.

1987, Sp. Sess., c. 1, § 2.1-639.11; 2001, c. [844](#); 2003, c. [694](#); 2007, c. [613](#); 2012, c. [429](#); 2017, cc. [829](#), [832](#).

§2.2-3113. Application.

This article requires disclosure of certain personal and financial interests by state and local government officers and employees.

1987, Sp. Sess., c. 1, § 2.1-639.12; 2001, c. [844](#).

§2.2-3114. Disclosure by state officers and employees.

A. In accordance with the requirements set forth in § [2.2-3118.2](#), the Governor, Lieutenant Governor, Attorney General, Justices of the Supreme Court, judges of the Court of Appeals, judges of any circuit court, judges and substitute judges of any

district court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, members of the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, members of the Virginia Alcoholic Beverage Control Board, and members of the Virginia Lottery Board and other persons occupying such offices or positions of trust or employment in state government, including members of the governing bodies of authorities, as may be designated by the Governor, or officers or employees of the legislative branch, as may be designated by the Joint Rules Committee of the General Assembly, shall file with the Council, as a condition to assuming office or employment, a disclosure statement of their personal interests and such other information as is required on the form prescribed by the Council pursuant to § [2.2-3117](#) and thereafter shall file such a statement annually on or before February 1.

B. In accordance with the requirements set forth in § [2.2-3118.2](#), nonsalaried citizen members of all policy and supervisory boards, commissions and councils in the executive branch of state government, other than the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and the Virginia Lottery Board, shall file with the Council, as a condition to assuming office, a disclosure form of their personal interests and such other information as is required on the form prescribed by the Council pursuant to § [2.2-3118](#) and thereafter shall file such form annually on or before February 1. Nonsalaried citizen members of other boards, commissions and councils, including advisory boards and authorities, may be required to file a disclosure form if so designated by the Governor, in which case the form shall be that prescribed by the Council pursuant to § [2.2-3118](#).

C. The disclosure forms required by subsections A and B shall be made available by the Council at least 30 days prior to the filing deadline. Disclosure forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § [30-356](#). All forms shall be maintained as public records for five years in the office of the Council. Such forms shall be made public no later than six weeks after the filing deadline.

D. Candidates for the offices of Governor, Lieutenant Governor or Attorney General shall file a disclosure statement of their personal interests as required by § [24.2-502](#).

E. Any officer or employee of state government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to

subsection A of § [2.2-3112](#), or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall also be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental agency or advisory agency or, if the agency has a clerk, in the clerk's office.

F. An officer or employee of state government who is required to declare his interest pursuant to subdivision B 1 of § [2.2-3112](#), shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

G. An officer or employee of state government who is required to declare his interest pursuant to subdivision B 2 of § [2.2-3112](#), shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

H. Notwithstanding any other provision of law, chairs of departments at a public institution of higher education in the Commonwealth shall not be required to file the disclosure form prescribed by the Council pursuant to § [2.2-3117](#) or [2.2-3118](#).

1987, Sp. Sess., c. 1, § 2.1-639.13; 1988, cc. 767, 849; 1992, c. 710; 1993, c. 303; 1997, c. [641](#); 2001, cc. [217](#), [844](#); 2003, c. [694](#); 2005, c. [169](#); 2006, c. [779](#); 2014, cc. [225](#), [792](#), [804](#); 2015, cc. [763](#), [777](#); 2016, cc. [773](#), [774](#); 2017, cc. [829](#), [832](#).

§2.2-3114.1. Filings of statements of economic interests by General Assembly members.

The filing of a current statement of economic interests by a General Assembly member, member-elect, or candidate for the General Assembly pursuant to §§ [30-110](#) and [30-111](#) of the General Assembly Conflicts of Interests Act (§ [30-100](#) et seq.) shall suffice for the purposes of this chapter. The Secretary of the Commonwealth may obtain from the Council a copy of the statement of a General Assembly member who is appointed to a position for which a statement is required pursuant to § [2.2-3114](#). No General Assembly member, member-elect, or candidate shall be required to file a separate statement of economic interests for the purposes of § [2.2-3114](#).

2002, c. [36](#); 2015, cc. [763](#), [777](#).

§2.2-3114.2. Report of gifts by certain officers and employees of state government.

The Governor, Lieutenant Governor, Attorney General, and each member of the Governor's Cabinet shall file, on or before May 1, a report of gifts accepted or received by him or a member of his immediate family during the period beginning on January 1 complete through adjournment sine die of the regular session of the General Assembly. The gift report shall be on a form prescribed by the Council and shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § [30-356](#). For purposes of this section, "adjournment sine die" means adjournment on the last legislative day of the regular session and does not include the ensuing reconvened session. Any gifts reported pursuant to this section shall not be listed on the annual disclosure form prescribed by the Council pursuant to § [2.2-3117](#).

2016, cc. [773](#), [774](#).

§2.2-3115. Disclosure by local government officers and employees.

A. In accordance with the requirements set forth in § [2.2-3118.2](#), the members of every governing body and school board of each county and city and of towns with populations in excess of 3,500 shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § [2.2-3117](#) and thereafter shall file such a statement annually on or before February 1.

In accordance with the requirements set forth in § [2.2-3118.2](#), the members of the governing body of any authority established in any county or city, or part or combination thereof, and having the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year, shall file, as a condition to assuming office, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § [2.2-3118](#) and thereafter shall file such a statement annually on or before February 1, unless the governing body of the jurisdiction that appoints the members requires that the members file the form set forth in § [2.2-3117](#).

In accordance with the requirements set forth in § [2.2-3118.2](#), persons occupying such positions of trust appointed by governing bodies and persons occupying such positions of employment with governing bodies as may be designated to file by ordinance of the governing body shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § [2.2-3117](#) and thereafter shall file such a statement annually on or before February 1.

In accordance with the requirements set forth in § [2.2-3118.2](#), persons occupying such positions of trust appointed by school boards and persons occupying such positions of employment with school boards as may be designated to file by an adopted policy of the school board shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § [2.2-3117](#) and thereafter shall file such a statement annually on or before February 1.

B. In accordance with the requirements set forth in § [2.2-3118.2](#), nonsalaried citizen members of local boards, commissions and councils as may be designated by the governing body shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is required on the form prescribed by

the Council pursuant to § [2.2-3118](#) and thereafter shall file such form annually on or before February 1.

C. No person shall be mandated to file any disclosure not otherwise required by this article.

D. The disclosure forms required by subsections A and B shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council at least 30 days prior to the filing deadline, and the clerks of the governing body and school board shall distribute the forms to designated individuals at least 20 days prior to the filing deadline. Forms shall be filed and maintained as public records for five years in the office of the clerk of the respective governing body or school board. Forms filed by members of governing bodies of authorities shall be filed and maintained as public records for five years in the office of the clerk of the governing body of the county or city. Such forms shall be made public no later than six weeks after the filing deadline.

E. Candidates for membership in the governing body or school board of any county, city or town with a population of more than 3,500 persons shall file a disclosure statement of their personal interests as required by § [24.2-502](#).

F. Any officer or employee of local government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subsection A of § [2.2-3112](#) or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental or advisory agency.

G. In addition to any disclosure required by subsections A and B, in each county and city and in towns with populations in excess of 3,500, members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city and town managers or executive officers shall make annual disclosures of all their interests in real estate located in the county, city or town in which they are elected, appointed, or employed. Such disclosure shall include any business in which such persons own an interest, or from which income is received, if the primary purpose of the business is to own, develop or derive compensation through the sale, exchange or development of real estate in the county, city or town. In accordance with the

requirements set forth in § [2.2-3118.2](#), such disclosure shall be filed as a condition to assuming office or employment, and thereafter shall be filed annually with the clerk of the governing body of such county, city, or town on or before February 1. Such disclosures shall be filed and maintained as public records for five years. Such forms shall be made public no later than six weeks after the filing deadline. Forms for the filing of such reports shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council to the clerk of each governing body.

H. An officer or employee of local government who is required to declare his interest pursuant to subdivision B 1 of § [2.2-3112](#) shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day. The officer or employee shall also orally disclose the existence of the interest during each meeting of the governmental or advisory agency at which the transaction is discussed and such disclosure shall be recorded in the minutes of the meeting.

I. An officer or employee of local government who is required to declare his interest pursuant to subdivision B 2 of § [2.2-3112](#), shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to

participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

J. The clerk of the governing body or school board that releases any form to the public pursuant to this section shall redact from the form any residential address, personal telephone number, or signature contained on such form; however, any form filed pursuant to subsection G shall not have any residential addresses redacted.

1987, Sp. Sess., c. 1, § 2.1-639.14; 1988, c. 849; 1995, c. [495](#); 1996, c. [526](#); 2000, c. [317](#); 2001, cc. [217](#), [844](#); 2003, c. [694](#); 2012, c. [429](#); 2014, cc. [792](#), [804](#); 2015, cc. [763](#), [777](#); 2016, cc. [773](#), [774](#); 2017, cc. [829](#), [832](#).

§2.2-3116. Disclosure by certain constitutional officers.

For the purposes of this chapter, holders of the constitutional offices of treasurer, sheriff, attorney for the Commonwealth, clerk of the circuit court, and commissioner of the revenue of each county and city shall be required to file with the Council, as a condition to assuming office, the Statement of Economic Interests prescribed by the Council pursuant to § [2.2-3117](#). These officers shall file statements annually on or before February 1. Candidates shall file statements as required by § [24.2-502](#). Statements shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § [30-356](#). These officers shall be subject to the prohibition on certain gifts set forth in subsection B of § [2.2-3103.1](#).

1988, c. 469, § 2.1-639.14:1; 2001, c. [844](#); 2014, cc. [792](#), [804](#); 2015, cc. [763](#), [777](#); 2016, cc. [773](#), [774](#); 2017, cc. [829](#), [832](#).

§2.2-3117. Disclosure form.

The disclosure form to be used for filings required by subsections A and D of § [2.2-3114](#) and subsections A and E of § [2.2-3115](#) shall be prescribed by the Council. Except as otherwise provided in § [2.2-3115](#), all completed forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § [30-356](#). Any person who knowingly and intentionally makes a false statement of a material fact on the Statement of Economic Interests is guilty of a Class 5 felony.

1987, Sp. Sess., c. 1, § 2.1-639.15; 1988, c. 849; 1994, cc. [724](#), [733](#), [777](#), [793](#); 1995, c. [763](#); 1996, c. [77](#); 1997, cc. [577](#), [844](#); 1998, c. [732](#); 2001, c. [844](#); 2006, cc. [310](#), [779](#), [787](#), [892](#); 2008, c. [239](#); 2010, c. [670](#); 2012, c. [429](#); 2014, cc. [792](#), [804](#); 2015, cc. [763](#), [777](#); 2016, cc. [773](#), [774](#).

§2.2-3118. Disclosure form; certain citizen members.

The financial disclosure form to be used for filings required pursuant to subsection B of [§ 2.2-3114](#) and subsection B of [§ 2.2-3115](#) shall be filed in accordance with the provisions of [§ 30-356](#). The financial disclosure form shall be prescribed by the Council. Except as otherwise provided in [§ 2.2-3115](#), all completed forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to [§ 30-356](#).

1988, c. 849, § 2.1-639.15:1; 1996, c. [77](#); 2001, c. [844](#); 2006, c. [779](#); 2011, cc. [123](#), [177](#); 2014, cc. [792](#), [804](#); 2015, cc. [763](#), [777](#); 2016, cc. [773](#), [774](#).

§2.2-3118.1. Special provisions for individuals serving in or seeking multiple positions or offices; reappointees.

A. The filing of a single current statement of economic interests by an individual required to file the form prescribed in [§ 2.2-3117](#) shall suffice for the purposes of this chapter as filing for all positions or offices held or sought by such individual during a single reporting period. The filing of a single current financial disclosure statement by an individual required to file the form prescribed in [§ 2.2-3118](#) shall suffice for the purposes of this chapter as filing for all positions or offices held or sought by such individual and requiring the filing of the [§ 2.2-3118](#) form during a single reporting period.

B. Any individual who has met the requirement for periodically filing a statement provided in [§ 2.2-3117](#) or [2.2-3118](#) shall not be required to file an additional statement upon such individual's reappointment to the same office or position for which he is required to file, provided such reappointment occurs within six months after filing a statement pursuant to [§ 2.2-3117](#) and within 12 months after filing a statement pursuant to [§ 2.2-3118](#).

2005, c. [397](#); 2014, cc. [792](#), [804](#); 2016, cc. [773](#), [774](#).

§2.2-3118.2. Disclosure form; filing requirements.

A. An officer or employee required to file an annual disclosure on or before February 1 pursuant to this article shall disclose his personal interests and other information as required on the form prescribed by the Council for the preceding calendar year complete through December 31. An officer or employee required to file a disclosure as a condition to assuming office or employment shall file such disclosure on or before the day such office or position of employment is assumed and disclose his personal interests and other information as required on the form prescribed by the Council for the preceding 12-month period complete through the last day of the month

immediately preceding the month in which the office or position of employment is assumed; however, any officer or employee who assumes office or a position of employment in January shall be required to only file an annual disclosure on or before February 1 for the preceding calendar year complete through December 31.

B. When the deadline for filing any disclosure pursuant to this article falls on a Saturday, Sunday, or legal holiday, the deadline for filing shall be the next day that is not a Saturday, Sunday, or legal holiday.

2017, cc. [829](#), [832](#).

§2.2-3119. Additional provisions applicable to school boards and employees of school boards; exceptions.

A. Notwithstanding any other provision of this chapter, it shall be unlawful for the school board of any county or city or of any town constituting a separate school division to employ or pay any teacher or other school board employee from the public funds, federal, state or local, or for a division superintendent to recommend to the school board the employment of any teacher or other employee, if the teacher or other employee is the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law or brother-in-law of the superintendent, or of any member of the school board.

This section shall apply to any person employed by any school board in the operation of the public free school system, adult education programs or any other program maintained and operated by a local county, city or town school board.

B. This section shall not be construed to prohibit the employment, promotion, or transfer within a school division of any person within a relationship described in subsection A when such person:

1. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the taking of office of any member of such board or division superintendent of schools; or
2. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the inception of such relationship; or
3. Was employed by a school board at any time prior to June 10, 1994, and had been employed at any time as a teacher or other employee of any Virginia school board

prior to the taking of office of any member of such school board or division superintendent of schools.

C. A person employed as a substitute teacher may not be employed to any greater extent than he was employed by the school board in the last full school year prior to the taking of office of such board member or division superintendent or to the inception of such relationship. The exceptions in subdivisions B 1, B 2, and B 3 shall apply only if the prior employment has been in the same school divisions where the employee and the superintendent or school board member now seek to serve simultaneously.

D. If any member of the school board or any division superintendent knowingly violates these provisions, he shall be personally liable to refund to the local treasury any amounts paid in violation of this law, and the funds shall be recovered from the individual by action or suit in the name of the Commonwealth on the petition of the attorney for the Commonwealth. Recovered funds shall be paid into the local treasury for the use of the public schools.

E. The provisions of this section shall not apply to employment by a school district located in Planning Districts 3, [4](#), [11](#), [12](#), [13](#), and 17 of the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law, or brother-in-law of any member of the school board provided (i) the member certifies that he had no involvement with the hiring decision and (ii) the superintendent certifies to the remaining members of the governing body in writing that the employment is based upon merit and fitness and the competitive rating of the qualifications of the individual and that no member of the board had any involvement with the hiring decision.

1987, Sp. Sess., c. 1, § 2.1-639.16; 1994, c. [758](#); 1995, c. [186](#); 1997, c. [84](#); 2001, c. [844](#); 2010, cc. [676](#), [759](#); 2011, c. [517](#); 2017, cc. [146](#), [515](#).

§2.2-3120. Knowing violation of chapter a misdemeanor.

Any person who knowingly violates any of the provisions of Articles 2 through 6 (§§ [2.2-3102](#) through [2.2-3119](#)) of this chapter shall be guilty of a Class 1 misdemeanor, except that any member of a local governing body who knowingly violates subsection A of § [2.2-3112](#) or subsection D or F of § [2.2-3115](#) shall be guilty of a Class 3 misdemeanor. A knowing violation under this section is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter.

1987, Sp. Sess., c. 1, § 2.1-639.17; 2001, c. [844](#); 2012, c. [429](#).

§2.2-3121. Advisory opinions.

A. A state officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the Attorney General or a formal opinion or written informal advice of the Council made in response to his written request for such opinion or advice and the opinion or advice was made after a full disclosure of the facts regardless of whether such opinion or advice is later withdrawn provided the alleged violation occurred prior to the withdrawal of the opinion or advice.

B. A local officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the attorney for the Commonwealth or a formal opinion or written informal advice of the Council made in response to his written request for such opinion or advice and the opinion or advice was made after a full disclosure of the facts regardless of whether such opinion or advice is later withdrawn, provided that the alleged violation occurred prior to the withdrawal of the opinion or advice. The written opinion of the attorney for the Commonwealth shall be a public record and shall be released upon request.

C. If any officer or employee serving at the local level of government is charged with a knowing violation of this chapter, and the alleged violation resulted from his reliance upon a written opinion of his county, city, or town attorney, made after a full disclosure of the facts, that such action was not in violation of this chapter, then the officer or employee shall have the right to introduce a copy of the opinion at his trial as evidence that he did not knowingly violate this chapter.

1987, Sp. Sess., c. 1, § 2.1-639.18; 2001, c. [844](#); 2003, c. [694](#); 2014, cc. [792](#), [804](#); 2015, cc. [763](#), [777](#); 2016, c. [665](#); 2017, cc. [829](#), [832](#).

§2.2-3122. Knowing violation of chapter constitutes malfeasance in office or employment.

Any person who knowingly violates any of the provisions of this chapter shall be guilty of malfeasance in office or employment. Upon conviction thereof, the judge or jury trying the case, in addition to any other fine or penalty provided by law, may order the forfeiture of such office or employment.

1987, Sp. Sess., c. 1, § 2.1-639.19; 2001, c. [844](#).

§2.2-3123. Invalidation of contract; rescision of sales.

A. Any contract made in violation of § [2.2-3103](#) or §§ [2.2-3106](#) through [2.2-3109](#) may be declared void and may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such contract. In cases in which the contract is invalidated, the contractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of rescision of a contract of sale, any refund or restitution shall be made to the contracting or selling governmental agency.

B. Any purchase by an officer or employee made in violation of § [2.2-3103](#) or §§ [2.2-3106](#) through [2.2-3109](#) may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such purchase.

1987, Sp. Sess., c. 1, § 2.1-639.20; 2001, c. [844](#).

§2.2-3124. Civil penalty from violation of this chapter.

A. In addition to any other fine or penalty provided by law, an officer or employee who knowingly violates any provision of §§ [2.2-3103](#) through [2.2-3112](#) shall be subject to a civil penalty in an amount equal to the amount of money or thing of value received as a result of such violation. If the thing of value received by the officer or employee in violation of §§ [2.2-3103](#) through [2.2-3112](#) increases in value between the time of the violation and the time of discovery of the violation, the greater value shall determine the amount of the civil penalty. Further, all money or other things of value received as a result of such violation shall be forfeited in accordance with the provisions of § [19.2-386.33](#).

B. An officer or employee required to file the disclosure form prescribed by § [2.2-3117](#) who fails to file such form within the time period prescribed shall be assessed a civil penalty in an amount equal to \$250. The Council shall notify the Attorney General of any state officer's or employee's failure to file the required form and the Attorney General shall assess and collect the civil penalty. The clerk of the school board or the clerk of the governing body of the county, city, or town shall notify the attorney for the Commonwealth for the locality in which the officer or employee was elected or is employed of any local officer's or employee's failure to file the required form and the attorney for the Commonwealth shall assess and collect the civil penalty. The Council shall notify the Attorney General and the clerk shall notify the attorney for the Commonwealth within 30 days of the deadline for filing. All civil penalties

collected pursuant to this subsection shall be deposited into the general fund and used exclusively to fund the Council.

1987, Sp. Sess., c. 1, § 2.1-639.21; 1994, cc. [727](#), [776](#); 2001, c. [844](#); 2012, cc. [283](#), [756](#); 2015, cc. [763](#), [777](#).

§2.2-3125. Limitation of actions.

The statute of limitations for the criminal prosecution of a person for violation of any provision of this chapter shall be one year from the time the Attorney General, if the violation is by a state officer or employee, or the attorney for the Commonwealth, if the violation is by a local officer or employee, has actual knowledge of the violation or five years from the date of the violation, whichever event occurs first. Any prosecution for malfeasance in office shall be governed by the statute of limitations provided by law.

1987, Sp. Sess., c. 1, § 2.1-639.22; 2001, c. [844](#).

§2.2-3126. Enforcement.

A. The provisions of this chapter relating to an officer or employee serving at the state level of government shall be enforced by the Attorney General.

In addition to any other powers and duties prescribed by law, the Attorney General shall have the following powers and duties within the area for which he is responsible under this section:

1. He shall advise the agencies of state government and officers and employees serving at the state level of government on appropriate procedures for complying with the requirements of this chapter. He may review any disclosure statements, without notice to the affected person, for the purpose of determining satisfactory compliance, and shall investigate matters that come to his attention reflecting possible violations of the provisions of this chapter by officers and employees serving at the state level of government;
2. If he determines that there is a reasonable basis to conclude that any officer or employee serving at the state level of government has knowingly violated any provision of this chapter, he shall designate an attorney for the Commonwealth who shall have complete and independent discretion in the prosecution of such officer or employee;
3. He shall render advisory opinions to any state officer or employee who seeks advice as to whether the facts in a particular case would constitute a violation of the

provisions of this chapter. He shall determine which opinions or portions thereof are of general interest to the public and may, from time to time, be published.

Irrespective of whether an opinion of the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

B. The provisions of this chapter relating to an officer or employee serving at the local level of government shall be enforced by the attorney for the Commonwealth within the political subdivision for which he is elected.

Each attorney for the Commonwealth shall be responsible for prosecuting violations by an officer or employee serving at the local level of government and, if the Attorney General designates such attorney for the Commonwealth, violations by an officer or employee serving at the state level of government. In the event the violation by an officer or employee serving at the local level of government involves more than one local jurisdiction, the Attorney General shall designate which of the attorneys for the Commonwealth of the involved local jurisdictions shall enforce the provisions of this chapter with regard to such violation.

Each attorney for the Commonwealth shall establish an appropriate written procedure for implementing the disclosure requirements of local officers and employees of his county, city or town, and for other political subdivisions, whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. The attorney for the Commonwealth shall provide a copy of this act to all local officers and employees in the jurisdiction served by such attorney who are required to file a disclosure statement pursuant to Article 5 (§ [2.2-3113](#) et seq.) of this chapter. Failure to receive a copy of the act shall not be a defense to such officers and employees if they are prosecuted for violations of the act.

Each attorney for the Commonwealth shall render advisory opinions as to whether the facts in a particular case would constitute a violation of the provisions of this chapter to the governing body and any local officer or employee in his jurisdiction and to political subdivisions other than a county, city or town, including regional political subdivisions whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. If the advisory opinion is written, then such written opinion shall be a public record and shall be released upon request. In case the opinion given by the attorney for the Commonwealth indicates that the facts would constitute a violation, the officer or employee affected thereby may

request that the Attorney General review the opinion. A conflicting opinion by the Attorney General shall act to revoke the opinion of the attorney for the Commonwealth. The Attorney General shall determine which of his reviewing opinions or portions thereof are of general interest to the public and may, from time to time, be published.

Irrespective of whether an opinion of the attorney for the Commonwealth or the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

1987, Sp. Sess., c. 1, § 2.1-639.23; 2001, c. [844](#); 2003, c. [694](#).

§2.2-3127. Venue.

Any prosecution for a violation involving an officer serving at the state level of government shall be brought in the Circuit Court of the City of Richmond. Any prosecution for a violation involving an employee serving at the state level of government shall be within the jurisdiction in which the employee has his principal place of state employment.

Any proceeding provided in this chapter shall be brought in a court of competent jurisdiction within the county or city in which the violation occurs if the violation involves an officer or employee serving at the local level of government.

1987, Sp. Sess., c. 1, § 2.1-639.24; 2001, c. [844](#).

§2.2-3128. Semiannual orientation course.

Each state agency shall offer at least semiannually to each of its state filers an orientation course on this chapter, on ethics in public contracting pursuant to Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of this title, if applicable to the filer, and on any other applicable regulations that govern the official conduct of state officers and employees.

2004, cc. [134](#), [392](#).

§2.2-3129. Records of attendance.

Each state agency shall maintain records indicating the specific attendees, each attendee's job title, and dates of their attendance for each orientation course offered pursuant to § [2.2-3128](#) for a period of not less than five years after each course is given. These records shall be public records subject to inspection and copying consistent with § [2.2-3704](#).

2004, cc. [134](#), [392](#).

§2.2-3130. Attendance requirements.

Except as set forth in § [2.2-3131](#), each state filer shall attend the orientation course required in § [2.2-3128](#), as follows:

1. For a state filer who holds a position with the agency on January 1, 2004, not later than December 31, 2004 and, thereafter, at least once during each consecutive period of two calendar years commencing on January 1, 2006.
2. For a person who becomes a state filer with the agency after January 1, 2004, within two months after he or she becomes a state filer and at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter.

2004, cc. [134](#), [392](#).

§2.2-3131. Exemptions.

A. The requirements of § [2.2-3130](#) shall not apply to state filers with a state agency who have taken an equivalent ethics orientation course through another state agency within the time periods set forth in subdivision 1 or 2 of § [2.2-3130](#), as applicable.

B. State agencies may jointly conduct and state filers from more than one state agency may jointly attend an orientation course required by § [2.2-3128](#), as long as the course content is relevant to the official duties of the attending state filers.

C. Before conducting each orientation course required by § [2.2-3128](#), state agencies shall consult with the Attorney General and the Virginia Conflict of Interest and Ethics Advisory Council regarding appropriate course content.

2004, cc. [134](#), [392](#); 2014, cc. [792](#), [804](#).

State Government Volunteers Act

§2.2-3600. Short title; declaration of legislative intent.

A. This chapter may be cited as the Virginia State Government Volunteers Act.

B. Since the spirit of volunteerism has long animated generations of Americans to give of their time and abilities to help others, the Commonwealth would be wise to make use of volunteers in state service wherever practically possible. Effective use of volunteers in state service, however, requires that state agencies be provided guidelines for the development of volunteer programs and the utilization of

volunteers. The General Assembly intends by this chapter to assure that people of Virginia may derive optimal benefit from volunteers, and that the time and talents of volunteers in state service may be put to their best use.

1977, c. 347, § 2.1-554; 2001, c. [844](#).

§2.2-3601. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Department" includes all departments established in the executive branch of state government and local agencies under the jurisdiction or supervision thereof, and for the purposes of §§ [2.2-3602](#), [2.2-3604](#) and [2.2-3605](#), shall include political subdivisions of the Commonwealth.

"Material donor" means any person who, without financial gain, provides funds, materials, employment, or opportunities for clients of agencies, instrumentalities, or political subdivisions of the Commonwealth;

"Occasional-service volunteer" means any person who provides a one-time or occasional voluntary service;

"Regular-service volunteer" means any person engaged in specific voluntary service activities on an ongoing or continuous basis;

"Volunteer" means any person who, of his own free will, provides goods or services, without any financial gain, to any agency, instrumentality or political subdivision of the Commonwealth;

"Volunteer in state and local services" shall include, but shall not be limited to, any person who serves in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT) while engaged in emergency services and preparedness activities as defined in § [44-146.16](#).

1977, c. 347, § 2.1-555; 1979, c. 131; 2001, c. [844](#); 2005, c. [474](#).

§2.2-3602. Scope of chapter; status of volunteers; reimbursements.

A. Every department, through its executive head, may develop volunteer programs and accept the services of volunteers, including regular-service volunteers, occasional-service volunteers, or material donors, to assist in programs carried out or administered by that department.

B. Volunteers recruited, trained, or accepted by any department shall, to the extent of their voluntary service, be exempt from all provisions of law relating to state

employment, hours of work, rate of compensation, leave time, and employee benefits except those enumerated in or consistent with § [2.2-3605](#). Volunteers shall, however, at all times comply with applicable work rules.

C. Every department utilizing the services of volunteers may provide volunteers with such incidental reimbursements as are consistent with the provisions of § [2.2-3605](#), including transportation costs, lodging, and subsistence, as the department deems appropriate to assist volunteers in performing their duties.

D. For the purposes of this chapter, individuals involved in emergency services and preparedness activities pursuant to the definition of "emergency services" in § [44-146.16](#) shall be considered volunteers in state and local services and shall be accordingly entitled to the benefits conferred in this chapter. As volunteers in state and local services, such individuals shall be deemed to be regular-service volunteers.

1977, c. 347, § 2.1-556; 2001, c. [844](#); 2005, c. [474](#).

§2.2-3603. Responsibilities of departments.

Each department utilizing the services of volunteers shall:

1. Take actions necessary and appropriate to develop meaningful opportunities for volunteers involved in its programs and to improve public services;
2. Develop written rules governing the recruitment, screening, training, responsibility, utilization and supervision of volunteers;
3. Take actions necessary to ensure that volunteers and paid staff understand their respective duties and responsibilities, their relationship to each other, and their respective roles in fulfilling the objectives of their department;
4. Take actions necessary and appropriate to ensure a receptive climate for citizen volunteers;
5. Provide for the recognition of volunteers who have offered exceptional service to the Commonwealth; and
6. Recognize prior volunteer service as partial fulfillment of state employment requirements for training and experience established by the Department of Human Resource Management.

1977, c. 347, § 2.1-557; 1979, c. 107; 1991, c. 563; 2000, cc. [66](#), [657](#); 2001, c. [844](#).

§2.2-3604. Solicitation of aid from community.

Each department may, through the officer, agent, or employee primarily responsible for the utilization of volunteers in that department, solicit volunteers and voluntary assistance for that department from the community.

1978, c. 121, § 2.1-557.1; 2001, c. [844](#).

§2.2-3605. Volunteer benefits.

A. Meals may be furnished without charge to regular-service volunteers if scheduled work assignments extend over an established meal period. Meals may be furnished without charge to occasional-service volunteers at the discretion of the department's executive head.

B. Lodging, if available, may be furnished temporarily, at no charge, to regular-service volunteers.

C. Transportation reimbursement may be furnished those volunteers whose presence is determined to be necessary to the department. Rates or amounts of such reimbursement shall not exceed those provided in § [2.2-2823](#). Volunteers may utilize state vehicles in the performance of their duties, subject to those regulations governing use of state vehicles by paid staff.

D. Liability insurance may be provided by the department utilizing their services both to regular-service and occasional-service volunteers to the same extent as may be provided by the department to its paid staff. Volunteers in state and local service, including, but not limited to, any person who serves in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT), shall enjoy the protection of the Commonwealth's sovereign immunity to the same extent as paid staff.

1977, c. 347, § 2.1-558; 1979, c. 131; 2001, c. [844](#); 2005, c. [474](#).

State Lottery Law

§58.1-4000. Short title.

This chapter shall be known and may be cited as the "Virginia Lottery Law."

1987, c. 531.

§58.1-4001. Establishment of state lottery.

This chapter establishes a lottery to be operated by the Commonwealth which will produce revenue consonant with the probity of the Commonwealth and the general welfare of its people, to be used for the public purpose.

1987, c. 531.

§58.1-4002. Definitions.

For the purposes of this chapter:

"Board" means the Virginia Lottery Board established by this chapter.

"Department" means the independent agency responsible for the administration of the Virginia Lottery created in this chapter.

"Director" means the Director of the Virginia Lottery.

"Lottery" or "state lottery" means the lottery or lotteries established and operated pursuant to this chapter.

"Ticket courier service" means a service operated for the purpose of purchasing Virginia Lottery tickets on behalf of individuals located within or outside the Commonwealth and delivering or transmitting such tickets, or electronic images thereof, to such individuals as a business-for-profit delivery service.

1987, c. 531; 2014, c. [225](#); 2016, c. [461](#).

§58.1-4003. Virginia Lottery established.

Notwithstanding the provisions of Article 1 (§ [18.2-325](#) et seq.) of Chapter 8 of Title 18.2 or any other provision of law, there is hereby established as an independent agency of the Commonwealth, exclusive of the legislative, executive or judicial branches of government, the Virginia Lottery, which shall include a Director and a Virginia Lottery Board for the purpose of operating a state lottery.

1987, c. 531; 2014, c. [225](#).

§58.1-4004. Membership of Board; appointment; terms; vacancies; removal; expenses.

A. The Board shall consist of five members, all of whom shall be citizens and residents of this Commonwealth and all of whom shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by a majority of the members elected to each house of the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. Prior to the appointment of any Board members, the Governor shall consider the political affiliation and

the geographic residence of the Board members. The members shall be appointed for terms of five years. The members shall annually elect one member as chairman of the Board.

B. Any vacancy on the Board occurring for any reason other than the expiration of a term shall be filled for the unexpired term in the same manner as the original term.

C. The members of the Board shall receive such compensation as provided in § [2.2-2813](#), shall be subject to the requirements of such section, and shall be allowed reasonable expenses incurred in the performance of their official duties.

D. Before entering upon the discharge of their duties, the members of the Board shall take an oath that they will faithfully and honestly execute the duties of the office during their continuance therein and they shall give bond in such amount as may be fixed by the Governor, conditioned upon the faithful discharge of their duties. The premium on such bond shall be paid out of the Virginia Lottery Fund.

1987, c. 531; 2004, c. [630](#); 2014, c. [225](#).

§58.1-4005. Appointment, qualifications and salary of Director.

A. The Department shall be under the immediate supervision and direction of a Director, who shall be a person of good reputation, particularly as to honesty and integrity, and shall be subject to a thorough background investigation conducted by the Department of State Police prior to appointment. The Director shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by a majority of the members elected to each house of the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. The Director shall receive a salary as provided in the general appropriations act.

B. The Director shall devote his full time to the performance of his official duties and shall not be engaged in any other profession or occupation.

C. Before entering upon the discharge of his duties, the Director shall take an oath that he will faithfully and honestly execute the duties of his office during his continuance therein and shall give bond in such amount as may be fixed by the Governor, conditioned upon the faithful discharge of his duties. The premium on such bond shall be paid out of the Virginia Lottery Fund.

1987, c. 531; 2014, c. [225](#).

§58.1-4006. Powers of the Director.

A. The Director shall supervise and administer the operation of the lottery in accordance with the provisions of this chapter and with the rules and regulations promulgated hereunder.

B. The Director shall also:

1. Employ such deputy directors, professional, technical and clerical assistants, and other employees as may be required to carry out the functions and duties of the Department.

2. Act as secretary and executive officer of the Board.

3. Require bond or other surety satisfactory to the Director from licensed agents as provided in subsection E of § [58.1-4009](#) and Department employees with access to Department funds or lottery funds, in such amount as provided in the rules and regulations of the Board. The Director may also require bond from other employees as he deems necessary.

4. Confer regularly, but not less than four times each year, with the Board on the operation and administration of the lottery; make available for inspection by the Board, upon request, all books, records, files, and other information and documents of the Department; and advise the Board and recommend such matters as he deems necessary and advisable to improve the operation and administration of the lottery.

5. Suspend, revoke or refuse to renew any license issued pursuant to this chapter or the rules and regulations adopted hereunder.

6. Enter into contracts for the operation of the lottery, or any part thereof, for the promotion of the lottery and into interstate lottery contracts with other states. A contract awarded or entered into by the Director shall not be assigned by the holder thereof except by specific approval of the Director.

7. Certify monthly to the State Comptroller and the Board a full and complete statement of lottery revenues, prize disbursements and other expenses for the preceding month.

8. Report monthly to the Governor, the Secretary of Finance and the Chairmen of the Senate Finance Committee, House Finance Committee and House Appropriations Committee the total lottery revenues, prize disbursements and other expenses for the preceding month, and make an annual report, which shall include a full and complete statement of lottery revenues, prize disbursements and other expenses, to the

Governor and the General Assembly. Such annual report shall also include such recommendations for changes in this chapter as the Director and Board deem necessary or desirable.

9. Report immediately to the Governor and the General Assembly any matters which require immediate changes in the laws of this Commonwealth in order to prevent abuses and evasions of this chapter or the rules and regulations adopted hereunder or to rectify undesirable conditions in connection with the administration or operation of the lottery.

10. Notify prize winners and appropriate state and federal agencies of the payment of prizes in excess of \$600 in the manner required by the lottery rules and regulations.

11. Provide for the withholding of the applicable amount of state and federal income tax of persons claiming a prize for a winning ticket in excess of \$5,001.

C. The Director and the director of security or investigators appointed by the Director shall be vested with the powers of sheriff and sworn to enforce the statutes and regulations pertaining to the Department and to investigate violations of the statutes and regulations that the Director is required to enforce.

D. The Director may authorize temporary bonus or incentive programs for payments to licensed sales agents which he determines will be cost effective and support increased sales of lottery products.

1987, c. 531; 1992, cc. 422, 449; 2004, c. [630](#); 2006, c. [598](#); 2008, c. [302](#); 2014, c. [224](#).

§58.1-4007. Powers of the Board.

A. The Board shall have the power to adopt regulations governing the establishment and operation of a lottery. The regulations governing the establishment and operation of the lottery shall be promulgated by the Board after consultation with the Director. Such regulations shall be in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.). The regulations shall provide for all matters necessary or desirable for the efficient, honest and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares, and the holders of winning tickets or shares. The regulations, which may be amended, repealed or supplemented as necessary, shall include, but not be limited to, the following:

1. The type or types of lottery or game to be conducted in accordance with § [58.1-4001](#).

2. The price or prices of tickets or shares in the lottery.
3. The numbers and sizes of the prizes on the winning tickets or shares, including informing the public of the approximate odds of winning and the proportion of lottery revenues (i) disbursed as prizes and (ii) returned to the Commonwealth as net revenues.
4. The manner of selecting the winning tickets or shares.
5. The manner of payment of prizes to the holders of winning tickets or shares.
6. The frequency of the drawings or selections of winning tickets or shares without limitation.
7. Without limitation as to number, the type or types of locations at which tickets or shares may be sold.
8. The method to be used in selling tickets or shares.
9. The advertisement of the lottery in accordance with the provisions of subsection E of § [58.1-4022](#).
10. The licensing of agents to sell tickets or shares who will best serve the public convenience and promote the sale of tickets or shares. No person under the age of 18 shall be licensed as an agent. A licensed agent may employ a person who is 16 years of age or older to sell or otherwise vend tickets at the agent's place of business so long as the employee is supervised in the selling or vending of tickets by the manager or supervisor in charge at the location where the tickets are being sold. Employment of such person shall be in compliance with Chapter 5 (§ [40.1-78](#) et seq.) of Title 40.1.
11. The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public. Notwithstanding the provisions of this subdivision, the Board shall not be required to approve temporary bonus or incentive programs for payments to licensed sales agents.
12. Apportionment of the total revenues accruing from the sale of tickets or shares and from all other sources and establishment of the amount of the special reserve fund as provided in § [58.1-4022](#) of this chapter.
13. Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery.

The Department shall not be subject to the provisions of Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2; however, the Board shall promulgate regulations, after consultation with the Director, relative to departmental procurement which include standards of ethics for procurement consistent with the provisions of Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 and which ensure that departmental procurement will be based on competitive principles.

The Board shall have the power to advise and recommend, but shall have no power to veto or modify administrative decisions of the Director. However, the Board shall have the power to accept, modify or reject any revenue projections before such projections are forwarded to the Governor.

B. The Board shall carry on a continuous study and investigation of the lottery throughout the Commonwealth to:

1. Ascertain any defects of this chapter or the regulations issued hereunder which cause abuses in the administration and operation of the lottery and any evasions of such provisions.
2. Formulate, with the Director, recommendations for changes in this chapter and the regulations promulgated hereunder to prevent such abuses and evasions.
3. Guard against the use of this chapter and the regulations promulgated hereunder as a subterfuge for organized crime and illegal gambling.
4. Ensure that this law and the regulations of the Board are in such form and are so administered as to serve the true purpose of this chapter.

C. The Board shall make a continuous study and investigation of (i) the operation and the administration of similar laws which may be in effect in other states or countries, (ii) any literature on the subject which may be published or available, (iii) any federal laws which may affect the operation of the lottery, and (iv) the reaction of Virginia citizens to the potential features of the lottery with a view to recommending or effecting changes that will serve the purpose of this chapter.

D. The Board shall hear and decide an appeal of any denial by the Director of the licensing or revocation of a license of a lottery agent pursuant to subdivision 10 of subsection A of this section and subdivision 5 of subsection B of § [58.1-4006](#) of this chapter.

E. The Board shall have the authority to initiate procedures for the planning, acquisition, and construction of capital projects as set forth in Article 4 (§ [2.2-1129](#) et seq.) of Chapter 11 and Article 3 (§ [2.2-1819](#) et seq.) of Chapter 18 of Title 2.2.

1987, c. 531; 1988, c. 788; 1989, c. 228; 1990, c. 732; 1999, c. [716](#); 2004, c. [630](#); 2006, c. [598](#); 2008, c. [302](#).

§58.1-4007.1. Lottery tickets to bear telephone number for compulsive gamblers.

All lottery tickets printed after July 1, 1997, shall bear a toll-free telephone number for "Gamblers Anonymous" or other organization which provides assistance to compulsive gamblers.

1997, cc. [64](#), [118](#); 1998, c. [201](#); 1999, c. [736](#).

§58.1-4007.2. Lottery tickets not to be sold over Internet.

A. The Department shall not sell lottery tickets or shares directly to consumers over the Internet.

B. Nothing in this section shall be construed to prohibit (i) the use of the Internet to relay information or data relating to sales made to purchasers by licensed sales agents, their employees, or employees of the Department or (ii) the sale by the Department of prepaid subscriptions for the purchase of lottery tickets or shares for subsequent prize drawings.

2006, c. [352](#).

§58.1-4008. Employees of the Department; background investigations of employees.

All persons employed by the Department shall be fingerprinted before, and as a condition of, employment. These fingerprints shall be submitted to the Federal Bureau of Investigation for a National Criminal Records search and to the Department of State Police for a Virginia Criminal History Records search. All board members, officers and employees of any vendor to the Department of lottery on-line or instant ticket goods or services working directly on a contract with the Department for such goods or services shall be fingerprinted, and such fingerprints shall be submitted to the Federal Bureau of Investigation for a National Criminal Records search conducted by the chief security officer of the Virginia Lottery. A background investigation shall be conducted by the chief security officer of the Virginia Lottery on every applicant prior to employment by the Department. However, all division directors of the Virginia Lottery and

employees of the Virginia Lottery performing duties primarily related to security matters shall be subject to a background investigation report conducted by the Department of State Police prior to employment by the Department. The Department of State Police shall be reimbursed by the Virginia Lottery for the cost of investigations conducted pursuant to this section or § [58.1-4005](#). No person who has been convicted of a felony, bookmaking or other forms of illegal gambling, or of a crime involving moral turpitude shall be employed by the Department or on contracts with vendors described in this section.

1987, c. 531; 1989, c. 478; 1992, c. 449; 2004, c. [555](#); 2014, c. [225](#).

§58.1-4009. Licensing of lottery sales agents; penalty.

A. No license as an agent to sell lottery tickets or shares shall be issued to any person to engage in business primarily as a lottery sales agent. Before issuing such license, the Director shall consider such factors as (i) the financial responsibility and security of the person and his business or activity; (ii) the accessibility of his place of business or activity to the public; (iii) the sufficiency of existing licensees to serve the public convenience; and (iv) the volume of expected sales.

B. For the purposes of this section, the term "person" means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including counties, cities, municipalities, agencies and instrumentalities thereof.

C. The chief security officer of the Virginia Lottery shall conduct a background investigation, to include a Virginia Criminal History Records search, and fingerprints that shall be submitted to the Federal Bureau of Investigation if the Director deems a National Criminal Records search necessary, on applicants for licensure as lottery sales agents. The Director may refuse to issue a license to operate as an agent to sell lottery tickets or shares to any person who has been (i) convicted of a crime involving moral turpitude, (ii) convicted of bookmaking or other forms of illegal gambling, (iii) found guilty of any fraud or misrepresentation in any connection, (iv) convicted of a felony, or (v) engaged in conduct prejudicial to public confidence in the Lottery. The Director may refuse to grant a license or may suspend, revoke or refuse to renew a license issued pursuant to this chapter to a partnership or corporation, if he

determines that any general or limited partner, or officer or director of such partnership or corporation has been (a) convicted of a crime involving moral turpitude, (b) convicted of bookmaking or other forms of illegal gambling, (c) found guilty of any fraud or misrepresentation in any connection, (d) convicted of a felony, or (e) engaged in conduct prejudicial to public confidence in the Lottery. Whoever knowingly and willfully falsifies, conceals or misrepresents a material fact or knowingly and willfully makes a false, fictitious or fraudulent statement or representation in any application for licensure to the Virginia Lottery for lottery sales agent is guilty of a Class 1 misdemeanor.

D. In the event an applicant is a former lottery sales agent whose license was suspended, revoked, or refused renewal pursuant to this section or § [58.1-4012](#), no application for a new license to sell lottery tickets or shares shall be considered for a minimum period of 90 days following the suspension, revocation, or refusal to renew.

E. Prior to issuance of a license, every lottery sales agent shall either (i) be bonded by a surety company entitled to do business in this Commonwealth in such amount and penalty as may be prescribed by the regulations of the Department or (ii) provide such other surety as may be satisfactory to the Director, payable to the Virginia Lottery and conditioned upon the faithful performance of his duties.

F. Every licensed agent shall prominently display his license, or a copy thereof, as provided in the regulations of the Department.

1987, c. 531; 1989, c. 478; 2004, c. [555](#); 2006, c. [598](#); 2014, cc. [224](#), [225](#).

§58.1-4010. Authority of persons licensed as lottery sales agents; annual fee.

A. Notwithstanding any other provision of law, any person licensed as provided in this chapter is hereby authorized to act as a lottery sales agent.

B. The rules and regulations of the lottery shall provide for an initial licensing fee and an annual license review fee to be collected from each lottery sales agent. Such fee, as promulgated by rule and regulation of the Board, shall be designed to recover all or such portion of the installation and annual operational costs borne by the Department in providing services to the agent.

1987, c. 531; 2004, c. [630](#).

§58.1-4011. Meaning of "gross receipts."

A. Notwithstanding the provisions of Chapter 37 (§ [58.1-3700](#) et seq.) or § [58.1-4025](#) relating to local license taxes, the term "gross receipts" as used in Chapter 37 shall include only the compensation actually paid to a licensed sales agent as provided by rule or regulation adopted by the Board consistent with the provisions of subdivision A 11 of § [58.1-4007](#).

B. Unless otherwise provided by contract, any person licensed as a lottery agent who makes rental payments for the business premises on which state lottery tickets are sold on the basis of retail sales shall have that portion of rental payment based on sales of state lottery tickets or shares computed on the basis of the compensation received as a lottery agent from the Virginia Lottery.

1987, c. 531; 2014, c. [225](#).

§58.1-4012. Suspension and revocation of licenses.

The Director may suspend, revoke, or refuse to renew, after notice and a hearing, any license issued pursuant to this chapter. Such license may, however, be temporarily suspended by the Director without prior notice, pending any prosecution, hearing or investigation, whether by a third party or by the Director. A license may be suspended, revoked or refused renewal by the Director for one or more of the following reasons:

1. Failure to properly account for lottery tickets received or the proceeds of the sale of lottery tickets;
2. Failure to file a bond if required by the Director or to comply with instructions and rules and regulations of the Department concerning the licensed activity, especially with regard to the prompt payment of claims;
3. Conviction of any offense referenced in subsection C of § [58.1-4009](#) subsequent to licensure;
4. Failure to file any return or report, to keep records or to pay any fees or other charges required by this chapter;
5. Any act of fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the Commonwealth lottery;
6. If the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative costs and public convenience is adequately served by other licensees;

7. A material change, since issuance of the license, with respect to any matters required to be considered by the Director under this chapter; or

8. Other factors established by Department regulation.

1987, c. 531; 1992, c. 449 .

§58.1-4013. Right to prize not assignable; exceptions.

A. No right of any person to a prize drawn shall be assignable, except that: (i) payment of any prize drawn may be paid according to the terms of a deceased prize winner's beneficiary designation or similar form filed with the Department or to the estate of a deceased prize winner who has not completed such a form; (ii) the prize to which the winner is entitled may be paid to a person pursuant to an appropriate judicial order; and (iii) payment of any prize drawn may be paid in accordance with the provisions of § [58.1-4020.1](#). Payments made according to the terms of a deceased prize winner's beneficiary designation or similar form filed with the Department are effective by reason of the contract involved and this statute and are not to be considered as testamentary or subject to Chapter 4 (§ [64.2-400](#) et seq.) of Title 64.2. The Director shall be discharged of all liability upon payment of a prize pursuant to this section.

B. Investments of prize proceeds made by the Department to fund the payment of an annuitized prize are to be held in the name of the Department or the Commonwealth and not in the name of the prize winner. Any claim of a prize winner to a future payment remains inchoate until the date the payment is due under Department regulations.

C. Except as provided in Chapter 19 (§ [63.2-1900](#) et seq.) of Title 63.2 and this chapter, no lottery prize or installment thereof may be subject to garnishment or to a lien of any kind until such prize or installment thereof has been paid or distributed.

D. Whenever the Department or the Director is or may be named as a party in any proceeding instituted by or on behalf of one or more persons who claim ownership of a winning lottery ticket, prize, share or portion thereof for the purpose of determining the ownership or right to such ticket, prize, share or portion thereof, the Director may voluntarily pay or tender the prize, share or portion thereof into the circuit court where the action is filed, or may be ordered to do so by the court, and shall thereupon be discharged from all liability as between the claimants of such ticket,

prize, share or portion thereof without regard to whether such payment was made voluntarily or pursuant to a court order.

Nothing in this section shall be deemed to constitute a waiver of the sovereign immunity of the Commonwealth or to authorize any attachment, garnishment, or lien against the prize, share or portion thereof paid into the court except as permitted by subsection C.

1987, c. 531; 1992, c. 449; 1995, c. [423](#); 2003, c. [924](#).

§58.1-4014. Price of tickets or shares; who may sell; penalty.

No person shall sell a ticket or share at any price or at any location other than that fixed by rules and regulations of the Department. No person other than a licensed lottery sales agent or his employee shall sell lottery tickets or shares, except that nothing in this section shall be construed to prevent any person from giving lottery tickets or shares to another person over the age of 18 years as a gift. No person shall operate a ticket courier service in the Commonwealth.

Any person convicted of violating this section is guilty of a Class 1 misdemeanor.

1987, c. 531; 1992, c. 449; 2004, c. [630](#); 2006, c. [598](#); 2016, c. [461](#).

§58.1-4014.1. Method of payment for purchase of tickets or shares.

Lottery sales agents licensed in accordance with this chapter shall accept only cash or debit cards in payment for the purchase of lottery tickets or shares.

2006, c. [598](#).

§58.1-4015. Sale of ticket or share to person under eighteen prohibited; penalty.

No ticket or share shall be sold to or redeemed from any person under the age of eighteen years. Any licensee who knowingly sells or offers to sell or redeem a lottery ticket or share to or from any person under the age of eighteen years is guilty of a Class 1 misdemeanor.

1987, c. 531; 1989, c. 478 .

§58.1-4016. Gift to minor prohibited.

No ticket or share shall be given as a gift or otherwise to any person under the age of eighteen years. Any person who knowingly gives a lottery ticket or share to any person under the age of eighteen years is guilty of a Class 3 misdemeanor.

1987, c. 531.

§58.1-4017. Alteration and forgery; presentation of counterfeit or altered ticket or share; penalty.

Any person who forges, alters or fraudulently makes any lottery ticket or share with intent to present for payment or to transfer to another person to be presented for payment or knowingly presents for payment or transfers to another person to be presented for payment such forged, altered or fraudulently made counterfeit lottery ticket or share sold pursuant to this chapter is guilty of a Class 6 felony.

1987, c. 531; 1989, c. 478; 1990, c. 732 .

§58.1-4018. Prohibited actions; penalty.

Any person who wrongfully and fraudulently uses, disposes of, conceals or embezzles any public money or funds associated with the operation of the lottery shall be guilty of a Class 3 felony. Any person who wrongfully and fraudulently tampers with any equipment or machinery used in the operation of the lottery shall be guilty of a Class 3 felony. Any person who makes inaccurate entries regarding a financial accounting of the lottery in order to conceal the truth, defraud the Commonwealth and obtain money to which he is not entitled shall be guilty of a Class 3 felony.

1987, c. 531; 2006, c. [598](#).

§58.1-4018.1. Larceny of tickets; fraudulent notification of prizes; penalty.

A. Any person who steals or otherwise unlawfully converts to his own or another's use a lottery ticket, prize, share, or portion thereof shall be guilty of larceny. For purposes of this subsection, the value of a lottery ticket, prize, share, or portion thereof shall be deemed to be the greater of its face amount or its redemption value.

B. Any person who, with intent to defraud, steal, embezzle, or violate the provisions of § [18.2-186.3](#), designs, makes, prints, or otherwise produces, in whole or in part, a document or writing, whether in printed or electronic form, which falsely purports to be correspondence from or on behalf of the lottery shall be guilty of a Class 5 felony.

Jurisdiction shall lie and prosecution may proceed under this subsection in any county or city (i) in which the document was created; (ii) from which it was sent, regardless of the form of delivery; or (iii) in which it was received, regardless of the form of delivery.

2006, c. [598](#).

§58.1-4019. Certain persons ineligible to purchase tickets or shares or receive prizes.

A. No ticket or share shall be purchased by, and no prize shall be paid on a ticket purchased by or transferred to, any Board member, officer or employee of the lottery, or any board member, officer or employee of any vendor to the lottery of lottery on-line or instant ticket goods or services working directly on a contract with the Department for such goods or services, or any person residing in the same household of such member, officer or employee or any person under the age of eighteen years, or transferee of any such persons.

B. Only natural persons may purchase lottery tickets and claim prize winnings. In all cases, the identity and social security number of all natural persons who receive a prize greater than \$100 from a winning ticket redeemed at any Department office shall be provided in order to comply with this section and §§ [58.1-4015](#), [58.1-4016](#) and [58.1-4026](#), and Chapter 19 (§ [63.2-1900](#) et seq.) of Title 63.2.

1987, c. 531; 1989, c. 478; 1992, c. 449; 1996, c. [954](#); 1999, c. [34](#).

§58.1-4019.1. License required for "instant ticket" games or contests.

No person who owns or is employed by any retail establishment in the Commonwealth shall use any "instant ticket" game or contest for the purpose of promoting or furthering the sale of any product without first obtaining a license to do so from the Director. For the purposes of this section, an "instant ticket" game or contest means a game of chance played on a paper ticket or card where (i) a person may receive gifts, prizes, or gratuities and (ii) winners are determined by preprinted concealed letters, numbers, or symbols which, when exposed, reveal immediately whether the player has won a prize or entry into a prize drawing, but shall not include any "instant ticket" game or contest licensed by the Department of Agriculture and Consumer Services pursuant to Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Title 18.2. The fact that no purchase is required in order to participate shall not exclude such game or contest from the provisions of this section; however, nothing in this section shall prohibit any retail establishment from using a Virginia lottery ticket to promote or further the sale of any products except those having both a federal and state excise tax placed on them. Any person convicted of a violation of this section shall be guilty of a Class 3 misdemeanor.

1996, cc. [462](#), [505](#); 2003, c. [884](#); 2008, cc. [387](#), [689](#).

§58.1-4020. Unclaimed prizes.

A. Unclaimed prizes for a winning ticket or share shall be retained by the Director for the person entitled thereto for 180 days after the drawing in which the prize was won

in the case of a drawing prize and for 180 days after the announced end of the lottery game in the case of a prize determined in any manner other than by means of a drawing. If no claim is made for the prize within the 180 days, the Director shall deem such prize forfeited by the person entitled to claim such winnings.

B. All prizes deemed forfeited pursuant to subsection A shall be paid into the Literary Fund. The Director may develop procedures, to be approved by the Auditor of Public Accounts, for estimating the cumulative total of such unclaimed prizes in any lottery game in lieu of specifically identifying unclaimed prizes where such specific identification would not be cost effective. The Director, within 60 days after the end of each 180-day retention period, shall report the total value of prizes forfeited at the end of such period to the Comptroller, who shall promptly transfer the total of such prizes to the Literary Fund. The total value of prizes forfeited during the fiscal year shall be audited by the Auditor of Public Accounts in accordance with § [58.1-4023](#). In the case of a prize payable over time on one or more winning tickets, if one or more winning tickets is not claimed within the 180-day redemption period, the Department shall transfer the then current monetary value of such portion of the prize remaining unclaimed to the Literary Fund in accordance with procedures approved by the State Treasurer. "Current monetary value" shall be determined by the net proceeds from the sale of that portion of jackpot securities allocated to the unclaimed winner plus the amount of the initial cash payment.

C. Subsection B of this section shall not apply to prizes of \$25 or less resulting from any lottery game other than a lottery game in which a drawing determined the prize. The Board shall adopt regulations for the disposition of all such unclaimed prizes of \$25 or less not resulting from a drawing. Such disposition shall be directed in whole or in part to either the Virginia Lottery Fund or to other forms of compensation to licensed sales agents.

D. For purposes of this section, "prize" refers to a cash prize. In the case of a prize payable over time and not as a lump sum payment, "prize" means the present cash value of the prize, not the value paid over time.

E. In accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C.A. § 525), any person whose unclaimed prize was deemed forfeited pursuant to subsection A while he was in active military service may claim such forfeited prize by presenting his winning ticket to the Director no later than 180 days after his discharge from active military service. Within 30 days of such

presentation, the Director shall verify the claim and report the verification to the Comptroller. The Comptroller shall promptly pay the verified claim first from funds available in the Unclaimed Property Trust Fund in § 3-2.00 of the general appropriations act; if such funds are insufficient, then, from any undesignated, unreserved year-end balance of the general fund. All verified claims shall be paid in accordance with the Board's rules and regulations then in effect regarding the manner of payment of prizes to the holders of winning tickets or shares.

1987, c. 531; 1989, c. 478; 1992, c. 449; 1994, c. [49](#); 1996, c. [975](#); 2014, c. [225](#).

§58.1-4020.1. Voluntary assignment of lottery prizes or pledge as collateral for a loan; requirements for the assignees and lenders.

A. Lottery prizes, payable in installments over a period of time, excluding prizes payable for the winner's life, may be voluntarily assigned or pledged as collateral for a loan, in whole or in part, by the person entitled to such installments, by written contract affirming that the requirements of this section have been met and endorsed by written order of a court of competent jurisdiction after a hearing. The order shall specify the name, address and social security number or tax identification number of the assignee or lender and shall specifically describe the payments be assigned or pledged as collateral by date and gross pre-tax amount. The Department shall be given notice of any hearing held pursuant to this section and shall have the right to appear and participate in such hearing. Venue for hearings held pursuant to this section shall be in the Circuit Court of the City of Richmond.

The rate charged for any such assignment or loan shall not exceed 15 percent.

The contract shall:

1. Be signed by the assignor and the assignee or the lender and the borrower, and the assignor or borrower shall affirm the assignment or loan has been voluntarily executed.
2. Include or be accompanied by a sworn statement attesting that the assignor or borrower (i) is of sound mind and not acting under duress; (ii) has been advised in writing by the assignee or lender to seek independent legal counsel and independent financial counsel concerning the implications of the assignment or loan, including the tax consequences, and has either received such advice or knowingly waived such advice in writing; (iii) understands that he is relinquishing or limiting his rights to receive the lottery proceeds; and (iv) has received from the Virginia Lottery, in

response to a written request therefor, confirmation of the assignee's or lender's registration with the Virginia Lottery in accordance with subsection E of this section.

3. Include a disclosure statement setting forth (i) the amounts assigned or loaned; (ii) the dates such amounts are payable; (iii) the purchase price paid for the assignment or loan; (iv) the rate of discount to present value, assuming daily compounding and funding on the contract date; (v) the amount of any fees associated with the assignment or loan and by whom such fees are payable; and (vi) the tax identification number of the assignee.

4. Expressly state that the assignor or borrower has three business days after signing the contract to cancel the assignment or loan.

5. Expressly state that the assignee or lender is eligible to purchase, share or receive prizes of the Virginia Lottery pursuant to §§ [58.1-4015](#), [58.1-4016](#) and subsection A of § [58.1-4019](#), and that the Virginia Lottery has complied with subsection B of § [58.1-4019](#) in that the original prizewinner is (or if deceased, was) a natural person if and to the extent that the prize was awarded on or after the effective date pursuant to subsection B of § [58.1-4019](#).

6. Expressly state that no amounts assigned or loaned are subject to setoff pursuant to Article 21 (§ [58.1-520](#) et seq.) of Chapter 3 of this title.

B. The Commonwealth, the Virginia Lottery and any employee or representative of either shall be indemnified and held harmless upon payment of amounts due as set forth in the court order.

C. The Lottery may establish a reasonable fee to process the assignments provided for in this section and to receive, review and file the registration required by subsection E and confirm compliance with the registration requirements. The fee shall be reflective of the direct and indirect costs of processing the assignments or registrations.

D. Notwithstanding the provisions of this section, the Commonwealth and the Virginia Lottery shall not accept any assignment if either of the following has occurred:

1. Federal law provides that the right to assign lottery proceeds is deemed receipt of income in the year the lottery prize is won for all installment lottery prize winners. "Federal law" includes statutory law, rulings of courts of competent jurisdiction, and published rulings by the Internal Revenue Service.

2. State law provides that the right to assign lottery proceeds is deemed receipt of income in the year the lottery prize is won for all installment lottery prize winners. "State law" includes statutory law, rulings of courts of competent jurisdiction, and published rulings by the Department of Taxation.

E. An assignee, prospective assignee, lender or prospective lender shall not make any representation in any written or oral communications with a lottery winner that implies that the assignee, prospective assignee, lender or prospective lender is associated with or an agent of the Virginia Lottery. Every prospective assignee or prospective lender shall register with the Virginia Lottery, prior to contracting for any assignment or loan pursuant to this section. The registration shall include (i) the assignee's or lender's standard information packet or materials given or sent to prospective assignees or borrowers, (ii) the assignee's or lender's standard form of agreement, (iii) the assignee's or lender's federal tax identification number, and (iv) where applicable, the assignee's or lender's most recent public financial statement. The Director may deny, suspend or revoke a registration for a violation of this chapter or for such other reason as the Board, by regulation, may establish.

2003, c. [924](#); 2004, c. [630](#).

§58.1-4021. Deposit of moneys received by agents; performance of functions, etc., in connection with operation of lottery; compensation of agents.

A. The Director shall require all lottery sales agents to deposit to the credit of the Virginia Lottery Fund in banks, designated by the State Treasurer, all moneys received by such agents from the sale of lottery tickets or shares, less any amount paid as prizes or retained as compensation to agents for the sale of the tickets or shares, and to file with the Director, or his designated agents, reports of their receipts, transactions and disbursements pertaining to the sale of lottery tickets in such form and containing such information as he may require. Such deposits and reports shall be submitted at such times and within such intervals as shall be prescribed by rule and regulation of the Department. The Director may arrange for any person, including a bank, to perform such functions, activities or services in connection with the operation of the lottery as he may deem advisable pursuant to this chapter and the rules and regulations of the Department, and such functions, activities and services shall constitute lawful functions, activities and services of the person.

B. The rules and regulations of the Department shall provide for a service charge to the licensed agent if any payor bank dishonors a check or draft tendered for deposit

to the credit of the Virginia Lottery Fund by a licensed agent or for an electronic transfer of funds to the Virginia Lottery Fund from the account of a licensed agent for money received from the sale of lottery tickets.

The regulations of the Department shall provide for a service charge and penalty to a licensed agent if any payor bank dishonors a check or draft from the account of a licensed agent tendered for payment of any prize by a licensed agent to any claimant. Any such charge or penalty so collected by the Department shall be used first to reimburse the claimant for any charges or penalties incurred by him as a result of the licensed agent's dishonored check tendered as payment of any prize and the remainder to offset the Department's administrative costs.

C. A licensed agent shall be charged interest as provided in § [58.1-15](#) on the money that is not timely paid to the Virginia Lottery Fund in accordance with the rules and regulations of the Department and shall in addition thereto pay penalties as provided by rules and regulations of the Department.

D. Should the Department refer the debt of any licensed agent to the Attorney General, the Department of Taxation as provided in § [58.1-520](#) et seq., or any other central collection unit of the Commonwealth, an additional service charge shall be imposed in the amount necessary to cover the administrative costs of the Department and agencies to which such debt is referred.

E. Notwithstanding the provisions of Chapter 5 (§ [8.01-257](#) et seq.) of Title 8.01, in any action for the collection of a debt owed by any licensed agent to the lottery, venue shall lie in the City of Richmond.

F. All proceeds from the sale of lottery tickets or shares received by a person in the capacity of a sales agent shall constitute a trust fund until deposited into the Virginia Lottery Fund either directly or through the Department's authorized collection representative. Proceeds shall include cash proceeds of the sale of any lottery products, less any amount paid as prizes or retained as compensation to agents for the sale of the tickets or shares. Sales agents shall be personally liable for all proceeds.

G. If the Director determines that the deposit or collection from any sales agent of any moneys or proceeds under this section is or will be jeopardized or will otherwise be delayed, he may adjust either the time or the interval or both for such deposits or collections of any sales agent; require that all such moneys or proceeds shall be kept separate and apart from all other funds and assets and shall not be commingled with

any other funds or assets prior to their deposit or collection under this section; and require such other security of any sales agent as he may deem advisable to ensure the timely deposit or collection of moneys or proceeds to the credit of the Virginia Lottery Fund.

Collection of moneys or proceeds "is or will be jeopardized or will otherwise be delayed" when (i) a check, draft, or electronic funds transfer to the credit of the Virginia Lottery Fund is dishonored as described in subsection B; (ii) an independent auditor states that the lottery sales agent's financial condition raises substantial doubt about its ability to continue as a going concern; or (iii) the lottery sales agent (a) closes for business or fails to maintain normal business hours without reasonable explanation, (b) has a credit record reflecting recent actions which cast doubt as to its creditworthiness, (c) states it has or may have cash flow problems or may be unable to meet its financial obligations, (d) states it may seek the protection of the federal bankruptcy or state insolvency law, (e) refuses to purchase additional lottery tickets or returns tickets ordered without good cause, or (f) does any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect moneys or proceeds which are or will become due and payable to the Virginia Lottery Fund.

1987, c. 531; 1990, c. 732; 1990, Sp. Sess., c. 1; 2006, c. [598](#); 2014, c. [225](#).

§58.1-4022. Virginia Lottery Fund.

A. All moneys received from the sale of lottery tickets or shares, less payment for prizes and compensation of agents as authorized by regulation and any other revenues received under this chapter, shall be placed in a special fund known as the "Virginia Lottery Fund." Notwithstanding any other provisions of law, interest earned from moneys in the Virginia Lottery Fund shall accrue to the benefit of such Fund.

B. The total costs for the operation and administration of the lottery shall be funded from the Virginia Lottery Fund and shall be in such amount as provided in the general appropriation act. Appropriations to the Department during any fiscal year beginning on and after July 1, 1989, exclusive of agent compensation, shall at no time exceed 10 percent of the total annual estimated gross revenues to be generated from lottery sales. However, should it be anticipated at any time by the Director that such operational and administrative costs for a fiscal year will exceed the limitation provided herein, the Director shall immediately report such information to the Board, the Governor and the Chairmen of Senate Finance and House Appropriations Committees. From the moneys in the Fund, the Comptroller shall establish a special

reserve fund in such amount as shall be provided by regulation of the Department for (i) operation of the lottery, (ii) use if the game's pay-out liabilities exceed its cash on hand, or (iii) enhancement of the prize pool with income derived from lending securities held for payment of prize installments, which lending of securities shall be conducted in accordance with lending programs approved by the Department of the Treasury.

C. The Comptroller shall transfer to the Lottery Proceeds Fund established pursuant to § [58.1-4022.1](#), less the special reserve fund, the audited balances of the Virginia Lottery Fund at the close of each fiscal year. The transfer for each year shall be made in two parts: (i) on or before June 30, the Comptroller shall transfer balances of the Virginia Lottery Fund for the fiscal year, based on an estimate determined by the Virginia Lottery, and (ii) no later than 10 days after receipt of the annual audit report required by § [58.1-4023](#), the Comptroller shall transfer to the Lottery Proceeds Fund the remaining audited balances of the Virginia Lottery Fund for the fiscal year. If such annual audit discloses that the actual revenue is less than the estimate on which the transfer was based, the State Comptroller shall transfer the difference between the actual revenue and the estimate from the Lottery Proceeds Fund to the Virginia Lottery Fund.

D. In addition to such other funds as may be appropriated, 100 percent of the lottery revenues transferred to the Lottery Proceeds Fund shall be appropriated entirely and solely for the purpose of public education in the Commonwealth unless otherwise redirected pursuant to Article X, Section 7-A of the Constitution of Virginia. The additional appropriation of lottery revenues to local school divisions for public education purposes consistent with this provision shall be used for operating, capital outlay, or debt service expenses, as determined by the appropriation act. The additional appropriation of lottery revenues shall not be used by any local school division to reduce its total local expenditures for public education in accordance with the provisions of the general appropriation act.

E. As a function of the administration of this chapter, funds may be expended for the purposes of reasonably informing the public concerning (i) the facts embraced in the subjects contained in subdivisions A 1 through 7 of § [58.1-4007](#) and (ii) the fact that the net proceeds are paid into the Lottery Proceeds Fund of the Commonwealth, but no funds shall be expended for the primary purpose of inducing persons to participate in the lottery.

1987, c. 531; 1989, c. 478; 1995, cc. [831](#), [852](#); 2002, cc. [829](#), [866](#); 2014, c. [225](#).

§58.1-4022.1. Lottery Proceeds Fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Lottery Proceeds Fund, hereafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller and interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Fund shall consist of amounts deposited into it from the net revenues of any lottery conducted by the Commonwealth pursuant to Article X, Section 7-A of the Constitution of Virginia.

B. For purposes of any appropriation act enacted by the General Assembly and for the purposes of the Comptroller's preliminary and final annual reports required by § [2.2-813](#), all deposits to and appropriations from the Lottery Proceeds Fund shall be accounted for and considered to be a part of the general fund of the state treasury.

2000, cc. [622](#), [713](#); 2002, cc. [829](#), [866](#).

§58.1-4023. Post-audit of accounts and transactions of Department; post-compliance audits.

A regular post-audit shall be conducted of all accounts and transactions of the Department. An annual audit of a fiscal and compliance nature of the accounts and transactions of the Department shall be conducted by the Auditor of Public Accounts on or before August 15 of each year. The cost of the annual audit and post-audit examinations shall be borne by the Department. The Board may order such other audits as it deems necessary and desirable.

1987, c. 531; 1989, c. 478 .

§58.1-4024. Employees of the Department.

Employees of the Department shall be exempt from the provisions of the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2. Personnel actions shall be taken without regard to race, sex, color, national origin, religion, age, handicap or political affiliation.

1987, c. 531; 1994, c. [48](#).

§58.1-4025. Exemption of lottery prizes and sales of tickets from state and local taxation.

Except as provided in Chapter 3 of Title 58.1 and § [58.1-4011](#), no state or local taxes of any type whatsoever shall be imposed upon any prize awarded or upon the sale of any lottery ticket sold pursuant to the Virginia Lottery Law.

1987, c. 531; 2014, c. [225](#).

§58.1-4026. Set-off of debts to the Commonwealth from prizes.

The Director shall establish by rule and regulation a set-off debt collection program in accordance with the provisions of the Setoff Debt Collection Act, Article 21 (§ [58.1-520](#) et seq.) of Chapter 3 of this title, wherein certain prizes shall be subjected to delinquent debts of agencies and institutions of the Commonwealth. The Director shall be responsible for the administration of the program and shall ensure by rule and regulation of the Department that any agency eligible to participate in the Setoff Debt Collection Act, Article 21 (§ [58.1-520](#) et seq.) of Chapter 3 of this title, shall be eligible to participate in the lottery prize set-off. The Tax Commissioner shall transmit to the Director, at such intervals as requested by the Director, a listing of claimant agencies and delinquent debts owed thereto.

1987, c. 531.

§58.1-4027. Judicial review.

The action of the Board in granting, or in refusing to grant, in suspending or revoking any license under the provisions of this chapter shall be subject to review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.). Such review shall be limited to the evidential record of the proceedings provided by the Board. Both the petitioner and the Board shall have the right to appeal to the Court of Appeals from any order of the court.

1987, c. 531.

§58.1-4028. Repealed.

Repealed by Acts 2002, c. [3](#).

State Publications Depository Program

§42.1-92. Short title; policy.

A. This chapter may be cited as the "State Publications Depository Program."

B. By enacting this chapter, the General Assembly recognizes that an informed citizenry is indispensable to the proper functioning of a democratic society. In order to remain informed, citizens must know about the activities of their government and benefit from information developed at public expense. Through the administration of the State Publications Depository Program, citizens will be ensured continued access to state publications, regardless of geographical location in the Commonwealth. This chapter shall be enacted to ensure that The Library of Virginia, as the official repository of state publications for the Commonwealth, is able to provide continued access to all state government publications, regardless of physical form or characteristics, and to prescribe conditions for the collection and preservation of state publications throughout the Commonwealth. Nothing in this chapter shall be construed to alter or diminish the responsibilities of public bodies with respect to public records under the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.) or the Virginia Public Records Act (§ [42.1-76](#) et seq.).

2006, c. [59](#).

§42.1-93. Definitions.

As used in this chapter:

"Local or regional agency" means all political subdivisions, including counties, cities, and towns, and other governmental agencies in the Commonwealth, other than state agencies.

"Publication" means all documents, regardless of physical form or characteristics and issued by or for a state, local, or regional agency, in full or in part at government expense, that are created for the research or informational use of the public. "Publication" shall not include documents that are developed solely for the agency's administrative and internal operations.

"State agency" means every agency, institution, collegial body, or other state governmental entity of any branch of government.

2006, c. [59](#).

§42.1-94. Duties of Librarian of Virginia; agencies to cooperate.

A. The Library of Virginia shall establish and administer the State Publications Depository Program for the collection and dissemination of publications to the libraries designated by The Library of Virginia as depository libraries, consistent with the rules, regulations, or standards promulgated by the State Library Board, which shall include

guidance in determining which documents are publications for purposes of the State Publications Depository Program.

B. Pursuant to § [2.2-609](#), state agencies shall furnish or otherwise make available publications or publication information designated by The Library of Virginia in the administration of the State Publications Depository Program.

C. Upon request, local and regional agencies shall provide to The Library of Virginia, free of charge, copies of specifically requested publications. The number of copies required for each requested printed publication shall not exceed two copies.

2006, c. [59](#).

§42.1-95. Catalog.

A. The Librarian of Virginia shall prepare, publish, and make available annually a catalog of publications produced by state agencies. Each such publication shall be indexed by subject, author, issuing agency, and the format of the publication. The date of publication of each listed publication shall be noted in the catalog. To the extent such information is available, the catalog shall set forth the price charged, if any, of each publication and how and where the same may be obtained.

B. Pursuant to § [2.2-609](#), state agencies shall provide information requested by The Library of Virginia to assist in the preparation of the catalog.

2006, c. [59](#).

§42.1-96. Distribution of catalog.

The catalog shall be made available without cost to persons indicating a continued interest in such catalog. Copies sent out of state shall be on an exchange basis or at a price sufficient to equal the unit cost of printing and mailing; complimentary copies may be made available by the Librarian of Virginia. A copy of the catalog shall be available at the libraries designated by The Library of Virginia as depository libraries for public inspection and use.

2006, c. [59](#).

§42.1-97. Annual report.

The Librarian of Virginia shall report annually to the Governor and the chairmen of the House and Senate Committees on General Laws and the House Appropriations and Senate Finance Committees of the General Assembly, indicating which, if any, state agencies did not furnish or otherwise make available copies of their publications

or other information required under this chapter, and which, if any, local or regional agencies did not provide access to publications upon request. Such report shall be filed no later than November 1 of each year.

2006, c. [59](#).

State Water Control Law

§62.1-44.2. Short title; purpose.

The short title of this chapter is the State Water Control Law. It is the policy of the Commonwealth of Virginia and the purpose of this law to: (1) protect existing high quality state waters and restore all other state waters to such condition of quality that any such waters will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (2) safeguard the clean waters of the Commonwealth from pollution; (3) prevent any increase in pollution; (4) reduce existing pollution; (5) promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health; and (6) promote water resource conservation, management and distribution, and encourage water consumption reduction in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

Code 1950, § 62.1-14; 1968, c. 659; 1970, c. 638; 1978, c. 827; 2000, c. [972](#).

§62.1-44.3. (For effective date -- see notes) Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the meanings hereinafter respectively ascribed to them:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Certificate" means any certificate or permit issued by the Board.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the physical, chemical or biological properties of any state waters.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business or from the development of any natural resources.

"Land-disturbance approval" means an approval allowing a land-disturbing activity to commence issued by (i) a Virginia Erosion and Stormwater Management Program authority after the requirements of § [62.1-44.15:34](#) have been met or (ii) a Virginia Erosion and Sediment Control Program authority after the requirements of § [62.1-44.15:55](#) have been met.

"The law" or "this law" means the law contained in this chapter as now existing or hereafter amended.

"Member" means a member of the Board.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that is:

1. Owned or operated by a federal entity, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including a special district under state law such as a sewer district, flood control district, drainage district or similar entity, or a designated and approved management agency

under § 208 of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. Not a combined sewer; and

4. Not part of a publicly owned treatment works.

"Normal agricultural activities" means those activities defined as an agricultural operation in § [3.2-300](#) and any activity that is conducted as part of or in furtherance of such agricultural operation but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Normal silvicultural activities" means any silvicultural activity as defined in § [10.1-1181.1](#) and any activity that is conducted as part of or in furtherance of such silvicultural activity but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances except industrial wastes and sewage which may cause pollution in any state waters.

"Owner" means the Commonwealth or any of its political subdivisions, including but not limited to sanitation district commissions and authorities and any public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § [62.1-44.5](#).

"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, or any other legal entity.

"Policies" means policies established under subdivisions (3a) and (3b) of § [62.1-44.15](#).

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a)

harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution" for the terms and purposes of this chapter.

"Pretreatment requirements" means any requirements arising under the Board's pretreatment regulations including the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the Board.

"Pretreatment standards" means any standards of performance or other requirements imposed by regulation of the Board upon an industrial user of a publicly owned treatment works.

"Reclaimed water" means water resulting from the treatment of domestic, municipal, or industrial wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur. Specifically excluded from this definition is "gray water."

"Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to produce reclaimed water for a direct beneficial or controlled use that would not otherwise occur.

"Regulation" means a regulation issued under subdivision (10) of § [62.1-44.15](#).

"Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in accordance with the requirements of the Board.

"Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to subdivision (7) of § [62.1-44.15](#).

"Ruling" means a ruling issued under subdivision (9) of § [62.1-44.15](#).

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Sewage treatment works" or "treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power, and other equipment, and appurtenances, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluent resulting from such treatment. These terms shall not include onsite sewage systems or alternative discharging sewage systems.

"Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or other wastes to a point of ultimate disposal.

"Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § [62.1-44.15](#).

"Standards" means standards established under subdivisions (3a) and (3b) of § [62.1-44.15](#).

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Code 1950, § 62.1-15; 1968, c. 659; 1970, c. 638; 1988, c. 167; 1990, c. 717; 1991, c. 702; 2000, cc. [972](#), [1032](#), [1054](#); 2003, c. [614](#); 2007, c. [659](#); 2015, cc. [104](#), [677](#); 2016, cc. [68](#), [758](#).

§62.1-44.3. (For expiration date -- see notes) Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the meanings hereinafter respectively ascribed to them:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Certificate" means any certificate issued by the Board.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the physical, chemical or biological properties of any state waters.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business or from the development of any natural resources.

"The law" or "this law" means the law contained in this chapter as now existing or hereafter amended.

"Member" means a member of the Board.

"Normal agricultural activities" means those activities defined as an agricultural operation in § [3.2-300](#) and any activity that is conducted as part of or in furtherance of such agricultural operation but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Normal silvicultural activities" means any silvicultural activity as defined in § [10.1-1181.1](#) and any activity that is conducted as part of or in furtherance of such silvicultural activity but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances except industrial wastes and sewage which may cause pollution in any state waters.

"Owner" means the Commonwealth or any of its political subdivisions, including but not limited to sanitation district commissions and authorities and any public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § [62.1-44.5](#).

"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, or any other legal entity.

"Policies" means policies established under subdivisions (3a) and (3b) of § [62.1-44.15](#).

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution" for the terms and purposes of this chapter.

"Pretreatment requirements" means any requirements arising under the Board's pre-treatment regulations including the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the Board.

"Pretreatment standards" means any standards of performance or other requirements imposed by regulation of the Board upon an industrial user of a publicly owned treatment works.

"Reclaimed water" means water resulting from the treatment of domestic, municipal, or industrial wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur. Specifically excluded from this definition is "gray water."

"Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to produce reclaimed water for a direct beneficial or controlled use that would not otherwise occur.

"Regulation" means a regulation issued under § [62.1-44.15](#) (10).

"Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in accordance with the requirements of the Board.

"Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to § [62.1-44.15](#) (7).

"Ruling" means a ruling issued under § [62.1-44.15](#) (9).

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Sewage treatment works" or "treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power, and other equipment, and appurtenances, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluent resulting from such treatment. These terms shall not include onsite sewage systems or alternative discharging sewage systems.

"Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for

conducting sewage or industrial wastes or other wastes to a point of ultimate disposal.

"Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § [62.1-44.15](#).

"Standards" means standards established under subdivisions (3a) and (3b) of § [62.1-44.15](#).

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Code 1950, § 62.1-15; 1968, c. 659; 1970, c. 638; 1988, c. 167; 1990, c. 717; 1991, c. 702; 2000, cc. [972](#), [1032](#), [1054](#); 2003, c. [614](#); 2007, c. [659](#); 2015, cc. [104](#), [677](#).

§62.1-44.3:1. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this chapter the Board or the Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Board or the Department may be sent by regular mail.

2011, c. [566](#).

§62.1-44.4. Control by Commonwealth as to water quality.

(1) No right to continue existing quality degradation in any state water shall exist nor shall such right be or be deemed to have been acquired by virtue of past or future discharge of sewage, industrial wastes or other wastes or other action by any owner. The right and control of the Commonwealth in and over all state waters is hereby expressly reserved and reaffirmed.

(2) Waters whose existing quality is better than the established standards as of the date on which such standards become effective will be maintained at high quality; provided that the Board has the power to authorize any project or development,

which would constitute a new or an increased discharge of effluent to high quality water, when it has been affirmatively demonstrated that a change is justifiable to provide necessary economic or social development; and provided, further, that the necessary degree of waste treatment to maintain high water quality will be required where physically and economically feasible. Present and anticipated use of such waters will be preserved and protected.

Code 1950, § 62.1-16; 1968, c. 659; 1970, c. 638.

§62.1-44.5. (For effective date -- see notes) Prohibition of waste discharges or other quality alterations of state waters except as authorized by permit; notification required.

A. Except in compliance with a certificate, land-disturbance approval, or permit issued by the Board or other entity authorized by the Board to issue a certificate, land-disturbance approval, or permit pursuant to this chapter, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses;
4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or
5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.

B. Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § [44-146.19](#) for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act.

Code 1950, § 62.1-17; 1968, c. 659; 1970, c. 638; 1990, c. 717; 1996, c. [119](#); 2000, cc. [1032](#), [1054](#); 2001, cc. [354](#), [383](#); 2004, c. [372](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.5. (For expiration date -- see notes) Prohibition of waste discharges or other quality alterations of state waters except as authorized by permit; notification required.

A. Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities.

B. Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § [44-146.19](#) for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act.

Code 1950, § 62.1-17; 1968, c. 659; 1970, c. 638; 1990, c. 717; 1996, c. [119](#); 2000, cc. [1032](#), [1054](#); 2001, cc. [354](#), [383](#); 2004, c. [372](#); 2013, cc. [756](#), [793](#).

§62.1-44.6. Chapter supplementary to existing laws.

This chapter is intended to supplement existing laws and no part thereof shall be construed to repeal any existing laws specifically enacted for the protection of health or the protection of fish, shellfish and game of the Commonwealth, except that the administration of any such laws pertaining to the pollution of state waters, as herein defined, shall be in accord with the purpose of this chapter and general policies adopted by the Board.

Code 1950, § 62.1-18; 1968, c. 659; 1970, c. 638.

§62.1-44.7. Board continued.

The State Water Control Board established in the Executive Department of the Commonwealth, is continued.

Code 1950, § 62.1-19; 1968, c. 659; 1970, c. 638.

§62.1-44.8. Number, appointment and terms of members.

The Board shall consist of seven members appointed by the Governor subject to confirmation by the General Assembly. Members shall be appointed for the terms of four years each. Vacancies other than by expiration of a term shall be filled by the Governor by appointment for the unexpired term.

Code 1950, § 62.1-20; 1968, c. 659; 1970, c. 638; 2008, cc. [276](#), [557](#).

§62.1-44.9. Qualifications of members.

A. Members of the Board shall be citizens of the Commonwealth; shall be selected from the Commonwealth at large for merit without regard to political affiliation; and shall, by character and reputation, reasonably be expected to inspire the highest degree of cooperation and confidence in the work of the Board. Members shall, by their education, training, or experience, be knowledgeable of water quality control and regulation and shall be fairly representative of conservation, public health, business, land development, and agriculture. In making appointments, the Governor shall endeavor to ensure balanced geographical representation. No person shall become a member of the Board who receives, or during the previous two years has received, a significant portion of his income directly or indirectly from certificate or permit holders or applicants for a certificate or permit.

For the purposes of this section, "significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement. Income includes retirement benefits, consultant fees, and stock dividends. Income is not received directly or indirectly from certificate or permit holders or applicants for certificates or permits when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

B. Notwithstanding any other provision of this section relating to Board membership, the qualifications for Board membership shall not be more strict than those that are required by federal statute or regulations of the United States Environmental Protection Agency.

Code 1950, § 62.1-21; 1968, c. 659; 1970, c. 638; 1994, c. [461](#); 2008, cc. [276](#), [557](#); 2013, cc. [756](#), [793](#); 2014, c. [150](#).

§62.1-44.10. Repealed.

Repealed by Acts 1980, c. 728.

§62.1-44.11. Meetings.

The Board shall meet at least four times a year, and other meetings may be held at any time or place determined by the Board or upon call of the chairman or upon

written request of any two members. All members shall be duly notified of the time and place of any regular or other meeting at least five days in advance of such meeting.

Code 1950, § 62.1-23; 1968, c. 659; 1970, c. 638.

§62.1-44.12. Records of proceedings; special orders, standards, policies, rules and regulations.

The Board shall keep a complete and accurate record of the proceedings at all its meetings, a copy of which shall be kept on file in the office of the Executive Director and open to public inspection. Any standards, policies, rules or regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ [2.2-4100](#) et seq.). The owner to whom any special order is issued under the provisions of § [62.1-44.15](#) shall be notified by certified mail sent to the last known address of such owner and the time limits specified shall be counted from the date of mailing.

Code 1950, § 62.1-24; 1968, c. 659; 1970, c. 638; 1977, c. 32; 1981, c. 620.

§62.1-44.13. Inspections and investigations, etc.

The Board shall make such inspections, conduct such investigations and do such other things as are necessary to carry out the provisions of this chapter, within the limits of appropriation, funds, or personnel which are, or become, available from any source for this purpose.

Code 1950, § 62.1-25; 1968, c. 659; 1970, c. 638.

§62.1-44.14. Chairman; Executive Director; employment of personnel; supervision; budget preparation.

The Board shall elect its chairman, and the Executive Director shall be appointed as set forth in § [2.2-106](#). The Executive Director shall serve as executive officer and devote his whole time to the performance of his duties, and he shall have such administrative powers as are conferred upon him by the Board; and, further, the Board may delegate to its Executive Director any of the powers and duties invested in it by this chapter except the adoption and promulgation of standards, rules and regulations; and the revocation of certificates. The Executive Director is authorized to issue, modify or revoke orders in cases of emergency as described in §§ [62.1-44.15](#) (8b) and [62.1-44.34:20](#) of this chapter. The Executive Director is further authorized to employ

such consultants and full-time technical and clerical workers as are necessary and within the available funds to carry out the purposes of this chapter.

It shall be the duty of the Executive Director to exercise general supervision and control over the quality and management of all state waters and to administer and enforce this chapter, and all certificates, standards, policies, rules, regulations, rulings and special orders promulgated by the Board. The Executive Director shall prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations. The Executive Director shall be vested with all the authority of the Board when it is not in session, except for the Board's authority to consider permits pursuant to § [62.1-44.15:02](#) and to issue special orders pursuant to subdivisions (8a) and (8b) of § [62.1-44.15](#) and subject to such regulations as may be prescribed by the Board. In no event shall the Executive Director have the authority to adopt or promulgate any regulation.

Code 1950, § 62.1-26; 1968, c. 659; 1970, c. 638; 1981, c. 620; 1984, c. 444; 1985, c. 397; 1992, c. 456; 2005, c. [706](#); 2013, cc. [756](#), [793](#).

§62.1-44.15. (For expiration date -- see notes) Powers and duties; civil penalties.

It shall be the duty of the Board and it shall have the authority:

(1) [Repealed.]

(2) To study and investigate all problems concerned with the quality of state waters and to make reports and recommendations.

(2a) To study and investigate methods, procedures, devices, appliances, and technologies that could assist in water conservation or water consumption reduction.

(2b) To coordinate its efforts toward water conservation with other persons or groups, within or without the Commonwealth.

(2c) To make reports concerning, and formulate recommendations based upon, any such water conservation studies to ensure that present and future water needs of the citizens of the Commonwealth are met.

(3a) To establish such standards of quality and policies for any state waters consistent with the general policy set forth in this chapter, and to modify, amend or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies

thus established, except that a description of provisions of any proposed standard or policy adopted by regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the standard or policy are most properly referable. The Board shall, from time to time, but at least once every three years, hold public hearings pursuant to § [2.2-4007.01](#) but, upon the request of an affected person or upon its own motion, hold hearings pursuant to § [2.2-4009](#), for the purpose of reviewing the standards of quality, and, as appropriate, adopting, modifying, or canceling such standards. Whenever the Board considers the adoption, modification, amendment or cancellation of any standard, it shall give due consideration to, among other factors, the economic and social costs and benefits which can reasonably be expected to obtain as a consequence of the standards as adopted, modified, amended or cancelled. The Board shall also give due consideration to the public health standards issued by the Virginia Department of Health with respect to issues of public health policy and protection. If the Board does not follow the public health standards of the Virginia Department of Health, the Board's reason for any deviation shall be made in writing and published for any and all concerned parties.

(3b) Except as provided in subdivision (3a), such standards and policies are to be adopted or modified, amended or cancelled in the manner provided by the Administrative Process Act (§ [2.2-4000](#) et seq.).

(4) To conduct or have conducted scientific experiments, investigations, studies, and research to discover methods for maintaining water quality consistent with the purposes of this chapter. To this end the Board may cooperate with any public or private agency in the conduct of such experiments, investigations and research and may receive in behalf of the Commonwealth any moneys that any such agency may contribute as its share of the cost under any such cooperative agreement. Such moneys shall be used only for the purposes for which they are contributed and any balance remaining after the conclusion of the experiments, investigations, studies, and research, shall be returned to the contributors.

(5) To issue, revoke or amend certificates under prescribed conditions for: (a) the discharge of sewage, industrial wastes and other wastes into or adjacent to state waters; (b) the alteration otherwise of the physical, chemical or biological properties of state waters; (c) excavation in a wetland; or (d) on and after October 1, 2001, the conduct

of the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions.

However, to the extent allowed by federal law, any person holding a certificate issued by the Board that is intending to upgrade the permitted facility by installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved energy efficiency, reduction in the amount of nutrients discharged, and improved water quality shall not be required to obtain a new, modified, or amended permit. The permit holder shall provide the demonstration anticipated by this subdivision to the Department no later than 30 days prior to commencing construction.

(5a) All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollution Discharge Elimination System permit shall not exceed five years. The term of a Virginia Water Protection Permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed 15 years. The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be 10 years. The Department of Environmental Quality shall inspect all facilities for which a Virginia Pollution Abatement permit has been issued to ensure compliance with statutory, regulatory, and permit requirements. Department personnel performing inspections of confined animal feeding operations shall be certified under the voluntary nutrient management training and certification program established in § [10.1-104.2](#). The term of a certificate issued by the Board shall not be extended by modification beyond the maximum duration and the certificate shall expire at the end of the term unless an application for a new permit has been timely filed as required by the regulations of the Board and the Board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

(5b) Any certificate issued by the Board under this chapter may, after notice and opportunity for a hearing, be amended or revoked on any of the following grounds or for good cause as may be provided by the regulations of the Board:

1. The owner has violated any regulation or order of the Board, any condition of a certificate, any provision of this chapter, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the Board, demonstrates the owner's disregard for or inability to comply with applicable laws, regulations, or requirements;
2. The owner has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a certificate, or in any other report or document required under this law or under the regulations of the Board;
3. The activity for which the certificate was issued endangers human health or the environment and can be regulated to acceptable levels by amendment or revocation of the certificate; or
4. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the certificate necessary to protect human health or the environment.

(5c) Any certificate issued by the Board under this chapter relating to dredging projects governed under Chapter 12 (§ [28.2-1200](#) et seq.) or Chapter 13 (§ [28.2-1300](#) et seq.) of Title 28.2 may be conditioned upon a demonstration of financial responsibility for the completion of compensatory mitigation requirements. Financial responsibility may be demonstrated by a letter of credit, a certificate of deposit or a performance bond executed in a form approved by the Board. If the U.S. Army Corps of Engineers requires demonstration of financial responsibility for the completion of compensatory mitigation required for a particular project, then the mechanism and amount approved by the U.S. Army Corps of Engineers shall be used to meet this requirement.

(6) To make investigations and inspections, to ensure compliance with any certificates, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance. In recognition of §§ [32.1-164](#) and [62.1-44.18](#), the Board and the State Department of Health shall enter into a memorandum of understanding establishing a common format to consolidate and simplify inspections of sewage treatment plants and coordinate the scheduling of the inspections. The new format shall ensure that all sewage treatment plants are

inspected at appropriate intervals in order to protect water quality and public health and at the same time avoid any unnecessary administrative burden on those being inspected.

(7) To adopt rules governing the procedure of the Board with respect to: (a) hearings; (b) the filing of reports; (c) the issuance of certificates and special orders; and (d) all other matters relating to procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this section shall be by such means as the Board may prescribe.

(8a) Except as otherwise provided in Articles 2.4 (§ [62.1-44.15:51](#) et seq.) and 2.5 (§ [62.1-44.15:67](#) et seq.) issue special orders to owners (i) who are permitting or causing the pollution, as defined by § [62.1-44.3](#), of state waters to cease and desist from such pollution, (ii) who have failed to construct facilities in accordance with final approved plans and specifications to construct such facilities in accordance with final approved plans and specifications, (iii) who have violated the terms and provisions of a certificate issued by the Board to comply with such terms and provisions, (iv) who have failed to comply with a directive from the Board to comply with such directive, (v) who have contravened duly adopted and promulgated water quality standards and policies to cease and desist from such contravention and to comply with such water quality standards and policies, (vi) who have violated the terms and provisions of a pretreatment permit issued by the Board or by the owner of a publicly owned treatment works to comply with such terms and provisions or (vii) who have contravened any applicable pretreatment standard or requirement to comply with such standard or requirement; and also to issue such orders to require any owner to comply with the provisions of this chapter and any decision of the Board. Except as otherwise provided by a separate article, orders issued pursuant to this subsection may include civil penalties of up to \$32,500 per violation, not to exceed \$100,000 per order. The Board may assess penalties under this subsection if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subdivision (8b). The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the

compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § [2.2-4001](#). Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ [10.1-2500](#) et seq.), except that civil penalties assessed for violations of Article 9 (§ [62.1-44.34:8](#) et seq.) or Article 11 (§ [62.1-44.34:14](#) et seq.) shall be paid into the Virginia Petroleum Storage Tank Fund in accordance with § [62.1-44.34:11](#), and except that civil penalties assessed for violations of Article 2.3 (§ [62.1-44.15:24](#) et seq.) shall be paid in accordance with the provisions of § [62.1-44.15:48](#).

(8b) Such special orders are to be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § [2.2-4020](#) or, if requested by the person, before a quorum of the Board with at least 30 days' notice to the affected owners, of the time, place and purpose thereof, and they shall become effective not less than 15 days after service as provided in § [62.1-44.12](#); provided that if the Board finds that any such owner is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing the owner to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If an owner who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § [62.1-44.23](#), and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the

Board shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

(8c) The provisions of this section notwithstanding, the Board may proceed directly under § [62.1-44.32](#) for any past violation or violations of any provision of this chapter or any regulation duly promulgated hereunder.

(8d) With the consent of any owner who has violated or failed, neglected or refused to obey any regulation or order of the Board, any condition of a permit or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in § [62.1-44.32](#) (a). Such civil charges shall be instead of any appropriate civil penalty which could be imposed under § [62.1-44.32](#) (a) and shall not be subject to the provisions of § [2.2-514](#). Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ [10.1-2500](#) et seq.), excluding civil charges assessed for violations of Article 9 (§ [62.1-44.34:8](#) et seq.) or 10 (§ [62.1-44.34:10](#) et seq.) of Chapter 3.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles, or civil charges assessed for violations of Article 2.3 (§ [62.1-44.15:24](#) et seq.), or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under that article.

The amendments to this section adopted by the 1976 Session of the General Assembly shall not be construed as limiting or expanding any cause of action or any other remedy possessed by the Board prior to the effective date of said amendments.

(8e) The Board shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

(8f) Before issuing a special order under subdivision (8a) or by consent under (8d), with or without an assessment of a civil penalty, to an owner of a sewerage system requiring corrective action to prevent or minimize overflows of sewage from such system, the Board shall provide public notice of and reasonable opportunity to comment on the proposed order. Any such order under subdivision (8d) may impose civil penalties in amounts up to the maximum amount authorized in § 309(g) of the Clean

Water Act. Any person who comments on the proposed order shall be given notice of any hearing to be held on the terms of the order. In any hearing held, such person shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held before issuance of an order under subdivision (8d), any person who commented on the proposed order may file a petition, within 30 days after the issuance of such order, requesting the Board to set aside such order and provide a formal hearing thereon. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Board shall immediately set aside the order, provide a formal hearing, and make such petitioner a party. If the Board denies the petition, the Board shall provide notice to the petitioner and make available to the public the reasons for such denial, and the petitioner shall have the right to judicial review of such decision under § [62.1-44.29](#) if he meets the requirements thereof.

(9) To make such rulings under §§ [62.1-44.16](#), [62.1-44.17](#), and [62.1-44.19](#) as may be required upon requests or applications to the Board, the owner or owners affected to be notified by certified mail as soon as practicable after the Board makes them and such rulings to become effective upon such notification.

(10) To adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

(11) To investigate any large-scale killing of fish.

(a) Whenever the Board shall determine that any owner, whether or not he shall have been issued a certificate for discharge of waste, has discharged sewage, industrial waste, or other waste into state waters in such quantity, concentration or manner that fish are killed as a result thereof, it may effect such settlement with the owner as will cover the costs incurred by the Board and by the Department of Game and Inland Fisheries in investigating such killing of fish, plus the replacement value of the fish destroyed, or as it deems proper, and if no such settlement is reached within a reasonable time, the Board shall authorize its executive secretary to bring a civil action in

the name of the Board to recover from the owner such costs and value, plus any court or other legal costs incurred in connection with such action.

(b) If the owner is a political subdivision of the Commonwealth, the action may be brought in any circuit court within the territory embraced by such political subdivision. If the owner is an establishment, as defined in this chapter, the action shall be brought in the circuit court of the city or the circuit court of the county in which such establishment is located. If the owner is an individual or group of individuals, the action shall be brought in the circuit court of the city or circuit court of the county in which such person or any of them reside.

(c) For the purposes of this subsection the State Water Control Board shall be deemed the owner of the fish killed and the proceedings shall be as though the State Water Control Board were the owner of the fish. The fact that the owner has or held a certificate issued under this chapter shall not be raised as a defense in bar to any such action.

(d) The proceeds of any recovery had under this subsection shall, when received by the Board, be applied, first, to reimburse the Board for any expenses incurred in investigating such killing of fish. The balance shall be paid to the Board of Game and Inland Fisheries to be used for the fisheries' management practices as in its judgment will best restore or replace the fisheries' values lost as a result of such discharge of waste, including, where appropriate, replacement of the fish killed with game fish or other appropriate species. Any such funds received are hereby appropriated for that purpose.

(e) Nothing in this subsection shall be construed in any way to limit or prevent any other action which is now authorized by law by the Board against any owner.

(f) Notwithstanding the foregoing, the provisions of this subsection shall not apply to any owner who adds or applies any chemicals or other substances that are recommended or approved by the State Department of Health to state waters in the course of processing or treating such waters for public water supply purposes, except where negligence is shown.

(12) To administer programs of financial assistance for planning, construction, operation, and maintenance of water quality control facilities for political subdivisions in the Commonwealth.

(13) To establish policies and programs for effective area-wide or basin-wide water quality control and management. The Board may develop comprehensive pollution abatement and water quality control plans on an area-wide or basin-wide basis. In conjunction with this, the Board, when considering proposals for waste treatment facilities, is to consider the feasibility of combined or joint treatment facilities and is to ensure that the approval of waste treatment facilities is in accordance with the water quality management and pollution control plan in the watershed or basin as a whole. In making such determinations, the Board is to seek the advice of local, regional, or state planning authorities.

(14) To establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter; however, no treatment shall be less than secondary or its equivalent, unless the owner can demonstrate that a lesser degree of treatment is consistent with the purposes of this chapter.

(15) To promote and establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into waters of the state. The requirements shall address various potential categories of reuse and may include general permits and provide for greater flexibility and less stringent requirements commensurate with the quality of the reclaimed water and its intended use. The requirements shall be developed in consultation with the Department of Health and other appropriate state agencies. This authority shall not be construed as conferring upon the Board any power or duty duplicative of those of the State Board of Health.

(16) To establish and implement policies and programs to protect and enhance the Commonwealth's wetland resources. Regulatory programs shall be designed to achieve no net loss of existing wetland acreage and functions. Voluntary and incentive-based programs shall be developed to achieve a net resource gain in acreage and functions of wetlands. The Board shall seek and obtain advice and guidance from the Virginia Institute of Marine Science in implementing these policies and programs.

(17) To establish additional procedures for obtaining a Virginia Water Protection Permit pursuant to §§ [62.1-44.15:20](#) and [62.1-44.15:22](#) for a proposed water withdrawal involving the transfer of water resources between major river basins within the Commonwealth that may impact water basins in another state. Such additional procedures shall not apply to any water withdrawal in existence as of July 1, 2012,

except where the expansion of such withdrawal requires a permit under §§ [62.1-44.15:20](#) and [62.1-44.15:22](#), in which event such additional procedures may apply to the extent of the expanded withdrawal only. The applicant shall provide as part of the application (i) an analysis of alternatives to such a transfer, (ii) a comprehensive analysis of the impacts that would occur in the source and receiving basins, (iii) a description of measures to mitigate any adverse impacts that may arise, (iv) a description of how notice shall be provided to interested parties, and (v) any other requirements that the Board may adopt that are consistent with the provisions of this section and §§ [62.1-44.15:20](#) and [62.1-44.15:22](#) or regulations adopted thereunder. This subdivision shall not be construed as limiting or expanding the Board's authority under §§ [62.1-44.15:20](#) and [62.1-44.15:22](#) to issue permits and impose conditions or limitations on the permitted activity.

(18) To be the lead agency for the Commonwealth's nonpoint source pollution management program, including coordination of the nonpoint source control elements of programs developed pursuant to certain state and federal laws, including § 319 of the federal Clean Water Act and § 6217 of the federal Coastal Zone Management Act. Further responsibilities include the adoption of regulations necessary to implement a nonpoint source pollution management program in the Commonwealth, the distribution of assigned funds, the identification and establishment of priorities to address nonpoint source related water quality problems, the administration of the Statewide Nonpoint Source Advisory Committee, and the development of a program for the prevention and control of soil erosion, sediment deposition, and nonagricultural runoff to conserve Virginia's natural resources.

Code 1950, § 62.1-27; 1968, c. 659; 1970, c. 638; 1972, c. 741; 1975, c. 335; 1976, c. 621; 1977, c. 32; 1978, c. 827; 1984, c. 11; 1985, cc. 249, 397; 1988, cc. 167, 328; 1989, c. 389; 1990, c. 717; 1991, cc. 239, 718; 1993, c. 456; 1994, c. [698](#); 1998, cc. [805](#), [863](#); 2000, cc. [972](#), [1032](#), [1054](#); 2002, cc. [49](#), [396](#); 2004, c. [431](#); 2005, c. [706](#); 2007, cc. [144](#), [633](#), [873](#), [916](#); 2011, cc. [52](#), [101](#); 2012, cc. [574](#), [581](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:01. Further duties of Board; localities particularly affected.

A. After June 30, 1994, before promulgating any regulation under consideration or granting any variance to an existing regulation, or issuing any permit, if the Board finds that there are localities particularly affected by the regulation, variance or permit, the Board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall include information on the specific pollutants involved and the total quantity of each that may be discharged.
2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the Board for at least 15 days after any hearing on the regulation, variance or permit, unless the Board votes to shorten the period.

For the purposes of this section, the term "locality particularly affected" means any locality that bears any identified disproportionate material water quality impact that would not be experienced by other localities.

B. On or after January 1, 2007, the Board shall ensure that all wetland inventory maps that identify the location of wetlands in the Commonwealth and that are maintained by the Board be made readily available to the public. The Board shall notify the circuit court clerk's office and other appropriate officials in each locality of the availability of the wetland inventory maps and request that the locality provide information in the location where the land records of the locality are maintained on the availability of the wetland inventory maps as well as the potential Virginia Water Protection Permit requirements.

1993, c. 944; 2005, c. [478](#).

§62.1-44.15:02. Permits; procedures for public hearings and permits before the Board.

A. During the public comment period on a permit action, interested persons may request a public hearing to contest such action or the terms and conditions thereof. Where public hearings are mandatory under state or federal law or regulation, interested persons may request, during the public comment period on the permit action, that the Board consider the permit action pursuant to the requirements of this section.

B. Requests for a public hearing or Board consideration shall contain the following information:

1. The name, mailing address, and telephone number of the requester;

2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person);

3. The reason why a public hearing or Board consideration is requested;

4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the State Water Control Law (§ [62.1-44.2](#) et seq.).

C. Upon completion of the public comment period on a permit action, the Director shall review all timely requests for public hearing or Board consideration filed during the public comment period on the permit action and within 30 calendar days following the expiration of the time period for the submission of requests shall grant a public hearing or Board consideration after the public hearing required by state or federal law or regulation, unless the permittee or applicant agrees to a later date, if the Director finds the following:

1. That there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing or Board consideration;

2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and

3. That the action requested is not on its face inconsistent with, or in violation of, the State Water Control Law (§ [62.1-44.2](#) et seq.), federal law or any regulation promulgated thereunder.

D. Either the Director or a majority of the Board members, acting independently, may request a meeting of the Board to be convened within 20 days of the Director's decision pursuant to subsection C in order to review such decision and determine by a majority vote of the Board whether or not to grant a public hearing or Board consideration, or to delegate the permit to the Director for his decision.

For purposes of this subsection, if a Board meeting is held via electronic communication, the meeting shall be held in compliance with the provisions § [2.2-3708](#), except that a quorum of the Board is not required to be physically assembled at one primary or central meeting location. Discussions of the Board held via such electronic communication means shall be specifically limited to a (i) review of the Director's decision pursuant to subsection C, (ii) determination of the Board whether or not to grant a public hearing or Board consideration, or (iii) delegation of the permit to the Director for his decision. No other matter of public business shall be discussed or transacted by the Board during any such meeting held via electronic communication.

E. The Director shall, forthwith, notify by mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing or Board consideration.

F. In addition to subsections C, D, and E, the Director may, in his discretion, convene a public hearing on a permit action or submit a permit action to the Board for its consideration.

G. If a determination is made to hold a public hearing, the Director shall schedule the hearing at a time between 45 and 75 days after mailing of the notice required by subsection E.

H. The Director shall cause, or require the applicant to publish, notice of a public hearing to be published once, in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

I. The Director may, on his own motion or at the request of the applicant or permittee, for good cause shown, reschedule the date of the public hearing. In the event the Director reschedules the date for the public hearing after notice has been published, he shall, or require the applicant to, provide reasonable notice of the new date of the public hearing. Such notice shall be published once in the same newspaper where the original notice was published.

J. Public hearings held pursuant to these procedures may be conducted by (i) the Board at a regular or special meeting of the Board or (ii) one or more members of the Board. A member of the Board shall preside over the public hearing.

K. The presiding Board member shall have the authority to maintain order, preserve the impartiality of the decision process, and conclude the hearing process

expeditiously. The presiding Board member, in order to carry out his responsibilities under this subsection, is authorized to exercise the following powers, including but not limited to:

1. Prescribing the methods and procedures to be used in the presentation of factual data, arguments, and proof orally and in writing including the imposition of reasonable limitations on the time permitted for oral testimony;
2. Consolidating the presentation of factual data, arguments, and proof to avoid repetitive presentation of them;
3. Ruling on procedural matters; and
4. Acting as custodian of the record of the public hearing causing all notices and written submittals to be entered in it.

L. The public comment period will remain open for 15 days after the close of the public hearing if required by § [62.1-44.15:01](#).

M. When the public hearing is conducted by less than a quorum of the Board, the Department shall, promptly after the close of the public hearing comment period, make a report to the Board.

N. After the close of the public hearing comment period, the Board shall, at a regular or special meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the public comment period or from a later date, as agreed to by the permittee or applicant and the Board or the Director. The Board shall not take any action on a permit where a public hearing was convened solely to satisfy the requirements of state or federal law or regulation unless the permit was provided to the Board for its consideration pursuant to the provisions of this section.

O. When the public hearing was conducted by less than a quorum of the Board, persons who commented during the public comment period shall be afforded an opportunity at the Board meeting when final action is scheduled to respond to any summaries of the public comments prepared by the Department for the Board's consideration subject to such reasonable limitations on the time permitted for oral testimony or presentation of repetitive material as are determined by the Board.

P. In making its decision, the Board shall consider (i) the verbal and written comments received during the public comment period made part of the record, (ii) any explanation of comments previously received during the public comment period

made at the Board meeting, (iii) the comments and recommendation of the Department, and (iv) the agency files. When the decision of the Board is to adopt the recommendation of the Department, the Board shall provide in writing a clear and concise statement of the legal basis and justification for the decision reached. When the decision of the Board varies from the recommendation of the Department, the Board shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the variation and how the Board's decision is in compliance with applicable laws and regulations. The written statement shall be provided contemporaneously with the decision of the Board. Copies of the decision, certified by the Director, shall be mailed by certified mail to the permittee or applicant.

2008, cc. [276](#), [557](#); 2009, c. [627](#).

§62.1-44.15:1. Limitation on power to require construction of sewerage systems or sewage or other waste treatment works.

Nothing contained in this chapter shall be construed to empower the Board to require the Commonwealth, or any political subdivision thereof, or any authority created under the provisions of § [15.2-5102](#) or §§ [15.2-5152](#) through [15.2-5158](#), to construct any sewerage system, sewage treatment works, or water treatment plant waste treatment works or system necessary to (1) upgrade the present level of treatment in existing systems or works to abate existing pollution of state waters, or (2) expand a system or works to accommodate additional growth, unless the Board shall have previously committed itself to provide financial assistance from federal and state funds equal to the maximum amount provided for under § 8 or other applicable sections of the Federal Water Pollution Control Act (P.L. 84-660, as amended), or unless the Commonwealth or political subdivision or authority voluntarily agrees, or is directed by the Board with the concurrence of the Governor, to proceed with such construction, subject to reimbursement under § 8, or other applicable sections of such federal act.

The foregoing restriction shall not apply to those cases where existing sewerage systems or sewage or other waste treatment works cease to perform in accordance with their approved certificate requirements.

Nothing contained in this chapter shall be construed to empower the Board to require the Commonwealth, or any political subdivision thereof, to upgrade the level of treatment in any works to a level more stringent than that required by applicable provisions of the Federal Water Pollution Control Act, as amended.

1971, Ex. Sess., cc. 197, 245; 1973, c. 179; 1975, c. 279; 1981, c. 262.

§62.1-44.15:1.1. Special orders; penalties.

The Board is authorized to issue special orders in compliance with the Administrative Process Act (§ [2.2-4000](#) et seq.) requiring that an owner file with the Board a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained within the Board, submission of a bond, corporate guarantee based upon audited financial statements, or such other instruments as the Board may deem appropriate. The Board may require that such plan and instruments be updated as appropriate. The Board shall give due consideration to any plan submitted by the owner in accordance with §§ [10.1-1309.1](#), [10.1-1410](#), and [10.1-1428](#), in determining the necessity for and suitability of any plan submitted under this section.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a facility which is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

1991, c. 702 .

§62.1-44.15:1.2. Lake level contingency plans.

Any Virginia Pollutant Discharge Elimination System permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions. The plan shall take into account and minimize any adverse effects of any release reduction requirements on beneficial uses, as defined in § [62.1-10](#), within the impoundment, and on downstream users. The reduction in release amounts required by a lake level contingency plan shall not be implemented to the extent they result in an adverse impact to (i) the ability to meet water quality standards based upon permitted discharge amounts, (ii) the ability to provide adequate water supplies for consumptive purposes such as drinking water and fire protection, and (iii) fish and wildlife resources. In the event there is an imminent threat of such an adverse impact, the permit holder and the Department of Environmental Quality shall be notified. Upon such notification, the permit holder may increase release amounts as specified in the permit for up to forty-eight hours or until such time as the Department of Environmental Quality determines whether or not the increase in release amounts is necessary. This section shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

2000, cc. [103](#), [119](#); 2001, c. [116](#).

§62.1-44.15:2. Extraordinary hardship program.

There is hereby established a supplemental program of financial assistance for the construction of water quality control facilities by political subdivisions of the Commonwealth. All sums appropriated for this program shall be apportioned by the Board among the political subdivisions qualifying, to provide financial assistance in addition to that otherwise available to help relieve extraordinary hardship in local funding of the construction of such facilities.

1975, c. 339.

§62.1-44.15:3. When application for permit considered complete.

A. No application submitted to the Board for a new individual Virginia Pollutant Discharge Elimination permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances

adopted pursuant to Chapter 22 (§ [15.2-2200](#) et seq.) of Title 15.2. The county, city, or town shall inform in writing the applicant and the Board of the discharging facility's compliance or noncompliance not more than thirty days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city, or town fail to provide such written notification within thirty days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid certificate had been issued prior to March 10, 2000.

B. No application for a certificate to discharge sewage into or adjacent to state waters from a privately owned wastewater treatment system serving fifty or more residences shall be considered complete unless the applicant has provided the Executive Director with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

1987, c. 132; 1990, c. 14; 1993, c. 606; 1994, cc. [262](#), [549](#); 1995, c. [256](#); 2000, cc. [19](#), [98](#); 2001, c. [492](#).

§62.1-44.15:4. Notification of local governments and property owners.

A. Upon determining that there has been a violation of a regulation promulgated under this chapter and such violation poses an imminent threat to the health, safety or welfare of the public, the Executive Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the Executive Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this subsection.

B. Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the Board's antidegradation policy, as required by 40 C.F.R. § 131.12, the Board shall notify each locality in which the waterway or segment lies and shall make a good faith effort to provide notice to impacted riparian property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and criteria for designation as well as the impact of designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. Notice to property owners shall be based on names and addresses

taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdictions upon request by the Board. After receipt of the notice of the nomination localities shall be provided sixty days to comment on the consistency of the nomination with the locality's comprehensive plan.

C. Upon determining that a waterway or any segment of a waterway does not meet its water quality standard use designation as set out in the Board's regulations and as required by § 1313 (d) of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) and 40 C.F.R. § 130.7 (b), the Board shall notify each locality in which the waterway or segment lies. The written notification shall include, at a minimum: (i) a description of the reasons the waters do not meet the water quality standard including specific parameters and criteria not met; (ii) a layman's description of the location of the waters; (iii) the known sources of the pollution; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the failure of the waterway or segment to meet the standards. After receipt of the notification, local governments shall have thirty days to comment.

D. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the Board shall notify, in writing, the locality wherein the discharge does or is proposed to take place of, at a minimum: (i) the name of the applicant; (ii) the nature of the application and proposed discharge; (iii) the availability and timing of any comment period; and (iv) upon request, any other information known to, or in the possession of, the Board or the Department regarding the applicant not required to be held confidential by this chapter. The Board shall make a good faith effort to provide this same notice and information to (i) each locality and riparian property owner to a distance one quarter mile downstream and one quarter mile upstream or to the fall line whichever is closer on tidal waters, and (ii) each locality and riparian property owner to a distance one half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river, at the point or proposed point of discharge, is two miles wide or greater, the riparian property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdictions upon request by the Board.

E. Upon the commencement of public notice of an enforcement action pursuant to this chapter, the Board shall notify, in writing, the locality where the alleged offense has or is taking place of: (i) the name of the alleged violator; (ii) the facts of the alleged violation; (iii) the statutory remedies for the alleged violation; (iv) the availability and timing of any comment period; and (v) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the alleged violation.

F. The comment periods established in subsections B and C shall in no way impact a locality's ability to comment during any additional comment periods established by the Board.

1988, c. 434; 1996, c. [160](#); 1997, c. [581](#).

§62.1-44.15:4.1. Listing and notice of confirmed oil releases and discharges.

The Department of Environmental Quality shall notify the Department of Health of any confirmed release or discharge of oil, as defined in §§ [62.1-44.34:8](#) and [62.1-44.34:14](#), respectively, which requires that a site characterization investigation be conducted. Monthly notification to the Department of Health shall occur within one week from the last day of the previous month and shall include information on the location of the site of each confirmed release or discharge during the monthly reporting period. The reporting of such information shall begin for releases or discharges of oil that have been confirmed on and after January 1, 1999.

1998, c. [795](#).

§62.1-44.15:5. Repealed.

Repealed by Acts 2007, c. [659](#), cl. 3.

§62.1-44.15:5.01. Coordinated review of water resources projects.

A. Applications for water resources projects that require an individual Virginia Water Protection Permit and a Virginia Marine Resources permit under § [28.2-1205](#) shall be submitted and processed through a joint application and review process.

B. The Director and the Commissioner of the Virginia Marine Resources Commission, in consultation with the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Department of Historic Resources, the Department of Health, the Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and any other appropriate or interested state

agency, shall coordinate the joint review process to ensure the orderly evaluation of projects requiring both permits.

C. The joint review process shall include, but not be limited to, provisions to ensure that: (i) the initial application for the project shall be advertised simultaneously by the Department of Environmental Quality and the Virginia Marine Resources Commission; (ii) project reviews shall be completed by all state agencies that have been asked to review and provide comments within 45 days of project notification by the Department of Environmental Quality and the Virginia Marine Resources Commission; (iii) the Board and the Virginia Marine Resources Commission shall coordinate permit issuance and, to the extent practicable, shall take action on the permit application no later than one year after the agencies have received complete applications; (iv) to the extent practicable, the Board and the Virginia Marine Resources Commission shall take action concurrently, but no more than six months apart; and (v) upon taking its final action on each permit, the Board and the Virginia Marine Resources Commission shall provide each other with notification of their actions and any and all supporting information, including any background materials or exhibits used in the application. Any state agency asked to review and provide comments in accordance with clause (ii) shall provide such comments within 45 days of project notification by the Department of Environmental Quality and the Virginia Marine Resources Commission or be deemed to have waived its right to provide comment.

D. If requested by the applicant, the Department of Environmental Quality shall convene a preapplication review panel to assist applicants for water resources projects in the early identification of issues related to the protection of beneficial instream and offstream uses of state waters. The Virginia Marine Resources Commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, and the Department of Environmental Quality shall participate in the preapplication review panel by providing information and guidance on the potential natural resource impacts and regulatory implications of the options being considered by the applicant. However, the participation by these agencies in such a review process shall not limit any authority they may exercise pursuant to state and federal laws or regulations.

2005, c. [49](#); 2011, cc. [829](#), [842](#).

§62.1-44.15:5.02. Low-flow protections in Potomac River.

A. Virginia Water Protection Permits issued after July 1, 2007, authorizing withdrawal of water from the Potomac River or its tributaries between the West Virginia border and Little Falls for any purpose other than municipal water supply, shall incorporate low-flow protection requirements if the maximum consumptive use allowed by the permit exceeds 500,000 gallons per day. Such permits shall require that the permittee provide or secure sufficient offstream storage to augment instream flow during low-flow periods in an amount equal to the amount that the permittee's consumptive use exceeds 500,000 gallons per day. The permit shall specify the instream flow volume at which low-flow protection is to be implemented.

B. Permittees may comply with the requirements of this section by: (i) constructing or acquiring facilities for offstream storage of water that may be used to replace their consumptive use withdrawals exceeding 500,000 gallons per day during low-flow periods; (ii) purchasing storage capacity in facilities owned by another entity, sufficient to replace their consumptive use withdrawals exceeding 500,000 gallons per day during low-flow periods; or (iii) agreeing to a permit condition limiting consumptive use to not more than 500,000 gallons per day during low-flow periods as designated in the permit.

C. No owner who holds a Virginia Water Protection Permit as described in this section shall withdraw water for consumptive use in excess of 500,000 gallons per day, except in compliance with permit requirements for low-flow augmentation.

D. Should the implementation of emergency measures pursuant to applicable law, regulation, or interjurisdictional agreement require more stringent temporary restrictions on consumptive use, those requirements shall override the provisions of permits issued pursuant to this section during the period that such requirements are in effect.

E. The requirements of this section shall not apply to the reissuance or amendment of any Virginia Water Protection Permit issued prior to July 1, 2007, unless such reissuance or amendment: (i) authorizes an increase in the permitted withdrawal in excess of 500,000 gallons per day for consumptive use; or (ii) authorizes a change from nonconsumptive to consumptive use, in excess of 500,000 gallons per day.

2007, c. [656](#).

§62.1-44.15:5.1. General permit for certain water quality improvement activities.

A. The Board shall coordinate the development of a general permit for activities such as bioengineered streambank stabilization projects and livestock stream crossings that: (i) are coverable by the Nationwide Permit Program (33 C.F.R. Part 330) of the United States Army Corps of Engineers and for which certification has not been waived by the Board; (ii) are conservation practices designed and supervised by a soil and water conservation district; (iii) meet the design standards of the Department of Conservation and Recreation and the United States Department of Agriculture's Natural Resource Conservation Service; and (iv) are intended to improve water quality. The development of the general permit shall be exempt from Article 2 (§ [2.2-4006](#) et seq.) of the Administrative Process Act.

B. The development of the general permit shall be a coordinated effort between the Department of Environmental Quality, the Virginia Marine Resources Commission and such other agencies as may be needed to develop a single, unified, process that will expedite the implementation of the projects described in subsection A and unify and streamline the permitting process for such projects.

C. A general permit pursuant to this section shall be promulgated as final by July 1, 1998.

1997, c. [845](#).

§62.1-44.15:5.2. General permits for ready-mix concrete plant discharges.

Any general permit issued by the Board for discharges of stormwater and process wastewater from industrial activities associated with the manufacture of ready-mix concrete shall apply to both permanent and portable plants. The general permit may include a requirement that settling basins for the treatment and control of process wastewater and commingled stormwater be lined with concrete or other impermeable materials for settling basins constructed on or before February 1, 1998, and shall include such a requirement for all settling basins constructed on or after February 2, 1998.

1998, c. [28](#).

§62.1-44.15:6. Permit fee regulations.

A. The Board shall promulgate regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, the Department of Game and Inland Fisheries' and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application

to issue, reissue, amend or modify any permit or certificate, which the Board has authority to issue under this chapter and Chapters 24 (§ [62.1-242](#) et seq.) and 25 (§ [62.1-254](#) et seq.) of this title, from the applicant for such permit or certificate for the purpose of more efficiently and expeditiously processing permits. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts. The Board shall have no authority to charge such fees where the authority to issue such permits has been delegated to another agency that imposes permit fees.

B1. Permit fees charged an applicant for a Virginia Pollutant Discharge Elimination System permit or a Virginia Pollution Abatement permit shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. However, notwithstanding any other provision of law, in no instance shall the Board charge a fee for a permit pertaining to a farming operation engaged in production for market or for a permit pertaining to maintenance dredging for federal navigation channels or other Corps of Engineers- or Department of the Navy-sponsored dredging projects or for the regularly scheduled renewal of an individual permit for an existing facility. Fees shall be charged for a major modification or reissuance of a permit initiated by the permittee that occurs between permit issuance and the stated expiration date. No fees shall be charged for a modification or amendment made at the Board's initiative. In no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major Industrial	\$24,000
Major Municipal	\$21,300
Minor Industrial with nonstandard limits	\$10,300
Minor Industrial with standard limits	\$6,600
Minor Municipal greater than 100,000 gallons per day	\$7,500
Minor Municipal 10,001-100,000 gallons per day	\$6,000
Minor Municipal 1,000-10,000 gallons per day	\$5,400
Minor Municipal less than 1,000 gallons per day	\$2,000
General-industrial stormwater management	\$500
General-stormwater management-phase I land clearing	\$500
General-stormwater management-phase II land clearing	\$300
General-other	\$600

2. Virginia Pollution Abatement

Industrial/Wastewater 10 or more inches per year	\$15,000
Industrial/Wastewater less than 10 inches per year	\$10,500
Industrial/Sludge	\$7,500
Municipal/Wastewater	\$13,500
Municipal/Sludge	\$7,500
General Permit	\$600
Other	\$750

The fee for the major modification of a permit or certificate that occurs between the permit issuance and expiration dates shall be 50 percent of the maximum amount established by this subsection. No fees shall be charged for minor modifications or minor amendments to such permits. For the purpose of this subdivision, "minor modifications" or "minor amendments" means specific types of changes defined by the Board that are made to keep the permit current with routine changes to the facility or its operation that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

B2. Each permitted facility shall pay a permit maintenance fee to the Board by October 1 of each year, not to exceed the following amounts:

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major Industrial	\$4,800
Major Municipal greater than 10 million gallons per day	\$4,750
Major Municipal 2-10 million gallons per day	\$4,350
Major Municipal less than 2 million gallons per day	\$3,850
Minor Industrial with nonstandard limits	\$2,040
Minor Industrial with standard limits	\$1,320
Minor Industrial water treatment system	\$1,200
Minor Municipal greater than 100,000 gallons per day	\$1,500

Minor Municipal 10,001-100,000 gallons per day	\$1,200
Minor Municipal 1,000-10,000 gallons per day	\$1,080
Minor Municipal less than 1,000 gallons per day	\$400

2. Virginia Pollution Abatement

Industrial/Wastewater 10 or more inches per year	\$3,000
Industrial/Wastewater less than 10 inches per year	\$2,100
Industrial/Sludge	\$3,000
Municipal/Wastewater	\$2,700
Municipal/Sludge	\$1,500

An additional permit maintenance fee of \$1,000 shall be collected from facilities in a toxics management program and an additional permit maintenance fee shall be collected from facilities that have more than five process wastewater discharge outfalls. Permit maintenance fees shall be collected annually and shall be remitted by October 1 of each year. For a local government or public service authority with permits for multiple facilities in a single jurisdiction, the permit maintenance fees for permits held as of April 1, 2004, shall not exceed \$20,000 per year. No permit maintenance fee shall be assessed for facilities operating under a general permit or for permits pertaining to a farming operation engaged in production for market.

B3. Permit application fees charged for Virginia Water Protection Permits, ground water withdrawal permits, and surface water withdrawal permits shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions and the size of the proposed impact. Only one permit fee shall be assessed for a water protection permit involving elements of more than one category of permit fees under this section. The fee shall be assessed based upon the primary purpose of the proposed activity. In no instance shall the Board charge a fee for a permit pertaining to maintenance dredging for federal navigation channels or other U.S. Army Corps of Engineers- or Department of the Navy-sponsored dredging projects, and in no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit	Maximum Amount
1. Virginia Water Protection	
Individual-wetland impacts	\$2,400 plus \$220 per 1/10 acre of impact over two acres, not to exceed \$60,000
Individual-minimum instream	\$25,000

flow

Individual-reservoir	\$35,000
Individual-nonmetallic mineral mining	\$7,500
General-less than 1/10 acre impact	\$0
General-1/10 to 1/2 acre impact	\$600
General-greater than 1/2 to one acre impact	\$1,200
General-greater than one acre to two acres of impact	\$120 per 1/10 acre of impact
2. Ground Water Withdrawal	\$6,000
3. Surface Water Withdrawal	\$12,000

No fees shall be charged for minor modifications or minor amendments to such permits. For the purpose of this subdivision, "minor modifications" or "minor amendments" means specific types of changes defined by the Board that are made to keep the permit current with routine changes to the facility or its operation that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

C. When promulgating regulations establishing permit fees, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.

D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board shall make a report on the implementation of the water permit program to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources and the House Committee on Finance. The report shall include the following: (i) the total costs, both direct and indirect, including the costs of overhead, water quality planning, water quality assessment, operations coordination, and surface water and ground water investigations, (ii) the total fees collected by permit category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal funds received, (v) the Board's use of the

fees, the general funds, and the federal funds, (vi) the number of permit applications received by category, (vii) the number of permits issued by category, (viii) the progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and indirect costs to neighboring states of administering their water permit programs, including what activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders and applicants.

E. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Board.

F. Permit fee schedules shall apply to permit programs in existence on July 1, 1992, any additional permits that may be required by the federal government and administered by the Board, or any new permit required pursuant to any law of the Commonwealth.

G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit fees for facilities that have established a record of compliance with the terms and requirements of their permits and shall establish criteria by regulation to provide for reductions in the annual fee amount assessed for facilities accepted into the Department's programs to recognize excellent environmental performance.

1992, cc. 621, 657; 1993, cc. 749, 756; 1995, c. [107](#); 1997, cc. [115](#), [154](#); 2002, c. [822](#); 2004, cc. [249](#), [324](#); 2011, cc. [87](#), [149](#).

§62.1-44.15:7. Permit Program Fund established; use of moneys.

A. There is hereby established a special, nonreverting fund in the state treasury to be known as the State Water Control Board Permit Program Fund, hereafter referred to as the Fund. Notwithstanding the provisions of § [2.2-1802](#), all moneys collected pursuant to § [62.1-44.15:6](#) shall be paid into the state treasury to the credit of the Fund.

B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.

C. The Board is authorized and empowered to release moneys from the Fund, on warrants issued by the State Comptroller, for the purposes of recovering portions of the costs of processing applications under this chapter and Chapters 24 (§ [62.1-242](#) et seq.) and 25 (§ [62.1-254](#) et seq.) of this title under the direction of the Executive Director.

D. An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller and furnished upon request to the Governor or the General Assembly.

1992, cc. 621, 657 .

§62.1-44.15:8. Conformance with federal requirements.

Notwithstanding the provisions of this article, any fee system developed by the Board may be modified by regulation promulgated by the Board, as may be necessary to conform with the requirements of the federal Clean Water Act and any regulations promulgated thereunder. Any modification imposed under this section shall be submitted to the members of the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Conservation and Natural Resources, and Finance.

1992, cc. 621, 657 .

§62.1-44.15:20. Virginia Water Protection Permit.

A. Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to:

1. Excavate in a wetland;
2. On or after October 1, 2001, conduct the following in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or
3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.

B. The Board shall, after providing an opportunity for public comment, issue a Virginia Water Protection Permit if it has determined that the proposed activity is con-

sistent with the provisions of the Clean Water Act and the State Water Control Law and will protect instream beneficial uses.

C. Prior to the issuance of a Virginia Water Protection Permit, the Board shall consult with and give full consideration to any relevant information contained in the state water supply plan described in subsection A of § [62.1-44.38:1](#) as well as to the written recommendations of the following agencies: the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, the Department of Agriculture and Consumer Services, and any other interested and affected agencies. When considering the state water supply plan, nothing shall be construed to limit the operation or expansion of an electric generation facility located on a man-made lake or impoundment built for the purpose of providing cooling water to such facility. Such consultation shall include the need for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within 45 days after notification by the Board. If written comments are not submitted by an agency within this time period, the Board shall assume that the agency has no comments on the proposed permit and deem that the agency has waived its right to comment. After the expiration of the 45-day period, any such agency shall have no further opportunity to comment.

D. Issuance of a Virginia Water Protection Permit shall constitute the certification required under § 401 of the Clean Water Act.

E. No locality may impose wetlands permit requirements duplicating state or federal wetlands permit requirements. In addition, no locality shall impose or establish by ordinance, policy, plan, or any other means provisions related to the location of wetlands or stream mitigation in satisfaction of aquatic resource impacts regulated under a Virginia Water Protection Permit or under a permit issued by the U.S. Army Corps of Engineers pursuant to § 404 of the Clean Water Act. However, a locality's determination of allowed uses within zoning classifications or its approval of the siting or construction of wetlands or stream mitigation banks or other mitigation projects shall not be affected by the provisions of this subsection.

F. The Board shall assess compensation implementation, inventory permitted wetland impacts, and work to prevent unpermitted impacts to wetlands.

2007, c. [659](#); 2010, c. [233](#); 2011, cc. [829](#), [842](#); 2012, c. [628](#).

§62.1-44.15:21. Impacts to wetlands.

A. Permits shall address avoidance and minimization of wetland impacts to the maximum extent practicable. A permit shall be issued only if the Board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

B. Permits shall contain requirements for compensating impacts on wetlands. Such compensation requirements shall be sufficient to achieve no net loss of existing wetland acreage and functions and may be met through (i) wetland creation or restoration, (ii) purchase or use of mitigation bank credits pursuant to § [62.1-44.15:23](#), (iii) contribution to the Wetland and Stream Replacement Fund established pursuant to § [62.1-44.15:23.1](#) to provide compensation for impacts to wetlands, streams, or other state waters that occur in areas where neither mitigation bank credits nor credits from a Board-approved fund that have met the success criteria are available at the time of permit application, or (iv) contribution to a Board-approved fund dedicated to achieving no net loss of wetland acreage and functions. When utilized in conjunction with creation, restoration, or mitigation bank credits, compensation may incorporate (a) preservation or restoration of upland buffers adjacent to wetlands or other state waters or (b) preservation of wetlands.

C. The Board shall utilize the U.S. Army Corps of Engineers' "Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" as the approved method for delineating wetlands. The Board shall adopt appropriate guidance and regulations to ensure consistency with the U.S. Army Corps of Engineers' implementation of delineation practices. The Board shall also adopt guidance and regulations for review and approval of the geographic area of a delineated wetland. Any such approval of a delineation shall remain effective for a period of five years; however, if the Board issues a permit pursuant to this article for an activity in the delineated wetland within the five-year period, the approval shall remain effective for the term of the permit. Any delineation accepted by the U.S. Army Corps of Engineers as sufficient for its exercise of jurisdiction pursuant to § 404 of the Clean Water Act shall be determinative of the geographic area of that delineated wetland.

D. The Board shall develop general permits for such activities in wetlands as it deems appropriate. General permits shall include such terms and conditions as the Board deems necessary to protect state waters and fish and wildlife resources from significant impairment. The Board is authorized to waive the requirement for a general

permit or deem an activity in compliance with a general permit when it determines that an isolated wetland is of minimal ecological value. The Board shall develop general permits for:

1. Activities causing wetland impacts of less than one-half of an acre;
2. Facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or State Corporation Commission. No Board action on an individual or general permit for such facilities shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval. The Board and the State Corporation Commission shall develop a memorandum of agreement pursuant to §§ [56-46.1](#), [56-265.2](#), [56-265.2:1](#), and [56-580](#) to ensure that consultation on wetland impacts occurs prior to siting determinations;
3. Coal, natural gas, and coalbed methane gas mining activities authorized by the Department of Mines, Minerals and Energy, and sand mining;
4. Virginia Department of Transportation or other linear transportation projects; and
5. Activities governed by nationwide or regional permits approved by the Board and issued by the U.S. Army Corps of Engineers. Conditions contained in the general permits shall include, but not be limited to, filing with the Board any copies of pre-construction notification, postconstruction report, and certificate of compliance required by the U.S. Army Corps of Engineers.

E. Within 15 days of receipt of an individual permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. Within 120 days of receipt of a complete application, the Board shall issue the permit, issue the permit with conditions, deny the permit, or decide to conduct a public meeting or hearing. If a public meeting or hearing is held, it shall be held within 60 days of the decision to conduct such a proceeding, and a final decision as to the permit shall be made within 90 days of completion of the public meeting or hearing.

F. Within 15 days of receipt of a general permit application, the Board shall review the application for completeness and either accept the application or request additional specific information from the applicant. A determination that an application is complete shall not mean the Board will issue the permit but means only that the applicant has submitted sufficient information to process the application. The Board

shall deny, approve, or approve with conditions any application for coverage under a general permit within 45 days of receipt of a complete preconstruction application. The application shall be deemed approved if the Board fails to act within 45 days.

G. No Virginia Water Protection Permit shall be required for impacts to wetlands caused by activities governed under Chapter 13 (§ [28.2-1300](#) et seq.) of Title 28.2 or normal agricultural activities or normal silvicultural activities. This section shall also not apply to normal residential gardening, lawn and landscape maintenance, or other similar activities that are incidental to an occupant's ongoing residential use of property and of minimal ecological impact. The Board shall develop criteria governing this exemption and shall specifically identify the activities meeting these criteria in its regulations.

H. No Virginia Water Protection Permit shall be required for impacts caused by the construction or maintenance of farm or stock ponds, but other permits may be required pursuant to state and federal law. For purposes of this exclusion, farm or stock ponds shall include all ponds and impoundments that do not fall under the authority of the Virginia Soil and Water Conservation Board pursuant to Article 2 (§ [10.1-604](#) et seq.) of Chapter 6 pursuant to normal agricultural or silvicultural activities.

2007, c. [659](#); 2008, c. [244](#); 2013, c. [742](#).

§62.1-44.15:22. Water withdrawals and preservation of instream flow.

A. Conditions contained in a Virginia Water Protection Permit may include but are not limited to the volume of water which may be withdrawn as a part of the permitted activity and conditions necessary to protect beneficial uses. Domestic and other existing beneficial uses shall be considered the highest priority uses.

B. Notwithstanding any other provision, no Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal. No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

C. The Board may issue an Emergency Virginia Water Protection Permit for a new or increased withdrawal when it finds that because of drought there is an insufficient public drinking water supply that may result in a substantial threat to human health or public safety. Such a permit may be issued to authorize the proposed activity only after conservation measures mandated by local or state authorities have failed to protect public health and safety and notification of the agencies designated in § [62.1-44.15:20](#) C and only for the amount of water necessary to protect public health and safety. These agencies shall have five days to provide comments or written recommendations on the issuance of the permit. Notwithstanding the provisions of § [62.1-44.15:20](#) B, no public comment shall be required prior to issuance of the emergency permit. Not later than 14 days after the issuance of the emergency permit, the permit holder shall apply for a Virginia Water Protection Permit authorized under the other provisions of this section. The application for the Virginia Water Protection Permit shall be subject to public comment for a period established by the Board. Any Emergency Virginia Water Protection Permit issued under this section shall be valid until the Board approves or denies the subsequent request for a Virginia Water Protection Permit or for a period of one year, whichever occurs sooner. The fee for the emergency permit shall be 50 percent of the fee charged for a comparable Virginia Water Protection Permit.

2007, c. [659](#).

§62.1-44.15:23. Wetland and stream mitigation banks.

A. When a Virginia Water Protection Permit is conditioned upon compensatory mitigation for adverse impacts to wetlands or streams, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any wetland or stream mitigation bank in the Commonwealth, or in Maryland on property wholly surrounded by and located in the Potomac River if the mitigation banking instrument provides that the Board shall have the right to enter and inspect the property and that the mitigation bank instrument and the contract for the purchase or use of such credits may be enforced in the courts of the Commonwealth, including any banks owned by the permit applicant, that has been approved and is operating in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks as long as (i) the bank is in the same fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset or by the hydrologic unit system or dataset utilized and depicted or described in the bank's approved mitigation

banking instrument, as the impacted site, or in an adjacent subbasin within the same river watershed as the impacted site, or it meets all the conditions found in clauses (a) through (d) and either clause (e) or (f) of this subsection; (ii) the bank is ecologically preferable to practicable onsite and offsite individual mitigation options as defined by federal wetland regulations; and (iii) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same subbasin or adjacent subbasin within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the applicant demonstrates to the satisfaction of the Department of Environmental Quality that (a) the impacts will occur as a result of a Virginia Department of Transportation linear project or as the result of a locality project for a locality whose jurisdiction encompasses multiple river watersheds; (b) there is no practical same river watershed mitigation alternative; (c) the impacts are less than one acre in a single and complete project within a subbasin; (d) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (e) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (f) impacts within subbasins 02080108, 02080208, and 03010205, as defined by the National Watershed Boundary Dataset, are mitigated in-kind within those subbasins, as close as possible to the impacted site. For the purposes of this subsection, the hydrologic unit boundaries of the National Watershed Boundary Dataset or other hydrologic unit system may be adjusted by the Department of Environmental Quality to reflect site-specific geographic or hydrologic information provided by the bank sponsor.

For the purposes of this section, "river watershed" means the Potomac River Basin, Shenandoah River Basin, James River Basin, Rappahannock River Basin, Roanoke and Yadkin Rivers Basin, Chowan River Basin (including the Dismal Swamp and Albemarle Sound), Tennessee River Basin/Big Sandy River Basin Complex, Chesapeake Bay and its Small Coastal Basins, Atlantic Ocean, York River Basin, and the New River Basin.

B. The Department of Environmental Quality is authorized to serve as a signatory to agreements governing the operation of mitigation banks. The Commonwealth, its officials, agencies, and employees shall not be liable for any action taken under any agreement developed pursuant to such authority.

C. State agencies and localities are authorized to purchase credits from mitigation banks.

D. A locality may establish, operate and sponsor wetland or stream single-user mitigation banks within the Commonwealth that have been approved and are operated in accordance with the requirements of subsection A, provided that such single-user banks may only be considered for compensatory mitigation for the sponsoring locality's municipal, joint municipal or governmental projects. For the purposes of this subsection, the term "sponsoring locality's municipal, joint municipal or governmental projects" means projects for which the locality is the named permittee, and for which there shall be no third-party leasing, sale, granting, transfer, or use of the projects or credits. Localities may enter into agreements with private third parties to facilitate the creation of privately sponsored wetland and stream mitigation banks having service areas developed through the procedures of subsection A.

2007, c. [659](#); 2008, c. [173](#); 2011, c. [253](#); 2012, c. [631](#); 2014, c. [332](#).

§62.1-44.15:23.1. Wetland and Stream Replacement Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Wetland and Stream Replacement Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All contributions to the Board pursuant to clause (iii) of subsection B of § [62.1-44.15:21](#) shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Fund shall be administered and utilized by the Department of Environmental Quality. The Fund may be used as an additional mechanism for compensatory mitigation for impacts to aquatic resources (i) that result from activities authorized under (a) Section 404 and 401 of the Clean Water Act (33 U.S.C. § 1251 et seq.), (b) the Virginia Water Protection Permit Regulation ([9VAC25-210](#) et seq.), or (c) Section 10 of the Rivers and Harbors Act (33 U.S.C. § 403); (ii) that result from unauthorized activities in waters of the United States or state waters; and (iii) in other cases, as the appropriate regulatory agencies deem acceptable. Moneys in the Fund shall be used for the purpose of purchasing mitigation bank credits in compliance with the provisions of subsection A of § [62.1-44.15:23](#) as soon as practicable if qualifying credits are available. If such credits are not available within three years of the collection of moneys for a specific impact,

then funds shall be utilized either (1) to purchase credits from a Board-approved fund that have met the success criteria, if qualifying credits are available, (2) for the planning, construction, monitoring, and preservation of wetland and stream mitigation projects and preservation, enhancement, or restoration of upland buffers adjacent to wetlands or other state waters when used in conjunction with creation or restoration of wetlands and streams, or (3) for other water quality improvement projects as deemed acceptable by the Department of Environmental Quality. Such projects developed under clause (2) shall be developed in accordance with guidelines, responsibilities, and standards established by the Department of Environmental Quality for use, operation, and maintenance consistent with 33 CFR Part 332, governing compensatory mitigation for activities authorized by U.S. Army Corps of Engineer permits. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department of Environmental Quality. The Department may charge a reasonable fee to administer the Fund.

2013, c. [742](#).

§62.1-44.15:24. (For expiration date -- see note) Definitions.

As used in this article, unless the context requires a different meaning:

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation provisions of this chapter.

"CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, as amended by P.L. 95-217, P.L. 95-576, P.L. 96-483, and P.L. 97-117, or any subsequent revisions thereto.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in § [62.1-44.15:34](#).

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a state permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations, and this article and its attendant regulations, using management practices, control techniques, and system, design, and engineering methods, and such other provisions that are appropriate.

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed

but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of state VSMP general permit coverage has been provided where applicable.

"Permittee" means the person to which the permit or state permit is issued.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"State permit" means an approval to conduct a land-disturbing activity issued by the Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the Board for stormwater discharges from an MS4. Under these permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations and this article and its attendant regulations.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater management plan" means a document containing material describing methods for complying with the requirements of a VSMP.

"Subdivision" means the same as defined in § [15.2-2201](#).

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a Virginia Stormwater Management Program or the Department. An authority may include a locality; state entity, including the Department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § [62.1-44.15:31](#), electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § [15.2-5102](#).

"Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

1989, cc. 467, 499, § 10.1-603.2; 1991, c. 84; 1994, cc. [605](#), [898](#); 2004, c. [372](#); 2006, cc. [21](#), [171](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, cc. [303](#), [598](#).

§62.1-44.15:24. (For effective date -- see notes) Definitions.

As used in this article, unless the context requires a different meaning:

"Agreement in lieu of a plan" means a contract between the VESMP authority or the Board acting as a VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of this article for the construction of a single-family detached residential structure; such contract may be executed by the VESMP authority in lieu of a soil erosion control and stormwater management plan or by the Board acting as a VSMP authority in lieu of a stormwater management plan.

"Applicant" means any person submitting a soil erosion control and stormwater management plan to a VESMP authority, or a stormwater management plan to the Board when it is serving as a VSMP authority, for approval in order to obtain authorization to commence a land-disturbing activity.

"CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, as amended by P.L. 95-217, P.L. 95-576, P.L. 96-483, and P.L. 97-117, or any subsequent revisions thereto.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Erosion impact area" means an area of land that is not associated with a current land-disturbing activity but is subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or any shoreline where the erosion results from wave action or other coastal processes.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

"Land-disturbance approval" means the same as that term is defined in § [62.1-44.3](#).

"Municipal separate storm sewer" or "MS4" means the same as that term is defined in § [62.1-44.3](#).

"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations, and this article and its attendant regulations, using management practices, control techniques, and system, design, and engineering methods, and such other provisions that are appropriate.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater.

"Owner" means the same as that term is defined in § [62.1-44.3](#). For a regulated land-disturbing activity that does not require a permit, "owner" also means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Permit" means a Virginia Pollutant Discharge Elimination System (VPDES) permit issued by the Board pursuant to § [62.1-44.15](#) for stormwater discharges from a land-disturbing activity or MS4.

"Permittee" means the person to whom the permit is issued.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

"Soil Erosion Control and Stormwater Management plan" or "plan" means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to this article.

"Stormwater," for the purposes of this article, means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater management plan" means a document containing material describing methods for complying with the requirements of a VSMP.

"Subdivision" means the same as that term is defined in § [15.2-2201](#).

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board that is established by a VESCP authority pursuant to Article 2.4 (§ [62.1-44.15:51](#) et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other

natural resources. The VESCP shall include, where applicable, such items as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of Article 2.4 (§ [62.1-44.15:51](#) et seq.).

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality that is approved by the Board to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ [62.1-44.15:51](#) et seq.). Only a locality for which the Department administered a Virginia Stormwater Management Program as of July 1, 2017, is authorized to choose to operate a VESCP pursuant to Article 2.4 (§ [62.1-44.15:51](#) et seq.).

"Virginia Erosion and Stormwater Management Program" or "VESMP" means a program established by a VESMP authority for the effective control of soil erosion and sediment deposition and the management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program shall include such items as local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of this article.

"Virginia Erosion and Stormwater Management Program authority" or "VESMP authority" means the Board or a locality approved by the Board to operate a Virginia Erosion and Stormwater Management Program. For state agency or federal entity land-disturbing activities and land-disturbing activities subject to approved standards and specifications, the Board shall serve as the VESMP authority.

"Virginia Stormwater Management Program" or "VSMP" means a program established by the Board pursuant to § [62.1-44.15:27.1](#) on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or more of land disturbance.

"Virginia Stormwater Management Program authority" or "VSMP authority" means the Board when administering a VSMP on behalf of a locality that, pursuant to subdivision B 3 of § [62.1-44.15:27](#), has chosen not to adopt and administer a VESMP.

"Water quality technical criteria" means standards set forth in regulations adopted pursuant to this article that establish minimum design criteria for measures to control nonpoint source pollution.

"Water quantity technical criteria" means standards set forth in regulations adopted pursuant to this article that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which water drains may be considered the single outlet for the watershed.

1989, cc. 467, 499, § 10.1-603.2; 1991, c. 84; 1994, cc. [605](#), [898](#); 2004, c. [372](#); 2006, cc. [21](#), [171](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, cc. [303](#), [598](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:25. (For expiration date -- see notes) Further powers and duties of the State Water Control Board.

In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and control stormwater runoff in the Commonwealth. The Board may issue, deny, revoke, terminate, or amend state stormwater individual permits or coverage issued under state general permits; adopt regulations; approve and periodically review Virginia Stormwater Management Programs and management programs developed in conjunction with a state municipal separate storm sewer permit; enforce the provisions of this article; and otherwise act to ensure the general health, safety, and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater. The Board may:

1. Issue, deny, amend, revoke, terminate, and enforce state permits for the control of stormwater discharges from Municipal Separate Storm Sewer Systems and land-disturbing activities.
2. Take administrative and legal actions to ensure compliance with the provisions of this article by any person subject to state or VSMP authority permit requirements under this article, and those entities with an approved Virginia Stormwater Management Program and management programs developed in conjunction with a state

municipal separate storm sewer system permit, including the proper enforcement and implementation of, and continual compliance with, this article.

3. In accordance with procedures of the Administrative Process Act ([§ 2.2-4000](#) et seq.), amend or revoke any state permit issued under this article on the following grounds or for good cause as may be provided by the regulations of the Board:

a. Any person subject to state permit requirements under this article has violated or failed, neglected, or refused to obey any order or regulation of the Board, any order, notice, or requirement of the Department, any condition of a state permit, any provision of this article, or any order of a court, where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations, including the disregard for or inability to comply with applicable laws, regulations, permit conditions, orders, rules, or requirements;

b. Any person subject to state permit requirements under this article has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a state permit, or in any other report or document required under this law or under the regulations of the Board;

c. The activity for which the state permit was issued causes unreasonable degradation of properties, water quality, stream channels, and other natural resources; or

d. There exists a material change in the basis on which the state permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity controlled by the state permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

4. Cause investigations and inspections to ensure compliance with any state or VSMP authority permits, conditions, policies, rules, regulations, rulings, and orders which it may adopt, issue, or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance.

5. In accordance with procedures of the Administrative Process Act ([§ 2.2-4000](#) et seq.), adopt rules governing (i) hearings, (ii) the filing of reports, (iii) the issuance of permits and special orders, and (iv) all other matters relating to procedure, and amend or cancel any rule adopted.

6. Issue special orders to any person subject to state or VSMP authority permit requirements under this article (i) who is permitting or causing the unreasonable degradation of properties, water quality, stream channels, and other natural resources to cease and desist from such activities; (ii) who has failed to construct facilities in accordance with final approved plans and specifications to construct such facilities; (iii) who has violated the terms and provisions of a state or VSMP authority permit issued by the Board or VSMP authority to comply with the provisions of the state or VSMP authority permit, this article, and any decision of the VSMP authority, the Department, or the Board; or (iv) who has violated the terms of an order issued by the court, the VSMP authority, the Department, or the Board to comply with the terms of such order, and also to issue orders to require any person subject to state or VSMP authority permit requirements under this article to comply with the provisions of this article and any decision of the Board.

Such special orders are to be issued in accordance with the procedures of the Administrative Process Act ([§ 2.2-4000](#) et seq.) and shall become effective not less than 15 days after the date of mailing with confirmation of delivery of the notice to the last known address of any person subject to state or VSMP authority permit requirements under this article, provided that if the Board finds that any such person subject to state or VSMP authority permit requirements under this article is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety, or welfare or the health of animals, fish, or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing any person subject to state or VSMP authority permit requirements under this article to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to any person subject to state or VSMP authority permit requirements under this article, to affirm, modify, amend, or cancel such emergency special order. If any person subject to state or VSMP authority permit requirements under this article who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with [§ 62.1-44.15:48](#), and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the

recipient of the order may appeal its issuance to the circuit court of the jurisdiction wherein the discharge was alleged to have occurred.

The provisions of this section notwithstanding, the Board may proceed directly under § [62.1-44.15:48](#) for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

With the consent of any person subject to state or VSMP authority permit requirements under this article who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VSMP authority, any condition of a state or VSMP authority permit, or any provision of this article, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for violations in specific sums not to exceed the limit specified in subsection A of § [62.1-44.15:48](#). Such civil charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant to subsection A of § [62.1-44.15:48](#) and shall not be subject to the provisions of [§ 2.2-514](#). Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to [§ 62.1-44.15:29](#).

2004, c. [372](#), § 10.1-603.2:1; 2006, c. [171](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:25. (For effective date -- see notes) Further powers and duties of the State Water Control Board.

In addition to other powers and duties conferred upon the Board by this chapter, it shall permit, regulate, and control soil erosion and stormwater runoff in the Commonwealth and may otherwise act to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion. It shall be the duty of the Board and it shall have the authority to:

1. Issue special orders pursuant to subdivision (8a) or (8b) of [§ 62.1-44.15](#) to any owner subject to requirements under this article, except that for any land-disturbing activity that disturbs an area measuring not less than 10,000 square feet but less than one acre in an area of a locality that is not designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act ([§ 62.1-44.15:67](#) et seq.) and that is not part of a larger common plan of development or sale that disturbs one acre or more of land, such special orders may include civil penalties of up to \$5,000 per violation, not to exceed \$50,000 per order. Such civil penalties shall be

paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to [§ 62.1-44.15:29.1](#).

The provisions of this section notwithstanding, the Board may proceed directly under [§ 62.1-44.15:48](#) or Article 5 ([§ 62.1-44.20](#) et seq.) for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

2. With the consent of any owner subject to requirements under this article, the Board may provide, in an order issued by the Board pursuant to subdivision (8d) of [§ 62.1-44.15](#) against such owner, for the payment of civil charges for violations in specific sums. Such sums shall not exceed the limit specified in subdivision A 1 or B 1, as applicable, of [§ 62.1-44.15:48](#). Such civil charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant to [§ 62.1-44.15:48](#) and shall not be subject to the provisions of [§ 2.2-514](#). Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to [§ 62.1-44.15:29.1](#).

2004, c. [372](#), § 10.1-603.2:1; 2006, c. [171](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:25.1. (For effective date -- see notes) Additional local authority.

Any locality serving as a VESMP authority shall have the authority to:

1. Issue orders in accordance with the procedures of subdivision 10 a of [§ 15.2-2122](#) to any owner subject to the requirements of this article. Such orders may include civil penalties in specific sums not to exceed the limit specified in subdivision A 2 or B 2, as applicable, of [§ 62.1-44.15:48](#), and such civil penalties shall be paid into the treasury of the locality in accordance with subdivision A 2 of [§ 62.1-44.15:48](#). The provisions of this section notwithstanding, the locality may proceed directly under [§ 62.1-44.15:48](#) for any past violation or violations of any provision of this article or any ordinance duly adopted hereunder.

2. Issue consent orders with the consent of any person who has violated or failed, neglected, or refused to obey any ordinance adopted pursuant to the provisions of this article, any condition of a locality's land-disturbance approval, or any order of a locality serving as a VESMP authority. Such consent order may provide for the payment of civil charges not to exceed the limits specified in subdivision A 2 or B 2, as applicable, of [§ 62.1-44.15:48](#). Such civil charges shall be in lieu of any appropriate civil penalty that could be imposed under this article. Any civil charges collected shall

be paid to the treasury of the locality in accordance with subdivision A 2 of § [62.1-44.15:48](#).

2016, cc. [68](#), [758](#).

§62.1-44.15:26. (For repeal date -- see notes) State permits.

A. All state permits issued by the Board under this article shall have fixed terms. The term of a state permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed five years. The term of a permit issued by the Board shall not be extended by modification beyond the maximum duration and the permit shall expire at the end of the term unless it is administratively continued in accordance with Board regulations.

B. State individual construction permits shall be administered by the Department.

2004, c. [372](#), § 10.1-603.2:2; 2006, c. [171](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:27. (For expiration date -- see notes) Establishment of Virginia Stormwater Management Programs.

A. Any locality that operates a regulated MS4 or that notifies the Department of its decision to participate in the establishment of a VSMP shall be required to adopt a VSMP for land-disturbing activities consistent with the provisions of this article according to a schedule set by the Department. Such schedule shall require implementation no later than July 1, 2014. Thereafter, the Department shall provide an annual schedule by which localities can submit applications to implement a VSMP. Localities subject to this subsection are authorized to coordinate plan review and inspections with other entities in accordance with subsection H. The Department shall operate a VSMP on behalf of any locality that does not operate a regulated MS4 and that does not notify the Department, according to a schedule set by the Department, of its decision to participate in the establishment of a VSMP. A locality that decides not to establish a VSMP shall still comply with the requirements set forth in this article and attendant regulations as required to satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment Control Law (§ [62.1-44.15:51](#) et seq.). A locality that is subject to the provisions of the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.) also shall adopt requirements set forth in this article and attendant regulations as required to regulate Chesapeake Bay Preservation Act land-disturbing activities in accordance with § [62.1-44.15:28](#).

Notwithstanding any other provision of this subsection, any county that operates an MS4 that became a regulated MS4 on or after January 1, 2014 may elect, on a schedule set by the Department, to defer the implementation of the county's VSMP until no later than January 1, 2015. During this deferral period, when such county thus lacks the legal authority to operate a VSMP, the Department shall operate a VSMP on behalf of the county and address post-construction stormwater runoff and the required design criteria for stormwater runoff controls. Any such county electing to defer the establishment of its VSMP shall still comply with the requirements set forth in this article and attendant regulations as required to satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment Control Law (§ [62.1-44.15:51](#) et seq.).

B. Any town, including a town that operates a regulated MS4, lying within a county that has adopted a VSMP in accordance with subsection A may decide, but shall not be required, to become subject to the county's VSMP. Any town lying within a county that operates an MS4 that became a regulated MS4 on or after January 1, 2014 may elect to become subject to the county's VSMP according to the deferred schedule established in subsection A. During the county's deferral period, the Department shall operate a VSMP on behalf of the town and address post-construction stormwater runoff and the required design criteria for stormwater runoff controls for the town as provided in subsection A. If a town lies within the boundaries of more than one county, the town shall be considered to be wholly within the county in which the larger portion of the town lies. Towns shall inform the Department of their decision according to a schedule established by the Department. Thereafter, the Department shall provide an annual schedule by which towns can submit applications to adopt a VSMP.

C. In support of VSMP authorities, the Department shall:

1. Provide assistance grants to localities not currently operating a local stormwater management program to help the localities to establish their VSMP.
2. Provide technical assistance and training.
3. Provide qualified services in specified geographic areas to a VSMP to assist localities in the administration of components of their programs. The Department shall actively assist localities in the establishment of their programs and in the selection of a contractor or other entity that may provide support to the locality or regional support to several localities.

D. The Department shall develop a model ordinance for establishing a VSMP consistent with this article and its associated regulations, including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities.

E. Each locality that administers an approved VSMP shall, by ordinance, establish a VSMP that shall be administered in conjunction with a local MS4 program and a local erosion and sediment control program if required pursuant to the Erosion and Sediment Control Law (§ [62.1-44.15:51](#) et seq.), and which shall include the following:

1. Consistency with regulations adopted in accordance with provisions of this article;
2. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and
3. Provisions for the integration of the VSMP with local erosion and sediment control, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing construction in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

F. The Board may approve a state entity, including the Department, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § [15.2-5102](#) to operate a Virginia Stormwater Management Program consistent with the requirements of this article and its associated regulations and the VSMP authority's Department-approved annual standards and specifications. For these programs, enforcement shall be administered by the Department and the Board where applicable in accordance with the provisions of this article.

G. The Board shall approve a VSMP when it deems a program consistent with this article and associated regulations, including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities.

H. A VSMP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to carry out or assist with the responsibilities of this article. A VSMP authority may enter into contracts with third-party professionals who hold certificates of competence in the appropriate subject areas, as provided in subsection A of § [62.1-44.15:30](#), to carry out any or all of the responsibilities that this article requires of a VSMP authority, including plan review and inspection but not including enforcement.

I. If a locality establishes a VSMP, it shall issue a consolidated stormwater management and erosion and sediment control permit that is consistent with the provisions of the Erosion and Sediment Control Law (§ [62.1-44.15:51](#) et seq.). When available in accordance with subsection J, such permit, where applicable, shall also include a copy of or reference to state VSMP permit coverage authorization to discharge.

J. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VSMP authority shall then be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance.

K. Any VSMP adopted pursuant to and consistent with this article shall be considered to meet the stormwater management requirements under the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.) and attendant regulations, and effective July 1, 2014, shall not be subject to local program review under the stormwater management provisions of the Chesapeake Bay Preservation Act.

L. All VSMP authorities shall comply with the provisions of this article and the stormwater management provisions of the Erosion and Sediment Control Law (§ [62.1-44.15:51](#) et seq.) and related regulations. The VSMP authority responsible for regulating the land-disturbing activity shall require compliance with the issued permit, permit conditions, and plan specifications. The state shall enforce state permits.

1989, cc. 467, 499, § 10.1-603.3; 2004, c. [372](#); 2006, c. [171](#); 2009, c. [18](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, cc. [303](#), [598](#); 2017, c. [349](#).

§62.1-44.15:27. (For effective date -- see notes) Virginia Programs for Erosion Control and Stormwater Management.

A. Any locality that operates a regulated MS4 or that administers a Virginia Stormwater Management Program (VSMP) as of July 1, 2017, shall be required to adopt and

administer a VESMP consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.). The VESMP shall be adopted according to a process established by the Department.

B. Any locality that does not operate a regulated MS4 and for which the Department administers a VSMP as of July 1, 2017, shall choose one of the following options and shall notify the Department of its choice according to a process established by the Department:

1. Adopt and administer a VESMP consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.);

2. Adopt and administer a VESMP consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.), except that the Department shall provide the locality with review of the plan required by § [62.1-44.15:34](#) and provide a recommendation to the locality on the plan's compliance with the water quality and water quantity technical criteria; or

3. Adopt and administer a VESCP pursuant to Article 2.4 (§ [62.1-44.15:51](#) et seq.) that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.). For such a land-disturbing activity in a Chesapeake Bay Preservation Area, the VESCP authority also shall adopt requirements set forth in this article and attendant regulations as required to regulate those activities in accordance with §§ [62.1-44.15:28](#) and [62.1-44.15:34](#).

The Board shall administer a VSMP on behalf of each VESCP authority for any land-disturbing activity that (a) disturbs one acre or more of land or (b) disturbs less than

one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance.

C. Any town that is required to or elects to adopt and administer a VESMP or VESCP, as applicable, may choose one of the following options and shall notify the Department of its choice according to a process established by the Department:

1. Any town, including a town that operates a regulated MS4, lying within a county may enter into an agreement with the county to become subject to the county's VESMP. If a town lies within the boundaries of more than one county, it may enter into an agreement with any of those counties that operates a VESMP.

2. Any town that chooses not to adopt and administer a VESMP pursuant to subdivision B 3 and that lies within a county may enter into an agreement with the county to become subject to the county's VESMP or VESCP, as applicable. If a town lies within the boundaries of more than one county, it may enter into an agreement with any of those counties.

3. Any town that is subject to the provisions of the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.) may enter into an agreement with a county pursuant to subdivision C 1 or 2 only if the county administers a VESMP for land-disturbing activities that disturb 2,500 square feet or more.

D. Any locality that chooses not to implement a VESMP pursuant to subdivision B 3 may notify the Department at any time that it has chosen to implement a VESMP pursuant to subdivision B 1 or 2. Any locality that chooses to implement a VESMP pursuant to subdivision B 2 may notify the Department at any time that it has chosen to implement a VESMP pursuant to subdivision B 1. A locality may petition the Board at any time for approval to change from fully administering a VESMP pursuant to subdivision B 1 to administering a VESMP in coordination with the Department pursuant to subdivision B 2 due to a significant change in economic conditions or other fiscal emergency in the locality. The provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) shall govern any appeal of the Board's decision.

E. In support of VESMP authorities, the Department shall provide technical assistance and training and general assistance to localities in the establishment and administration of their individual or regional programs.

F. The Department shall develop a model ordinance for establishing a VESMP consistent with this article.

G. Each locality that operates a regulated MS4 or that chooses to administer a VESMP shall, by ordinance, establish a VESMP that shall be administered in conjunction with a local MS4 management program, if applicable, and which shall include the following:

1. Ordinances, policies, and technical materials consistent with regulations adopted in accordance with this article;
2. Requirements for land-disturbance approvals;
3. Requirements for plan review, inspection, and enforcement consistent with the requirements of this article, including provisions requiring periodic inspections of the installation of stormwater management measures. A VESMP authority may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management;
4. Provisions charging each applicant a reasonable fee to defray the cost of program administration for a regulated land-disturbing activity that does not require permit coverage. Such fee may be in addition to any fee charged pursuant to the statewide fee schedule established in accordance with subdivision 9 of § [62.1-44.15:28](#), although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the program. A VESMP authority shall hold a public hearing prior to establishing such fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESMP authority's expense involved;
5. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and
6. Provisions for the coordination of the VESMP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing land disturbance in order to make the submission and approval of plans, issuance of land-disturbance approvals, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

H. The Board shall approve a VESMP when it deems a program consistent with this article and associated regulations.

I. A VESMP authority may enter into agreements or contracts with the Department, soil and water conservation districts, adjacent localities, planning district commissions, or other public or private entities to carry out or assist with plan review and inspections. A VESMP authority may enter into contracts with third-party professionals who hold certifications in the appropriate subject areas, as provided in subsection A of § [62.1-44.15:30](#), to carry out any or all of the responsibilities that this article requires of a VESMP authority, including plan review and inspection but not including enforcement.

J. A VESMP authority shall be required to obtain evidence of permit coverage from the Department's online reporting system, where such coverage is required, prior to providing land-disturbance approval.

K. The VESMP authority responsible for regulating the land-disturbing activity shall require compliance with its applicable ordinances and the conditions of its land-disturbance approval and plan specifications. The Board shall enforce permits and require compliance with its applicable regulations, including when serving as a VSMP authority in a locality that chose not to adopt a VESMP in accordance with subdivision B 3.

1989, cc. 467, 499, § 10.1-603.3; 2004, c. [372](#); 2006, c. [171](#); 2009, c. [18](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, cc. [303](#), [598](#); 2016, cc. [68](#), [758](#); 2017, c. [349](#).

§62.1-44.15:27.1. (For effective date -- see notes) Virginia Stormwater Management Programs administered by the Board.

A. The Board shall administer a Virginia Stormwater Management Program (VSMP) on behalf of any locality that notifies the Department pursuant to subsection B of § [62.1-44.15:27](#) that it has chosen to not administer a VESMP as provided by subdivision B 3 of § [62.1-44.15:27](#). In such a locality:

1. The Board shall implement a VSMP in order to manage the quality and quantity of stormwater runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance, as required by this article.

2. No person shall conduct a land-disturbing activity until he has obtained land-disturbance approval from the VESCP authority and, if required, submitted to the Depart-

ment an application that includes a permit registration statement and stormwater management plan, and the Department has issued permit coverage.

B. The Board shall adopt regulations establishing specifications for the VSMP, including permit requirements and requirements for plan review, inspection, and enforcement that reflect the analogous stormwater management requirements for a VESMP set forth in applicable provisions of this article.

2016, cc. [68](#), [758](#).

§62.1-44.15:28. (For expiration date -- see notes) Development of regulations.

A. The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for Virginia Stormwater Management Programs. The regulations shall:

1. Establish standards and procedures for administering a VSMP;
2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law (§ [62.1-44.15:51](#) et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;
3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;
4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VSMP authority shall grant land-disturbing activity approval, the conditions and processes under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;
5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes include the costs associated with plan review, VSMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a

provision for a reduced fee for land-disturbing activities between 2,500 square feet and up to one acre in Chesapeake Bay Preservation Act ([§ 62.1-44.15:67](#) et seq.) localities. The fee schedule shall be governed by the following:

a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to [§ 62.1-44.15:29](#). However, whenever the Board has approved a VSMP, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VSMP authority.

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the Department and the VSMP to fully carry out their responsibilities under this article and its attendant regulations and local ordinances or standards and specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant regulations, ordinances, or annual standards and specifications.

c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the Board, or where the Board has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for an entity for which it has approved annual standards and specifications, shall be \$750 for each large construction activity with sites or common plans of development equal to or greater than five acres and \$450 for each small construction activity with sites or common plans of development equal to or greater than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where coverage has been issued under the Board's General Permit for Discharges of Stormwater from Construction Activities to a state agency or

federal entity for which it has approved annual standards and specifications. After establishment, such fees may be modified in the future through regulatory actions.

d. Until July 1, 2014, the Department is authorized to assess a \$125 reinspection fee for each visit to a project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection.

e. In establishing the fee schedule under this subdivision, the Department shall ensure that the VSMP authority portion of the statewide permit fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VSMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale.

f. When any fees are collected pursuant to this section by credit cards, business transaction costs associated with processing such payments may be additionally assessed;

6. Establish statewide standards for stormwater management from land-disturbing activities of one acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment control, consistent with the provisions of the Erosion and Sediment Control Law (§ [62.1-44.15:51](#) et seq.) and this article. However, such standards shall also apply to land-disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations;

7. Establish a procedure by which a stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

8. Notwithstanding the provisions of subdivision A 5, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide permit fee established pursuant to that subdivision shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

9. Provide for reciprocity with programs in other states for the certification of proprietary best management practices;

10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to [§ 62.1-44.15:27](#) or [62.1-44.15:33](#);

11. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

13. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer administration of the VSMP to the Department;

14. Establish a statewide permit fee schedule for stormwater management related to municipal separate storm sewer system permits;

15. Provide for the evaluation and potential inclusion of emerging or innovative stormwater control technologies that may prove effective in reducing nonpoint source pollution; and

16. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 ([§ 54.1-400](#) et seq.) or 22 ([§ 54.1-2200](#) et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

B. The Board may integrate and consolidate components of the regulations implementing the Erosion and Sediment Control program and the Chesapeake Bay Preservation Area Designation and Management program with the regulations governing the Virginia Stormwater Management Program (VSMP) Permit program or repeal components so that these programs may be implemented in a consolidated manner that provides greater consistency, understanding, and efficiency for those regulated by and administering a VSMP.

1989, cc. 467, 499, § 10.1-603.4; 1991, c. 84; 2004, c. [372](#); 2005, c. [102](#); 2006, c. [21](#); 2008, c. [405](#); 2009, c. [709](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, cc. [303](#), [598](#); 2017, cc. [10](#), [163](#).

§62.1-44.15:28. (For effective date -- see notes) Development of regulations.

The Board is authorized to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, and that specify minimum technical criteria and administrative procedures for VESMPs. The regulations shall:

1. Establish standards and procedures for administering a VESMP;
2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be approved until it is reviewed by a plan reviewer certified pursuant to [§ 62.1-44.15:30](#), (ii) each inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to [§ 62.1-44.15:30](#), and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom is certified pursuant to [§ 62.1-44.15:30](#) and all of whom may be the same person;

3. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;
4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and sediment problems;
5. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of soil erosion and sediment resulting from land-disturbing activities;
6. Establish water quality and water quantity technical criteria. These criteria shall be periodically modified as required in order to reflect current engineering methods;
7. Require the provision of long-term responsibility for and maintenance of storm-water management control devices and other techniques specified to manage the quality and quantity of runoff;
8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VESMP authority shall grant land-disturbance approval, the conditions and processes under which such approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;
9. Establish a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include the costs associated with plan review, permit registration statement review, permit issuance, permit coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act ([§ 62.1-44.15:67](#) et seq.). The fee schedule shall be governed by the following:

- a. The revenue generated from the statewide fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to [§ 62.1-44.15:29](#). However, whenever the Board has approved a VESMP, no more than 30 percent of the total revenue generated by the statewide fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VESMP authority;
- b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a level sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities under this article and local ordinances or standards and specifications where applicable. When establishing a VESMP, the VESMP authority shall assess the statewide fees pursuant to the schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision a. A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities under this article and associated ordinances;
- c. In establishing the fee schedule under this subdivision, the Department shall ensure that the VESMP authority portion of the statewide fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single-family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VESMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale;
- d. When any fees are collected pursuant to this section by credit cards, business transaction costs associated with processing such payments may be additionally assessed;
- e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide fee established pursuant to this subdivision 9 shall be required for coverage under the General Permit for Discharges of Stormwater from Construction

Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

10. Establish statewide standards for soil erosion control and stormwater management from land-disturbing activities;

11. Establish a procedure by which a soil erosion control and stormwater management plan or stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

12. Provide for reciprocity with programs in other states for the certification of proprietary best management practices;

13. Require that VESMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.

a. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to [§ 62.1-44.15:27](#) or [62.1-44.15:33](#);

b. Any stream restoration or relocation project that incorporates natural channel design concepts is not a man-made channel and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this article;

14. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

15. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

16. Establish procedures to be followed when a locality chooses to change the type of program it administers pursuant to subsection D of [§ 62.1-44.15:27](#);

17. Establish a statewide permit fee schedule for stormwater management related to MS4 permits;

18. Provide for the evaluation and potential inclusion of emerging or innovative stormwater control technologies that may prove effective in reducing nonpoint source pollution; and

19. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 ([§ 54.1-400](#) et seq.) or 22 ([§ 54.1-2200](#) et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

1989, cc. 467, 499, § 10.1-603.4; 1991, c. 84; 2004, c. [372](#); 2005, c. [102](#); 2006, c. [21](#); 2008, c. [405](#); 2009, c. [709](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, cc. [303](#), [598](#); 2016, cc. [68](#), [758](#); 2017, cc. [10](#), [163](#).

§62.1-44.15:28.1. Pollutant removal by dredging.

Upon approval by the Chesapeake Bay Program as a creditable practice for pollutant removal, the Board shall establish a procedure for the approval of dredging operations in the Chesapeake Bay Watershed as a method of meeting pollutant reduction and loading requirements. The dredging operation and disposal of dredged material shall be conducted in compliance with all applicable local, state, and federal laws and regulations. Any locality imposing a fee relating to stormwater pursuant to [§ 15.2-2114](#) may make funds available for stormwater maintenance dredging, including at the

point of discharge, where stormwater has contributed to the deposition of sediment in state waters.

2015, c. [753](#).

§62.1-44.15:29. (For expiration date -- see notes) Virginia Stormwater Management Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Stormwater Management Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected by the Department pursuant to §§ [62.1-44.15:28](#), [62.1-44.15:38](#), and [62.1-44.15:71](#) and all civil penalties collected pursuant to § [62.1-44.19:22](#) shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the Department's responsibilities under this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller.

2004, c. [372](#), § 10.1-603.4:1; 2012, cc. [748](#), [785](#), [808](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:29. (For effective date -- see notes) Virginia Stormwater Management Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Stormwater Management Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected by the Department pursuant to § [62.1-44.15:28](#) shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the Department's responsibilities under this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller.

2004, c. [372](#), § 10.1-603.4:1; 2012, cc. [748](#), [785](#), [808](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:29.1. (For effective date -- see notes) Stormwater Local Assistance Fund.

A. The State Comptroller shall continue in the state treasury the Stormwater Local Assistance Fund (the Fund) established by Chapter 806 of the Acts of Assembly of 2013, which shall be administered by the Department. All civil penalties and civil charges collected by the Board pursuant to §§ [62.1-44.15:25](#), [62.1-44.15:48](#), [62.1-44.15:63](#), and [62.1-44.15:74](#), subdivision (19) of § [62.1-44.15](#), and § [62.1-44.19:22](#) shall be paid into the state treasury and credited to the Fund, together with such other funds as may be made available to the Fund, which shall also receive bond proceeds from bonds authorized by the General Assembly, sums appropriated to it by the General Assembly, and other grants, gifts, and moneys as may be made available to it from any other source, public or private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

B. The purpose of the Fund is to provide matching grants to local governments for the planning, design, and implementation of stormwater best management practices that address cost efficiency and commitments related to reducing water quality pollutant loads. Moneys in the Fund shall be used to meet (i) obligations related to the Chesapeake Bay total maximum daily load (TMDL) requirements, (ii) requirements for local impaired stream TMDLs, (iii) water quality measures of the Chesapeake Bay Watershed Implementation Plan, and (iv) water quality requirements related to the permitting of small municipal separate storm sewer systems. The grants shall be used solely for stormwater capital projects, including (a) new stormwater best management practices, (b) stormwater best management practice retrofitting or maintenance, (c) stream restoration, (d) low-impact development projects, (e) buffer restoration, (f) pond retrofitting, and (g) wetlands restoration. Such grants shall be made in accordance with eligibility determinations made by the Department pursuant to criteria established by the Board.

C. Moneys in the Fund shall be used solely for the purpose set forth herein and disbursements from it shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

2016, cc. [68](#), [758](#).

§62.1-44.15:30. (For expiration date -- see notes) Education and training programs.

A. The Board shall issue certificates of competence concerning the content and application of specified subject areas of this article and accompanying regulations, including program administration, plan review, and project inspection, to personnel of VSMP authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge to the satisfaction of the Board. As part of education and training programs authorized pursuant to subsection E of § [62.1-44.15:52](#), the Department shall develop or certify expanded components to address program administration, plan review, and project inspection elements of this article and attendant regulations. Reasonable fees to cover the costs of these additional components may be charged.

B. Effective July 1, 2014, personnel of VSMP authorities reviewing plans or conducting inspections pursuant to this chapter shall hold a certificate of competence as provided in subsection A. Professionals registered in the Commonwealth pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1 shall be deemed to have met the provisions of this section for the purposes of renewals.

2012, cc. [785](#), [819](#), § 10.1-603.4:2; 2013, cc. [756](#), [793](#).

§62.1-44.15:30. (For effective date -- see notes) Training and certification.

A. The Board shall issue separate or combined certifications concerning specified subject areas of this article, including program administration, plan review, and project inspection, to persons who have demonstrated adequate knowledge to the satisfaction of the Board. The Board also shall issue a Responsible Land Disturber certificate to personnel and contractors who have demonstrated adequate knowledge to the satisfaction of the Board.

B. The Department shall administer education and training programs for specified subject areas of this article and is authorized to charge persons attending such programs reasonable fees to cover the costs of administering the programs.

C. Personnel of VSMP or VESMP authorities who are administering programs, reviewing plans, or conducting inspections pursuant to this article shall hold a certification in the appropriate subject area as provided in subsection A. This requirement shall not apply to third-party individuals who prepare and submit plans to a VESMP or VSMP authority.

D. The Department shall establish procedures and requirements for issuance and periodic renewal of certifications.

E. Professionals registered in the Commonwealth pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1 shall be deemed to have met the provisions of this section for the purposes of renewals of such certifications.

2012, cc. [785](#), [819](#), § 10.1-603.4:2; 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:31. (For expiration date -- see notes) Annual standards and specifications for state agencies, federal entities, and other specified entities.

A. State entities, including the Department of Transportation, and for linear projects set out in subsection B, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall, and federal entities and authorities created pursuant to § [15.2-5102](#) may, annually submit a single set of standards and specifications for Department approval that describes how land-disturbing activities shall be conducted. Such standards and specifications shall be consistent with the requirements of this article and associated regulations, including the regulations governing the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities and the Erosion and Sediment Control Law (§ [62.1-44.15:51](#) et seq.) and associated regulations. Each project constructed in accordance with the requirements of this article, its attendant regulations, and where required standards and specifications shall obtain coverage issued under the state general permit prior to land disturbance. The standards and specifications shall include:

1. Technical criteria to meet the requirements of this article and regulations developed under this article;
2. Provisions for the long-term responsibility and maintenance of stormwater management control devices and other techniques specified to manage the quantity and quality of runoff;

3. Provisions for erosion and sediment control and stormwater management program administration, plan design, review and approval, and construction inspection and enforcement;
4. Provisions for ensuring that responsible personnel and contractors obtain certifications or qualifications for erosion and sediment control and stormwater management comparable to those required for local government;
5. Implementation of a project tracking and notification system to the Department of all land-disturbing activities covered under this article; and
6. Requirements for documenting onsite changes as they occur to ensure compliance with the requirements of the article.

B. Linear projects subject to annual standards and specifications include:

1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone utility lines and pipelines, and water and sewer lines; and
2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

Linear projects not included in subdivisions 1 and 2 shall comply with the requirements of the local or state VSMP in the locality within which the project is located.

C. The Department shall perform random site inspections or inspections in response to a complaint to assure compliance with this article, the Erosion and Sediment Control Law (§ [62.1-44.15:51](#) et seq.), and regulations adopted thereunder. The Department may take enforcement actions in accordance with this article and related regulations.

D. The Department shall assess an administrative charge to cover the costs of services rendered associated with its responsibilities pursuant to this section.

1989, cc. 467, 499, § 10.1-603.5; 2004, c. [372](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:31. (For effective date -- see notes) Standards and specifications for state agencies, federal entities, and other specified entities.

A. As an alternative to submitting soil erosion control and stormwater management plans for its land-disturbing activities pursuant to § [62.1-44.15:34](#), the Virginia Department of Transportation shall, and any other state agency or federal entity may, submit standards and specifications for its conduct of land-disturbing activities for Department of Environmental Quality approval. Approved standards and

specifications shall be consistent with this article. The Department of Environmental Quality shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to it for approval.

B. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § [62.1-44.15:34](#), electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, and authorities created pursuant to § [15.2-5102](#) may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. Such standards and specifications may be submitted for the following types of projects:

1. Construction, installation, or maintenance of electric transmission and distribution lines, oil or gas transmission and distribution pipelines, communication utility lines, and water and sewer lines; and
2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

The Department shall have 60 days after receipt in which to act on any standards and specifications submitted or resubmitted to it for approval. A linear project not included in subdivision 1 or 2, or for which the owner chooses not to submit standards and specifications, shall comply with the requirements of the VESMP or the VESCP and VSMP, as appropriate, in any locality within which the project is located.

C. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § [62.1-44.15:34](#), any person engaging in more than one jurisdiction in the creation and operation of a wetland mitigation or stream restoration bank that has been approved and is operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the Department, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted. The Department shall have 60 days after receipt in which to act on standards and specifications submitted to it or resubmitted to it for approval.

D. All standards and specifications submitted to the Department shall be periodically updated according to a schedule to be established by the Department and shall be

consistent with the requirements of this article. Approval of standards and specifications by the Department does not relieve the owner or operator of the duty to comply with any other applicable local ordinances or regulations. Standards and specifications shall include:

1. Technical criteria to meet the requirements of this article and regulations developed under this article;
2. Provisions for the long-term responsibility and maintenance of any stormwater management control devices and other techniques specified to manage the quantity and quality of runoff;
3. Provisions for administration of the standards and specifications program, project-specific plan design, plan review and plan approval, and construction inspection and compliance;
4. Provisions for ensuring that personnel and contractors assisting the owner in carrying out the land-disturbing activity obtain training or qualifications for soil erosion control and stormwater management as set forth in regulations adopted pursuant to this article;
5. Provisions for ensuring that personnel implementing approved standards and specifications pursuant to this section obtain certifications or qualifications comparable to those required for VESMP personnel pursuant to subsection C of § [62.1-44.15:30](#);
6. Implementation of a project tracking system that ensures notification to the Department of all land-disturbing activities covered under this article; and
7. Requirements for documenting onsite changes as they occur to ensure compliance with the requirements of this article.

E. The Department shall perform random site inspections or inspections in response to a complaint to ensure compliance with this article and regulations adopted thereunder.

F. The Department shall assess an administrative charge to cover the costs of services rendered associated with its responsibilities pursuant to this section, including standards and specifications review and approval, project inspections, and compliance. The Board may take enforcement actions in accordance with this article and related regulations.

1989, cc. 467, 499, § 10.1-603.5; 2004, c. [372](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:32. (For repeal date -- see notes) Duties of the Department.

A. The Department shall provide technical assistance, training, research, and coordination in stormwater management technology to VSMP authorities consistent with the purposes of this article.

B. The Department is authorized to review the stormwater management plan for any project with real or potential interjurisdictional impacts upon the request of one or all of the involved localities to determine that the plan is consistent with the provisions of this article. Any such review shall be completed and a report submitted to each locality involved within 90 days of such request being accepted. The Department may charge a fee of the requesting locality to cover its costs for providing such services.

C. The Department shall be responsible for the implementation of this article.

1989, cc. 467, 499, § 10.1-603.6; 2004, c. [372](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:33. (For expiration date -- see notes) Authorization for more stringent ordinances.

A. Localities that are VSMP authorities are authorized to adopt more stringent stormwater management ordinances than those necessary to ensure compliance with the Board's minimum regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a MS4 permit or a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources, to address TMDL requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances a public hearing is held after giving due notice.

B. Localities that are VSMP authorities shall submit a letter report to the Department when more stringent stormwater management ordinances or more stringent requirements authorized by such ordinances, such as may be set forth in design manuals, policies, or guidance documents developed by the localities, are determined to be

necessary pursuant to this section within 30 days after adoption thereof. Any such letter report shall include a summary explanation as to why the more stringent ordinance or requirement has been determined to be necessary pursuant to this section. Upon the request of an affected landowner or his agent submitted to the Department with a copy to be sent to the locality, within 90 days after adoption of any such ordinance or derivative requirement, localities shall submit the ordinance or requirement and all other supporting materials to the Department for a determination of whether the requirements of this section have been met and whether any determination made by the locality pursuant to this section is supported by the evidence. The Department shall issue a written determination setting forth its rationale within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

C. Localities shall not prohibit or otherwise limit the use of any best management practice (BMP) approved for use by the Director or the Board except as follows:

1. When the Director or the Board approves the use of any BMP in accordance with its stated conditions, the locality serving as a VSMP authority shall have authority to preclude the onsite use of the approved BMP, or to require more stringent conditions upon its use, for a specific land-disturbing project based on a review of the storm-water management plan and project site conditions. Such limitations shall be based on site-specific concerns. Any project or site-specific determination purportedly authorized pursuant to this subsection may be appealed to the Department and the Department shall issue a written determination regarding compliance with this section to the requesting party within 90 days of submission. Any such determination, or a failure by the Department to make any such determination within the 90-day period, may be appealed to the Board.

2. When a locality is seeking to uniformly preclude jurisdiction-wide or otherwise limit geographically the use of a BMP approved by the Director or Board, or to apply more stringent conditions to the use of a BMP approved by the Director or Board, upon the request of an affected landowner or his agent submitted to the Department, with a copy submitted to the locality, within 90 days after adoption, such authorizing ordinances, design manuals, policies, or guidance documents developed by the locality that set forth the BMP use policy shall be provided to the Department in such manner as may be prescribed by the Department that includes a written justification and explanation as to why such more stringent limitation or conditions are

determined to be necessary. The Department shall review all supporting materials provided by the locality to determine whether the requirements of this section have been met and that any determination made by the locality pursuant to this section is reasonable under the circumstances. The Department shall issue its determination to the locality in writing within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

D. Based on a determination made in accordance with subsection B or C, any ordinance or other requirement enacted or established by a locality that is found to not comply with this section shall be null and void, replaced with state minimum standards, and remanded to the locality for revision to ensure compliance with this section. Any such ordinance or other requirement that has been proposed but neither enacted nor established shall be remanded to the locality for revision to ensure compliance with this section.

E. Any provisions of a local stormwater management program in existence before January 1, 2013, that contains more stringent provisions than this article shall be exempt from the requirements of this section. However, such provisions shall be reported to the Board at the time of the locality's VSMP approval package.

1989, cc. 467, 499, § 10.1-603.7; 1991, c. 84; 2004, c. [372](#); 2011, cc. [341](#), [353](#); 2012, cc. [785](#), [819](#); 2013, cc. [591](#), [756](#), [793](#); 2014, cc. [303](#), [598](#).

§62.1-44.15:33. (For effective date -- see notes) Authorization for more stringent ordinances.

A. Localities that are serving as VESMP authorities are authorized to adopt more stringent soil erosion control or stormwater management ordinances than those necessary to ensure compliance with the Board's minimum regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of an MS4 permit or a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources, to address total maximum daily load requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances a public hearing is held after giving due notice. This process

shall not be required when a VESMP authority chooses to reduce the threshold for regulating land-disturbing activities to a smaller area of disturbed land pursuant to § [62.1-44.15:34](#). However, this section shall not be construed to authorize a VESMP authority to impose a more stringent timeframe for land-disturbance review and approval than those provided in this article.

B. Localities that are serving as VESMP authorities shall submit a letter report to the Department when more stringent stormwater management ordinances or more stringent requirements authorized by such stormwater management ordinances, such as may be set forth in design manuals, policies, or guidance documents developed by the localities, are determined to be necessary pursuant to this section within 30 days after adoption thereof. Any such letter report shall include a summary explanation as to why the more stringent ordinance or requirement has been determined to be necessary pursuant to this section. Upon the request of an affected landowner or his agent submitted to the Department with a copy to be sent to the locality, within 90 days after adoption of any such ordinance or derivative requirement, localities shall submit the ordinance or requirement and all other supporting materials to the Department for a determination of whether the requirements of this section have been met and whether any determination made by the locality pursuant to this section is supported by the evidence. The Department shall issue a written determination setting forth its rationale within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

C. Localities shall not prohibit or otherwise limit the use of any best management practice (BMP) approved for use by the Director or the Board except as follows:

1. When the Director or the Board approves the use of any BMP in accordance with its stated conditions, the locality serving as a VESMP authority shall have authority to preclude the onsite use of the approved BMP, or to require more stringent conditions upon its use, for a specific land-disturbing project based on a review of the stormwater management plan and project site conditions. Such limitations shall be based on site-specific concerns. Any project or site-specific determination purportedly authorized pursuant to this subsection may be appealed to the Department and the Department shall issue a written determination regarding compliance with this section to the requesting party within 90 days of submission. Any such determ-

ination, or a failure by the Department to make any such determination within the 90-day period, may be appealed to the Board.

2. When a locality is seeking to uniformly preclude jurisdiction-wide or otherwise limit geographically the use of a BMP approved by the Director or Board, or to apply more stringent conditions to the use of a BMP approved by the Director or Board, upon the request of an affected landowner or his agent submitted to the Department, with a copy submitted to the locality, within 90 days after adoption, such authorizing ordinances, design manuals, policies, or guidance documents developed by the locality that set forth the BMP use policy shall be provided to the Department in such manner as may be prescribed by the Department that includes a written justification and explanation as to why such more stringent limitation or conditions are determined to be necessary. The Department shall review all supporting materials provided by the locality to determine whether the requirements of this section have been met and that any determination made by the locality pursuant to this section is reasonable under the circumstances. The Department shall issue its determination to the locality in writing within 90 days of submission. Such a determination, or a failure by the Department to make such a determination within the 90-day period, may be appealed to the Board.

D. Based on a determination made in accordance with subsection B or C, any ordinance or other requirement enacted or established by a locality that is found to not comply with this section shall be null and void, replaced with state minimum standards, and remanded to the locality for revision to ensure compliance with this section. Any such ordinance or other requirement that has been proposed but neither enacted nor established shall be remanded to the locality for revision to ensure compliance with this section.

E. Any provisions of a local erosion and sediment control or stormwater management program in existence before January 1, 2016, that contains more stringent provisions than this article shall be exempt from the requirements of this section if the locality chooses to retain such provisions when it becomes a VESMP authority. However, such provisions shall be reported to the Board at the time of submission of the locality's VESMP approval package.

1989, cc. 467, 499, § 10.1-603.7; 1991, c. 84; 2004, c. [372](#); 2011, cc. [341](#), [353](#); 2012, cc. [785](#), [819](#); 2013, cc. [591](#), [756](#), [793](#); 2014, cc. [303](#), [598](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:34. (For expiration date -- see notes) Regulated activities; submission and approval of a permit application; security for performance; exemptions.

A. A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance. A locality that is not a VSMP authority shall provide a general notice to applicants of the state permit coverage requirement and report all approvals pursuant to the Erosion and Sediment Control Law (§ [62.1-44.15:51](#) et seq.) to begin land disturbance of one acre or greater to the Department at least monthly. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VSMP authority shall be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance. The VSMP authority shall act on any permit application within 60 days after it has been determined by the VSMP authority to be a complete application. The VSMP authority may either issue project approval or denial and shall provide written rationale for the denial. The VSMP authority shall act on any permit application that has been previously disapproved within 45 days after the application has been revised, resubmitted for approval, and deemed complete. Prior to issuance of any approval, the VSMP authority may also require an applicant, excluding state and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VSMP authority, to ensure that measures could be taken by the VSMP authority at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions that may be required of him by the permit conditions as a result of his land-disturbing activity. If the VSMP authority takes such action upon such failure by the applicant, the VSMP authority may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of

law relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

B. A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities until July 1, 2014, at which time it shall no longer be considered a small construction activity but shall be then regulated under the requirements of this article.

C. Notwithstanding any other provisions of this article, the following activities are exempt, unless otherwise required by federal law:

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1;
2. Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ [10.1-1100](#) et seq.) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § [10.1-1163](#);
3. Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures. However, localities subject to the provisions of the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.) may regulate these single-family residences where land disturbance exceeds 2,500 square feet;
4. Land-disturbing activities that disturb less than one acre of land area except for land-disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the provisions of the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.) or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;

however, the governing body of any locality that administers a VSMP may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

5. Discharges to a sanitary sewer or a combined sewer system;

6. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;

7. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and

8. Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VSMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity.

1989, cc. 467, 499, § 10.1-603.8; 1994, cc. [605](#), [898](#); 2004, c. [372](#); 2011, c. [400](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, cc. [303](#), [598](#).

§62.1-44.15:34. (For effective date -- see notes) Regulated activities; submission and approval of a permit application; security for performance; exemptions.

A. A person shall not conduct any land-disturbing activity until (i) he has submitted to the appropriate VESMP authority an application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required, and (ii) the VESMP authority has issued its land-disturbance approval. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § [62.1-44.15:30](#) shall be submitted to the VESMP authority. Any VESMP authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure; however, if a violation occurs during the land-disturbing activity for the single-family detached residential structure, then the owner shall correct the

violation and provide the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-14:30. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided in this article.

1. A VESMP authority that is implementing its program pursuant to subsection A of § [62.1-44.15:27](#) or subdivision B 1 of § [62.1-44.15:27](#) shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the VESMP authority to be complete. The VESMP authority shall issue either land-disturbance approval or denial and provide written rationale for any denial. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required. The VESMP authority also shall determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after receipt.

2. A VESMP authority implementing its program in coordination with the Department pursuant to subdivision B 2 of § [62.1-44.15:27](#) shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the VESMP authority to be complete. The VESMP authority shall forward a soil erosion control and storm-water management plan to the Department for review within five days of receipt. If the plan is incomplete, the Department shall return the plan to the locality immediately and the application process shall start over. If the plan is complete, the Department shall review it for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VESMP authority. The VESMP authority shall either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written rationale for the denial. In no case shall a locality have more than 60 days for its decision on an application after it has been determined to be complete. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required.

The VESMP authority also shall forward to the Department any resubmittal of a previously disapproved application within five days after receipt, and the VESMP authority shall determine whether the plan is complete within 15 days of its receipt of the plan. The Department shall review the plan for compliance with the water quality and

water quantity technical criteria and provide its recommendation to the VESMP authority, and the VESMP authority shall act on the resubmitted application within 45 days after receipt.

3. When a state agency or federal entity submits a soil erosion control and stormwater management plan for a project, land disturbance shall not commence until the Board has reviewed and approved the plan and has issued permit coverage when it is required.

a. The Board shall not approve a soil erosion control and stormwater management plan submitted by a state agency or federal entity for a project involving a land-disturbing activity (i) in any locality that has not adopted a local program with more stringent ordinances than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the plan is consistent with the requirements of the state program.

b. The Board shall not approve a soil erosion control and stormwater management plan submitted by a state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent ordinances than those of the state program, unless the plan is consistent with the requirements of the local program.

c. If onsite changes occur, the state agency or federal entity shall submit an amended soil erosion control and stormwater management plan to the Department.

d. The state agency or federal entity responsible for the land-disturbing activity shall ensure compliance with the approved plan. As necessary, the Board shall provide project oversight and enforcement.

4. Prior to issuance of any land-disturbance approval, the VESMP authority may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VESMP authority, to ensure that measures could be taken by the VESMP authority at the applicant's expense should he fail, after proper notice, within the time specified to comply with the conditions imposed by the VESMP authority as a result of his land-disturbing activity. If the VESMP authority takes such action upon such failure by the applicant, the VESMP authority may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within

60 days of the completion of the VESMP authority's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

B. The VESMP authority may require changes to an approved soil erosion control and stormwater management plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or

2. Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the VESMP authority and the owner.

C. In order to prevent further erosion, a VESMP authority may require approval of a soil erosion control and stormwater management plan for any land identified as an erosion impact area by the VESMP authority.

D. A VESMP authority may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying who shall be responsible for all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.

E. The following requirements shall apply to land-disturbing activities in the Commonwealth:

1. Any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance may, in accordance with regulations adopted by the Board, be required to obtain permit coverage.

2. For a land-disturbing activity occurring in an area not designated as a Chesapeake Bay Preservation Area subject to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.):

- a. Soil erosion control requirements and water quantity technical criteria adopted pursuant to this article shall apply to any activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of

disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A. This subdivision shall also apply to additions or modifications to existing single-family detached residential structures.

b. Soil erosion control requirements and water quantity and water quality technical criteria shall apply to any activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance, although the locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

3. For a land-disturbing activity occurring in an area designated as a Chesapeake Bay Preservation Area subject to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.):

a. Soil erosion control and water quantity and water quality technical criteria shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, other than a single-family detached residential structure. However, the governing body of any affected locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

b. For land-disturbing activities for single-family detached residential structures, soil erosion control and water quantity technical criteria shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, and the locality also may require compliance with the water quality technical criteria. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

F. Notwithstanding any other provisions of this article, the following activities are not required to comply with the requirements of this article unless otherwise required by federal law:

1. Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;
2. Installation, maintenance, or repair of any individual service connection;

3. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
4. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1;
6. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ [10.1-1100](#) et seq.) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § [10.1-1163](#);
7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
8. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;
9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and

compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity; and

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity.

G. Notwithstanding any other provision of this article, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:

1. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;

2. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and

3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

1989, cc. 467, 499, § 10.1-603.8; 1994, cc. [605](#), [898](#); 2004, c. [372](#); 2011, c. [400](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, cc. [303](#), [598](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:35. (For expiration date -- see notes) Nutrient credit use and additional offsite options for construction activities.

A. As used in this section:

"Nutrient credit" or "credit" means a nutrient credit certified pursuant to Article 4.02 (§ [62.1-44.19:12](#) et seq.).

"Tributary," within the Chesapeake Bay watershed, has the same meaning as in § [62.1-44.19:13](#). For areas outside of the Chesapeake Bay watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

"Virginia Stormwater Management Program Authority" or "VSMP authority" has the same meaning as in § [62.1-44.15:24](#) and includes, until July 1, 2014, any locality that has adopted a local stormwater management program.

B. A VSMP authority is authorized to allow compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to § [62.1-44.15:28](#), in whole or in part, through the use of the applicant's acquisition of nutrient credits in the same tributary.

C. No applicant shall use nutrient credits to address water quantity control requirements. No applicant shall use nutrient credits or other offsite options in contravention of local water quality-based limitations (i) determined pursuant to subsection B of § [62.1-44.19:14](#), (ii) adopted pursuant to § [62.1-44.15:33](#) or other applicable authority, (iii) deemed necessary to protect public water supplies from demonstrated adverse nutrient impacts, or (iv) as otherwise may be established or approved by the Board. Where such a limitation exists, offsite options may be used provided that such options do not preclude or impair compliance with the local limitation.

D. A VSMP authority shall allow offsite options in accordance with subsection I when:

1. Less than five acres of land will be disturbed;
2. The postconstruction phosphorous control requirement is less than 10 pounds per year; or
3. The state permit applicant demonstrates to the satisfaction of the VSMP authority that (i) alternative site designs have been considered that may accommodate onsite best management practices, (ii) onsite best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate onsite best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met onsite. For purposes of this subdivision, if an applicant demonstrates onsite control of at least 75 percent of the required phosphorous nutrient reductions, the applicant shall be deemed to have met the requirements of clauses (i) through (iv).

E. Documentation of the applicant's acquisition of nutrient credits shall be provided to the VSMP authority and the Department in a certification from the credit provider documenting the number of phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the credit-generating entity. Until the effective date of regulations establishing application fees in accordance with § [62.1-44.19:20](#),

the credit provider shall pay the Department a water quality enhancement fee equal to six percent of the amount paid by the applicant for the credits. Such fee shall be deposited into the Virginia Stormwater Management Fund established by § [62.1-44.15:29](#).

F. Nutrient credits used pursuant to subsection B shall be generated in the same or adjacent eight-digit hydrologic unit code as defined by the United States Geological Survey as the permitted site except as otherwise limited in subsection C. Nutrient credits outside the same or adjacent eight-digit hydrologic unit code may only be used if it is determined by the VSMP authority that no credits are available within the same or adjacent eight-digit hydrologic unit code when the VSMP authority accepts the final site design. In such cases, and subject to other limitations imposed in this section, credits available within the same tributary may be used. In no case shall credits from another tributary be used.

G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality criteria being obtained through nutrient credits, the applicant shall (i) comply with a 1:1 ratio of the nutrient credits to the site's remaining postdevelopment nonpoint nutrient runoff compliance requirement being met by credit use and (ii) use credits certified as perpetual credits pursuant to Article 4.02 (§ [62.1-44.19:12](#) et seq.).

H. No VSMP authority may grant an exception to, or waiver of, postdevelopment nonpoint nutrient runoff compliance requirements unless offsite options have been considered and found not available.

I. The VSMP authority shall require that nutrient credits and other offsite options approved by the Department or applicable state board, including locality pollutant loading pro rata share programs established pursuant to § [15.2-2243](#), achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity. A pollutant loading pro rata share program established by a locality pursuant to § [15.2-2243](#) and approved by the Department or applicable state board prior to January 1, 2011, including those that may achieve nutrient reductions after the commencement of the land-disturbing activity, may continue to operate in the approved manner for a transition period ending July 1, 2014. The applicant shall have the right to select between the use of nutrient credits or other offsite options, except during the transition period in those localities to which the transition period applies. The locality may use funds collected for nutrient reductions pursuant to a

locality pollutant loading pro rata share program under § [15.2-2243](#) for nutrient reductions in the same tributary within the same locality as the land-disturbing activity or for the acquisition of nutrient credits. In the case of a phased project, the applicant may acquire or achieve the offsite nutrient reductions prior to the commencement of each phase of the land-disturbing activity in an amount sufficient for each such phase.

J. Nutrient reductions obtained through nutrient credits shall be credited toward compliance with any nutrient allocation assigned to a municipal separate storm sewer system in a Virginia Stormwater Management Program Permit or Total Maximum Daily Load applicable to the location where the activity for which the nutrient credits are used takes place. If the activity for which the nutrient credits are used does not discharge to a municipal separate storm sewer system, the nutrient reductions shall be credited toward compliance with the applicable nutrient allocation.

K. A VSMP authority shall allow the full or partial substitution of perpetual nutrient credits for existing onsite nutrient controls when (i) the nutrient credits will compensate for 10 or fewer pounds of the annual phosphorous requirement associated with the original land-disturbing activity or (ii) existing onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable maintenance agreements or requirements and the use of nutrient credits will account for the deficiency. Upon determination by the VSMP authority that the conditions established by clause (i) or (ii) have been met, the party responsible for maintenance shall be released from maintenance obligations related to the onsite phosphorous controls for which the nutrient credits are substituted.

L. To the extent available, with the consent of the applicant, the VSMP authority, the Board or the Department may include the use of nutrient credits or other offsite measures in resolving enforcement actions to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance and (ii) permanent nutrient control deficiencies.

M. This section shall not be construed as limiting the authority established under § [15.2-2243](#); however, under any pollutant loading pro rata share program established thereunder, the subdivider or developer shall be given appropriate credit for nutrient reductions achieved through nutrient credits or other offsite options.

N. In order to properly account for allowed nonpoint nutrient offsite reductions, an applicant shall report to the Department, in accordance with Department procedures,

information regarding all offsite reductions that have been authorized to meet storm-water postdevelopment nonpoint nutrient runoff compliance requirements.

O. An applicant or a permittee found to be in noncompliance with the requirements of this section shall be subject to the enforcement and penalty provisions of this article.

2009, c. [364](#), § 10.1-603.8:1; 2010, c. [686](#); 2011, c. [523](#); 2012, cc. [748](#), [785](#), [808](#), [819](#); 2013, cc. [756](#), [793](#); 2015, c. [164](#).

§62.1-44.15:35. (For effective date -- see notes) Nutrient credit use and additional offsite options for construction activities.

A. As used in this section:

"Nutrient credit" or "credit" means a type of offsite option that is a nutrient credit certified pursuant to Article 4.02 (§ [62.1-44.19:12](#) et seq.).

"Offsite option" means an alternative available, away from the real property where land disturbance is occurring, to address water quality or water quantity technical criteria established pursuant to § [62.1-44.15:28](#).

"Tributary," within the Chesapeake Bay watershed, has the same meaning as in § [62.1-44.19:13](#). For areas outside of the Chesapeake Bay watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

B. No offsite option shall be used in contravention of local water quality-based limitations (i) determined pursuant to subsection B of § [62.1-44.19:14](#), (ii) adopted pursuant to § [62.1-44.15:33](#) or other applicable authority, (iii) deemed necessary to protect public water supplies from demonstrated adverse nutrient impacts, or (iv) as otherwise may be established or approved by the Board. Where such a limitation exists, offsite options may be used provided that such options do not preclude or impair compliance with the local limitation.

C. Unless prohibited by subsection B, a VESMP authority or a VSMP authority:

1. May allow the use of offsite options for compliance with water quality and water quantity technical criteria established pursuant to § [62.1-44.15:28](#), in whole or in part; and

2. Shall allow the use of nutrient credits for compliance with the water quality technical criteria when:

a. Less than five acres of land will be disturbed;

b. The phosphorous water quality reduction requirement is less than 10 pounds per year; or

c. It is demonstrated to the satisfaction of the VESMP or VSMP authority that (i) alternative site designs have been considered that may accommodate onsite best management practices, (ii) onsite best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate onsite best management practices will be implemented, and (iv) compliance with water quality technical criteria cannot practicably be met onsite. The requirements of clauses (i) through (iv) shall be deemed to have been met if it is demonstrated that onsite control of at least 75 percent of the required phosphorous water quality reduction will be achieved.

D. No VSMP or VESMP authority may grant an exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements unless offsite options have been considered and found not available.

E. The VSMP or VESMP authority shall require that offsite options approved by the Department or applicable state board achieve the necessary phosphorous water quality reductions prior to the commencement of the land-disturbing activity. A pollutant loading pro rata share program established by a locality pursuant to § [15.2-2243](#) and approved by the Department or applicable state board prior to January 1, 2011, including those that may achieve nutrient reductions after the commencement of the land-disturbing activity, may continue to operate in the approved manner for a transition period ending July 1, 2014. In the case of a phased project, the land disturber may acquire or achieve the offsite nutrient reductions prior to the commencement of each phase of the land-disturbing activity in an amount sufficient for each such phase. The land disturber shall have the right to select between the use of nutrient credits or other offsite options, except during the transition period in those localities to which the transition period applies.

F. With the consent of the land disturber, in resolving enforcement actions, the VESMP authority or the Board may include the use of offsite options to compensate

for (i) nutrient control deficiencies occurring during the period of noncompliance and (ii) permanent nutrient control deficiencies.

G. This section shall not be construed as limiting the authority established under § [15.2-2243](#); however, under any pollutant loading pro rata share program established thereunder, the subdivider or developer shall be given appropriate credit for nutrient reductions achieved through offsite options. The locality may use funds collected for nutrient reductions pursuant to a locality pollutant loading pro rata share program for nutrient reductions in the same tributary within the same locality as the land-disturbing activity, or for the acquisition of nutrient credits.

H. Nutrient credits shall not be used to address water quantity technical criteria. Nutrient credits shall be generated in the same or adjacent fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, as the land-disturbing activity. If no credits are available within these subbasins when the VESMP or VSMP authority accepts the final site design, credits available within the same tributary may be used. The following requirements apply to the use of nutrient credits:

1. Documentation of the acquisition of nutrient credits shall be provided to the VESMP authority and the Department or the VSMP authority in a certification from the credit provider documenting the number of phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the credit-generating entity.

2. Until the effective date of regulations establishing application fees in accordance with § [62.1-44.19:20](#), the credit provider shall pay the Department a water quality enhancement fee equal to six percent of the amount paid for the credits. Such fee shall be deposited into the Virginia Stormwater Management Fund established by § [62.1-44.15:29](#).

3. For that portion of a site's compliance with water quality technical criteria being obtained through nutrient credits, the land disturber shall (i) comply with a 1:1 ratio of the nutrient credits to the site's remaining post-development nonpoint nutrient runoff compliance requirement being met by credit use and (ii) use credits certified as perpetual credits pursuant to Article 4.02 (§ [62.1-44.19:12](#) et seq.).

4. A VESMP or VSMP authority shall allow the full or partial substitution of perpetual nutrient credits for existing onsite nutrient controls when (i) the nutrient credits will compensate for 10 or fewer pounds of the annual phosphorous requirement

associated with the original land-disturbing activity or (ii) existing onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable maintenance agreements or requirements and the use of nutrient credits will account for the deficiency. Upon determination by the VESMP or VSMP authority that the conditions established by clause (i) or (ii) have been met, the party responsible for maintenance shall be released from maintenance obligations related to the onsite phosphorous controls for which the nutrient credits are substituted.

I. The use of nutrient credits to meet post-construction nutrient control requirements shall be accounted for in the implementation of total maximum daily loads and MS4 permits as specified in subdivisions 1, 2, and 3. In order to ensure that the nutrient reduction benefits of nutrient credits used to meet post-construction nutrient control requirements are attributed to the location of the land-disturbing activity where the credit is used, the following account method shall be used:

1. Chesapeake Bay TMDL.

a. Where nutrient credits are used to meet nutrient reduction requirements applicable to redevelopment projects, a 1:1 credit shall be applied toward MS4 compliance with the Chesapeake Bay TMDL waste load allocation or related MS4 permit requirement applicable to the MS4 service area, including the site of the land-disturbing activity, such that the nutrient reductions of redevelopment projects are counted as part of the MS4 nutrient reductions to the same extent as when land-disturbing activities use onsite measures to comply.

b. Where nutrient credits are used to meet post-construction requirements applicable to new development projects, the nutrient reduction benefits represented by such credits shall be attributed to the location of the land-disturbing activity where the credit is used to the same extent as when land-disturbing activities use onsite measures to comply.

c. A 1: 1 credit shall be applied toward compliance by a locality that operates a regulated MS4 with its Chesapeake Bay TMDL waste load allocation or related MS4 permit requirement to the extent that nutrient credits are obtained by the MS4 jurisdiction from a nutrient credit-generating entity as defined in § [62.1-44.19:13](#) independent of or in excess of those required to meet the post-construction requirements.

2. Local nutrient-related TMDLs adopted prior to the land-disturbing activity.

a. Where nutrient credits are used to meet nutrient reduction requirements applicable to redevelopment projects, a 1:1 credit shall be applied toward MS4 compliance with any local TMDL waste load allocation or related MS4 permit requirement applicable to the MS4 service area, including the site of the land-disturbing activity, such that the nutrient reductions of redevelopment projects are counted as part of the MS4 nutrient reductions to the same extent as when land-disturbing activities use onsite measures to comply, provided the nutrient credits are generated upstream of where the land-disturbing activity discharges to the water body segment that is subject to the TMDL.

b. Where nutrient credits are used to meet post-construction requirements applicable to new development projects, the nutrient reduction benefits represented by such credits shall be attributed to the location of the land-disturbing activity where the credit is used to the same extent as when land-disturbing activities use onsite measures to comply, provided the nutrient credits are generated upstream of where the land-disturbing activity discharges to the water body segment that is subject to the TMDL.

c. A 1: 1 credit shall be applied toward MS4 compliance with any local TMDL waste load allocation or related MS4 permit requirement to the extent that nutrient credits are obtained by the MS4 jurisdiction from a nutrient credit-generating entity as defined in § [62.1-44.19:13](#) independent of or in excess of those required to meet the post-construction requirements. However, such credits shall be generated upstream of where the land-disturbing activity discharges to the water body segment that is subject to the TMDL.

3. Future local nutrient-related TMDLs.

This subdivision applies only to areas where there has been a documented prior use of nutrient credits to meet nutrient control requirements in an MS4 service area that flows to or is upstream of a water body segment for which a nutrient-related TMDL is being developed. For a TMDL waste load allocation applicable to the MS4, the Board shall develop the TMDL waste load allocation with the nutrient reduction benefits represented by the nutrient credit use being attributed to the MS4, except when the Board determines during the TMDL development process that reasonable assurance of implementation cannot be provided for nonpoint source load allocations due to the nutrient reduction benefits being attributed in this manner. The Board shall have no obligation to account for nutrient reduction benefits in this manner if the MS4

does not provide the Board with adequate documentation of (i) the location of the land-disturbing activities, (ii) the number of nutrient credits, and (iii) the generation of the nutrient credits upstream of the site at which the land-disturbing activity discharges to the water body segment addressed by the TMDL. Such attribution shall not be interpreted as amending the requirement that the TMDL be established at a level necessary to meet the applicable water quality standard.

2009, c. [364](#), § 10.1-603.8:1; 2010, c. [686](#); 2011, c. [523](#); 2012, cc. [748](#), [785](#), [808](#), [819](#); 2013, cc. [756](#), [793](#); 2015, c. [164](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:36. Repealed.

Repealed by Acts 2013, cc. [756](#) and 793, cl. [4](#).

§62.1-44.15:37. (For expiration date -- see notes) Monitoring, reports, investigations, inspections, and stop work orders.

A. The VSMP authority (i) shall provide for periodic inspections of the installation of stormwater management measures, (ii) may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management, and (iii) shall conduct such investigations and perform such other actions as are necessary to carry out the provisions of this article. If the VSMP authority, where authorized to enforce this article, or the Department determines that there is a failure to comply with the permit conditions, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by mailing with confirmation of delivery to the address specified in the permit application, or by delivery at the site of the development activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with subsection B by the VSMP authority, where authorized to enforce this article, or by the Board, or the permit may be revoked by the VSMP authority, or the state permit may be revoked by the Board. The Board or the VSMP authority, where authorized to enforce this article, may pursue enforcement in accordance with § [62.1-44.15:48](#).

B. If a permittee fails to comply with a notice issued in accordance with subsection A within the time specified, the VSMP authority, where authorized to enforce this article, or the Department may issue an order requiring the owner, permittee, person

responsible for carrying out an approved plan, or person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall be issued (i) in accordance with local procedures if issued by a locality serving as a VSMP authority or (ii) after a hearing held in accordance with the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) if issued by the Department. Such orders shall become effective upon service on the person by mailing, with confirmation of delivery, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the VSMP authority or Department. However, if the VSMP authority or the Department finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

If a person who has been issued an order is not complying with the terms thereof, the VSMP authority or the Department may institute a proceeding in accordance with § [62.1-44.15:42](#).

1989, cc. 467, 499, § 10.1-603.11; 2004, c. [372](#); 2012, cc. [785](#), [819](#). 2013, cc. [756](#), [793](#).

§62.1-44.15:37. (For effective date -- see notes) Notices to comply and stop work orders.

A. When the VESMP authority or the Board determines that there is a failure to comply with the permit conditions or conditions of land-disturbance approval, or to obtain an approved plan, permit, or land-disturbance approval prior to commencing land-disturbing activities, the VESMP authority or the Board may serve a notice to comply upon the owner, permittee, or person conducting land-disturbing activities without an approved plan, permit, or approval. Such notice to comply shall be served by delivery by facsimile, email, or other technology; by mailing with confirmation of delivery to the address specified in the permit or land-disturbance application, if

available, or in the land records of the locality; or by delivery at the site to a person previously identified to the VESMP authority by the permittee or owner. The notice to comply shall specify the measures needed to comply with the permit or land-disturbance approval conditions, or shall identify the plan approval or permit or land-disturbance approval needed to comply with this article, and shall specify a reasonable time within which such measures shall be completed. In any instance in which a required permit or land-disturbance approval has not been obtained, the VESMP authority or the Board may require immediate compliance. In any other case, the VESMP authority or the Board may establish the time for compliance by taking into account the risk of damage to natural resources and other relevant factors. Notwithstanding any other provision in this subsection, a VESMP authority or the Board may count any days of noncompliance as days of violation should the VESMP authority or the Board take an enforcement action. The issuance of a notice to comply by the Board shall not be considered a case decision as defined in § [2.2-4001](#).

B. Upon failure to comply within the time specified in a notice to comply issued in accordance with subsection A, a locality serving as the VESMP authority or the Board may issue a stop work order requiring the owner, permittee, or person conducting the land-disturbing activities without an approved plan or required permit or land-disturbance approval to cease all land-disturbing activities until the violation has ceased, or an approved plan and required permits and approvals are obtained, and specified corrective measures have been completed. The VESMP authority or the Board shall lift the order immediately upon completion and approval of corrective action or upon obtaining an approved plan or any required permits or approvals.

C. When such an order is issued by the Board, it shall be issued in accordance with the procedures of the Administrative Process Act (§ [2.2-4000](#) et seq.). Such orders shall become effective upon service on the person in the manner set forth in subsection A. However, where the alleged noncompliance is causing or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, the locality serving as the VESMP authority or the Board may issue, without advance notice or procedures, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

D. The owner, permittee, or person conducting a land-disturbing activity may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to occur or other appropriate court.

E. An aggrieved owner of property sustaining pecuniary damage from soil erosion or sediment deposition resulting from a violation of an approved plan or required land-disturbance approval, or from the conduct of a land-disturbing activity commenced without an approved plan or required land-disturbance approval, may give written notice of an alleged violation to the locality serving as the VESMP authority and to the Board.

1. If the VESMP authority has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's property within 30 days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Board conduct an investigation and, if necessary, require the violator to stop the alleged violation and abate the damage to the property of the aggrieved owner.

2. Upon receipt of the request, the Board shall conduct an investigation of the aggrieved owner's complaint. If the Board's investigation of the complaint indicates that (i) there is a violation and the VESMP authority has not responded to the violation as required by the VESMP and (ii) the VESMP authority has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's property within 30 days from receipt of the notice from the aggrieved owner, then the Board shall give written notice to the VESMP authority that the Board intends to issue an order pursuant to subdivision 3.

3. If the VESMP authority has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within 10 days following receipt of the notice from the Board, the Board is authorized to issue an order requiring the owner, person responsible for carrying out an approved plan, or person conducting the land-disturbing activity without an approved plan or required land-disturbance approval to cease all land-disturbing activities until the violation of the plan has ceased or an approved plan and required land-disturbance approval are obtained, as appropriate, and specified corrective measures have been completed. The Board also may immediately initiate a program review of the VESMP.

4. Such orders are to be issued in accordance with the procedures of the Administrative Process Act (§ [2.2-4000](#) et seq.) and they shall become effective upon service

on the person by mailing, with confirmation of delivery, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Board. Any subsequent identical mail or notice that is sent by the Board may be sent by regular mail. However, if the Board finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, it may issue, without advance notice or hearing, an emergency order directing such person to cease all land-disturbing activities on the site immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

5. If a person who has been issued an order or an emergency order is not complying with the terms thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction, mandamus, or other appropriate remedy compelling the person to comply with such order. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty in accordance with the provisions of § [62.1-44.15:48](#). Any civil penalties assessed by a court shall be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § [62.1-44.15:29](#).1.

1989, cc. 467, 499, § 10.1-603.11; 2004, c. [372](#); 2012, cc. [785](#), [819](#). 2013, cc. [756](#), [793](#), [2016](#), cc. [68](#), [758](#).

§62.1-44.15:38. (For repeal date -- see notes) Department to review VSMPs.

A. The Department shall develop and implement a review and evaluation schedule so that the effectiveness of each VSMP authority, Municipal Separate Storm Sewer System Management Program, and other MS4 permit requirements is evaluated no less than every five years. The review shall include an assessment of the extent to which the program has reduced nonpoint source pollution and mitigated the detrimental effects of localized flooding. Such reviews shall be coordinated with those being implemented in accordance with the Erosion and Sediment Control Law (§ [62.1-44.15:51](#) et seq.) and associated regulations and, where applicable, the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.) and associated regulations.

B. Following completion of a compliance review of a VSMP, the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement if deficiencies are found; otherwise, the Board may find the

program compliant. If, after such a review and evaluation, a VSMP is found to have a program that does not comply with the provisions of this article or regulations adopted thereunder, the Board shall establish a schedule for the VSMP authority to come into compliance. The Board shall provide a copy of its decision to the VSMP authority that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule. If the VSMP has not implemented the necessary compliance actions identified by the Board within 30 days following receipt of the corrective action agreement, or such additional period as is granted to complete the implementation of the corrective action, then the Board shall have the authority to (i) issue a special order to any VSMP imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per violation for noncompliance with the requirements of this article and its regulations, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § [62.1-44.15:29](#) or (ii) revoke its approval of the VSMP. The Administrative Process Act (§ [2.2-4000](#) et seq.) shall govern the activities and proceedings of the Board under this article and the judicial review thereof.

If the Board revokes its approval of a VSMP, the Board shall find the VSMP authority provisional and shall have the Department assist with the administration of the program until the VSMP authority is deemed compliant with the requirements of this article and associated regulations. Assisting with administration includes the ability to review and comment on plans to the VSMP authority, to conduct inspections with the VSMP authority, and to conduct enforcement in accordance with this article and associated regulations.

In lieu of issuing a special order or revoking the program, the Board may take legal action against a VSMP pursuant to § [62.1-44.15:48](#) to ensure compliance.

1989, cc. 467, 499, § 10.1-603.12; 2004, c. [372](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:39. (For expiration date -- see notes) Right of entry.

The Department, the VSMP authority, where authorized to enforce this article, any duly authorized agent of the Department or VSMP authority, or any locality that is the operator of a regulated municipal separate storm sewer system may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of

this article. For operators of municipal separate storm sewer systems, this authority shall apply only to those properties from which a discharge enters their municipal separate storm sewer systems.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VSMP authority may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

2004, c. [372](#), § 10.1-603.12:1; 2011, c. [453](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:39. (For effective date -- see notes) Right of entry.

In addition to the Board's authority set forth in § [62.1-44.20](#), a locality serving as a VESMP authority or any duly authorized agent thereof may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article. For localities that operate regulated municipal separate storm sewer systems, this authority shall apply only to those properties from which a discharge enters their municipal separate storm sewer systems.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VESMP authority may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by conditions imposed by the VESMP authority on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.

2004, c. [372](#), § 10.1-603.12:1; 2011, c. [453](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:40. (For expiration date -- see notes) Information to be furnished.

The Board, the Department, or the VSMP authority, where authorized to enforce this article, may require every permit applicant, every permittee, or any person subject to state permit requirements under this article to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or

such other information as may be necessary to accomplish the purposes of this article. Any personal information shall not be disclosed except to an appropriate official of the Board, Department, U.S. Environmental Protection Agency, or VSMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.). However, disclosure of records of the Department, the Board, or the VSMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law, (ii) enforcement strategies, including proposed sanctions for enforcement actions, and (iii) any secret formulae, secret processes, or secret methods other than effluent data used by any permittee or under that permittee's direction is prohibited. Upon request, such enforcement records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the Department, the Board, or the VSMP authority. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

2004, c. [372](#), § 10.1-603.12:2; 2005, c. [102](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:40. (For effective date -- see notes) Information to be furnished.

The Board, the Department, or a locality serving as a VESMP authority may require every owner, including every applicant for a permit or land-disturbance approval, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article. The Board or Department also may require any locality that is a VESMP authority to furnish when requested any information as may be required to accomplish the purposes of this article. Any personal information shall not be disclosed except to an appropriate official of the Board, Department, U.S. Environmental Protection Agency, or VESMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.). However, disclosure of records of the Department, the Board, or the VESMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law, (ii) enforcement strategies, including proposed sanctions for enforcement actions, and (iii) any secret formulae, secret processes, or secret methods other than effluent data used by any owner or under that owner's direction is prohibited. Upon request, such enforcement records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the Board or the

locality serving as a VESMP authority. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

2004, c. [372](#), § 10.1-603.12:2; 2005, c. [102](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:41. (For expiration date -- see notes) Private rights; liability.

A. Whenever a common interest community cedes responsibility for the maintenance, repair, and replacement of a stormwater management facility on its real property to the Commonwealth or political subdivision thereof, such common interest community shall be immune from civil liability in relation to such stormwater management facility. In order for the immunity established by this subsection to apply, (i) the common interest community must cede such responsibility by contract or other instrument executed by both parties and (ii) the Commonwealth or the governing body of the political subdivision shall have accepted the responsibility ceded by the common interest community in writing or by resolution. As used in this section, maintenance, repair, and replacement shall include, without limitation, cleaning of the facility, maintenance of adjacent grounds that are part of the facility, maintenance and replacement of fencing where the facility is fenced, and posting of signage indicating the identity of the governmental entity that maintains the facility. Acceptance or approval of an easement, subdivision plat, site plan, or other plan of development shall not constitute the acceptance by the Commonwealth or the governing body of the political subdivision required to satisfy clause (ii). The immunity granted by this section shall not apply to actions or omissions by the common interest community constituting intentional or willful misconduct or gross negligence. For the purposes of this section, "common interest community" means the same as that term is defined in § [55-528](#).

B. Except as provided in subsection A, the fact that any permittee holds or has held a permit or state permit issued under this article shall not constitute a defense in any civil action involving private rights.

2004, c. [372](#), § 10.1-603.12:3; 2010, c. [853](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:41. (For effective date -- see notes) Liability of common interest communities.

Whenever a common interest community cedes responsibility for the maintenance, repair, and replacement of a stormwater management facility on its real property to the Commonwealth or political subdivision thereof, such common interest community shall be immune from civil liability in relation to such stormwater management facility. In order for the immunity established by this subsection to apply, (i) the common interest community must cede such responsibility by contract or other instrument executed by both parties and (ii) the Commonwealth or the governing body of the political subdivision shall have accepted the responsibility ceded by the common interest community in writing or by resolution. As used in this section, maintenance, repair, and replacement shall include, without limitation, cleaning of the facility, maintenance of adjacent grounds that are part of the facility, maintenance and replacement of fencing where the facility is fenced, and posting of signage indicating the identity of the governmental entity that maintains the facility. Acceptance or approval of an easement, subdivision plat, site plan, or other plan of development shall not constitute the acceptance by the Commonwealth or the governing body of the political subdivision required to satisfy clause (ii). The immunity granted by this section shall not apply to actions or omissions by the common interest community constituting intentional or willful misconduct or gross negligence. For the purposes of this section, "common interest community" means the same as that term is defined in § [55-528](#).

2004, c. [372](#), § 10.1-603.12:3; 2010, c. [853](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:42. (For repeal date -- see notes) Enforcement by injunction, etc.

A. It is unlawful for any person to fail to comply with any stop work order, emergency order issued in accordance with § [62.1-44.15:37](#), or a special order or emergency special order issued in accordance with § [62.1-44.15:25](#) that has become final under the provisions of this article. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, approved standard and specification, order, or permit condition issued by the Board, Department, or VSMP authority as authorized to do such, or any provisions of this article, may be compelled in a proceeding instituted in any appropriate court by the Board, Department, or VSMP authority where authorized to enforce this article to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy.

B. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty in accordance with the provisions of § [62.1-44.15:48](#).

2004, c. [372](#), § 10.1-603.12:4; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:43. (For repeal date -- see notes) Testing validity of regulations; judicial review.

A. The validity of any regulation adopted by the Board pursuant to this article may be determined through judicial review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

B. An appeal may be taken from the decision of the court to the Court of Appeals as provided by law.

2004, c. [372](#), § 10.1-603.12:5; 2013, cc. [756](#), [793](#).

§62.1-44.15:44. (For repeal date -- see notes) Right to hearing.

Any permit applicant, permittee, or person subject to state permit requirements under this article aggrieved by any action of the Department or Board taken without a formal hearing, or by inaction of the Department or Board, may demand in writing a formal hearing by the Board, provided a petition requesting such hearing is filed with the Board within 30 days after notice of such action.

2004, c. [372](#), § 10.1-603.12:6; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, cc. [303](#), [598](#).

§62.1-44.15:45. (For repeal date -- see notes) Hearings.

When holding hearings under this article, the Board shall do so in a manner consistent with § [62.1-44.26](#). A locality holding hearings under this article shall do so in a manner consistent with local hearing procedures.

2004, c. [372](#), § 10.1-603.12:7; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, cc. [303](#), [598](#).

§62.1-44.15:46. (For expiration date -- see notes) Appeals.

Any permittee or party aggrieved by a state permit or enforcement decision of the Department or Board under this article, or any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the Department or Board under this article, whether such decision is

affirmative or negative, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the Constitution of the United States. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury that is an invasion of a legally protected interest and that is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Department or the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

The provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) shall not apply to decisions rendered by localities. Appeals of decisions rendered by localities shall be conducted in accordance with local appeal procedures and shall include an opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such review in accordance with the standards established in § [2.2-4027](#), and the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other cases under this article.

1989, cc. 467, 499, § 10.1-603.13; 2004, c. [372](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, cc. [303](#), [598](#).

§62.1-44.15:46. (For effective date -- see notes) Appeals.

Any permittee or party aggrieved by (i) a permit or permit enforcement decision of the Board under this article or (ii) a decision of the Board under this article concerning a land-disturbing activity in a locality subject to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.), or any person who has participated, in person or by submittal of written comments, in the public comment process related to such decision of the Board under this article, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with § [62.1-44.29](#). Appeals of other final decisions of the Board under this article shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

A final decision by a locality, when serving as a VESMP authority, shall be subject to judicial review, provided that an appeal is filed in the appropriate court within 30 days from the date of any written decision adversely affecting the rights, duties, or

privileges of the person engaging in or proposing to engage in a land-disturbing activity.

1989, cc. 467, 499, § 10.1-603.13; 2004, c. [372](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, cc. [303](#), [598](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:47. (For repeal date -- see notes) Appeal to Court of Appeals.

From the final decision of the circuit court an appeal may be taken to the Court of Appeals as provided in § [17.1-405](#).

2004, c. [372](#), § 10.1-603.13:1; 2013, cc. [756](#), [793](#).

§62.1-44.15:48. (For expiration date -- see notes) Penalties, injunctions, and other legal actions.

A. Any person who violates any provision of this article or of any regulation, ordinance, or standard and specification adopted or approved hereunder, including those adopted pursuant to the conditions of an MS4 permit, or who fails, neglects, or refuses to comply with any order of a VSMP authority authorized to enforce this article, the Department, the Board, or a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. The Board shall adopt a regulation establishing a schedule of civil penalties to be utilized by the VSMP authority in enforcing the provisions of this article. The Board, Department, or VSMP authority may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court. Any civil penalties assessed by a court as a result of a summons issued by a locality as an approved VSMP authority shall be paid into the treasury of the locality wherein the land lies, except where the violator is the locality itself, or its agent. When the penalties are assessed by the court as a result of a summons issued by the Board or Department, or where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to [§ 62.1-44.15:29](#). Such civil penalties paid into the treasury of the locality in which the violation occurred are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

B. Any person who willfully or negligently violates any provision of this article, any regulation or order of the Board, any order of a VSMP authority authorized to enforce

this article or the Department, any ordinance of any locality approved as a VSMP authority, any condition of a permit or state permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates any provision of this article, any regulation or order of the Board, any order of the VSMP authority or the Department, any ordinance of any locality approved as a VSMP authority, any condition of a permit or state permit, or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this article or knowingly renders inaccurate any monitoring device or method required to be maintained under this article, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this article, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

D. Violation of any provision of this article may also include the following sanctions:

1. The Board, Department, or the VSMP authority, where authorized to enforce this article, may apply to the appropriate court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this article or of the local ordinance without the necessity of showing that an adequate remedy at law does not exist.

2. With the consent of any person who has violated or failed, neglected, or refused to obey any ordinance, any condition of a permit or state permit, any regulation or order of the Board, any order of the VSMP authority or the Department, or any provision of this article, the Board, Department, or VSMP authority may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section. Any civil charges collected shall be paid to the locality or state treasury pursuant to subsection A.

1989, cc. 467, 499, § 10.1-603.14; 2004, c. [372](#); 2006, c. [171](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:48. (For effective date -- see notes) Penalties, injunctions, and other legal actions.

A. For a land-disturbing activity that disturbs 2,500 square feet or more of land in an area of a locality that is designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act ([§ 62.1-44.15:67](#) et seq.), or that disturbs one acre or more of land or is part of a larger common plan of development or sale that disturbs one acre or more of land anywhere else in the Commonwealth:

1. Any person who violates any applicable provision of this article or of any regulation, permit, or standard and specification adopted or approved by the Board hereunder, or who fails, neglects, or refuses to comply with any order of the Board, or a court, issued as herein provided, shall be subject to a civil penalty pursuant to [§ 62.1-44.32](#). The court shall direct that any penalty be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to [§ 62.1-44.15:29.1](#).

2. Any person who violates any applicable provision of this article, or any ordinance adopted pursuant to this article, including those adopted pursuant to the conditions of an MS4 permit, or any condition of a local land-disturbance approval, or who fails, neglects, or refuses to comply with any order of a locality serving as a VSMP authority or a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties shall be paid into the treasury of the locality in which the violation occurred and are to be used solely for stormwater management capital projects, including (i) new

stormwater best management practices; (ii) stormwater best management practice maintenance, inspection, or retrofitting; (iii) stream restoration; (iv) low-impact development projects; (v) buffer restoration; (vi) pond retrofitting; and (vii) wetlands restoration.

Where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to [§ 62.1-44.15:29.1](#).

B. For a land-disturbing activity that disturbs an area measuring not less than 10,000 square feet but less than one acre in an area that is not designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act ([§ 62.1-44.15:67](#) et seq.) and is not part of a larger common plan of development or sale that disturbs one acre or more of land:

1. Any person who violates any applicable provision of this article or of any regulation or order of the Board issued pursuant to this article, or any condition of a land-disturbance approval issued by the Board, or fails to obtain a required land-disturbance approval, shall be subject to a civil penalty not to exceed \$5,000 for each violation with a limit of \$50,000 within the discretion of the court in a civil action initiated by the Board. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$50,000. The court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to [§ 62.1-44.15:29.1](#).

2. Any locality serving as a VESMP authority shall adopt an ordinance providing that a violation of any ordinance or provision of its program adopted pursuant to this article, or any condition of a land-disturbance approval, shall be subject to a civil penalty. Such ordinance shall provide that any person who violates any applicable provision of this article or any ordinance or order of a locality issued pursuant to this article, or any condition of a land-disturbance approval issued by the locality, or fails to obtain a required land-disturbance approval, shall be subject to a civil penalty not to exceed \$5,000 for each violation with a limit of \$50,000 within the discretion of the court in a civil action initiated by the locality. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil

penalties that exceed a total of \$50,000. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies and used pursuant to subdivision A 2, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to [§ 62.1-44.15:29.1](#).

C. The violation of any provision of this article may also result in the following sanctions:

1. The Board may seek an injunction, mandamus, or other appropriate remedy pursuant to [§ 62.1-44.23](#). A locality serving as a VESMP authority may apply to the appropriate court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of a local ordinance or order or the conditions of a local land-disturbance approval. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this article shall be subject, in the discretion of the court, to a civil penalty that shall be assessed and used in accordance with the provisions of subsection A or B, as applicable.

2. The Board or a locality serving as a VESMP authority may use the criminal provisions provided in [§ 62.1-44.32](#).

1989, cc. 467, 499, § 10.1-603.14; 2004, c. [372](#); 2006, c. [171](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:49. (For expiration date -- see notes) Enforcement authority of MS4 localities.

A. Localities shall adopt a stormwater ordinance pursuant to the conditions of a MS4 permit that is consistent with this article and its associated regulations and that contains provisions including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities and shall include additional provisions as required to comply with a state MS4 permit. Such locality may utilize the civil penalty provisions in subsection A of [§ 62.1-44.15:48](#), the injunctive authority as provided for in subdivision D 1 of [§ 62.1-44.15:48](#), and the civil charges as authorized in subdivision D 2 of [§ 62.1-44.15:48](#), to enforce the ordinance. At the request of another MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to any MS4 located within its jurisdiction.

B. Any person who willfully and knowingly violates any provision of such an ordinance is guilty of a Class 1 misdemeanor.

C. The local ordinance authorized by this section shall remain in full force and effect at the locality has been approved as a VSMP authority.

2008, c. [13](#), § 10.1-603.14:1; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:49. (For effective date -- see notes) Enforcement authority of MS4 localities.

Each locality subject to an MS4 permit shall adopt an ordinance to implement a municipal separate storm sewer system management program that is consistent with this chapter and that contains provisions as required to comply with an MS4 permit. Such locality may utilize the civil penalty provisions in subdivision A 2 of § [62.1-44.15:48](#), the injunctive authority as provided for in subsection C of § [62.1-44.15:48](#), the civil charges as authorized in § [62.1-44.15:25](#).1, and the criminal provisions in § [62.1-44.32](#), to enforce the ordinance. At the request of another MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to any MS4 located within its jurisdiction.

2008, c. [13](#), § 10.1-603.14:1; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:50. (For effective date -- see notes) Cooperation with federal and state agencies.

A VESMP authority and the Department are authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities.

1989, cc. 467, 499, § 10.1-603.15; 2004, c. [372](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:50. (For expiration date -- see notes) Cooperation with federal and state agencies.

A VSMP authority and the Department are authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities for stormwater management.

1989, cc. 467, 499, § 10.1-603.15; 2004, c. [372](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:51. (For expiration date, see Acts 2016, cc. 68 and 758) Definitions.

As used in this article, unless the context requires a different meaning:

"Agreement in lieu of a plan" means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

"Certified inspector" means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

"Certified plan reviewer" means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as defined in § [54.1-2200](#).

"Certified program administrator" means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ [10.1-506](#) et seq.) of Chapter 5 of Title 10.1.

"Erosion and sediment control plan" or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions

contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Erosion impact area" means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

"Land-disturbing activity" means any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term shall not include:

1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
2. Individual service connections;
3. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1;
6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, live-stock feedlot operations, or as additionally set forth by the Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the

provisions of Chapter 11 (§ [10.1-1100](#) et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § [10.1-1163](#);

7. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

8. Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (§ [10.1-604](#) et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;

9. Disturbed land areas of less than 10,000 square feet in size or 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and

12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the VESCP authority.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular location.

"Permittee" means the person to whom the local permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"Town" means an incorporated town.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § [15.2-5102](#).

"Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

1973, c. 486, § 21-89.3; 1974, c. 265; 1977, c. 149; 1980, c. 305; 1988, cc. 690, 732, 891, § 10.1-560; 1990, c. 491; 1991, c. 469; 1992, c. 184; 1993, c. 925; 1994, c. [703](#); 2003, c. [423](#); 2004, c. [476](#); 2005, c. [107](#); 2006, c. [21](#); 2009, c. [309](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:51.1. (For effective date -- see notes) Applicability.

The requirements of this article shall apply in any locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program (VESMP) pursuant to subdivision B 3 of § [62.1-44.15:27](#). Each such locality shall be required to adopt and administer a Board-approved VESCP.

2016, cc. [68](#), [758](#).

§62.1-44.15:51. (For effective date, see Acts 2016, cc. 68 and 758) Definitions.

As used in this article, unless the context requires a different meaning:

"Agreement in lieu of a plan" means a contract between the VESCP authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family detached residential structure; this contract may be executed by the VESCP authority in lieu of a formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval in order to obtain authorization for land-disturbing activities to commence.

"Certified inspector" means an employee or agent of a VESCP authority who (i) holds a certification from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

"Certified plan reviewer" means an employee or agent of a VESCP authority who (i) holds a certification from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as defined in § [54.1-2200](#).

"Certified program administrator" means an employee or agent of a VESCP authority who (i) holds a certification from the Board in the area of program administration or

(ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ [10.1-506](#) et seq.) of Chapter 5 of Title 10.1.

"Erosion and sediment control plan" or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Erosion impact area" means an area of land that is not associated with a current land-disturbing activity but is subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

"Land disturbance" or "land-disturbing activity" means any man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including the clearing, grading, excavating, transporting, and filling of land.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Owner" means the same as provided in § [62.1-44.3](#). For a land-disturbing activity that is regulated under this article, "owner" also includes the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession,

assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular location.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

"Town" means an incorporated town.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of this article.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality approved by the Board to operate a Virginia Erosion and Sediment Control Program. A locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program pursuant to subdivision B 3 of § [62.1-44.15:27](#) is required to become a VESCP authority in accordance with this article.

"Virginia Stormwater Management Program" or "VSMP" means a program established by the Board pursuant to § [62.1-44.15:27.1](#) on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance.

1973, c. 486, § 21-89.3; 1974, c. 265; 1977, c. 149; 1980, c. 305; 1988, cc. 690, 732, 891, § 10.1-560; 1990, c. 491; 1991, c. 469; 1992, c. 184; 1993, c. 925; 1994, c. [703](#); 2003, c. [423](#); 2004, c. [476](#); 2005, c. [107](#); 2006, c. [21](#); 2009, c. [309](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:52. (For expiration date -- see notes) Virginia Erosion and Sediment Control Program.

A. The Board shall develop a program and adopt regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff that shall be met in any control program to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or § [62.1-44.15:54](#) or [62.1-44.15:65](#). Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one-year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirement for natural or man-made channels as defined in regulations promulgated pursuant to § [62.1-44.15:54](#) or [62.1-44.15:65](#). For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (§ [62.1-44.15:24](#) et seq.) and attendant regulations, unless such land-disturbing activities (a) are in accordance with the grandfathering or time limits on applicability of approved design criteria provisions of the Virginia Stormwater Management Program (VSMP) Regulations, in which case the flow rate capacity and velocity requirements of

this subsection shall apply, or (b) are exempt pursuant to subdivision C 7 of § [62.1-44.15:34](#).

The regulations shall:

1. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including, but not limited to, data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

2. Include such survey of lands and waters as may be deemed appropriate by the Board or required by any applicable law to identify areas, including multijurisdictional and watershed areas, with critical erosion and sediment problems; and

3. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities.

B. The Board shall provide technical assistance and advice to, and conduct and supervise educational programs for VESCP authorities.

C. The Board shall adopt regulations establishing minimum standards of effectiveness of erosion and sediment control programs, and criteria and procedures for reviewing and evaluating the effectiveness of VESCPs. In developing minimum standards for program effectiveness, the Board shall consider information and standards on which the regulations promulgated pursuant to subsection A are based.

D. The Board shall approve VESCP authorities and shall periodically conduct a comprehensive program compliance review and evaluation to ensure that all VESCPs operating under the jurisdiction of this article meet minimum standards of effectiveness in controlling soil erosion, sediment deposition, and nonagricultural runoff. The Department shall develop a schedule for conducting periodic reviews and evaluations of the effectiveness of VESCPs unless otherwise directed by the Board. Such reviews where applicable shall be coordinated with those being implemented in accordance with the Stormwater Management Act (§ [62.1-44.15:24](#) et seq.) and associated regulations and the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.) and associated regulations. The Department may also conduct a comprehensive or partial

program compliance review and evaluation of a VESCP at a greater frequency than the standard schedule.

E. The Board shall issue certificates of competence concerning the content, application, and intent of specified subject areas of this article and accompanying regulations, including program administration, plan review, and project inspection, to personnel of program authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge. The Department shall administer education and training programs for specified subject areas of this article and accompanying regulations, and is authorized to charge persons attending such programs reasonable fees to cover the costs of administering the programs. Such education and training programs shall also contain expanded components to address plan review and project inspection elements of the Stormwater Management Act (§ [62.1-44.15:24](#) et seq.) and attendant regulations in accordance with § [62.1-44.15:30](#).

F. Department personnel conducting inspections pursuant to this article shall hold a certificate of competence as provided in subsection E.

1973, c. 486, § 21-89.4; 1988, cc. 732, 891, § 10.1-561; 1993, c. 925; 2004, c. [431](#); 2005, c. [107](#); 2006, c. [21](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2015, c. [497](#); 2016, c. [66](#).

§62.1-44.15:52. (For effective date -- see notes) Virginia Erosion and Sediment Control Program.

A. The Board shall develop a program and adopt regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff that shall be met in any control program to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or § [62.1-44.15:54](#) or [62.1-44.15:65](#). Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project and to release

it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one-year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirement for natural or man-made channels as defined in regulations promulgated pursuant to § [62.1-44.15:54](#) or [62.1-44.15:65](#). For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Virginia Erosion and Stormwater Management Act (§ [62.1-44.15:24](#) et seq.) and attendant regulations unless such land-disturbing activities (a) are in accordance with the grandfathering or time limits on applicability of approved design criteria provisions of the Virginia Erosion and Stormwater Management Program (VESMP) Regulations, in which case the flow rate capacity and velocity requirements of this subsection shall apply, or (b) are exempt pursuant to subdivision G 2 of § [62.1-44.15:34](#).

The regulations shall:

1. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including, but not limited to, data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;
 2. Include such survey of lands and waters as may be deemed appropriate by the Board or required by any applicable law to identify areas, including multi-jurisdictional and watershed areas, with critical erosion and sediment problems; and
 3. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities.
- B. The Board shall provide technical assistance and advice to, and conduct and supervise educational programs for VESCP authorities.

C. The Board shall adopt regulations establishing minimum standards of effectiveness of erosion and sediment control programs, and criteria and procedures for reviewing and evaluating the effectiveness of VESCPs. In developing minimum standards for program effectiveness, the Board shall consider information and standards on which the regulations promulgated pursuant to subsection A are based.

D. The Board shall approve VESCP authorities and shall periodically conduct a comprehensive program compliance review and evaluation pursuant to subdivision (19) of § [62.1-44.15](#).

E. The Board shall issue certifications concerning the content, application, and intent of specified subject areas of this article and accompanying regulations, including program administration, plan review, and project inspection, to personnel of program authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge. The Department shall administer education and training programs for specified subject areas of this article and accompanying regulations, and is authorized to charge persons attending such programs reasonable fees to cover the costs of administering the programs. Such education and training programs shall also contain expanded components to address plan review and project inspection elements of the Virginia Erosion and Stormwater Management Act (§ [62.1-44.15:24](#) et seq.) in accordance with § [62.1-44.15:30](#).

F. Department personnel conducting inspections pursuant to this article shall hold a certification as provided in subsection E.

1973, c. 486, § 21-89.4; 1988, cc. 732, 891, § 10.1-561; 1993, c. 925; 2004, c. [431](#); 2005, c. [107](#); 2006, c. [21](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2015, c. [497](#); 2016, cc. [66](#), [68](#), [758](#).

§62.1-44.15:53. Certification of program personnel.

A. The minimum standards of VESCP effectiveness established by the Board pursuant to subsection C of § [62.1-44.15:52](#) shall provide that (i) an erosion and sediment control plan shall not be approved until it is reviewed by a certified plan reviewer; (ii) inspections of land-disturbing activities shall be conducted by a certified inspector; and (iii) a VESCP shall contain a certified program administrator, a certified plan reviewer, and a certified project inspector, who may be the same person.

B. Any person who holds a certificate of competence from the Board in the area of plan review, project inspection, or program administration that was attained prior to

the adoption of the mandatory certification provisions of subsection A shall be deemed to satisfy the requirements of that area of certification.

C. (For expiration date -- see note) Professionals registered in the Commonwealth pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1 or a professional soil scientist as defined in § [54.1-2200](#) shall be deemed to satisfy the certification requirements for the purposes of renewals.

C. (For effective date -- see notes) Professionals registered in the Commonwealth pursuant to Article 1 (§ [54.1-400](#) et seq.) of Chapter 4 of Title 54.1 or a professional soil scientist as defined in § [54.1-2200](#) shall be deemed to have met the provisions of this section for the purposes of renewals of certifications.

1993, c. 925, § 10.1-561.1; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:54. (For expiration date -- see notes) Establishment of Virginia Erosion and Sediment Control Program.

A. Counties and cities shall adopt and administer a VESCP.

Any town lying within a county that has adopted its own VESCP may adopt its own program or shall become subject to the county program. If a town lies within the boundaries of more than one county, the town shall be considered for the purposes of this article to be wholly within the county in which the larger portion of the town lies.

B. A VESCP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to assist with carrying out the provisions of this article, including the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities on a unit or units of land as well as for monitoring, reports, inspections, and enforcement where authorized in this article, of such land-disturbing activities.

C. Any VESCP adopted by a county, city, or town shall be approved by the Board if it establishes by ordinance requirements that are consistent with this article and associated regulations.

D. Each approved VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with Virginia stormwater management, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval

of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

E. The Board may approve a state entity, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to [§ 15.2-5102](#) to operate a VESCP consistent with the requirements of this article and its associated regulations and the VESCP authority's Department-approved annual standards and specifications. For these programs, enforcement shall be administered by the Department and the Board where applicable in accordance with the provisions of this article.

F. Following completion of a compliance review of a VESCP in accordance with subsection D of [§ 62.1-44.15:52](#), the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement if deficiencies are found; otherwise, the Board may find the program compliant. If a comprehensive or partial program compliance review conducted by the Department of a VESCP indicates that the VESCP authority has not administered, enforced where authorized to do so, or conducted its VESCP in a manner that satisfies the minimum standards of effectiveness established pursuant to subsection C of [§ 62.1-44.15:52](#), the Board shall establish a schedule for the VESCP authority to come into compliance. The Board shall provide a copy of its decision to the VESCP authority that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule required to attain the minimum standard of effectiveness and shall include an offer to provide technical assistance to implement the corrective action. If the VESCP authority has not implemented the necessary compliance actions identified by the Board within 30 days following receipt of the corrective action agreement, or such additional period as is granted to complete the implementation of the corrective action, then the Board shall have the authority to (i) issue a special order to any VESCP, imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per violation for noncompliance with the state program, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by [§ 62.1-44.15:29](#) or (ii) revoke its approval of the VESCP. The Administrative Process Act ([§ 2.2-4000](#) et seq.) shall govern the activities and proceedings of the Board and the judicial review thereof.

In lieu of issuing a special order or revoking the program, the Board is authorized to take legal action against a VESCP to ensure compliance.

G. If the Board revokes its approval of the VESCP of a county, city, or town, and the locality is in a district, the district, upon approval of the Board, shall adopt and administer a VESCP for the locality. To carry out its program, the district shall adopt regulations in accordance with the Administrative Process Act ([§ 2.2-4000](#) et seq.) consistent with this article and associated regulations. The regulations may be revised from time to time as necessary. The program and regulations shall be available for public inspection at the principal office of the district.

H. If the Board (i) revokes its approval of a VESCP of a district, or of a county, city, or town not in a district, or (ii) finds that a local program consistent with this article and associated regulations has not been adopted by a district or a county, city, or town that is required to adopt and administer a VESCP, the Board shall find the VESCP authority provisional, and have the Department assist with the administration of the program until the Board finds the VESCP authority compliant with the requirements of this article and associated regulations. "Assisting with administration" includes but is not limited to the ability to review and comment on plans to the VESCP authority, to conduct inspections with the VESCP authority, and to conduct enforcement in accordance with this article and associated regulations.

I. If the Board revokes its approval of a state entity, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to [§ 15.2-5102](#), the Board shall find the VESCP authority provisional, and have the Department assist with the administration of the program until the Board finds the VESCP authority compliant with the requirements of this article and associated regulations. "Assisting with administration" includes the ability to review and comment on plans to the VESCP authority and to conduct inspections with the VESCP authority in accordance with this article and associated regulations.

J. Any VESCP authority that administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration. Such fee may be in addition to any fee charged for administration of a Virginia Stormwater Management Program, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance

with the programs. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

K. The governing body of any county, city, or town, or a district board that is authorized to administer a VESCP, may adopt an ordinance or regulation where applicable providing that violations of any regulation or order of the Board, any provision of its program, any condition of a permit, or any provision of this article shall be subject to a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties that exceed a total of \$10,000. Adoption of such an ordinance providing that violations are subject to a civil penalty shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of § [62.1-44.15:63](#). The penalties set out in this subsection are also available to the Board in its enforcement actions.

1973, c. 486, § 21-89.5; 1976, c. 653; 1978, c. 450; 1980, c. 35; 1983, c. 189; 1988, cc. 732, 891, § 10.1-562; 1992, c. 298; 1993, c. 925; 2005, c. [129](#); 2007, cc. [51](#), [204](#); 2010, c. [275](#); 2012, cc. [785](#), [819.2013](#), cc. [756](#), [793](#).

§62.1-44.15:54. (For effective date -- see notes) Virginia Erosion and Sediment Control Program.

A. Any locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program (VESMP) pursuant to subdivision B 3 of [§ 62.1-44.15:27](#) shall administer a VESCP in accordance with this article; however, a town may enter into an agreement with a county to administer the town's VESCP pursuant to subsection C of [§ 62.1-44.15:27](#).

B. A VESCP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to assist with carrying out the provisions of this article, including the review and determination of adequacy of erosion and sediment control plans submitted for land-dis-

turbing activities on a unit or units of land as well as for monitoring, reports, inspections, and enforcement of such land-disturbing activities.

C. Any VESCP adopted by a county, city, or town shall be approved by the Board if it establishes by ordinance requirements that are consistent with this article and associated regulations.

D. Each approved VESCP operated by a county, city, or town shall include provisions for the coordination of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

E. The Board shall conduct compliance reviews of VESCPs in accordance with subdivision (19) of [§ 62.1-44.15](#). The Board or Department also may require any locality that is a VESCP authority to furnish when requested any information as may be required to accomplish the purposes of this article.

F. Any VESCP authority that administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

G. Any locality that is authorized to administer a VESCP may adopt an ordinance or regulation where applicable providing that violations of any regulation or order of the Board, any provision of its program, any condition of a land-disturbance approval, or any provision of this article shall be subject to a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties that exceed a total of \$10,000. The penalties set out in this subsection are also available to the Board in its enforcement actions.

1973, c. 486, § 21-89.5; 1976, c. 653; 1978, c. 450; 1980, c. 35; 1983, c. 189; 1988, cc. 732, 891, § 10.1-562; 1992, c. 298; 1993, c. 925; 2005, c. [129](#); 2007, cc. [51](#), [204](#); 2010, c. [275](#); 2012, cc. [785](#), [819.2013](#), cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:55. (For expiration date -- see notes) Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.

A. Except as provided in [§ 62.1-44.15:56](#) for state agency and federal entity land-disturbing activities, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VESCP authority shall then be required to obtain evidence of Virginia Stormwater Management Program permit coverage where it is required prior to providing approval to begin land disturbance. Where land-disturbing activities involve lands under the jurisdiction of more than one VESCP, an erosion and sediment control plan may, at the request of one or all of the VESCP authorities, be submitted to the Department for review and approval rather than to each jurisdiction concerned. The Department may charge the jurisdictions requesting the review a fee sufficient to cover the cost associated with conducting the review. A VESCP may enter into an agreement with an adjacent VESCP regarding the administration of multijurisdictional projects whereby the jurisdiction that contains the greater portion of the project shall be responsible for all or part of the administrative procedures. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the VESCP authority, as provided by [§ 62.1-44.15:52](#), who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate of competence requirement for an

agreement in lieu of a plan for construction of a single-family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by [§ 62.1-44.15:52](#). Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the VESCP authority within the time specified in this subsection, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

C. The VESCP authority may require changes to an approved plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article and associated regulations, are agreed to by the VESCP authority and the person responsible for carrying out the plan.

D. Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall, and authorities created pursuant to [§ 15.2-5102](#) may, file general erosion and sediment control standards and specifications annually with the Department for review and approval. Such standards and specifications shall be consistent with the requirements of this article and associated regulations and the Stormwater Management Act ([§ 62.1-44.15:24](#) et seq.) and associated regulations where applicable. The specifications shall apply to:

1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone utility lines and pipelines, and water and sewer lines; and
2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of the railroad company.

The Department shall have 60 days in which to approve the standards and specifications. If no action is taken by the Department within 60 days, the standards and specifications shall be deemed approved. Individual approval of separate projects within subdivisions 1 and 2 is not necessary when approved specifications are followed. Projects not included in subdivisions 1 and 2 shall comply with the requirements of the appropriate VESCP. The Board shall have the authority to enforce approved specifications and charge fees equal to the lower of (i) \$1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification review and approval, project inspections, and compliance.

E. Any person engaging, in more than one jurisdiction, in the creation and operation of a wetland mitigation or stream restoration bank or banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetlands mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control standards and specifications for wetland mitigation or stream restoration banks annually with the Department for review and approval consistent with guidelines established by the Board.

The Department shall have 60 days in which to approve the specifications. If no action is taken by the Department within 60 days, the specifications shall be deemed approved. Individual approval of separate projects under this subsection is not necessary when approved specifications are implemented through a project-specific erosion and sediment control plan. Projects not included in this subsection shall comply with the requirements of the appropriate local erosion and sediment control program. The Board shall have the authority to enforce approved specifications and charge fees equal to the lower of (i) \$1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification review and approval, projection inspections, and compliance. Approval of general erosion and sediment control specifications by the Department does not relieve the owner or operator from compliance with any

other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.

F. In order to prevent further erosion, a VESCP authority may require approval of an erosion and sediment control plan for any land identified by the VESCP authority as an erosion impact area.

G. For the purposes of subsections A and B, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

1973, c. 486, § 21-89.6; 1979, c. 432; 1988, cc. 732, 891, § 10.1-563; 1993, c. 925; 1999, c. [555](#); 2001, c. [490](#); 2003, cc. [827](#), [966](#); 2006, c. [466](#); 2008, c. [23](#); 2011, cc. [720](#), [721](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:55. (For effective date -- see notes) Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.

A. Except as provided in [§ 62.1-44.15:31](#) for a land-disturbing activity conducted by a state agency, federal entity, or other specified entity, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. Where Virginia Pollutant Discharge Elimination System permit coverage is required, a VESCP authority shall be required to obtain evidence of such coverage from the Department's online reporting system prior to approving the erosion and sediment control plan. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP authority regarding the administration of multijurisdictional projects specifying who shall be responsible for all or part of the administrative procedures. Should adjacent authorities fail to come to such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly

perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate to the VESCP authority, as provided by [§ 62.1-44.15:52](#), who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan for construction of a single-family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate, as provided by [§ 62.1-44.15:52](#). Failure to provide the name of an individual holding a certificate prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the VESCP authority within the time specified in this subsection, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

C. The VESCP authority may require changes to an approved plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article and associated regulations, are agreed to by the VESCP authority and the person responsible for carrying out the plan.

D. In order to prevent further erosion, a VESCP authority may require approval of an erosion and sediment control plan for any land identified by the VESCP authority as an erosion impact area.

E. For the purposes of subsections A and B, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

F. Notwithstanding any other provisions of this article, the following activities are not required to comply with the requirements of this article unless otherwise required by federal law:

1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act ([§ 62.1-44.15:67](#) et seq.). However, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
3. Installation, maintenance, or repair of any individual service connection;
4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1;
7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and

land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 ([§ 10.1-1100](#) et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of [§ 10.1-1163](#);

8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity;

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and

12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

1973, c. 486, § 21-89.6; 1979, c. 432; 1988, cc. 732, 891, § 10.1-563; 1993, c. 925; 1999, c. [555](#); 2001, c. [490](#); 2003, cc. [827](#), [966](#); 2006, c. [466](#); 2008, c. [23](#); 2011, cc. [720](#), [721](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:56. (For repeal date -- see notes) State agency and federal entity projects.

A. A state agency shall not undertake a project involving a land-disturbing activity unless (i) the state agency has submitted annual standards and specifications for its conduct of land-disturbing activities that have been reviewed and approved by the Department as being consistent with this article and associated regulations or (ii) the state agency has submitted an erosion and sediment control plan for the project that has been reviewed and approved by the Department. When a federal entity submits

an erosion and sediment control plan for a project, land disturbance shall not commence until the Department has reviewed and approved the plan.

B. The Department shall not approve an erosion and sediment control plan submitted by a state agency or federal entity for a project involving a land-disturbing activity (i) in any locality that has not adopted a local program with more stringent regulations than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the erosion and sediment control plan is consistent with the requirements of the state program.

C. The Department shall not approve an erosion and sediment control plan submitted by a state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent ordinances than those of the state program unless the erosion and sediment control plan is consistent with the requirements of the local program. If a locality has not submitted a copy of its local program regulations to the Department, the provisions of subsection B shall apply.

D. The Department shall have 60 days in which to comment on any standards and specifications or erosion and sediment control plan submitted to it for review, and its comments shall be binding on the state agency and any private business hired by the state agency.

E. As onsite changes occur, the state agency shall submit changes in an erosion and sediment control plan to the Department.

F. The state agency responsible for the land-disturbing activity shall ensure compliance with an approved plan, and the Department and Board, where applicable, shall provide project oversight and enforcement as necessary.

G. If the state agency or federal entity has developed, and the Department has approved, annual standards and specifications, and the state agency or federal entity has been approved by the Board to operate a VESCP as a VESCP authority, erosion and sediment control plan review and approval and land-disturbing activity inspections shall be conducted by such entity. The Department and the Board, where applicable, shall provide project oversight and enforcement as necessary and comprehensive program compliance review and evaluation. Such standards and specifications shall be consistent with the requirements of this article and associated reg-

ulations and the Stormwater Management Act (§ [62.1-44.15:24](#) et seq.) and associated regulations when applicable.

1973, c. 486, § 21-89.6; 1979, c. 432; 1988, c. 891, § 10.1-564; 1993, c. 925; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:57. (For expiration date -- see notes) Approved plan required for issuance of grading, building, or other permits; security for performance.

Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities regulated under this article shall not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed and, upon the development of an online reporting system by the Department but no later than July 1, 2014, evidence of Virginia Stormwater Management Program permit coverage where it is required. Prior to issuance of any permit, the agency may also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the agency, to ensure that measures could be taken by the agency at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action that may be required of him by the approved plan as a result of his land-disturbing activity. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation, which shall not exceed 25 percent of the estimated cost of the conservation action. If the agency takes such conservation action upon such failure by the permittee, the agency may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the achievement of adequate stabilization of the land-disturbing activity in any project or section thereof, the bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated based upon the percentage of stabilization accomplished in the project or section thereof. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

1973, c. 486, § 21-89.7; 1980, c. 35; 1988, cc. 694, 891, § 10.1-565; 1996, c. [275](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:57. (For effective date -- see notes) Approved plan required for issuance of grading, building, or other permits; security for performance.

Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities regulated under this article shall not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan, certification that the plan will be followed, and evidence of Virginia Pollutant Discharge Elimination System permit coverage where it is required. Prior to issuance of any permit, the agency may also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the agency, to ensure that measures could be taken by the agency at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action that may be required of him by the approved plan as a result of his land-disturbing activity. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation, which shall not exceed 25 percent of the estimated cost of the conservation action. If the agency takes such conservation action upon such failure by the permittee, the agency may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the achievement of adequate stabilization of the land-disturbing activity in any project or section thereof, the bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated based upon the percentage of stabilization accomplished in the project or section thereof. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

1973, c. 486, § 21-89.7; 1980, c. 35; 1988, cc. 694, 891, § 10.1-565; 1996, c. [275](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:58. (For expiration date -- see notes) Monitoring, reports, and inspections.

A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and require that an individual holding a certificate of competence, as provided by § [62.1-44.15:52](#), who will be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reports from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. However, any VESCP authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single-family residence. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the VESCP authority, where authorized to enforce this article, or the Department determines that there is a failure to comply with the plan following an inspection, notice shall be served upon the permittee or person responsible for carrying out the plan by mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the VESCP authority, where authorized to enforce this article, the Department, or the Board may pursue enforcement as provided by § [62.1-44.15:63](#).

B. Notwithstanding the provisions of subsection A, a VESCP authority is authorized to enter into agreements or contracts with districts, adjacent localities, or other public or private entities to assist with the responsibilities of this article, including but not limited to the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities as well as monitoring, reports, inspections, and enforcement where an authority is granted such powers by this article.

C. Upon issuance of an inspection report denoting a violation of this section, § [62.1-44.15:55](#) or [62.1-44.15:56](#), in conjunction with or subsequent to a notice to comply as specified in subsection A, a VESCP authority, where authorized to enforce this article, or the Department may issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § [62.1-44.15:55](#), requiring that all of the land-

disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved erosion and sediment control plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order for noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the VESCP authority, the Department, or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. The order for disturbance without an approved plan or permits shall be served upon the owner by mailing with confirmation of delivery to the address specified in the land records of the locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as permits and plan approvals are secured, except in such situations where an agricultural exemption applies. If the alleged violator has not obtained an approved erosion and sediment control plan or any required permit within seven days from the date of service of the order, the Department or the chief administrative officer or his designee on behalf of the VESCP authority may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved erosion and sediment control plan and any required permits have been obtained. The subsequent order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person violating or failing, neglecting, or refusing to obey an order issued by the Department or the chief administrative officer or his designee on behalf of the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be

lifted. Nothing in this section shall prevent the Department, the Board, or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in § [62.1-44.15:63](#).

1973, c. 486, § 21-89.8; 1986, c. 328; 1988, cc. 694, 891, § 10.1-566; 1992, c. 298; 1993, c. 925; 2001, c. [490](#); 2003, c. [827](#); 2012, cc. [249](#), [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:58. (For effective date -- see notes) Monitoring, reports, and inspections.

A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and require that an individual holding a certificate, as provided by § [62.1-44.15:52](#), will be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reports from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure. The owner shall be given notice of the inspection. When the VESCP authority or the Board determines that there is a failure to comply with the conditions of land-disturbance approval or to obtain an approved plan or a land-disturbance approval prior to commencing land-disturbing activity, the VESCP authority or the Board may serve a notice to comply upon the owner or person responsible for carrying out the land-disturbing activity. Such notice to comply shall be served by delivery by facsimile, e-mail, or other technology; by mailing with confirmation of delivery to the address specified in the plan or land-disturbance application, if available, or in the land records of the locality; or by delivery at the site to a person previously identified to the VESCP authority by the owner. The notice to comply shall specify the measures needed to comply with the land-disturbance approval conditions or shall identify the plan approval or land-disturbance approval needed to comply with this article and shall specify a reasonable time within which such measures shall be completed. In any instance in which a required land-disturbance approval has not been obtained, the VESCP authority or the Board may require immediate compliance. In any other case, the VESCP authority or the Board may establish the time for compliance by taking into account the risk of damage to natural resources and other relevant factors. Notwithstanding any other provision in this subsection, a VESCP authority or the Board may count any days of noncompliance as days of violation should the VESCP authority or the Board take an

enforcement action. The issuance of a notice to comply by the Board shall not be considered a case decision as defined in § [2.2-4001](#). Upon failure to comply within the time specified, any plan approval or land-disturbance approval may be revoked and the VESCP authority or the Board may pursue enforcement as provided by § [62.1-44.15:63](#).

B. Notwithstanding the provisions of subsection A, a VESCP authority is authorized to enter into agreements or contracts with districts, adjacent localities, or other public or private entities to assist with the responsibilities of this article, including but not limited to the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities as well as monitoring, reports, inspections, and enforcement.

C. Upon issuance of an inspection report denoting a violation of this section or § [62.1-44.15:55](#), in conjunction with or subsequent to a notice to comply as specified in subsection A, a VESCP authority or the Board may issue a stop work order requiring that all or part of the land-disturbing activities on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § [62.1-44.15:55](#), requiring that all of the land-disturbing activities be stopped until an approved plan is obtained. When such an order is issued by the Board, it shall be issued in accordance with the procedures of the Administrative Process Act (§ [2.2-4000](#) et seq.). Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved erosion and sediment control plan, such a stop work order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order for noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the VESCP authority, the Board, or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. The stop work order for disturbance without an approved plan shall be served upon the owner by mailing with confirmation of delivery to the address specified in the land records of the locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as plan approvals are secured, except in

such situations where an agricultural exemption applies. If the alleged violator has not obtained an approved erosion and sediment control plan within seven days from the date of service of the stop work order, the Board or the chief administrative officer or his designee on behalf of the VESCP authority may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved erosion and sediment control plan has been obtained. The subsequent order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the plan or the land records of the locality in which the site is located. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person violating or failing, neglecting, or refusing to obey an order issued by the Board or the chief administrative officer or his designee on behalf of the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan, the order shall immediately be lifted. Nothing in this section shall prevent the Board or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in § [62.1-44.15:63](#).

1973, c. 486, § 21-89.8; 1986, c. 328; 1988, cc. 694, 891, § 10.1-566; 1992, c. 298; 1993, c. 925; 2001, c. [490](#); 2003, c. [827](#); 2012, cc. [249](#), [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:59. Reporting.

Each VESCP authority shall report to the Department, in a method such as an online reporting system and on a time schedule established by the Department, a listing of each land-disturbing activity for which a plan has been approved by the VESCP under this article.

2005, c. [102](#), § 10.1-566.1; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:60. (For effective date -- see notes) Right of entry.

In addition to the Board's authority set forth in § [62.1-44.20](#), a locality serving as a VESCP authority or any duly authorized agent thereof may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, pub-

lic or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VESCP authority may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by the conditions imposed by the VESCP authority on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.

2012, cc. [785](#), [819](#), § 10.1-566.2; 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:60. (For expiration date -- see notes) Right of entry.

The Department, the VESCP authority, where authorized to enforce this article, or any duly authorized agent of the Department or such VESCP authority may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VESCP authority may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

2012, cc. [785](#), [819](#), § 10.1-566.2; 2013, cc. [756](#), [793](#).

§62.1-44.15:61. (For repeal date -- see notes) Cooperation with federal and state agencies.

A VESCP authority and the Board are authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for erosion and sediment control with respect to land-disturbing activities.

1973, c. 486, § 21-89.9; 1988, c. 891, § 10.1-567; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:62. Judicial appeals.

A. A final decision by a county, city, or town, when serving as a VESCP authority under this article, shall be subject to judicial review, provided that an appeal is filed

within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

B. (For expiration date -- see notes) Final decisions of the Board, Department, or district shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

B. (For effective date -- see notes) Final decisions of the Board shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

1973, c. 486, § 21-89.10; 1986, c. 615; 1988, c. 891, § 10.1-568; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:63. (For expiration date -- see notes) Penalties, injunctions and other legal actions.

A. Violators of [§ 62.1-44.15:55](#), [62.1-44.15:56](#), or [62.1-44.15:58](#) shall be guilty of a Class 1 misdemeanor.

B. Any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VESCP authority, any condition of a permit, or any provision of this article or associated regulation shall, upon a finding of an appropriate court, be assessed a civil penalty. If a locality or district serving as a VESCP authority has adopted a uniform schedule of civil penalties as permitted by subsection K of [§ 62.1-44.15:54](#), such assessment shall be in accordance with the schedule. The VESCP authority or the Department may issue a summons for collection of the civil penalty. In any trial for a scheduled violation, it shall be the burden of the locality or Department to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, or where the Department is issuing the summons, the court shall direct the penalty to be paid into the state treasury.

C. The VESCP authority, the Department, or the owner of property that has sustained damage or which is in imminent danger of being damaged may apply to the circuit court in any jurisdiction wherein the land lies or other appropriate court to enjoin a violation or a threatened violation under [§ 62.1-44.15:55](#), [62.1-44.15:56](#), or [62.1-](#)

[44.15:58](#) without the necessity of showing that an adequate remedy at law does not exist; however, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the VESCP, the Department, and the VESCP authority that a violation of the VESCP has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the VESCP, the Department, nor the VESCP authority has taken corrective action within 15 days to eliminate the conditions that have caused, or create the probability of causing, damage to his property.

D. In addition to any criminal or civil penalties provided under this article, any person who violates any provision of this article may be liable to the VESCP authority or the Department, as appropriate, in a civil action for damages.

E. Without limiting the remedies that may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the VESCP authority wherein the land lies or the Department. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, or other VESCP authority, or where the penalties are assessed as the result of an enforcement action brought by the Department, the court shall direct the penalty to be paid into the state treasury.

F. With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VESCP authority, any condition of a permit, or any provision of this article or associated regulations, the Board, the Director, or VESCP authority may provide, in an order issued by the Board or VESCP authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection E. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under subsection B or E.

G. Upon request of a VESCP authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, the Department, or the district, the Attorney General shall take appropriate legal action on behalf of the Board, the Department, or the district to enforce the provisions of this article.

H. Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.

1973, c. 486, § 21-89.11; 1988, cc. 694, 891, § 10.1-569; 1992, c. 298; 1993, c. 925; 1995, c. [832](#); 1996, c. [518](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:63. (For effective date -- see notes) Penalties, injunctions and other legal actions.

A. Any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the VESCP authority, any condition of a land-disturbance approval, or any provision of this article or associated regulation shall, upon a finding of an appropriate court, be assessed a civil penalty. If a locality serving as a VESCP authority has adopted a uniform schedule of civil penalties as permitted by subsection G of [§ 62.1-44.15:54](#), such assessment shall be in accordance with the schedule. The VESCP authority or the Board may issue a summons for collection of the civil penalty. In any trial for a scheduled violation, it shall be the burden of the Board or the VESCP authority to show the liability of the violator by a preponderance of the evidence. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies and are to be used solely for stormwater management capital projects, including (i) new stormwater best management practices; (ii) stormwater best management practice maintenance, inspection, or retrofitting; (iii) stream restoration; (iv) low-impact development projects; (v) buffer restoration; (vi) pond retrofitting; and (vii) wetlands restoration. Where the violator is the locality itself, or its agent, or where the Board is issuing the summons, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to [§ 62.1-44.15:29.1](#).

B. The VESCP authority, the Board, or the owner of property that has sustained damage or which is in imminent danger of being damaged may apply to the circuit court in any jurisdiction wherein the land lies or other appropriate court to enjoin a violation or a threatened violation under [§ 62.1-44.15:55](#) or [62.1-44.15:58](#) without the necessity of showing that an adequate remedy at law does not exist; however, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the VESCP, the Board, and the VESCP authority

that a violation of the VESCP has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the VESCP, the Board, nor the VESCP authority has taken corrective action within 15 days to eliminate the conditions that have caused, or create the probability of causing, damage to his property.

C. In addition to any civil penalties provided under this article, any person who violates any provision of this article may be liable to the VESCP authority or the Board, as appropriate, in a civil action for damages.

D. Without limiting the remedies that may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the VESCP authority wherein the land lies or the Board. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies and used pursuant to requirements of subsection A. Where the violator is the locality itself, or its agent, or where the penalties are assessed as the result of an enforcement action brought by the Board, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund ([§ 62.1-44.15:29.1](#)).

E. With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the VESCP authority, any condition of a land-disturbance approval, or any provision of this article or associated regulations, the Board, the Director, or VESCP authority may provide, in an order issued by the Board or VESCP authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection D. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under subsection A or D.

F. Upon request of a VESCP authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, the Attorney General shall take appropriate legal action on behalf of the Board to enforce the provisions of this article.

1973, c. 486, § 21-89.11; 1988, cc. 694, 891, § 10.1-569; 1992, c. 298; 1993, c. 925; 1995, c. [832](#); 1996, c. [518](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:64. (For expiration date -- see notes) Stop work orders by Department; civil penalties.

A. An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an approved erosion and sediment control plan or required permit, or from the conduct of land-disturbing activities commenced without an approved plan or required permit, may give written notice of the alleged violation to the VESCP authority and to the Director.

B. Upon receipt of the notice from the aggrieved owner and notification to the VESCP authority, the Director shall conduct an investigation of the aggrieved owner's complaint.

C. If the VESCP authority has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's property within 30 days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Director require the violator to stop the violation and abate the damage to his property.

D. If (i) the Director's investigation of the complaint indicates that the VESCP authority has not responded to the alleged violation as required by the VESCP, (ii) the VESCP authority has not responded to the alleged violation within 30 days from the date of the notice given pursuant to subsection A, and (iii) the Director is requested by the aggrieved owner to require the violator to cease the violation, then the Director shall give written notice to the VESCP authority that the Department intends to issue an order pursuant to subsection E.

E. If the VESCP authority has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within 10 days following receipt of the notice from the Director, the Department is authorized to issue an order requiring the owner, permittee, person responsible for carrying out an approved erosion and sediment control plan, or person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the plan or permit has ceased or an approved plan and required permits are obtained, as appropriate, and specified corrective measures have been completed. The Department also may immediately initiate a program review of the VESCP.

F. Such orders are to be issued after a hearing held in accordance with the requirements of the Administrative Process Act ([§ 2.2-4000](#) et seq.), and they shall become effective upon service on the person by mailing with confirmation of delivery, sent to

his address specified in the land records of the locality, or by personal delivery by an agent of the Director. Any subsequent identical mail or notice that is sent by the Department may be sent by regular mail. However, if the Department finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, it may issue, without advance notice or hearing, an emergency order directing such person to cease all land-disturbing activities on the site immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

G. If a person who has been issued an order or emergency order is not complying with the terms thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction, mandamus, or other appropriate remedy compelling the person to comply with such order.

H. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to subsection G shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. Any civil penalties assessed by a court shall be paid into the state treasury.

1993, c. 925, § 10.1-569.1; 2012, cc. [785](#), [819.2013](#), cc. [756](#), [793](#).

§62.1-44.15:64. (For effective date -- see notes) Stop work orders by Board; civil penalties.

A. An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an approved erosion and sediment control plan or required land-disturbance approval, or from the conduct of land-disturbing activities commenced without an approved plan or required land-disturbance approval, may give written notice of the alleged violation to the VESCP authority and to the Board.

B. If the VESCP authority has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's property within 30 days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Board conduct an investigation and, if necessary, require the violator to stop the alleged violation and abate the damage to his property.

C. If the Board's investigation of the complaint indicates that (i) the VESCP authority has not responded to the alleged violation as required by the VESCP, (ii) the VESCP authority has not responded to the alleged violation within 30 days from the date of the notice given pursuant to subsection A, and (iii) there is a violation and it is necessary to require the violator to cease the violation as requested by the aggrieved owner, then the Board shall give written notice to the VESCP authority that the Board intends to issue an order pursuant to subsection D.

D. If the VESCP authority has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within 10 days following receipt of the notice from the Board, the Board is authorized to issue an order requiring the owner, person responsible for carrying out an approved erosion and sediment control plan, or person conducting the land-disturbing activities without an approved plan or required land-disturbance approval to cease all land-disturbing activities until the violation of the plan has ceased or an approved plan and required land-disturbance approval are obtained, as appropriate, and specified corrective measures have been completed. The Board also may immediately initiate a program review of the VESCP.

E. Such orders are to be issued in accordance with the procedures of the Administrative Process Act ([§ 2.2-4000](#) et seq.), and they shall become effective upon service on the person by mailing with confirmation of delivery, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Board. Any subsequent identical mail or notice that is sent by the Board may be sent by regular mail. However, if the Board finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, it may issue, without advance notice or hearing, an emergency order directing such person to cease all land-disturbing activities on the site immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

F. If a person who has been issued an order or emergency order is not complying with the terms thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction, mandamus, or other appropriate remedy compelling the person to comply with such order.

G. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to subsection G shall be subject, in

the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. Any civil penalties assessed by a court shall be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund ([§ 62.1-44.15:29.1](#)).

1993, c. 925, § 10.1-569.1; 2012, cc. [785](#), [819.2013](#), cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:65. (For expiration date -- see notes) Authorization for more stringent regulations.

A. As part of a VESCP, a district or locality is authorized to adopt more stringent soil erosion and sediment control regulations or ordinances than those necessary to ensure compliance with the Board's regulations, provided that the more stringent regulations or ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of an MS4 permit or a locally adopted watershed management study and are determined by the district or locality to be necessary to prevent any further degradation to water resources, to address total maximum daily load requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent regulations or ordinances, a public hearing is held after giving due notice. The VESCP authority shall report to the Board when more stringent stormwater management regulations or ordinances are determined to be necessary pursuant to this section. However, this section shall not be construed to authorize any district or locality to impose any more stringent regulations for plan approval or permit issuance than those specified in §§ [62.1-44.15:55](#) and [62.1-44.15:57](#).

B. Any provisions of an erosion and sediment control program in existence before July 1, 2012, that contains more stringent provisions than this article shall be exempt from the analysis requirements of subsection A.

1973, c. 486, § 21-89.12; 1988, c. 891, § 10.1-570; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:65. (For effective date -- see notes) Authorization for more stringent ordinances.

A. As part of a VESCP, a locality is authorized to adopt more stringent soil erosion and sediment control ordinances than those necessary to ensure compliance with the

Board's regulations, provided that the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources, to address total maximum daily load requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent ordinances, a public hearing is held after giving due notice. The VESCP authority shall report to the Board when more stringent erosion and sediment control ordinances are determined to be necessary pursuant to this section. This process shall not be required when a VESCP authority chooses to reduce the threshold for regulating land-disturbing activities to a smaller area of disturbed land pursuant to § [62.1-44.15:55](#). This section shall not be construed to authorize any VESCP authority to impose any more stringent ordinances for land-disturbance review and approval than those specified in § [62.1-44.15:55](#).

B. Any provisions of an erosion and sediment control program in existence before July 1, 2012, that contains more stringent provisions than this article shall be exempt from the analysis requirements of subsection A.

1973, c. 486, § 21-89.12; 1988, c. 891, § 10.1-570; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:66. No limitation on authority of Department of Mines, Minerals and Energy.

The provisions of this article shall not limit the powers or duties of the Department of Mines, Minerals and Energy as they relate to strip mine reclamation under Chapters 16 (§ [45.1-180](#) et seq.) and 19 (§ [45.1-226](#) et seq.) of Title 45.1 or oil or gas exploration under the Virginia Gas and Oil Act (§ [45.1-361.1](#) et seq.).

1973, c. 486, § 21-89.13; 1988, c. 891, § 10.1-571; 1996, c. [688](#); 2012, cc. [785](#), [819](#); 2013, cc. [47](#), [129](#), [756](#), [793](#).

§62.1-44.15:67. Cooperative state-local program.

A. Healthy state and local economies and a healthy Chesapeake Bay are integrally related; balanced economic development and water quality protection are not mutually exclusive. The protection of the public interest in the Chesapeake Bay, its tributaries, and other state waters and the promotion of the general welfare of the

people of the Commonwealth require that (i) the counties, cities, and towns of Tidewater Virginia incorporate general water quality protection measures into their comprehensive plans, zoning ordinances, and subdivision ordinances; (ii) the counties, cities, and towns of Tidewater Virginia establish programs, in accordance with criteria established by the Commonwealth, that define and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries; (iii) the Commonwealth make its resources available to local governing bodies by providing financial and technical assistance, policy guidance, and oversight when requested or otherwise required to carry out and enforce the provisions of this article; and (iv) all agencies of the Commonwealth exercise their delegated authority in a manner consistent with water quality protection provisions of local comprehensive plans, zoning ordinances, and subdivision ordinances when it has been determined that they comply with the provisions of this article.

B. Local governments have the initiative for planning and for implementing the provisions of this article, and the Commonwealth shall act primarily in a supportive role by providing oversight for local governmental programs, by establishing criteria as required by this article, and by providing those resources necessary to carry out and enforce the provisions of this article.

1988, cc. 608, 891, § 10.1-2100; 2013, cc. [756](#), [793](#).

§62.1-44.15:68. Definitions.

For the purposes of this article, the following words shall have the meanings respectively ascribed to them:

"Chesapeake Bay Preservation Area" means an area delineated by a local government in accordance with criteria established pursuant to § [62.1-44.15:72](#).

"Criteria" means criteria developed by the Board pursuant to § [62.1-44.15:72](#) for the purpose of determining the ecological and geographic extent of Chesapeake Bay Preservation Areas and for use by local governments in permitting, denying, or modifying requests to rezone, subdivide, or use and develop land in Chesapeake Bay Preservation Areas.

"Daylighted stream" means a stream that had been previously diverted into an underground drainage system, has been redirected into an aboveground channel using natural channel design concepts as defined in § [62.1-44.15:51](#), and would meet the

criteria for being designated as a Resource Protection Area (RPA) as defined by the Board under this article.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Secretary" means the Secretary of Natural Resources.

"Tidewater Virginia" means the following jurisdictions:

The Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York, and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.

1988, cc. 608, 891, § 10.1-2101; 2005, c. [41](#); 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2015, c. [674](#).

§62.1-44.15:69. (For effective date -- see notes) Powers and duties of the Board.

The Board is responsible for carrying out the purposes and provisions of this article and is authorized to:

1. Provide land use and development and water quality protection information and assistance to the various levels of local, regional, and state government within the Commonwealth.
2. Consult, advise, and coordinate with the Governor, the Secretary, the General Assembly, other state agencies, regional agencies, local governments, and federal agencies for the purpose of implementing this article.
3. Provide financial and technical assistance and advice to local governments and to regional and state agencies concerning aspects of land use and development and water quality protection pursuant to this article.
4. Promulgate regulations pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.).
5. Develop, promulgate, and keep current the criteria required by § [62.1-44.15:72](#).

6. Provide technical assistance and advice or other aid for the development, adoption, and implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land use and development and water quality protection measures utilizing criteria established by the Board to carry out the provisions of this article.

7. Develop procedures for use by local governments to designate Chesapeake Bay Preservation Areas in accordance with the criteria developed pursuant to § [62.1-44.15:72](#).

8. Ensure that local government comprehensive plans, zoning ordinances, and subdivision ordinances are in accordance with the provisions of this article. Determination of compliance shall be in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

9. Make application for federal funds that may become available under federal acts and to transmit such funds when applicable to any appropriate person.

10. Take administrative and legal actions pursuant to subdivision (19) of § [62.1-44.15](#) to ensure compliance by counties, cities, and towns with the provisions of this article including the proper enforcement and implementation of, and continual compliance with, this article.

11. Perform such other duties and responsibilities related to the use and development of land and the protection of water quality as the Secretary may assign.

1988, cc. 608, 891, § 10.1-2103; 1997, c. [266](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:69. (For expiration date -- see notes) Powers and duties of the Board.

The Board is responsible for carrying out the purposes and provisions of this article and is authorized to:

1. Provide land use and development and water quality protection information and assistance to the various levels of local, regional, and state government within the Commonwealth.

2. Consult, advise, and coordinate with the Governor, the Secretary, the General Assembly, other state agencies, regional agencies, local governments, and federal agencies for the purpose of implementing this article.

3. Provide financial and technical assistance and advice to local governments and to regional and state agencies concerning aspects of land use and development and water quality protection pursuant to this article.
4. Promulgate regulations pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.).
5. Develop, promulgate, and keep current the criteria required by § [62.1-44.15:72](#).
6. Provide technical assistance and advice or other aid for the development, adoption, and implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land use and development and water quality protection measures utilizing criteria established by the Board to carry out the provisions of this article.
7. Develop procedures for use by local governments to designate Chesapeake Bay Preservation Areas in accordance with the criteria developed pursuant to § [62.1-44.15:72](#).
8. Ensure that local government comprehensive plans, zoning ordinances, and subdivision ordinances are in accordance with the provisions of this article. Determination of compliance shall be in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).
9. Make application for federal funds that may become available under federal acts and to transmit such funds when applicable to any appropriate person.
10. Take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of this article including the proper enforcement and implementation of, and continual compliance with, this article.
11. Perform such other duties and responsibilities related to the use and development of land and the protection of water quality as the Secretary may assign.

1988, cc. 608, 891, § 10.1-2103; 1997, c. [266](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:70. Exclusive authority of Board to institute legal actions.

The Board shall have the exclusive authority to institute or intervene in legal and administrative actions to ensure compliance by local governing bodies with this article and with any criteria or regulations adopted hereunder.

1988, cc. 608, 891, § 10.1-2104; 1997, c. [266](#); 2013, cc. [756](#), [793](#).

§62.1-44.15:71. (For repeal date -- see notes) Program compliance.

Program compliance reviews conducted in accordance with § [62.1-44.15:69](#) and the regulations associated with this article shall be coordinated where applicable with those being implemented in accordance with the erosion and sediment control and stormwater management provisions of this chapter and associated regulations. The Department may also conduct a comprehensive or partial program compliance review and evaluation of a local government program more frequently than the standard schedule.

Following completion of a compliance review of a local government program, the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement should deficiencies be found; otherwise, the Board may find the program compliant. When deficiencies are found, the Board will establish a schedule for the local government to come into compliance. The Board shall provide a copy of its decision to the local government that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule. If the local government has not implemented the necessary compliance actions identified by the Board within 30 days following receipt of the corrective action agreement, or such additional period as is granted to complete the implementation of the compliance actions, then the Board shall have the authority to issue a special order to any local government imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per violation for noncompliance with the state program, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § [62.1-44.15:29](#).

The Administrative Process Act (§ [2.2-4000](#) et seq.) shall govern the activities and proceedings of the Board under this article and the judicial review thereof.

In lieu of issuing a special order, the Board is also authorized to take legal action against a local government to ensure compliance.

2012, cc. [785](#), [819](#), § 10.1-2104.1; 2013, cc. [756](#), [793](#).

§62.1-44.15:72. Board to develop criteria.

A. In order to implement the provisions of this article and to assist counties, cities, and towns in regulating the use and development of land and in protecting the quality of state waters, the Board shall promulgate regulations that establish criteria for use by local governments to determine the ecological and geographic extent of Chesapeake Bay Preservation Areas. The Board shall also promulgate regulations that

establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or use and develop land in these areas.

B. In developing and amending the criteria, the Board shall consider all factors relevant to the protection of water quality from significant degradation as a result of the use and development of land. The criteria shall incorporate measures such as performance standards, best management practices, and various planning and zoning concepts to protect the quality of state waters while allowing use and development of land consistent with the provisions of this chapter. The criteria adopted by the Board, operating in conjunction with other state water quality programs, shall encourage and promote (i) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv) reduction of existing pollution; and (v) promotion of water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

C. Prior to the development or amendment of criteria, the Board shall give due consideration to, among other things, the economic and social costs and benefits which can reasonably be expected to obtain as a result of the adoption or amendment of the criteria.

D. In developing such criteria the Board may consult with and obtain the comments of any federal, state, regional, or local agency that has jurisdiction by law or special expertise with respect to the use and development of land or the protection of water. The Board shall give due consideration to the comments submitted by such federal, state, regional, or local agencies.

E. In developing such criteria, the Board shall provide that any locality in a Chesapeake Bay Preservation Area that allows the owner of an on-site sewage treatment system not requiring a Virginia Pollutant Discharge Elimination System permit to submit documentation in lieu of proof of septic tank pump-out shall require such owner to have such documentation certified by an operator or on-site soil evaluator licensed or certified under Chapter 23 (§ [54.1-2300](#) et seq.) of Title 54.1 as being qualified to operate, maintain, or design on-site sewage systems.

F. In developing such criteria, the Board shall not require the designation of a Resource Protection Area (RPA) as defined according to the criteria developed by the Board, adjacent to a daylighted stream. However, a locality that elects not to designate an RPA adjacent to a daylighted stream shall use a water quality impact assessment to ensure that proposed development on properties adjacent to the daylighted stream does not result in the degradation of the stream. The water quality impact assessment shall (i) be consistent with the Board's criteria for water quality assessments in RPAs, (ii) identify the impacts of the proposed development on water quality, and (iii) determine specific measures for the mitigation of those impacts. The objective of this assessment is to ensure that practices on properties adjacent to daylighted streams are effective in retarding runoff, preventing erosion, and filtering non-point source pollution. The specific content for the water quality impact assessment shall be established and implemented by any locality that chooses not to designate an RPA adjacent to a daylighted stream. Nothing in this subsection shall limit a locality's authority to include a daylighted stream within the extent of an RPA.

G. Effective July 1, 2014, requirements promulgated under this article directly related to compliance with the erosion and sediment control and stormwater management provisions of this chapter and regulated under the authority of those provisions shall cease to have effect.

1988, cc. 608, 891, § 10.1-2107; 2012, cc. [785](#), [819](#); 2013, cc. [756](#), [793](#); 2014, c. [151](#); 2015, c. [674](#).

§62.1-44.15:73. Local government authority.

Counties, cities, and towns are authorized to exercise their police and zoning powers to protect the quality of state waters consistent with the provisions of this article.

1988, cc. 608, 891, § 10.1-2108; 2013, cc. [756](#), [793](#).

§62.1-44.15:74. Local governments to designate Chesapeake Bay Preservation Areas; incorporate into local plans and ordinances; impose civil penalties.

A. Counties, cities, and towns in Tidewater Virginia shall use the criteria developed by the Board to determine the extent of the Chesapeake Bay Preservation Area within their jurisdictions. Designation of Chesapeake Bay Preservation Areas shall be accomplished by every county, city, and town in Tidewater Virginia not later than 12 months after adoption of criteria by the Board.

B. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan consistent with the provisions of this article.

C. All counties, cities, and towns in Tidewater Virginia shall have zoning ordinances that incorporate measures to protect the quality of state waters in the Chesapeake Bay Preservation Areas consistent with the provisions of this article. Zoning in Chesapeake Bay Preservation Areas shall comply with all criteria set forth in or established pursuant to § [62.1-44.15:72](#).

D. Counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into their subdivision ordinances consistent with the provisions of this article. Counties, cities, and towns in Tidewater Virginia shall ensure that all subdivisions developed pursuant to their subdivision ordinances comply with all criteria developed by the Board.

E. (For expiration date -- see notes) In addition to any other remedies which may be obtained under any local ordinance enacted to protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities, and towns in Tidewater Virginia may incorporate the following penalties into their zoning, subdivision, or other ordinances:

1. Any person who (i) violates any provision of any such ordinance or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or variance or permit condition authorized under such ordinance shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

2. With the consent of any person who (i) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance or permit condition authorized under such ordinance, the local government may provide for the issuance of an order

against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county, city, or town itself, or its agent, the civil charges shall be paid into the state treasury. Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1. Civil charges may be in addition to the cost of any restoration required or ordered by the local governmental body or official.

E. (For effective date -- see notes) In addition to any other remedies which may be obtained under any local ordinance enacted to protect the quality of state waters in Chesapeake Bay Preservation Areas, counties, cities, and towns in Tidewater Virginia may incorporate the following penalties into their zoning, subdivision, or other ordinances:

1. Any person who (i) violates any provision of any such ordinance or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's final notice, order, rule, regulation, or variance or permit condition authorized under such ordinance shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$5,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, in such a manner as the court may direct by order, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established by § [62.1-44.15:29.1](#).

2. With the consent of any person who (i) violates any provision of any local ordinance related to the protection of water quality in Chesapeake Bay Preservation Areas or (ii) violates or fails, neglects, or refuses to obey any local governmental body's or official's notice, order, rule, regulation, or variance or permit condition authorized under such ordinance, the local government may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Such civil charges shall be paid into the treasury of the county, city, or town in which the violation occurred for

the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas therein, except that where the violator is the county, city, or town itself, or its agent, the civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established by § [62.1-44.15:29.1](#). Civil charges shall be in lieu of any appropriate civil penalty that could be imposed under subdivision 1. Civil charges may be in addition to the cost of any restoration required or ordered by the local governmental body or official.

F. Localities that are subject to the provisions of this article may by ordinance adopt an appeal period for any person aggrieved by a decision of a board that has been established by the locality to hear cases regarding ordinances adopted pursuant to this article. The ordinance shall allow the aggrieved party a minimum of 30 days from the date of such decision to appeal the decision to the circuit court.

1988, cc. 608, 891, § 10.1-2109; 1998, cc. [700](#), [714](#); 2008, c. [15](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.15:75. Local governments outside of Tidewater Virginia may adopt provisions.

Any local government, although not a part of Tidewater Virginia, may employ the criteria developed pursuant to § [62.1-44.15:72](#) and may incorporate protection of the quality of state waters into their comprehensive plans, zoning ordinances, and subdivision ordinances consistent with the provisions of this article.

1988, cc. 608, 891, § 10.1-2110; 2013, cc. [756](#), [793](#).

§62.1-44.15:76. Local government requirements for water quality protection.

Local governments shall employ the criteria promulgated by the Board to ensure that the use and development of land in Chesapeake Bay Preservation Areas shall be accomplished in a manner that protects the quality of state waters consistent with the provisions of this article.

1988, cc. 608, 891, § 10.1-2111; 2013, cc. [756](#), [793](#).

§62.1-44.15:77. Effect on other governmental authority.

The authorities granted herein are supplemental to other state, regional, and local governmental authority. No authority granted to a local government by this article shall affect in any way the authority of the Board. No authority granted to a local government by this article shall limit in any way any other planning, zoning, or subdivision authority of that local government.

1988, cc. 608, 891, § 10.1-2113; 2013, cc. [756](#), [793](#).

§62.1-44.15:78. State agency consistency.

All agencies of the Commonwealth shall exercise their authorities under the Constitution and laws of Virginia in a manner consistent with the provisions of comprehensive plans, zoning ordinances, and subdivision ordinances that comply with §§ [62.1-44.15:74](#) and [62.1-44.15:75](#).

1988, cc. 608, 891, § 10.1-2114; 2013, cc. [756](#), [793](#).

§62.1-44.15:79. Vested rights protected.

The provisions of this article shall not affect vested rights of any landowner under existing law.

1988, cc. 608, 891, § 10.1-2115; 2013, cc. [756](#), [793](#).

§62.1-44.16. Industrial wastes.

A. Any owner who erects, constructs, opens, reopens, expands or employs new processes in or operates any establishment from which there is a potential or actual discharge of industrial wastes or other wastes to state waters shall first provide facilities approved by the Board for the treatment or control of such industrial wastes or other wastes.

Application for such discharge shall be made to the Board and shall be accompanied by pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and details satisfactory to the Board.

1. Public notice of every such application shall be given by notice published once a week for two successive weeks in a newspaper of general circulation in the county or city where the certificate is applied for or by such other means as the Board may prescribe.

2. The Board shall review the application and the information that accompanies it as soon as practicable and making a ruling within a period of four months from the date the application is filed with the Board approving or disapproving the application and stating the grounds for conditional approval or disapproval. If the application is approved, the Board shall grant a certificate for the discharge of the industrial wastes or other wastes into state waters or for the other alteration of the physical, chemical or biological properties of state waters, as the case may be. If the application is disapproved, the Board shall notify the owner as to what measures, if any, the owner may take to secure approval.

B. Any owner operating under a valid certificate issued by the Board who fails to meet water quality standards established by the Board solely as a result of a change in water quality standards or in the law shall provide the necessary facilities approved by the Board within a reasonable time to meet such new requirements; provided, however, that such facilities shall be reasonable and practicable of attainment giving consideration to the public interest and the equities of the case. The Board may amend such certificate, or revoke it and issue a new one to reflect such facilities after proper hearing, with at least thirty days' notice to the owner of the time, place and purpose thereof. If such revocation or amendment of a certificate is mutually agreeable to the Board and the owner involved, the hearing and notice may be dispensed with.

C. The Board shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order under subdivisions (8a), (8b), and (8c) of § [62.1-44.15](#) (8).

D. Any locality may adopt an ordinance that provides for the testing and monitoring of the land application of solid or semisolid industrial wastes within its political boundaries to ensure compliance with applicable laws and regulations.

E. The Board shall adopt regulations requiring the payment of a fee for the land application of solid or semisolid industrial wastes, pursuant to permits issued under this section, in localities that have adopted ordinances in accordance with subsection

D. The person land applying industrial wastes shall (i) provide advance notice of the estimated fee to the generator of the industrial wastes unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee to the Department of Environmental Quality as provided by regulation. The fee shall be imposed on each dry ton of solid or semisolid industrial wastes that is land applied in a locality in accordance with the regulations adopted by the Board. The regulations shall include requirements and procedures for:

1. Collection of fees by the Department of Environmental Quality;
2. The deposit of collected fees into the Sludge Management Fund established by subsection G of § [62.1-44.19:3](#); and
3. Disbursement of proceeds from the Sludge Management Fund by the Department of Environmental Quality pursuant to subsection G of § [62.1-44.19:3](#).

F. The Department, in consultation with the Department of Health, the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services, and the Virginia Cooperative Extension Service, shall establish and implement a program to train persons employed by those local governments that have adopted ordinances, pursuant to this section, to test and monitor the land application of industrial wastes. The program shall include, at a minimum, instruction in (i) the provisions of the Virginia Pollution Abatement Permit Regulation; (ii) land application methods and equipment, including methods and processes for preparation and stabilization of industrial wastes that are land applied; (iii) sampling and chain of custody control; (iv) preparation and implementation of nutrient management plans for land application sites; (v) complaint response and preparation of complaint and inspection reports; (vi) enforcement authority and procedures; (vii) interaction and communication with the public; and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subsection G of § [62.1-44.19:3](#). To the extent feasible, the program shall emphasize in-field instruction and practical training. Persons employed by local governments shall successfully complete such training before the local government may request reimbursement from the Board for testing and monitoring of land application of solid or semisolid industrial wastes performed by the person. The completion of training shall not be a prerequisite to the exercise of authority granted to local governments by any applicable provision of law.

The Department may:

1. Charge attendees a reasonable fee to recover the actual costs of preparing course materials and providing facilities and instructors for the program. The fee shall be reimbursable from the Fund established pursuant to subsection G of § [62.1-44.19:3](#); and
2. Request and accept the assistance and participation of other state agencies and institutions in preparing and presenting the course of training established by this subsection.

1970, c. 638; 2015, cc. [104](#), [677](#).

§62.1-44.16:1. Local enforcement of industrial waste permits.

A. Any locality that has adopted an ordinance for the testing and monitoring of the land application of industrial wastes pursuant to § [62.1-44.16](#) shall have the authority to order the abatement of any violation of § [62.1-44.16](#) or of any violation of any

permit or certificate issued under that section. Such abatement order shall identify the activity constituting the violation, specify the provision of the Code of Virginia or permit condition violated by the activity, and order that the activity cease immediately.

B. In the event of any dispute concerning the existence of a violation, the activity alleged to be in violation shall be halted pending a determination by the Director, whose decision shall be final and binding unless reversed on judicial appeal pursuant to § [2.2-4026](#). Any person who fails or refuses to halt such activity may be compelled to do so by injunction issued by a court having competent jurisdiction. Upon determination by the Director that there has been a violation of § [62.1-44.16](#) or of any permit or certificate issued under that section and that such violation poses an imminent threat to public health, safety, or welfare, the Department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation. Neither the Board, the Commonwealth, nor any employee of the Commonwealth shall be liable for failing to provide the notification required by this section.

C. Local governments shall promptly notify the Department of all results from the testing and monitoring of the land application of industrial wastes performed by persons employed by local governments and any violation of § [62.1-44.16](#) or of any violation of any permit or certificate issued under that section, discovered by local governments.

2015, cc. [104](#), [677](#).

§62.1-44.17. Other wastes.

(1) Any owner who handles, stores, distributes or produces other wastes as defined in § [62.1-44.3](#), any owner who causes or permits same to be handled, stored, distributed or produced or any owner upon or in whose establishment other wastes are handled, stored, distributed or produced shall upon request of the Board install facilities approved by the Board or adopt such measures approved by the Board as are necessary to prevent the escape, flow or discharge into any state waters when the escape, flow or discharge of such other wastes into any state waters would cause pollution of such state waters.

(2) Any owner under this section requested by the Board to provide facilities or adopt such measures shall make application therefor to the Board. Such application shall be accompanied by a copy of pertinent plans, specifications, maps, and such other

relevant information as may be required, in scope and details satisfactory to the Board.

(3) The Board shall review the application and the information that accompanies it as soon as practicable and make a ruling within a period of four months from the date the application is filed with the Board approving or disapproving the application and stating the grounds for conditional approval or disapproval. If the application is approved, the Board shall grant a certificate for the handling, storing, distribution or production of such other wastes. If the application is disapproved, the Board shall notify the owner as to what measures the owner may take to secure approval.

Code 1950, § 62.1-30; 1968, c. 659; 1970, c. 638.

§62.1-44.17:1. Permits for confined animal feeding operations.

A. For the purposes of this chapter, "confined animal feeding operation" means a lot or facility, together with any associated treatment works, where both of the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation of the lot or facility.

Two or more confined animal feeding operations under common ownership are considered to be a single confined animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of liquid waste.

A1. Notwithstanding the provisions of subsection B, the Board shall promulgate regulations requiring Virginia Pollutant Discharge Elimination System permits for confined animal feeding operations to the extent necessary to comply with § 402 of the federal Clean Water Act (33 U.S.C. § 1342), as amended.

B. A confined animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system, upon fulfillment of the requirements of this section, shall be permitted by a General Virginia Pollution Abatement permit (hereafter referred to as the "General Permit"), adopted by the Board. In adopting the General Permit the Board shall:

1. Authorize the General Permit to pertain to confined animal feeding operations having 300 or more animal units;

2. Establish procedures for submitting a registration statement meeting the requirements of subsection C. Submitting a registration statement shall be evidence of intention to be covered by the General Permit; and

3. Establish criteria for the design and operation of confined animal feeding operations only as described in subsection E.

C. For coverage under the General Permit, the owner of the confined animal feeding operation shall file a registration statement with the Department of Environmental Quality providing the name and address of the owner of the operation, the name and address of the operator of the operation (if different than the owner), the mailing address and location of the operation, and a list of the types, maximum number and average weight of the animals that will be maintained at the facility. The owner shall attach to the registration statement:

1. A copy of a letter of approval of the nutrient management plan for the operation from the Department of Conservation and Recreation;

2. A copy of the approved nutrient management plan;

3. A notification from the governing body of the locality where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ [15.2-2200](#) et seq.) of Title 15.2;

4. A certification that the owner or operator meets all the requirements of the Board for the General Permit; and

5. A certification that the owner has given notice of the registration statement to all owners or residents of property that adjoins the property on which the proposed operation will be located. Such notice shall include (i) the types and maximum number of animals that will be maintained at the facility and (ii) the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. Such certification of notice shall be waived whenever the registration is for the purpose of renewing coverage under a permit for which no expansion is proposed and the Department of Environmental Quality has not issued any special or consent order relating to violations under the existing permit.

D. Any person may submit written comments on the proposed operation to the Department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the Director determines that the

proposed operation will not be capable of complying with the provisions of this section, the Director shall require the owner to obtain an individual permit for the operation. Any such determination by the Director shall be made in writing and received by the owner not more than 45 days after the filing of the registration statement or, if in the Director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement.

E. The criteria for the design and operation of a confined animal feeding operation shall be as follows:

1. The operation shall have a liquid manure collection and storage facility designed and operated to: (i) prevent any discharge to state waters, except a discharge resulting from a storm event exceeding a 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste;
2. The operation shall implement and maintain on site a nutrient management plan approved pursuant to subdivision 1 of subsection C. The nutrient management plan shall contain at a minimum the following information: (i) a site map indicating the location of the waste storage facilities and the fields where waste will be applied; (ii) site evaluation and assessment of soil types and potential productivities; (iii) nutrient management sampling including soil and waste monitoring; (iv) storage and land area requirements; (v) calculation of waste application rates; (vi) waste application schedules; and (vii) a plan for waste utilization in the event the operation is discontinued;
3. Adequate buffer zones, where waste shall not be applied, shall be maintained between areas where waste may be applied and (i) water supply wells or springs, (ii) surface water courses, (iii) rock outcroppings, (iv) sinkholes, and (v) occupied dwellings unless a waiver is signed by the occupants of the dwellings;
4. The operation shall be monitored as follows: (i) waste shall be monitored at least once per year; (ii) soil shall be monitored at least once every three years; (iii) ground water shall be monitored at new earthen waste storage facilities constructed to an elevation below the seasonal high water table or within one foot thereof; and (iv) all facilities previously covered by a Virginia Pollution Abatement permit that required

ground water monitoring shall continue such monitoring. In such facilities constructed below the water table, the top surface of the waste must be maintained at a level of at least two feet above the water table. The Department of Environmental Quality and the Department of Conservation and Recreation may include in the permit or nutrient management plan more frequent or additional monitoring of waste, soils or groundwater as required to protect state waters. Records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted. Such records shall be available for inspection by the Department of Environmental Quality and shall be maintained for a period of five years after recorded application is made;

5. New earthen waste storage facilities shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority, or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this section;

6. New waste storage facilities shall not be located on a 100-year flood plain;

7. All facilities must maintain one foot of freeboard at all times, up to and including a 25-year, 24-hour storm;

8. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. Manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate;

9. The owner or operator of the operation shall notify the Department of Environmental Quality at least 14 days prior to animals being placed in the confined facility; and

10. Each operator of a facility covered by the General Permit on July 1, 1999, shall, by January 1, 2000, complete the training program offered or approved by the Department of Conservation and Recreation under subsection F. Each operator of a facility permitted after July 1, 1999, shall complete such training within one year after the

registration statement required by subsection C has been submitted. Thereafter, all operators shall complete the training program at least once every three years.

F. The Department of Conservation and Recreation, in consultation with the Department of Environmental Quality and the Virginia Cooperative Extension Service, shall develop or approve a training program for persons operating confined animal feeding operations covered by the General Permit. The program shall include training in the requirements of the General Permit; the use of best management practices; inspection and management of liquid manure collection, storage and application systems; water quality monitoring and spill prevention; and emergency procedures.

G. Operations having an individual Virginia Pollution Abatement permit or a No Discharge Certificate may submit a registration statement for operation under the General Permit pursuant to this section.

H. The Director of the Department of Environmental Quality may require the owner of a confined animal feeding operation to obtain an individual permit for an operation subject to this section upon determining that the operation is in violation of the provisions of this section or if coverage under an individual permit is required to comply with federal law. New or reissued individual permits shall contain criteria for the design and operation of confined animal feeding operations including, but not limited to, those described in subsection E.

I. No person shall operate a confined animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system after July 1, 2000, without having submitted a registration statement as provided in subsection C or being covered by a Virginia Pollutant Discharge Elimination System permit or an individual Virginia Pollution Abatement permit.

J. Any person violating this section shall be subject only to the provisions of §§ [62.1-44.23](#) and [62.1-44.32](#) (a), except that any civil penalty imposed shall not exceed \$2,500 for any confined animal feeding operation covered by a Virginia Pollution Abatement permit.

1994, c. [698](#); 1998, cc. [805](#), [863](#); 2001, c. [109](#); 2003, c. [375](#); 2004, c. [455](#).

§62.1-44.17:1.1. Poultry waste management program.

A. As used in this section, unless the context requires a different meaning:

"Commercial poultry processor" means any animal food manufacturer, as defined in § [3.2-5400](#), that contracts with poultry growers for the raising of poultry.

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry.

"Nutrient management plan" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters.

"Poultry grower" means any person who owns or operates a confined poultry feeding operation.

B. The Board shall develop a regulatory program governing the storage, treatment and management of poultry waste, including dry litter, that:

1. Requires the development and implementation of nutrient management plans for any person owning or operating a confined poultry feeding operation;
2. Provides for waste tracking and accounting; and
3. Ensures proper storage of waste consistent with the terms and provisions of a nutrient management plan.

C. The program shall include, at a minimum:

1. Provisions for permitting confined poultry feeding operations under a general permit; however, the Board may require an individual permit upon determining that an operation is in violation of the program developed under this section;
2. Provisions requiring that:
 - a. Nitrogen application rates contained in nutrient management plans developed pursuant to this section shall not exceed crop nutrient needs as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff, leaching, and volatilization losses, and reduce adverse water quality impacts from nitrogen;
 - b. For all nutrient management plans developed pursuant to this section after October 1, 2001, phosphorous application rates shall not exceed the greater of crop nutrient needs or crop nutrient removal, as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorus;

c. By December 31, 2005, the Department of Conservation and Recreation, in consultation with the Department of Environmental Quality, shall (i) complete an examination of current developments in scientific research and technology that shall include a review of land application of poultry waste, soil nutrient retention capacity, and water quality degradation and (ii) adopt and implement regulatory or other changes, if any, to its nutrient management plan program that it concludes are appropriate as a result of this examination; and

d. Notwithstanding subdivision 2 b, upon the effective date of the Department of Conservation and Recreation's revised regulatory criteria and standards governing phosphorous application rates adopted pursuant to subdivision 2 c, or on October 31, 2005, whichever is later, phosphorous application rates for all nutrient management plans developed pursuant to this section shall conform solely to such regulatory criteria and standards adopted by the Department of Conservation and Recreation to protect water quality or to reduce soil concentrations of phosphorus or phosphorous loadings. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorus.

D. The program shall reflect Board consideration of existing state-approved nutrient management plans and existing general permit programs for other confined animal feeding operations, and may include such other provisions as the Board determines appropriate for the protection of state waters.

E. After October 1, 2001, all persons owning or operating a confined poultry feeding operation shall operate in compliance with the provisions of this section and any regulations promulgated thereunder.

F. Any person violating this section shall be subject only to the provisions of §§ [62.1-44.23](#) and [62.1-44.32](#) (a), except that any civil penalty shall not exceed \$2,500 for any confined animal feeding operation covered by a Virginia Pollution Abatement permit.

G. On or before January 1, 2000, or prior to commencing operations, each commercial poultry processor operating in the Commonwealth shall file with the Board a plan under which the processor, either directly or under contract with a third party, shall:

1. Provide technical assistance to the poultry growers with whom it contracts on the proper management and storage of poultry waste in accordance with best management practices;
2. Provide education programs on poultry waste nutrient management for the poultry growers with whom it contracts as well as for poultry litter brokers and persons utilizing poultry waste;
3. Provide a toll-free hotline and advertising program to assist poultry growers with excess amounts of poultry waste to make available such waste to persons in other areas who can use such waste as a fertilizer consistent with the provisions of subdivision C 2 or for other alternative purposes;
4. Participate in the development of a poultry waste transportation and alternative use equal matching grant program between the Commonwealth and commercial poultry processors to (i) facilitate the transportation of excess poultry waste in the possession of poultry growers with whom it contracts to persons in other areas who can use such waste as a fertilizer consistent with the provisions of subdivision C 2 or for other alternative purposes and (ii) encourage alternative uses to land application of poultry waste;
5. Conduct research on the reduction of phosphorus in poultry waste, innovative best management practices for poultry waste, water quality issues concerning poultry waste, or alternative uses of poultry waste; and
6. Conduct research on and consider implementation of nutrient reduction strategies in the formulation of feed. Such nutrient reduction strategies may include the addition of phytase or other feed additives or modifications to reduce nutrients in poultry waste.

H. Any amendments to the plan required by subsection G shall be filed with the Board before they are implemented. After January 1, 2000, each commercial poultry processor shall implement its plan and any amendments thereto. Each commercial poultry processor shall report annually to the Board on the activities it has undertaken pursuant to its plan and any amendments thereto. Failure to comply with the provisions of this section or to implement and follow a filed plan or any amendments thereto shall constitute a violation of this section.

1999, c. [1](#); 2004, c. [455](#); 2005, c. [78](#).

§62.1-44.17:2. Definitions.

As used in this article, unless the context requires a different meaning:

"Toxicity" means the inherent potential or capacity of a material to cause adverse effects on a living organism, including acute or chronic effects on aquatic life, detrimental effects on human health or other adverse environmental effects.

"Toxics" or "toxic substance" means any agent or material listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act and those substances on the "toxics of concern" list of the Chesapeake Bay Program as of January 1, 1997.

1997, c. [155](#); 2000, cc. [17](#), [1043](#).

§62.1-44.17:3. Toxic substances reduction in state waters; report required.

A. The Board shall (i) conduct ongoing assessments of the amounts of toxics in Virginia's waters and (ii) develop and implement a plan for the reduction of toxics in Virginia's waters.

B. The status of the Board's efforts to reduce the level of toxic substances in state waters shall be reported biennially, no later than January 1 in each odd-numbered year, to the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources. The report shall include the following information:

1. Compliance data on permits that have limits for toxics;
2. The number of new permits or reissued permits that have toxic limits and the location of each permitted facility;
3. The location and number of monitoring stations and the period of time that monitoring has occurred at each location;
4. A summary of pollution prevention and pollution control activities for the reduction of toxics in state waters;
5. The sampling results from the monitoring stations for the previous two years;
6. The Board's plan for continued reduction of the discharge of toxics, which shall include, but not be limited to, additional monitoring activities, a work plan for the pollution prevention program, and any pilot projects established for the use of innovative technologies to reduce the discharge of toxics;
7. The identification of any segments for which the Board or the Director of the Department of Environmental Quality has made a decision to conduct additional

evaluation or monitoring. Information regarding these segments shall include, at a minimum, the geographic location of the stream segment within a named county or city; and

8. The identification of any segments that are designated as toxic impaired waters as defined in § [62.1-44.19:4](#) and any plans to address the impairment.

1997, c. [155](#); 2000, cc. [17](#), [1043](#); 2015, c. [173](#).

§62.1-44.17:4. Evaluation of toxics removal and remediation technology.

The Board shall conduct a review of instream toxics removal or remediation technologies, a minimum of once every five years, to determine whether (i) new technologies for responding to toxic contamination will necessitate any changes in the selection of removal or remediation strategies previously included as provisions of Board agreements and (ii) any of the Department of Environmental Quality's current strategies for responding to toxic contamination need to be revised.

2000, cc. [17](#), [1043](#).

§62.1-44.18. Sewerage systems, etc., under supervision of Board and Department of Environmental Quality; Board to regulate design specification and plans.

A. All sewerage systems and sewage treatment works shall be under the general supervision of the Board.

B. The Department of Environmental Quality shall, when requested, consult with and advise the authorities of cities, towns, sanitary districts, and any owner having or intending to have installed sewage treatment works as to the most appropriate type of treatment, but the Department shall not prepare plans, specifications, or detailed estimates of cost for any improvement of an existing or proposed sewage treatment works.

C. It shall be the duty of the owner of any such sewerage system or sewage treatment works from which sewage is being discharged into any state waters to furnish, when requested by the Board, information with regard to the quantities and character of the raw and treated sewage and the operation results obtained in the removal and disposal of organic matter and other pertinent information as is required.

D. The regulations of the Board shall govern the collection, conveyance, treatment and disposal of sewage. Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:

1. A requirement that the owner obtain a permit prior to the construction, installation, modification or operation of a sewerage system or treatment;
2. Criteria for the granting or denial of such permits;
3. Standards for the design, construction, installation, modification and operation of sewerage systems and treatment works;
4. Standards specifying the minimum distance between sewerage systems or treatment works and:
 - (a) Public and private wells supplying water for human consumption,
 - (b) Lakes and other impounded waters,
 - (c) Streams and rivers,
 - (d) Shellfish waters,
 - (e) Ground waters,
 - (f) Areas and places of human habitation, and
 - (g) Property lines;
5. Standards as to the adequacy of an approved water supply;
6. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth; and
7. Criteria for determining the demonstrated ability of alternative onsite systems, which are not permitted through the then current sewage handling and disposal regulations, to treat and dispose of sewage as effectively as approved methods.

E. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards, give due consideration to economic costs of such standards in accordance with the applicable provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

Code 1950, §§ 62-39, § 62.1-31; 1968, c. 659; 1970, c. 638; 1991, c. 194; 2003, c. [614](#).

§62.1-44.18:1. Repealed.

Repealed by Acts 1991, c. 194 .

§62.1-44.18:2. When Board may prohibit discharge; permits.

A. Notwithstanding any other provision of this chapter, the Board shall have the authority to prohibit any present or proposed discharge of sewage, industrial wastes, or other wastes into any sewerage system or treatment works when it has determined that such discharge would threaten the public health and safety, or would substantially interfere or be incompatible with the treatment works, or would substantially interfere with usage of state waters as designated by the Board. Before making any such determination, the Board shall consult with and receive the advice of the State Department of Health.

B. The Board shall have the authority to issue permits which prescribe the terms and conditions upon which the discharge of sewage, industrial wastes, or other wastes may be made into any sewerage system or treatment works. The Board may revoke or amend any such permit for good cause and after proper hearing. Notwithstanding the requirement for notice and a hearing, the Board may, after consultation with the State Department of Health, summarily revoke or amend such permit when it determines that the permitted discharge poses a threat to the public health and safety, or is interfering substantially with the treatment works, or is grossly affecting usage of state waters as designated by the Board. In such case, the Board shall hold a hearing as soon as practicable but in no event later than twenty days after the revocation or amendment with reasonable notice to the owner as to the time and place thereof to affirm, modify, or rescind the summary revocation or amendment of such permit.

C. Nothing in this section shall limit the authority of the Board to proceed against such owner directly under § [62.1-44.23](#) or § [62.1-44.32](#) after the Board has prohibited discharge, or after the Board has summarily amended or revoked the permit which authorized the discharge. If a proposed revocation or amendment of a permit is mutually agreeable to the Board and the owner, the hearing and notice thereof may be dispensed with.

1976, c. 626.

§62.1-44.18:3. Permit for private sewerage facility; financial assurance; violations; waiver of filing.

A. No person shall operate a privately owned sewerage system or sewerage treatment works, including an LHS 120 facility, that discharges more than 1,000 gallons per day and less than 40,000 gallons per day without obtaining a Virginia Pollutant Discharge Elimination System permit. Any owner of such a facility shall file with the Board a plan to abate, control, prevent, remove, or contain any substantial or

imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the creation of a trust fund, a submission of a bond, a corporate guarantee based upon audited financial statements, or such other instruments as the Board may deem appropriate. The Board may require that such plan and instruments be updated as appropriate.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a facility that is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat. This shall not in any way limit other recourse available to the Board.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

B. The Board may waive the filing of the plan required pursuant to subsection A for any person who operates a privately owned sewerage system or sewerage treatment works that was permitted prior to January 1, 2001, and discharges less than 5,000 gallons per day upon a finding that such person has not violated any regulation or order of the Board, any condition of a permit to operate the facility, or any provision of this chapter for a period of not less than five years; provided, that no waiver may be approved by the Board until after the governing body of the locality in which the facility is located approves the waiver after a public hearing. The Board may revoke such waiver at any time for good cause. Any person receiving a waiver who ceases

operations shall, if such cessation of operation results in a significant harm or an imminent and substantial risk of significant harm to human health and the environment, be guilty of a Class 4 felony and liable to the Commonwealth and any political subdivision thereof, for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

C. The Department of Environmental Quality shall promulgate regulations necessary to carry out the provisions of this section. The Department shall identify by January 1, 2001, those facilities regulated under this section.

2000, c. [69](#); 2001, c. [493](#).

§62.1-44.19. Approval of sewerage systems and sewage treatment works.

A. Before any owner may erect, construct, open, expand or operate a sewerage system or sewage treatment works which will have a potential discharge or actual discharge to state waters, such owner shall file with the Board an application for a certificate in scope and detail satisfactory to the Board.

B. If the application involves a system or works from which there is or is to be a discharge to state waters, the application shall be given public notice by publication once a week for two successive weeks in a newspaper of general circulation in the county or city where the certificate is applied for or by such other means as the Board may prescribe. Before issuing the certificate, the Board shall consult with and give consideration to the written recommendations of the State Department of Health pertaining to the protection of public health. Upon completion of advertising, the Board shall determine if the application is complete, and if so, shall act upon it within 21 days of such determination. The Board shall approve such application if it determines that minimum treatment requirements will be met and that the discharge will not result in violations of water quality standards. If the Board disapproves the application, it shall state what modifications or changes, if any, will be required for approval.

C. After the certificate has been issued or amended by the Board, the owner shall acquire from the Department of Environmental Quality (i) authorization to construct the systems or works for which the Board has issued a discharge certificate and (ii) upon completion of construction, authorization to operate the sewerage system or sewage treatment works. These authorizations shall be obtained in accordance with regulations promulgated by the Board.

D. Any owner operating under a valid certificate issued by the Board who fails to meet water quality standards established by the Board solely as a result of a change in water quality standards or in the law shall provide the necessary facilities approved by the Department of Environmental Quality, in accordance with the provisions of subsection C of this section, within a reasonable time to meet such new requirements. The Board may amend such certificate, or revoke it and issue a new one to reflect such facilities after proper hearing, with at least 30 days' notice to the owner of the time, place and purpose thereof. If such revocation or amendment of a certificate is mutually agreeable to the Board and the owner involved, the hearing and notice may be dispensed with.

E. The Board shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order under subdivisions (8a), (8b), and (8c) of § [62.1-44.15](#).

Code 1950, § 62.1-33; 1968, c. 659; 1970, c. 638; 1976, c. 661; 1991, c. 194; 2003, c. [614](#).

§62.1-44.19:1. Prohibiting sewage discharge under certain conditions in certain cities [Not set out].

Not set out. (1972, c. 840.)

§62.1-44.19:2. Additional requirements on sewage discharge in Norfolk, Newport News, Hampton, Virginia Beach, and Chesapeake [Not set out].

Not set out. (1972, c. 840; 1975, c. 373; 1976, c. 188.)

§62.1-44.19:3. Prohibition on land application, marketing and distribution of sewage sludge without permit; ordinances; notice requirement; fees.

A.1. No owner of a sewage treatment works shall land apply, market or distribute sewage sludge from such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination System Permit or valid Virginia Pollution Abatement Permit.

2. Sewage sludge shall be treated to meet standards for land application as required by Board regulation prior to delivery at the land application site. No person shall alter the composition of sewage sludge at a site approved for land application of sewage sludge under a Virginia Pollution Abatement Permit or a Virginia Pollutant Discharge Elimination System. Any person who engages in the alteration of such sewage sludge shall be subject to the penalties provided in Article 6 (§ [62.1-44.31](#) et

seq.) of this chapter. The addition of lime or deodorants to sewage sludge that has been treated to meet land application standards shall not constitute alteration of the composition of sewage sludge. The Department may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

3. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit authorizing land application, marketing or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing or distribution. The permit application shall not be complete unless it includes the landowner's written consent to apply sewage sludge on his property.

4. The land disposal of lime-stabilized septage and unstabilized septage is prohibited.

5. Beginning July 1, 2007, no application for a permit or variance to authorize the storage of sewage sludge shall be complete unless it contains certification from the governing body of the locality in which the sewage sludge is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

B. The Board, with the assistance of the Department of Conservation and Recreation and the Department of Health, shall adopt regulations to ensure that (i) sewage sludge permitted for land application, marketing, or distribution is properly treated or stabilized; (ii) land application, marketing, and distribution of sewage sludge is performed in a manner that will protect public health and the environment; and (iii) the escape, flow or discharge of sewage sludge into state waters, in a manner that would cause pollution of state waters, as those terms are defined in § [62.1-44.3](#), shall be prevented.

C. Regulations adopted by the Board, with the assistance of the Department of Conservation and Recreation and the Department of Health pursuant to subsection B, shall include:

1. Requirements and procedures for the issuance and amendment of permits, including general permits, authorizing the land application, marketing or distribution of sewage sludge;
2. Procedures for amending land application permits to include additional application sites and sewage sludge types;
3. Standards for treatment or stabilization of sewage sludge prior to land application, marketing or distribution;
4. Requirements for determining the suitability of land application sites and facilities used in land application, marketing or distribution of sewage sludge;
5. Required procedures for land application, marketing, and distribution of sewage sludge;
6. Requirements for sampling, analysis, recordkeeping, and reporting in connection with land application, marketing, and distribution of sewage sludge;
7. Provisions for notification of local governing bodies to ensure compliance with §§ [62.1-44.15:3](#) and [62.1-44.19:3.4](#);
8. Requirements for site-specific nutrient management plans, which shall be developed by persons certified in accordance with § [10.1-104.2](#) prior to land application for all sites where sewage sludge is land applied, and approved by the Department of Conservation and Recreation prior to permit issuance under specific conditions, including but not limited to, sites operated by an owner or lessee of a Confined Animal Feeding Operation, as defined in subsection A of § [62.1-44.17:1](#), or Confined Poultry Feeding Operation, as defined in § [62.1-44.17:1.1](#), sites where the permit authorizes land application more frequently than once every three years at greater than 50 percent of the annual agronomic rate, and other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters;
9. Procedures for the prompt investigation and disposition of complaints concerning land application of sewage sludge, including the requirements that (i) holders of permits issued under this section shall report all complaints received by them to the Department and to the local governing body of the jurisdiction in which the complaint originates, and (ii) localities receiving complaints concerning land application of sewage sludge shall notify the Department and the permit holder. The Department shall maintain a searchable electronic database of complaints received during the

current and preceding calendar year, which shall include information detailing each complaint and how it was resolved; and

10. Procedures for receiving and responding to public comments on applications for permits and for permit amendments authorizing land application at additional sites. Such procedures shall provide that an application for any permit amendments to increase the acreage authorized by the initial permit by 50 percent or more shall be treated as a new application for purposes of public notice and public hearings.

D. Prior to issuance of a permit authorizing the land application, marketing or distribution of sewage sludge, the Department shall consult with, and give full consideration to the written recommendations of the Department of Health and the Department of Conservation and Recreation. Such consultation shall include any public health risks or water quality impacts associated with the permitted activity. The Department of Health and the Department of Conservation and Recreation may submit written comments on proposed permits within 30 days after notification by the Department.

E. Where, because of site-specific conditions, including soil type, identified during the permit application review process, the Department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the Department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by the regulations adopted under this section. Before incorporating any such conditions into the permit, the Department shall provide written notice to the permit applicant, specifying the reasons therefor and identifying the site-specific conditions justifying the additional requirements. The Department shall incorporate into the notice any written requests or recommendations concerning such site-specific conditions submitted by the local governing body where the land application is to take place. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

F. The Board shall adopt regulations prescribing a fee to be charged to all permit holders and persons applying for permits and permit modifications pursuant to this section. All fees collected pursuant to this subsection shall be deposited into the Sludge Management Fund. The fee for the initial issuance of a permit shall be \$5,000. The

fee for the reissuance, amendment, or modification of a permit for an existing site shall not exceed \$1,000 and shall be charged only for permit actions initiated by the permit holder. Fees collected under this section shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to the Department.

G. There is hereby established in the treasury a special fund to be known as the Sludge Management Fund, hereinafter referred to as the Fund. The fees required by this section and by subsection E of § [62.1-44.16](#) shall be transmitted to the Comptroller to be deposited into the Fund. The income and principal of the Fund shall be used only and exclusively (i) for the Department's direct and indirect costs associated with the processing of an application to issue, reissue, amend, or modify any permit to land apply, distribute, or market sewage sludge or industrial wastes, the administration and management of the Department's sewage sludge and industrial wastes land application programs, including monitoring and inspecting, and the Department of Conservation and Recreation's costs for implementation of the sewage sludge application program and (ii) to reimburse localities with duly adopted ordinances providing for the testing and monitoring of the land application of sewage sludge or solid or semisolid industrial wastes. The State Treasurer shall be the custodian of the moneys deposited in the Fund. No part of the Fund, either principal or interest earned thereon, shall revert to the general fund of the state treasury.

H. All persons holding or applying for a permit authorizing the land application of sewage sludge shall provide to the Board written evidence of financial responsibility, which shall be available to pay claims for cleanup costs, personal injury, and property damages resulting from the transportation, storage or land application of sewage sludge. The Board shall, by regulation, establish and prescribe mechanisms for meeting the financial responsibility requirements of this section.

I. Any county, city or town may adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations.

J. The Department, upon the timely request of any individual to test the sewage sludge at a specific site, shall collect samples of the sewage sludge at the site prior to the land application and submit such samples to a laboratory. The testing shall include an analysis of the (i) concentration of trace elements, (ii) coliform count, and (iii) pH level. The results of the laboratory analysis shall be (a) furnished to the

individual requesting that the test be conducted and (b) reviewed by the Department. The person requesting the test and analysis of the sewage sludge shall pay the costs of sampling, testing, and analysis.

K. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. This requirement shall not apply to any application commenced prior to October 10, 2005. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

L. The permit holder shall deliver or cause to be delivered written notification to the Department at least 14 days prior to commencing land application of sewage sludge at a permitted site. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

M. The Department shall randomly conduct unannounced site inspections while land application of sewage sludge is in progress at a sufficient frequency to determine compliance with the requirements of this section, § [62.1-44.19:3.1](#), or regulations adopted under those sections.

N. Surface incorporation into the soil of sewage sludge applied to cropland may be required when practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

O. The Board shall develop regulations specifying and providing for extended buffers to be employed for application of sewage sludge (i) to hay, pasture, and forestlands; or (ii) to croplands where surface incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such extended buffers may be included by the Department as site specific permit conditions pursuant to subsection E, as an alternative to surface incorporation when necessary to protect odor sensitive receptors as determined by the Department or the local monitor.

P. The Board shall adopt regulations requiring the payment of a fee for the land application of sewage sludge, pursuant to permits issued under this section. The person land applying sewage sludge shall (i) provide advance notice of the estimated fee to the generator of the sewage sludge unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee to the Department as provided for by regulation. The fee shall be imposed on each dry ton of sewage sludge that is land applied in the Commonwealth. The regulations shall include requirements and procedures for:

1. Collection of fees by the Department;
2. Deposit of the fees into the Fund; and
3. Disbursement of proceeds by the Department pursuant to subsection G.

Q. The Department, in consultation with the Department of Health, the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services, and the Virginia Cooperative Extension Service, shall establish and implement a program to train persons employed by those local governments that have adopted ordinances, pursuant to this section, to test and monitor the land application of sewage sludge. The program shall include, at a minimum, instruction in: (i) the provisions of the Virginia Biosolids Use Regulations; (ii) land application methods and equipment, including methods and processes for preparation and stabilization of sewage sludge that is land applied; (iii) sampling and chain of custody control; (iv) preparation and implementation of nutrient management plans for land application sites; (v) complaint response and preparation of complaint and inspection reports; (vi) enforcement authority and procedures; (vii) interaction and communication with the public; and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subsection G. To the extent feasible, the program shall emphasize in-field instruction and practical training. Persons employed by local governments shall successfully complete such training before the local government may request reimbursement from the Board for testing and monitoring of land application of sewage sludge performed by the person. The completion of training shall not be a prerequisite to the exercise of authority granted to local governments by any applicable provision of law.

The Department may:

1. Charge attendees a reasonable fee to recover the actual costs of preparing course materials and providing facilities and instructors for the program. The fee shall be reimbursable from the Fund established pursuant to this section; and
2. Request and accept the assistance and participation of other state agencies and institutions in preparing and presenting the course of training established by this subsection.

R. Localities, as part of their zoning ordinances, may designate or reasonably restrict the storage of sewage sludge based on criteria directly related to the public health, safety, and welfare of its citizens and the environment. Notwithstanding any contrary provision of law, a locality may by ordinance require that a special exception or a special use permit be obtained to begin the storage of sewage sludge on any property in its jurisdiction, including any area that is zoned as an agricultural district or classification. Such ordinances shall not restrict the storage of sewage sludge on a farm as long as such sludge is being stored (i) solely for land application on that farm and (ii) for a period no longer than 45 days. No person shall apply to the State Health Commissioner or the Department of Environmental Quality for a permit, a variance, or a permit modification authorizing such storage without first complying with all requirements adopted pursuant to this subsection.

1994, c. [288](#); 2001, c. [831](#); 2005, cc. [197](#), [396](#), [459](#), [593](#); 2007, cc. [390](#), [881](#), [927](#), [929](#); 2009, c. [42](#); 2015, cc. [104](#), [677](#).

§62.1-44.19:3.1. Certification of sewage sludge land applicators.

A. The Board, with the assistance of the Department of Health, and the Department of Professional and Occupational Regulation shall adopt regulations and standards for training, testing, and certification of persons land applying Class B sewage sludge in the Commonwealth, and for revoking, suspending, or denying such certification from any person for cause. The regulations shall include standards and criteria for the approval of programs of instruction taught by governmental entities and by the private sector for the purpose of certifying sewage sludge land applicators. The Board shall promulgate the regulations and standards required by this subsection no later than July 1, 2008.

B. No person shall land apply Class B sewage sludge pursuant to a permit under § [62.1-44.19:3](#) unless a certified sewage sludge land applicator is onsite at all times during such land application, as of 180 days following the effective date of regulations required by this section.

2007, cc. [881](#), [929](#).

§62.1-44.19:3.2. Local enforcement of sewage sludge regulations.

A. Any locality that has adopted an ordinance for the testing and monitoring of the land application of sewage sludge pursuant to § [62.1-44.19:3](#) shall have the authority to order the abatement of any violation of § [62.1-44.19:3](#), [62.1-44.19:3.1](#), or [62.1-44.19:3.3](#), or of any violation of any regulation adopted under these sections. Such abatement order shall identify the activity constituting the violation, specify the Code provision or regulation violated by the activity, and order that the activity cease immediately.

B. In the event of any dispute concerning the existence of a violation, the activity alleged to be in violation shall be halted pending a determination by the Director, whose decision shall be final and binding unless reversed on judicial appeal pursuant to § [2.2-4026](#). Any person who fails or refuses to halt such activity may be compelled to do so by injunction issued by a court having competent jurisdiction. Upon determination by the Director that there has been a violation of § [62.1-44.19:3](#), [62.1-44.19:3.1](#), or [62.1-44.19:3.3](#), or of any regulation adopted under these sections and that such violation poses an imminent threat to public health, safety, or welfare, the Department shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation. Neither the Board, the Commonwealth, nor any employee of the Commonwealth shall be liable for failing to provide the notification required by this section.

C. Local governments shall promptly notify the Department of all results from the testing and monitoring of the land application of sewage sludge performed by persons employed by local governments and any violation of § [62.1-44.19:3](#), [62.1-44.19:3.1](#), or [62.1-44.19:3.3](#), or regulations adopted under those sections, discovered by local governments.

2007, cc. [881](#), [929](#).

§62.1-44.19:3.3. Septage disposal.

The Board shall have the authority to issue permits that prescribe the terms and conditions upon which septage may be disposed of by land application. Application for disposal permits shall be submitted in form and content that are satisfactory to the Board. Upon receipt of a satisfactory application, the Board shall send a copy to the State Board of Health and shall comply with the provisions of § [62.1-44.19:3.4](#). The

State Board of Health shall review the application without delay and advise the Board within 60 days of the requirements necessary to protect public health. The Board shall not consider the application complete until comments have been received from the State Board of Health. The Board shall approve or disapprove the application and issue the permit as appropriate. If the application is disapproved, the Board shall advise the applicant of the conditions necessary to obtain approval. The Board may summarily revoke or amend the permit if it determines that the septage disposal is adversely affecting state waters or if the State Board of Health notifies the Board that public health is being adversely affected.

2007, cc. [881](#), [929](#).

§62.1-44.19:3.4. Notification of local governing bodies.

A. Whenever the Department receives an application for land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, the Department shall notify the local governing bodies where disposal is to take place of pertinent details of the proposal and establish a date for a public meeting to discuss technical issues relating to the proposal. The Department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where land disposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The Board shall not issue the permit for land disposal until the public meeting has been held and comment has been received from the local governing body, or until 30 days have lapsed from the date of the public meeting. This section shall not apply to applications for septic tank permits.

B. When a farm is to be added to an existing permit authorizing land application of sewage sludge, the Department shall notify persons residing on property bordering such farm, and shall receive written comments from those persons for a period not to exceed 30 days. Based upon the written comments, the Department shall determine whether additional site-specific requirements should be included in the authorization for land application at the farm.

2007, cc. [881](#), [929](#); 2009, c. [42](#).

§62.1-44.19:4. Definitions.

As used in this article unless the context requires a different meaning:

"Clean Water Act" means the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1251 et seq.).

"Fully supporting" means those waters meeting the fishable and swimmable goals of the Clean Water Act.

"Impaired waters" means those water bodies or water body segments that are not fully supporting or are partially supporting of the fishable and swimmable goals of the Clean Water Act and include those waters identified in subdivision C 1 of § [62.1-44.19:5](#) as impaired waters.

"Toxic impaired waters" means those water bodies or water body segments identified as impaired due to one or more toxic substances in the reports prepared pursuant to § [62.1-44.19:5](#).

"Toxic substance" or "toxics" means any agent or material listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act and those substances on the "toxics of concern" list of the Chesapeake Bay Program as of January 1, 1997.

1997, c. [519](#); 2000, cc. [17](#), [1043](#).

§62.1-44.19:5. Water quality monitoring and reporting.

A. The Board shall develop the reports required by § 1313(d) (hereafter the 303(d) report) and § 1315(b) (hereafter the 305(b) report) of the Clean Water Act in a manner such that the reports will: (i) provide an accurate and comprehensive assessment of the quality of state surface waters; (ii) identify trends in water quality for specific and easily identifiable geographically defined water segments; (iii) provide a basis for developing initiatives and programs to address current and potential water quality impairment; (iv) be consistent and comparable documents; and (v) contain accurate and comparable data that is representative of the state as a whole. The reports shall be produced in accordance with the schedule required by federal law, but shall incorporate at least the preceding five years of data. Data older than five years shall be incorporated when scientifically appropriate for trend analysis. The Board shall conduct monitoring as described in subsection B and consider and incorporate factors as described in subsection C into the reports. The Board may conduct additional monitoring and consider and incorporate other factors or information it deems appropriate or necessary.

B. Monitoring shall be conducted so that it:

1. Establishes consistent siting and monitoring techniques to ensure data reliability, comparability of data collected throughout the state, and ability to determine water quality trends within specific and easily identifiable geographically defined water segments.
2. Expands the percentage of river and stream miles monitored so as ultimately to be representative of all river and stream miles in the state according to a developed plan and schedule. Contingent upon the appropriation of adequate funding for this purpose, the number of water quality monitoring stations and the frequency of sampling shall be increased by at least five percent annually, until such representative monitoring is achieved, and shall be expanded first to water bodies for which there is credible evidence to support an indication of impairment.
3. Monitors, according to a plan and schedule, for all substances that are discharged to state waters and that are: (i) listed on the Chesapeake Bay Program's "toxics of concern" list as of January 1, 1997; (ii) listed by the USEPA Administrator pursuant to § 307(a) of the Clean Water Act; (iii) subject to water quality standards; or (iv) necessary to determine water quality conditions. The Board shall update the plan annually. The Board shall develop and implement the plan and schedule for the phasing in of monitoring required by this subdivision. The Board shall, upon development of the plan, publish notice in the Virginia Register that the plan is available for public inspection.
4. Provides, according to the plan in subdivision B 3, for increased use, as necessary, beyond 1996 levels, of sediment monitoring as well as benthic macro-invertebrate organisms and fish tissue monitoring, and provides for specific assessments of water quality based on the results of such monitoring. Contingent upon the appropriation of adequate funding for this purpose, all fish tissue and sediment monitoring for the segments identified in the water quality monitoring plan shall occur at least once every three years.
5. Increases frequency of sample collection at each chemical monitoring station to one or more per month when scientifically necessary to provide accurate and usable data. If statistical analysis is necessary to resolve issues surrounding potentially low sampling frequency, a sensitivity analysis shall be used to describe both potential overestimation and underestimation of water quality.

6. Utilizes a mobile laboratory or other laboratories to provide independent monitoring and assessments of effluent from permitted industrial and municipal establishments and other discharges to state waters.

7. Utilizes announced and unannounced inspections, and collection and testing of samples from establishments discharging to state surface waters.

C. The 303(d) report shall:

1. In addition to such other categories as the Board deems necessary or appropriate, identify geographically defined water segments as impaired if monitoring or other evidence shows: (i) violations of ambient water quality standards or human health standards; (ii) fishing restrictions or advisories; (iii) shellfish consumption restrictions due to contamination; (iv) nutrient over-enrichment; (v) significant declines in aquatic life biodiversity or populations; or (vi) contamination of sediment at levels which violate water quality standards or threaten aquatic life or human health.

Waters identified as "naturally impaired," "fully supporting but threatened," or "evaluated (without monitoring) as impaired" shall be set out in the report in the same format as those listed as "impaired." The Board shall develop and publish a procedure governing its process for defining and determining impaired water segments and shall provide for public comment on the procedure.

2. Include an assessment, conducted in conjunction with other appropriate state agencies, for the attribution of impairment to point and nonpoint sources. The absence of point source permit violations on or near the impaired water shall not conclusively support a determination that impairment is due to nonpoint sources. In determining the cause for impairment, the Board shall consider the cumulative impact of (i) multiple point source discharges, (ii) individual discharges over time, and (iii) nonpoint sources.

D. The 303(d) and 305(b) reports shall:

1. Be developed in consultation with scientists from baccalaureate public institutions of higher education in the Commonwealth prior to its submission by the Board to the United States Environmental Protection Agency.

2. Indicate water quality trends for specific and easily identifiable geographically defined water segments and provide summaries of the trends as well as available data and evaluations so that citizens of the Commonwealth can easily interpret and understand the conditions of the geographically defined water segments.

E. The Board shall refer to the 303(d) and 305(b) reports in determining proper staff and resource allocation.

F. The Board shall accept and review requests from the public regarding specific segments that should be included in the water quality monitoring plan described in subdivision B 3. Each request received by April 30 shall be reviewed when the agency develops or updates the water quality monitoring plan. Such requests shall include (i) a geographical description of the waterbody recommended for monitoring, (ii) the reason the monitoring is requested, and (iii) any water quality data that the petitioner may have collected or compiled. The Board shall respond in writing, either approving the request or stating the reasons a request under this subsection has been denied, by August 31 for requests received by April 30 of the same year. Such determination shall not be a regulation or case decision as defined by § [2.2-4001](#).

1997, c. [519](#); 2000, cc. [17](#), [945](#), [1043](#); 2007, c. [655](#).

§62.1-44.19:6. Citizen right-to-know provisions.

A. The Board, based on the information in the 303(d) and 305(b) reports, shall:

1. Request the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission to post notices at public access points to all toxic impaired waters. The notice shall be prepared by the Board and shall contain (i) the basis for the impaired designation and (ii) a statement of the potential health risks provided by the Virginia Department of Health. The Board shall annually notify local newspapers, and persons who request notice, of any posting and its contents. The Board shall coordinate with the Virginia Marine Resources Commission and the Department of Game and Inland Fisheries to assure that adequate notice of posted waters is provided to those purchasing hunting and fishing licenses.
2. Maintain a "citizen hot-line" for citizens to obtain, either telephonically or electronically, information about the condition of waterways, including information on toxics, toxic discharges, permit violations and other water quality related issues.
3. Make information regarding the presence of toxics in fish tissue and sediments available to the public on the Internet and through other reasonable means for at least five years after the information is received by the Department of Environmental Quality. The Department of Environmental Quality shall post on the Internet and in the Virginia Register on or about January 1 and July 1 of each year an announcement

of any new data that has been received over the past six months and shall make a copy of the information available upon request.

B. The Board shall provide to a local newspaper the discharge information reported to the Director of the Department of Environmental Quality pursuant to § [62.1-44.5](#), when the Virginia Department of Health determines that the discharge may be detrimental to the public health or the Board determines that the discharge may impair beneficial uses of state waters.

1997, c. [519](#); 2000, cc. [17](#), [1043](#).

§62.1-44.19:7. Plans to address impaired waters.

A. The Board shall develop and implement a plan to achieve fully supporting status for impaired waters, except when the impairment is established as naturally occurring. The plan shall include the date of expected achievement of water quality objectives, measurable goals, the corrective actions necessary, and the associated costs, benefits, and environmental impact of addressing impairment and the expeditious development and implementation of total maximum daily loads when appropriate and as required pursuant to subsection C.

B. The plan required by subsection A shall include, but not be limited to, the promulgation of water quality standards for those substances: (i) listed on the Chesapeake Bay Program's "toxics of concern" list as of January 1, 1997; (ii) listed by the USEPA Administrator pursuant to § 307 (a) of the Clean Water Act; or (iii) identified by the Board as having a particularly adverse effect on state water quality or living resources. The standards shall be promulgated pursuant to a schedule established by the Board following public notice and comment. Standards shall be adopted according to applicable federal criteria or standards unless the Board determines that an additional or more stringent standard is necessary to protect public health, aquatic life or drinking water supplies.

C. The plan required by subsection A shall, upon identification by the Board of impaired waters, establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The Board shall develop and implement pursuant to a schedule total maximum daily loads of pollutants that may enter the water for each impaired water body as required by the Clean Water Act.

D. The plan required by subsection A shall, upon identification by the Board of toxic-impaired waters, include provisions as required by § [62.1-44.19:8](#).

E. If an aggrieved party presents to the Board reasonable grounds indicating that the attainment of the designated use for a water is not feasible, then the Board, after public notice and at least 30 days provided for public comment, may allow the aggrieved party to conduct a use attainability analysis according to criteria established pursuant to the Clean Water Act and a schedule established by the Board. If applicable, the schedule shall also address whether TMDL development or implementation for the water should be delayed.

F. The plan required by subsection A shall be controlling unless and until amended or withdrawn by the Board.

1997, c. [519](#); 2006, c. [154](#); 2011, cc. [281](#), [322](#).

§62.1-44.19:8. Control of discharges to toxic-impaired water.

Owners of establishments that discharge toxics to toxic-impaired waters shall evaluate the options described in §§ [10.1-1425.10](#) and [10.1-1425.11](#) in determining the appropriate means to control such discharges. Prior to issuing or reissuing any permit for the discharge of toxics to toxic-impaired waters, the Board shall review and consider the owner's evaluation of the options in determining the conditions and limitations of the permit.

1997, c. [519](#).

§62.1-44.19:9. Transmission of toxics information.

The Virginia Department of Health and the Department of Environmental Quality shall cooperate, in accordance with a memorandum of agreement to be signed by the Commissioner of Health and the Director of the Department of Environmental Quality, to ensure the timely transmission and evaluation of reliable water quality and fish advisory information. The memorandum of agreement, at a minimum, shall include specific time frames for the (i) transfer of information from the Department of Environmental Quality to the Virginia Department of Health; (ii) assessments and recommendations to be made by the Virginia Department of Health, when the toxicity of the substance is known; and (iii) transmission of the Virginia Department of Health's assessments and recommendations to the Department of Environmental Quality and the dissemination of the assessments and recommendations to the public. Copies of the proposed memorandum of agreement shall be provided to the

Chairmen of the House Committees on Conservation and Natural Resources and Chesapeake and Its Tributaries and the Senate Committee on Agriculture, Conservation and Natural Resources at least one month prior to final signature by the heads of the two agencies but no later than December 1, 2000. Any revision of the agreement shall be submitted to the chairmen of these committees no later than one month prior to adoption by the Virginia Department of Health and the Department of Environmental Quality.

2000, cc. [17](#), [1043](#).

§62.1-44.19:10. Assessment of sources of toxic contamination.

The Department of Environmental Quality shall develop a written policy describing the circumstances or factors that indicate the need to conduct an assessment of potential sources of toxic contamination. The Department of Environmental Quality shall conduct source assessments as provided for in the written policy and shall develop strategies to remediate the contamination. A copy of the written policy shall be provided to the Chairmen of the House Committees on Conservation and Natural Resources and Chesapeake and Its Tributaries and the Senate Committee on Agriculture, Conservation and Natural Resources no later than one month prior to the adoption of the policy but no later than December 1, 2000. Any revision of the policy shall be submitted to the chairmen of these committees no later than one month prior to the adoption of the revision by the Department.

2000, cc. [17](#), [1043](#).

§62.1-44.19:11. Citizen water quality monitoring program.

A. The Department of Environmental Quality shall establish a citizen water quality monitoring program to provide technical assistance and may provide grants to support citizen water quality monitoring groups if (i) the monitoring is done pursuant to a memorandum of agreement with the Department, (ii) the project or activity is consistent with the Department of Environmental Quality's water quality monitoring program, (iii) the monitoring is conducted in a manner consistent with the Virginia Citizens Monitoring Methods Manual, and (iv) the location of the water quality monitoring activity is part of the water quality control plan required under § [62.1-44.19:5](#). The results of such citizen monitoring shall not be used as evidence in any enforcement action.

B. It shall be the goal of the Department to encourage citizen water quality monitoring so that 3,000 stream miles are monitored by volunteer citizens by 2010.

2002, c. [708](#); 2007, c. [29](#).

§62.1-44.19:12. Legislative findings and purposes.

The 2000 Chesapeake Bay Agreement and related multistate cooperative and regulatory initiatives (i) establish allocations for nitrogen and phosphorus delivered to the Chesapeake Bay and its tidal tributaries to meet applicable water quality standards and (ii) place caps on the loads of these nutrients that may be discharged into the Chesapeake Bay watershed. These initiatives will require public and private point source dischargers of nitrogen and phosphorus to achieve significant additional reductions of these nutrients to meet the cap load allocations. The General Assembly finds and determines that adoption and utilization of a watershed general permit and market-based point source nutrient credit trading program will assist in (a) meeting these cap load allocations cost-effectively and as soon as possible in keeping with the 2010 timeline and objectives of the Chesapeake 2000 Agreement, (b) accommodating continued growth and economic development in the Chesapeake Bay watershed, and (c) providing a foundation for establishing market-based incentives to help achieve the Chesapeake Bay Program's nonpoint source reduction goals.

2005, cc. [708](#), [710](#).

§62.1-44.19:13. Definitions.

As used in this article, unless the context requires a different meaning:

"Annual mass load of total nitrogen" (expressed in pounds per year) means the daily total nitrogen concentration (expressed as mg/L to the nearest 0.01 mg/L) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to the nearest 0.01 MGD), multiplied by 8.34 and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then totaled for the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the calendar year to convert to pounds per year (lbs/yr) units.

"Annual mass load of total phosphorus" (expressed in pounds per year) means the daily total phosphorus concentration (expressed as mg/L to the nearest 0.01mg/L) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to the nearest 0.01 MGD) multiplied by 8.34 and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then totaled for the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the calendar year to convert to pounds per year (lbs/yr) units.

"Association" means the Virginia Nutrient Credit Exchange Association authorized by this article.

"Attenuation" means the rate at which nutrients are reduced through natural processes during transport in water.

"Best management practice," "practice," or "BMP" means a structural practice, non-structural practice, or other management practice used to prevent or reduce nutrient loads associated with stormwater from reaching surface waters or the adverse effects thereof.

"Biological nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen effluent concentration of eight milligrams per liter and an annual average total phosphorus effluent concentration of one milligram per liter, or (ii) equivalent reductions in loads of total nitrogen and total phosphorus through the recycle or reuse of wastewater as determined by the Department.

"Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point source that is adjusted by the delivery factor for that point source.

"Delivered total phosphorus load" means the discharged mass load of total phosphorus from a point source that is adjusted by the delivery factor for that point source.

"Delivery factor" means an estimate of the number of pounds of total nitrogen or total phosphorus delivered to tidal waters for every pound discharged from a permitted facility, as determined by the specific geographic location of the permitted facility, to account for attenuation that occurs during riverine transport between the permitted facility and tidal waters. Delivery factors shall be calculated using the Chesapeake Bay Program watershed model.

"Department" means the Department of Environmental Quality.

"Equivalent load" means 2,300 pounds per year of total nitrogen and 300 pounds per year of total phosphorus at a flow volume of 40,000 gallons per day; 5,700 pounds per year of total nitrogen and 760 pounds per year of total phosphorus at a flow volume of 100,000 gallons per day; and 28,500 pounds per year of total nitrogen and 3,800 pounds per year of total phosphorus at a flow volume of 500,000 gallons per day.

"Facility" means a point source discharging or proposing to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries. This term does not include confined animal feeding operations, discharges of stormwater, return flows from irrigated agriculture, or vessels.

"General permit" means the general permit authorized by this article.

"MS4" means a municipal separate storm sewer system.

"Nutrient credit" or "credit" means a nutrient reduction that is certified pursuant to this article and expressed in pounds of phosphorus or nitrogen either (i) delivered to tidal waters when the credit is generated within the Chesapeake Bay Watershed or (ii) as otherwise specified when generated in the Southern Rivers watersheds. "Nutrient credit" does not include point source nitrogen credits or point source phosphorus credits as defined in this section.

"Nutrient credit-generating entity" means an entity that generates nonpoint source nutrient credits.

"Permitted facility" means a facility authorized by the general permit to discharge total nitrogen or total phosphorus. For the sole purpose of generating point source nitrogen credits or point source phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority.

"Permittee" means a person authorized by the general permit to discharge total nitrogen or total phosphorus.

"Point source nitrogen credit" means the difference between (i) the waste load allocation for a permitted facility specified as an annual mass load of total nitrogen, and (ii) the monitored annual mass load of total nitrogen discharged by that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total nitrogen load.

"Point source phosphorus credit" means the difference between (i) the waste load allocation for a permitted facility specified as an annual mass load of total phosphorus, and (ii) the monitored annual mass load of total phosphorus discharged by that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total phosphorus load.

"State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen effluent concentration of three milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter, or (ii) equivalent load reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the Department.

"Tributaries" means those river basins listed in the Chesapeake Bay TMDL and includes the Potomac, Rappahannock, York, and James River Basins, and the Eastern Shore, which encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay.

"Waste load allocation" means (i) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus allocated to individual facilities pursuant to the Water Quality Management Planning Regulation ([9VAC25-720](#)) or its successor, or permitted capacity in the case of nonsignificant dischargers; (ii) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus acquired pursuant to § [62.1-44.19:15](#) for new or expanded facilities; or (iii) applicable total nitrogen or total phosphorus waste load allocations under the Chesapeake Bay total maximum daily loads (TMDLs) to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

2005, cc. [708](#), [710](#); 2012, cc. [748](#), [808](#); 2013, cc. [756](#), [793](#); 2015, c. [164](#).

§62.1-44.19:14. Watershed general permit for nutrients.

A. By January 1, 2006, or as soon thereafter as possible, the Board shall issue a Watershed General Virginia Pollutant Discharge Elimination System Permit, hereafter referred to as the general permit, authorizing point source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries. Except as otherwise provided in this article, the general permit shall control in lieu of technology-based, water quality-based, and best professional judgment, interim or final effluent limitations for total nitrogen and total phosphorus in individual Virginia Pollutant Discharge Elimination System permits for facilities covered by the general permit where the effluent limitations for total nitrogen and total phosphorus in the individual permits are based upon standards, criteria, waste load allocations, policy, or guidance established to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

B. This section shall not be construed to limit or otherwise affect the Board's authority to establish and enforce more stringent water quality-based effluent limitations

for total nitrogen or total phosphorus in individual permits where those limitations are necessary to protect local water quality. The exchange or acquisition of credits pursuant to this article shall not affect any requirement to comply with such local water quality-based limitations.

C. The general permit shall contain the following:

1. Waste load allocations for total nitrogen and total phosphorus for each permitted facility expressed as annual mass loads. The allocations for each permitted facility shall reflect the applicable individual water quality-based total nitrogen and total phosphorus waste load allocations. An owner or operator of two or more facilities located in the same tributary may apply for and receive an aggregated waste load allocation for total nitrogen and an aggregated waste load allocation for total phosphorus for multiple facilities reflecting the total of the water quality-based total nitrogen and total phosphorus waste load allocations established for such facilities individually;
2. A schedule requiring compliance with the combined waste load allocations for each tributary as soon as possible taking into account (i) opportunities to minimize costs to the public or facility owners by phasing in the implementation of multiple projects; (ii) the availability of required services and skilled labor; (iii) the availability of funding from the Virginia Water Quality Improvement Fund as established in § [10.1-2128](#), the Virginia Water Facilities Revolving Fund as established in § [62.1-225](#), and other financing mechanisms; (iv) water quality conditions; and (v) other relevant factors. Following receipt of the compliance plans required by subdivision C 3, the Board shall reevaluate the schedule taking into account the information in the compliance plans and the factors in this subdivision, and may modify the schedule as appropriate;
3. A requirement that within nine months after the initial effective date of the general permit, the permittees shall either individually or through the Association submit compliance plans to the Department for approval. The compliance plans shall contain, at a minimum, any capital projects and implementation schedules needed to achieve total nitrogen and phosphorus reductions sufficient to comply with the individual and combined waste load allocations of all the permittees in the tributary. The compliance plans may rely on the exchange of point source credits in accordance with this article, but not the acquisition of credits through payments authorized by § [62.1-44.19:18](#), to achieve compliance with the individual and combined waste load

allocations in each tributary. The compliance plans shall be updated annually and submitted to the Department no later than February 1 of each year;

4. Such monitoring and reporting requirements as the Board deems necessary to carry out the provisions of this article;

5. A procedure that requires every owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 100,000 gallons or more per day, or an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters, to secure general permit coverage by filing a registration statement with the Department within a specified period after each effective date of the general permit. The procedure shall also require any owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 40,000 gallons or more per day, or an equivalent load, directly into tidal or nontidal waters to secure general permit coverage by filing a registration statement with the Department at the time he makes application with the Department for a new discharge or expansion that is subject to an offset or technology-based requirement in § [62.1-44.19:15](#), and thereafter within a specified period of time after each effective date of the general permit. The procedure shall also require any owner or operator of a facility with a discharge that is subject to an offset requirement in subdivision A 5 of § [62.1-44.19:15](#) to secure general permit coverage by filing a registration statement with the Department prior to commencing the discharge and thereafter within a specified period of time after each effective date of the general permit. The general permit shall provide that any facility authorized by a Virginia Pollutant Discharge Elimination System permit and not required by this subdivision to file a registration statement shall be deemed to be covered under the general permit at the time it is issued, and shall file a registration statement with the Department when required by this section. Owners or operators of facilities that are deemed to be permitted under this section shall have no other obligation under the general permit prior to filing a registration statement and securing coverage under the general permit based upon such registration statement;

6. A procedure for efficiently modifying the lists of facilities covered by the general permit where the modification does not change or otherwise alter any waste load allocation or delivery factor adopted pursuant to the Water Quality Management Planning Regulation (9VAC25-720) or its successor, or an applicable total maximum daily load. The procedure shall also provide for modifying or incorporating new waste load

allocations or delivery factors, including the opportunity for public notice and comment on such modifications or incorporations; and

7. Such other conditions as the Board deems necessary to carry out the provisions of this chapter and Section 402 of the federal Clean Water Act (33 U.S.C. § 1342).

D.1. The Board shall (i) review during the year 2020 and every 10 years thereafter the basis for allocations granted in the Water Quality Management Planning Regulation (9VAC25-720) and (ii) as a result of such decennial reviews propose for inclusion in the Water Quality Management Planning Regulation (9VAC25-720) either the reallocation of unneeded allocations to other facilities registered under the general permit or the reservation of such allocations for future use.

2. For each decennial review, the Board shall determine whether a permitted facility has:

a. Changed the use of the facility in such a way as to make discharges unnecessary, ceased the discharge of nutrients, and become unlikely to resume such discharges in the foreseeable future; or

b. Changed the production processes employed in the facility in such a way as to render impossible, or significantly to diminish the likelihood of, the resumption of previous nutrient discharges.

3. Beginning in 2030, each review also shall consider the following factors for municipal wastewater facilities:

a. Substantial changes in the size or population of a service area;

b. Significant changes in land use resulting from adopted changes to zoning ordinances or comprehensive plans within a service area;

c. Significant establishment of conservation easements or other perpetual instruments that are associated with a deed and that restrict growth or development;

d. Constructed treatment facility capacity;

e. Significant changes in the understanding of the water chemistry or biology of receiving waters that would reasonably result in unused nutrient discharge allocations over an extended period of time;

f. Significant changes in treatment technologies that would reasonably result in unused nutrient discharge allocations over an extended period of time;

g. The ability of the permitted facility to accommodate projected growth under existing nutrient waste load allocations; and

h. Other similarly significant factors that the Board determines reasonably to affect the allocations granted.

The Board shall not reduce allocations based solely on voluntary improvements in nutrient removal technology.

E. The Board shall maintain and make available to the public a current listing, by tributary, of all permittees and permitted facilities under the general permit, together with each permitted facility's total nitrogen and total phosphorus waste load allocations, and total nitrogen and total phosphorus delivery factors.

F. Except as otherwise provided in this article, in the event that there are conflicting or duplicative conditions contained in the general permit and an individual Virginia Pollutant Discharge Elimination System permit, the conditions in the general permit shall control.

2005, cc. [708](#), [710](#); 2010, c. [288](#); 2017, c. [9](#).

§62.1-44.19:15. New or expanded facilities.

A. An owner or operator of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under the general permit.

1. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day, or an equivalent load directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his waste load allocations or permitted design capacity as of July 1, 2005, and will install state-of-the-art nutrient removal technology at the time of the expansion.

2. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day up to and including 499,999 gallons per day, or an equivalent load, directly into nontidal waters, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any

increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005, and will install, at a minimum, biological nutrient removal technology at the time of the expansion.

3. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 40,000 gallons or more per day up to and including 99,999 gallons per day, or an equivalent load, directly into tidal or nontidal waters, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.

4. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads, and will install (i) at a minimum, biological nutrient removal technology at any facility authorized to discharge up to and including 99,999 gallons per day, or an equivalent load, directly into tidal and nontidal waters, or up to and including 499,999 gallons per day, or an equivalent load, to nontidal waters; and (ii) state-of-the-art nutrient removal technology at any facility authorized to discharge 100,000 gallons or more per day, or an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters.

5. An owner or operator of a facility treating domestic sewage authorized by a Virginia Pollutant Discharge Elimination System permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that has not commenced the discharge of pollutants prior to January 1, 2011, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads prior to commencing the discharge, except when the facility is for short-term temporary use only or when treatment of domestic sewage is not the primary purpose of the facility.

B. Waste load allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this subsection.

1. Such allocations may be acquired from one or a combination of the following:

- a. Acquisition of all or a portion of the waste load allocations or point source nitrogen or point source phosphorus credits from one or more permitted facilities in the same tributary;
 - b. Acquisition of credits certified by the Board pursuant to § [62.1-44.19:20](#). Such best management practices shall achieve reductions beyond those already required by or funded under federal or state law, or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan, and shall be installed in the same tributary in which the new or expanded facility is located and included as conditions of the facility's individual Virginia Pollutant Discharge Elimination System permit;
 - c. Acquisition of allocations purchased through the Nutrient Offset Fund established pursuant to § [10.1-2128.2](#);
 - d. Acquisition of allocations through such other means as may be approved by the Department on a case-by-case basis; or
 - e. Acquisition of credits or allocations through the implementation of best management practices on lands owned or controlled by, or under contractual obligation with, the new or expanded facility that achieve reductions greater than those currently required by or funded under federal or state law, or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan, subject to the approval by the Board in accordance with standards and procedures that are consistent with those established in § [62.1-44.19:20](#). Any such best management practices shall be implemented on lands within the same tributary as the new or expanded facility, and any credits assigned by the Board based on those practices shall be subject to adjustment based on the relevant delivery factor, as defined in § [62.1-44.19:13](#).
2. Such allocations or credits shall be provided for a minimum period of five years with each registration under the general permit. This subdivision shall not preclude longer-term or permanent allocations, except that such allocations are subject to modification by the Board where necessary to conform to the Chesapeake Bay TMDL.
3. The Board shall give priority to allocations or credits acquired in accordance with subdivisions 1 a, 1 b, and 1 d. The Board shall approve allocations acquired in accordance with subdivision 1 d only after the owner or operator has demonstrated that he has made a good faith effort to acquire sufficient allocations in accordance with subdivisions 1 a, 1 b, and 1 d and that such allocations are not reasonably available taking into account timing, cost, and other relevant factors.

4. Notwithstanding the priority provisions in subdivision 3, the Board may grant a waste load allocation in accordance with subdivision 1 d to an owner or operator of a facility authorized by a Virginia Pollution Abatement permit to land apply domestic sewage if (i) the Virginia Pollution Abatement permit was issued before July 1, 2005; (ii) the waste load allocation does not exceed such facility's permitted design capacity as of July 1, 2005; (iii) the waste treated by the existing facility is going to be treated and discharged pursuant to a Virginia Pollutant Discharge Elimination System permit for a new discharge; and (iv) the owner or operator installs state-of-the-art nutrient removal technology at such facility. Such facilities cannot generate credits or waste load allocations, based upon the removal of land application sites, that can be acquired by other permitted facilities to meet the requirements of this article.

C. Until such time as the Director finds that no allocations are reasonably available in an individual tributary, the general permit shall provide for the acquisition of allocations through payments into the Nutrient Offset Fund established in § [10.1-2128.2](#). Such payments shall be promptly applied by the Department to achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan. The general permit shall base the cost of each pound of allocation on (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired, whichever is higher. Upon each reissuance of the general permit, the Board may adjust the cost of each pound of allocation based on current costs and cost estimates.

D. The acquisition of nutrient allocations or credits from animal waste-to-energy or animal waste reduction facilities, or the acquisition of such nutrient allocations or credits from entities acting on behalf of such facilities, shall be considered point source allocations or credits for all nutrient trading purposes and shall not be subject to any otherwise applicable nonpoint source trading ratio if the best management practice being used to generate such nutrient allocations or credits is a point source nutrient removal technology. Point source nutrient removal technology shall include animal waste gasification in which lab analysis of the animal waste reveals the concentration of nutrients in the animal waste being fed into the gasifier, and the fate of

the nutrients during the animal waste gasification process, is known and documented using studies such as air emissions tests and ash analyses.

2005, cc. [708](#), [710](#); 2007, c. [27](#); 2010, c. [288](#); 2011, cc. [440](#), [524](#); 2012, cc. [748](#), [808](#); 2013, cc. [756](#), [793](#); 2016, cc. [137](#), [377](#).

§62.1-44.19:16. Technology-based standards and effluent limitations.

A. The Board may establish a technology-based standard less stringent than the applicable standard specified in § [62.1-44.19:15](#) based on a demonstration by an owner or operator that the specified standard is not technically or economically feasible for the affected facility or that the technology-based standard would require the owner or operator to construct treatment facilities not otherwise necessary to comply with his waste load allocation without reliance on nutrient credit exchanges pursuant to § [62.1-44.19:18](#).

B. The Board may include technology-based effluent concentration limitations in the individual permit for any facility that has installed technology for the control of nitrogen and phosphorus whether by new construction, expansion, or upgrade. Such limitations shall be based upon the technology installed by the facility and shall be expressed as annual average limitations. Such limitations shall not affect the generation, acquisition, or exchange of allocations or credits pursuant to this article.

2005, cc. [708](#), [710](#).

§62.1-44.19:17. Virginia Nutrient Credit Exchange Association authorized; duties; composition; appointment; terms.

A. The permittees under the general permit may establish a nonstock corporation under Chapter 10 (§ [13.1-801](#) et seq.) of Title 13.1, to be known as the Virginia Nutrient Credit Exchange Association, to coordinate and facilitate participation in the nutrient credit exchange program by its members. The Virginia Nutrient Credit Exchange Association, which is hereafter referred to as the Association, may (i) submit on behalf of the permittees the compliance plans required by § [62.1-44.19:14](#), (ii) develop a standard form of agreement for use by permittees when buying and selling nitrogen and phosphorus allocations and credits, (iii) assist permittees in identifying buyers and sellers of nitrogen and phosphorus allocations and credits, (iv) coordinate planning to ensure that to the extent possible, sufficient credits are available each year to achieve full compliance with the general permit, (v) assist individual municipal permittees in utilizing public-private partnerships and other innovative measures to achieve the Commonwealth's water quality goals, and (vi) perform such other

duties and functions as may be necessary to the effective and efficient implementation of the credit exchange program. The Association shall not assume any of the permittees' compliance obligations under the general permit.

B. Only permittees under the general permit may become members of the Association. The Association shall operate through a board of directors, which shall consist of 10 members and be representative of the membership in the Association. Association board members shall be employees of Association members, shall be elected by the Association membership at the beginning of each term of the general permit, and shall serve through the end of the permit term to which they were elected. Vacancies for unexpired Association board terms shall be filled in the same manner in which members are originally elected to the Association board.

C. The Association board shall elect a president, vice-president, secretary, and treasurer from among its members at the beginning of each permit term. Officers and Association board members shall receive no compensation for their services as officers and board members of the Association.

2005, cc. [708](#), [710](#).

§62.1-44.19:18. Nutrient allocation compliance and reporting.

A. Each permitted facility shall be in compliance with its individual waste load allocations if: (i) its annual mass load is less than the applicable waste load allocation assigned to the facility in the general permit; (ii) the permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision 1; or (iii) in the event it is unable to meet the individual waste load allocation pursuant to clauses (i) or (ii), the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made in accordance with subdivision 2, provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual waste load allocations for each permitted facility.

1. A permittee may acquire point source nitrogen or phosphorus credits from one or more permitted facilities only if (i) the credits are generated and applied to a compliance obligation in the same calendar year, (ii) the credits are generated by one or more permitted facilities in the same tributary, except that permitted facilities in the Eastern Coastal Basin may also acquire credits from permitted facilities in the Potomac and Rappahannock tributaries, (iii) the credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied, and

(iv) no later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a form supplied by the Department that he has acquired sufficient credits to satisfy his compliance obligations.

2. A permittee may acquire nitrogen or phosphorus credits through payments made into the Nutrient Offset Fund established in § [10.1-2128.2](#) only if, no later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a form supplied by the Department that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities in the same tributary, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of the general permit.

B. Until such time as the Director finds that no credits are reasonably available in an individual tributary, the general permit shall provide for the acquisition of nitrogen and phosphorus credits through payments into the Nutrient Offset Fund in accordance with subdivision A 2. Such payments shall be promptly applied to achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law, or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan. The general permit shall base the cost of each nitrogen or phosphorus credit on the average cost of reducing one pound of nitrogen or phosphorus from Virginia publicly owned wastewater treatment facilities for each credit acquired. Upon each reissuance of the general permit, the Board may adjust the cost of each nitrogen and phosphorus credit based on (i) the current average cost of reducing a pound of nitrogen or phosphorus from Virginia publicly owned wastewater treatment facilities for each credit acquired and (ii) any additional incentives reasonably necessary to ensure that there is timely and continuing progress toward attaining and maintaining each tributary's combined waste load allocation.

C. On or before February 1, annually, each permittee shall file a discharge monitoring report with the Department identifying the annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by each permitted facility during the previous calendar year. The report shall contain the certification required by federal and state law and be signed by each permittee for each of the permittee's facilities covered by the general permit.

D. On or before April 1, annually, the Department shall prepare a report containing the annual mass load of total nitrogen and annual mass load of total phosphorus discharged by each permitted facility, the number of point source nitrogen and phosphorus credits for the previous calendar year generated or required by each such facility, and to the extent there are insufficient point source credits available for exchange to provide for full compliance by every permittee, the number of credits to be purchased pursuant to this section. Upon completion of the report, the Department shall promptly publish notice of the report and make the report available to any person requesting it.

E. On or before July 1, annually, the Department shall publish notice of all nitrogen and phosphorus credit exchanges and purchases for the previous calendar year and make all documents relating to the exchanges and purchases available to any person requesting them.

2005, cc. [708](#), [710](#); 2010, c. [11](#); 2011, c. [524](#); 2012, cc. [748](#), [808](#).

§62.1-44.19:19. Program audits.

In addition to its permit compliance and enforcement authority, the Department is authorized to conduct such audits of the Association and permittees as it deems necessary to ensure that the reports and data received from permittees and the Association are complete and accurate. The Association and permittees under the general permit shall cooperate with the Department in the conduct of such audits and provide the Department with such information as the Department may require to fulfill its responsibilities under this article.

2005, cc. [708](#), [710](#).

§62.1-44.19:20. Nutrient credit certification.

A. The Board may adopt regulations for the purpose of establishing procedures for the certification of point source nutrient credits except that no certification shall be required for point source nitrogen and point source phosphorus credits generated by point sources regulated under the Watershed General Virginia Pollutant Discharge Elimination System Permit issued pursuant to § [62.1-44.19:14](#). The Board shall adopt regulations for the purpose of establishing procedures for the certification of non-point source nutrient credits.

B. Regulations adopted pursuant to this section shall:

1. Establish procedures for the certification and registration of credits, including:

- a. Certifying credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse;
- b. Certifying credits that may be generated from agricultural and urban stormwater best management practices, use or management of manures, managed turf, land use conversion, stream or wetlands projects, shellfish aquaculture, algal harvesting, and other established or innovative methods of nutrient control or removal, as appropriate;
- c. Establishing a process and standards for wetland or stream credits to be converted to nutrient credits. Such process and standards shall only apply to wetland or stream credits that were established after July 1, 2005, and have not been transferred or used. Under no circumstances shall such credits be used for both wetland or stream credit and nutrient credit purposes;
- d. Certifying credits from multiple practices that are bundled as a package by the applicant;
- e. Prohibiting the certification of credits generated from activities funded by federal or state water quality grant funds other than controls and practices under subdivision B 1 a; however, baseline levels may be achieved through the use of such grants;
- f. Establishing a timely and efficient certification process including application requirements, a reasonable application fee schedule not to exceed \$10,000 per application, and review and approval procedures;
- g. Requiring public notification of a proposed nutrient credit-generating entity; and
- h. Establishing a timeline for the consideration of certification applications for land conversion projects. The timeline shall provide that within 30 days of receipt of an application the Department shall, if warranted, conduct a site visit and that within 45 days of receipt of an application the Department shall either determine that the application is complete or request additional specific information from the applicant. A determination that an application for a land conversion project is complete shall not require the Department to issue the certification. The Department shall deny, approve, or approve with conditions an application within 15 days of the Department's determination that the application is complete. When the request for credit release is made concurrently with the application for a land conversion project

certification, the concurrent release shall be processed on the same timeline. When the request for credit release is from a previously approved land conversion project, the Department shall schedule a site visit, if warranted, within 30 days of the request and shall deny, approve, or approve with conditions the release within 15 days of the site visit or determination that a site visit is not warranted. The timelines set out in this subdivision shall be implemented prior to adoption of regulations. The Department shall release credits from a land conversion project after it is satisfied that the applicant has met the criteria for release in an approved nutrient reduction implementation plan.

2. Establish credit calculation procedures for proposed credit-generating practices, including the determination of:

a. Baselines for credits certified under subdivision B 1 a in accordance with any applicable provisions of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

b. Baselines established for agricultural practices, which shall be those actions necessary to achieve a level of reduction assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs as implemented on the tract, field, or other land area under consideration;

c. Baselines for urban practices from new development and redevelopment, which shall be in compliance with postconstruction nutrient loading requirements of the Virginia Stormwater Management Program regulations. Baselines for all other existing development shall be at a level necessary to achieve the reductions assigned in the urban sector in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

d. Baselines for land use conversion, which shall be based on the pre-conversion land use and the level of reductions assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs applicable to that land use;

e. Baselines for other nonpoint source credit-generating practices, which shall be based on the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs using the best available scientific and technical information;

f. Unless otherwise established by the Board, for certification within the Chesapeake Bay Watershed a credit-generating practice that involves land use conversion, which shall represent controls beyond those in place as of July 1, 2005. For other waters for

which a TMDL has been approved, the practice shall represent controls beyond those in place at the time of TMDL approval;

g. Baseline dates for all other credit-generating practices, which shall be based on the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs; and

h. Credit quantities, which shall be established using the best available scientific and technical information at the time of certification;

3. Provide certification of credits on an appropriate temporal basis, such as annual, term of years, or perpetual, depending on the nature of the credit-generating practice. A credit shall be certified for a term of no less than 12 months;

4. Establish requirements to reasonably assure the generation of the credit depending on the nature of the credit-generating activity and use, such as legal instruments for perpetual credits, operation and maintenance requirements, and associated financial assurance requirements. Financial assurance requirements may include letters of credit, escrows, surety bonds, insurance, and where the credits are used or generated by a locality, authority, utility, sanitation district, or permittee operating an MS4 or a point source permitted under this article, its existing tax or rate authority;

5. Establish appropriate reporting requirements;

6. Provide for the ability of the Department to inspect or audit for compliance with the requirements of such regulations;

7. Provide that the option to acquire nutrient credits for compliance purposes shall not eliminate any requirement to comply with local water quality requirements;

8. Establish a credit retirement requirement whereby five percent of nonpoint source credits in the Chesapeake Bay Watershed other than controls and practices under subdivision B 1 a are permanently retired at the time of certification pursuant to this section for the purposes of offsetting growth in unregulated nutrient loads; and

9. Establish such other requirements as the Board deems necessary and appropriate.

C. Prior to the adoption of such regulations, the Board shall certify (i) credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse, on a case-by-case basis using the best available scientific

and technical information and (ii) credits that are located in tributaries outside of the Chesapeake Bay watershed as defined in § [62.1-44.15:35](#), using an average of the nutrient removal rates for each practice identified in Appendix A of the Department's document "Trading Nutrient Reductions from Nonpoint Source Best Management Practices in the Chesapeake Bay Watershed: Guidance for Agricultural Landowners and Your Potential Trading Partners. "

D. The Department shall establish and maintain an online Virginia Nutrient Credit Registry of credits as follows:

1. The registry shall include all nonpoint source credits certified pursuant to this article and may include point source nitrogen and point source phosphorus credits generated from point sources covered by the general permit issued pursuant to § [62.1-44.19:14](#) or point source nutrient credits certified pursuant to this section at the option of the owner. No other credits shall be valid for compliance purposes.
2. Registration of credits on the registry shall not preclude or restrict the right of the owner of such credits from transferring the credits on such commercial terms as may be established by and between the owner and the regulated or unregulated party acquiring the credits.
3. The Department shall establish procedures for the listing and tracking of credits on the registry, including but not limited to (i) notification of the availability of new nutrient credits to the locality where the credit-generating practice is implemented at least five business days prior to listing on the registry to provide the locality an opportunity to acquire such credits at fair market value for compliance purposes and (ii) notification that the listing of credits on the registry does not constitute a representation by the Board or the owner that the credits will satisfy the specific regulatory requirements applicable to the prospective user's intended use and that the prospective user is encouraged to contact the Board for technical assistance to identify limitations, if any, applicable to the intended use.
4. The registry shall be publicly accessible without charge.

E. The owner or operator of a nonpoint source nutrient credit-generating entity that fails to comply with the provisions of this section shall be subject to the enforcement and penalty provisions of § [62.1-44.19:22](#).

F. Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a Nonpoint Nutrient Offset Authorization for Transfer letter from the

Department prior to July 1, 2012, shall be considered certified nutrient credits and shall not be subject to further certification requirements or to the credit retirement requirement under subdivision B 8. However, such facilities shall be subject to the other provisions of this article, including registration, inspection, reporting, and enforcement.

2012, cc. [748](#), [808](#); 2013, cc. [756](#), [793](#); 2016, c. [653](#).

§62.1-44.19:21. Nutrient credit use by regulated entities.

A. An MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with any waste load allocations established as effluent limitations in an MS4 permit issued pursuant to § [62.1-44.15:25](#). Such method of compliance may be approved by the Department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits. The permittee may use such credits for compliance purposes only if (i) the credits, whether annual, term, or perpetual, are generated and applied for purposes of compliance for the same calendar year; (ii) the credits are acquired no later than a date following the calendar year in which the credits are applied as specified by the Department consistent with the permittee's Virginia Stormwater Management Program (VSMP) permit annual report deadline under such permit; (iii) the credits are generated in the same locality or tributary, except that permittees in the Eastern Coastal Basin may also acquire credits from the Potomac and Rappahannock tributaries; and (iv) the credits either are point source nitrogen or point source phosphorus credits generated by point sources covered by the general permit issued pursuant to § [62.1-44.19:14](#), or are certified pursuant to § [62.1-44.19:20](#). An MS4 permittee may enter into an agreement with one or more other MS4 permittees within the same locality or within the same or adjacent eight-digit hydrologic unit code to collectively meet the sum of any waste load allocations in their permits. Such permittees shall submit to the Department for approval a compliance plan to achieve their aggregate permit waste load allocations.

B. Those applicants required to comply with water quality requirements for land-disturbing activities operating under a General VSMP Permit for Discharges of Stormwater from Construction Activities or a Construction Individual Permit may acquire and use perpetual nutrient credits certified and registered on the Virginia Nutrient Credit Registry in accordance with § [62.1-44.15:35](#).

C. Confined animal feeding operations issued permits pursuant to this chapter may acquire, use, and transfer credits for compliance with any waste load allocations

contained in the provisions of a Virginia Pollutant Discharge Elimination System (VPDES) permit. Such method of compliance may be approved by the Department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

D. Facilities registered under the Industrial Stormwater General Permit issued pursuant to this chapter may acquire, use, and transfer credits for compliance with any waste load allocations established as effluent limitations in a VPDES permit. Such method of compliance may be approved by the Department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

E. Public notice of each compliance plan submitted for approval pursuant to this section shall be given by the Department.

F. This section shall not be construed to limit or otherwise affect the authority of the Board to establish and enforce more stringent water quality-based effluent limitations for total nitrogen or total phosphorus in permits where those limitations are necessary to protect local water quality. The exchange or acquisition of credits pursuant to this article shall not affect any requirement to comply with such local water quality-based limitations.

2012, cc. [748](#), [808](#), § 10.1-603.15:3; 2013, cc. [756](#), [793](#).

§62.1-44.19:21.1. Sediment credit use by regulated MS4s.

A. Subject to the conditions and limitations of subsections B, C, and D, an MS4 permittee may acquire and use sediment credits for purposes of compliance with any waste load allocations established by total maximum daily loads for the Chesapeake Bay or its tidal tributaries applied in an MS4 permit issued pursuant to § [62.1-44.15:25](#), where such credit use is part of an integrated compliance plan for the MS4 permittee to address such nutrient and sediment total maximum daily loads.

B. Such method of compliance may be approved by the Department following review of an integrated compliance plan submitted by the permittee that includes the use of sediment credits. The permittee may use such credits for compliance purposes only if (i) the credits are generated and applied for purposes of compliance for the same calendar year; (ii) the credits are acquired no later than June 1 immediately following the calendar year to which the credits are applied; (iii) no later than June 1 immediately following the calendar year to which credits are applied, the permittee certifies on a form supplied by the Department that he has acquired sufficient credits to

satisfy his compliance obligations; (iv) the credits are generated in the same tributary; (v) the sediment credits are not associated with phosphorus credits used for compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to § [62.1-44.15:28](#); and (vi) the credits are derived from (a) implementation of best management practices in a defined area outside of an MS4 service area, in which case the necessary baseline sediment reduction for such defined area shall be achieved prior to the permittee's use of additional reductions as credit, or (b) a point source waste load allocation established by the Chesapeake Bay total maximum daily load, in which case the credit is the difference between the waste load allocation specified as an annual mass load and any lower monitored annual mass load that is discharged as certified on a form supplied by the Department.

C. This section shall not be construed to limit or otherwise affect the authority of the Board to establish and enforce more stringent water quality-based effluent limitations in permits where those limitations are necessary to protect local water quality. The exchange or acquisition of credits pursuant to this article shall not affect any requirement to comply with such local water quality-based limitations.

D. The Board may adopt regulations for the purpose of establishing procedures for the certification of nonpoint source sediment credits used pursuant to subsection B. The Board's administration of this section and its adoption of any such regulations shall be consistent wherever appropriate with the standards and procedures established pursuant to § [62.1-44.19:20](#) for certification of nonpoint source nutrient credits, including, without limitation, the opportunity for public notification, the retirement of credits, sediment baseline attainment as a condition on generation and use of nonpoint source sediment credits, financial assurance requirements, and requirements for inspection or auditing by the Department.

E. For the purposes of this section, "sediment credit" means a sediment or total suspended solids reduction that is expressed in pounds delivered to tidal waters within the Chesapeake Bay Watershed.

2016, cc. [8](#), [126](#).

§62.1-44.19:22. Enforcement and penalties.

A. Transfer of certified nutrient credits by an operator of a nutrient credit-generating entity may be suspended by the Department until such time as the operator comes into compliance with this article and attendant regulations.

B. (For expiration date -- see notes) Any operator of a nutrient credit-generating entity who violates any provision of this article, or of any regulations adopted hereunder, shall be subject to a civil penalty not to exceed \$10,000 within the discretion of the court. The Department may issue a summons for collection of the civil penalty, and the action may be prosecuted in the appropriate circuit court. When the penalties are assessed by the court as a result of a summons issued by the Department, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § [62.1-44.15:29](#).

B. (For effective date -- see notes) Any operator of a nutrient credit-generating entity who violates any provision of this article, or of any regulations adopted hereunder, shall be subject to a civil penalty not to exceed \$10,000 within the discretion of the court. The Department may issue a summons for collection of the civil penalty, and the action may be prosecuted in the appropriate circuit court. When the penalties are assessed by the court as a result of a summons issued by the Department, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Stormwater Local Assistance Fund established pursuant to § [62.1-44.15:29.1](#).

2012, cc. [748](#), [808](#), § 10.1-603.15:4; 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.19:23. Appeals.

Any person applying to establish a nutrient credit-generating entity or an operator of a nutrient credit-generating entity aggrieved by any action of the Department taken in accordance with this section, or by inaction of the Department, shall have the right to review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

2012, cc. [748](#), [808](#), § 10.1-603.15:5; 2013, cc. [756](#), [793](#).

§62.1-44.20. Right to entry to obtain information, etc.

Any duly authorized agent of the Board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this chapter.

Code 1950, § 62.1-34; 1968, c. 659; 1970, c. 638.

§62.1-44.21. Information to be furnished to Board.

The Board may require every owner to furnish when requested such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this chapter. The Board shall not at any time disclose to any person other than appropriate officials of the Environmental Protection Agency pursuant to the requirements of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) any secret formulae, secret processes, or secret methods other than effluent data used by any owner or under that owner's direction.

Code 1950, § 62.1-35; 1968, c. 659; 1970, c. 638; 1974, c. 237.

§62.1-44.22. (For effective date -- see notes) Private actions.

The fact that any owner holds or has held a certificate or land-disturbance approval issued under this chapter shall not constitute a defense in any civil action involving private rights.

Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.

Code 1950, § 62.1-36; 1968, c. 659; 1970, c. 638; 2016, cc. [68](#), [758](#).

§62.1-44.22. (For expiration date -- see notes) Private rights not affected.

The fact that any owner holds or has held a certificate issued under this chapter shall not constitute a defense in any civil action involving private rights.

Code 1950, § 62.1-36; 1968, c. 659; 1970, c. 638.

§62.1-44.23. (For effective date -- see notes) Enforcement by injunction, etc.

Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, water quality standard, pretreatment standard, approved standard and specification, or requirement of or any provision of any certificate or land-disturbance approval issued by the Board, or by the owner of a publicly owned treatment works issued to an industrial user, or any provisions of this chapter, except as provided by a separate article, may be compelled in a proceeding instituted in any appropriate court by the Board to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

Code 1950, § 62.1-37; 1952, c. 702; 1968, c. 659; 1970, c. 638; 1977, c. 263; 1988, c. 167; 1990, c. 717; 1994, c. [489](#); 2013, cc. [756](#), [793](#); 2016, cc. [68](#), [758](#).

§62.1-44.23. (For expiration date -- see notes) Enforcement by injunction, etc.

Any person violating or failing, neglecting or refusing to obey any rule, regulation, order, water quality standard, pretreatment standard, or requirement of or any provision of any certificate issued by the Board, or by the owner of a publicly owned treatment works issued to an industrial user, or any provisions of this chapter, except as provided by a separate article, may be compelled in a proceeding instituted in any appropriate court by the Board to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

Code 1950, § 62.1-37; 1952, c. 702; 1968, c. 659; 1970, c. 638; 1977, c. 263; 1988, c. 167; 1990, c. 717; 1994, c. [489](#); 2013, cc. [756](#), [793](#).

§62.1-44.23:1. Intervention of Commonwealth in actions involving surface water withdrawals.

The Board, in representing the public's interest, shall have the authority and standing to intervene as an interested party in any civil action, including actions both within and without the Commonwealth, pertaining to the withdrawal of any of the surface waters of the Commonwealth.

1989, c. 218 .

§62.1-44.24. Testing validity of regulations; judicial review.

(1) The validity of any regulation may be determined through judicial review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

(2) [Repealed.]

(3) An appeal may be taken from the decision of the court to the Court of Appeals as provided by law.

1970, c. 638; 1984, c. 703; 1986, c. 615.

§62.1-44.25. (For effective date -- see notes) Right to hearing.

Any owner under Article 2.3 (§ [62.1-44.15:24](#) et seq.), Article 2.5 (§ [62.1-44.15:67](#) et seq.), or § [62.1-44.16](#), [62.1-44.17](#), or [62.1-44.19](#) aggrieved by any action of the Board taken without a formal hearing, or by inaction of the Board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the Board. In cases involving actions of the Board, such petition must be

filed within 30 days after notice of such action is mailed to such owner by certified mail.

1970, c. 638; 2016, cc. [68](#), [758](#).

§62.1-44.25. (For expiration date -- see notes) Right to hearing.

Any owner under §§ [62.1-44.16](#), [62.1-44.17](#), and [62.1-44.19](#) aggrieved by any action of the Board taken without a formal hearing, or by inaction of the Board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the Board. In cases involving actions of the Board, such petition must be filed within thirty days after notice of such action is mailed to such owner by certified mail.

1970, c. 638.

§62.1-44.26. Hearings.

A. (For expiration date -- see notes) The formal hearings held under this chapter shall be conducted pursuant to § [2.2-4009](#) or [2.2-4020](#) and may be conducted by the Board itself at a regular or special meeting of the Board, or by at least one member of the Board designated by the chairman to conduct such hearings on behalf of the Board at any other time and place authorized by the Board.

A. (For effective date -- see notes) The formal hearings held by the Board under this chapter shall be conducted pursuant to § [2.2-4009](#) or [2.2-4020](#) and may be conducted by the Board itself at a regular or special meeting of the Board, or by at least one member of the Board designated by the chairman to conduct such hearings on behalf of the Board at any other time and place authorized by the Board.

B. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board. Depositions may be taken and read as in actions at law.

C. The Board shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Board in the manner prescribed in § [2.2-4022](#). Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions.

1970, c. 638; 1977, c. 291; 1993, c. 897; 2008, cc. [276](#), [557](#); 2016, cc. [68](#), [758](#).

§62.1-44.27. Rules of evidence in hearings.

In all hearings under this chapter:

(1) All relevant and material evidence shall be received, except that (a) the rules relating to privileged communications and privileged topics shall be observed; (b) hearsay evidence shall be received only if the declarant is not readily available as a witness; and (c) secondary evidence of the contents of a document shall be received only if the original is not readily available. In deciding whether a witness or document is readily available, the Board or hearing officer shall balance the importance of the evidence against the difficulty of obtaining it, and the more important the evidence is the more effort should be made to produce the eyewitness or the original document.

(2) All reports of inspectors and subordinates of the Board and other records and documents in the possession of the Board bearing on the case shall be introduced by the Board at the hearing.

(3) Subject to the provisions of subdivision (1) of this section every party shall have the right to cross-examine adverse witnesses and any inspector or subordinate of the Board whose report is in evidence and to submit rebuttal evidence.

(4) The decision of the Board shall be based only on evidence received at the hearing and matters of which a court of record could take judicial notice.

1970, c. 638.

§62.1-44.28. Decisions of the Board in hearings pursuant to §§ 62.1-44.15 and 62.1-44.25.

To be valid and operative, the decision by the Board rendered pursuant to hearings under subdivisions (8a), (8b), and (8c) of §§ [62.1-44.15](#) and [62.1-44.25](#) must be reduced to writing and contain the explicit findings of fact and conclusions of law upon which the decision of the Board is based and certified copies thereof must be mailed by certified mail to the parties affected by it.

1970, c. 638.

§62.1-44.29. (For effective date -- see notes) Judicial review.

Any owner aggrieved by or any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the Board under subdivision (5), (8a), (8b), (8c), or (19) of § [62.1-44.15](#) or § [62.1-44.15:20](#), [62.1-44.15:21](#), [62.1-44.15:22](#), [62.1-44.15:23](#), [62.1-44.16](#), [62.1-44.17](#), [62.1-44.19](#), or [62.1-44.25](#), whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) if such person meets the standard for

obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

1970, c. 638; 1986, c. 615; 1996, c. [1032](#); 2000, cc. [1032](#), [1054](#); 2007, c. [659](#); 2016, cc. [68](#), [758](#).

§62.1-44.29. (For expiration date -- see notes) Judicial review.

Any owner aggrieved by or any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the Board under § [62.1-44.15](#) (5), [62.1-44.15](#) (8a), (8b), and (8c), [62.1-44.15:20](#), [62.1-44.15:21](#), [62.1-44.15:22](#), [62.1-44.15:23](#), [62.1-44.16](#), [62.1-44.17](#), [62.1-44.19](#), or [62.1-44.25](#), whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

1970, c. 638; 1986, c. 615; 1996, c. [1032](#); 2000, cc. [1032](#), [1054](#); 2007, c. [659](#).

§62.1-44.30. Appeal to Court of Appeals.

From the final decision of the circuit court an appeal may be taken to the Court of Appeals as provided in § [17.1-405](#).

1970, c. 638; 1984, c. 703.

§62.1-44.31. (For effective date -- see notes) Violation of order or certificate or failure to cooperate with Board.

It shall be unlawful for any owner to fail to comply with any order adopted by the Board, which has become final under the provisions of this chapter, or to fail to

comply with a pretreatment condition incorporated into the permit issued to it by the owner of a publicly owned treatment works or to fail to comply with any pretreatment standard or pretreatment requirement, or to discharge sewage, industrial waste or other waste in violation of any condition contained in a certificate or land-disturbance approval issued by the Board or in excess of the waste covered by such certificate or land-disturbance approval, or to fail or refuse to furnish information, plans, specifications or other data reasonably necessary and pertinent required by the Board under this chapter.

For the purpose of this section, the term "owner" shall mean, in addition to the definition contained in § § [62.1-44.3](#) and [62.1-44.15:24](#), any responsible corporate officer so designated in the applicable discharge permit.

Code 1950, § 62.1-43; 1952, c. 478; 1968, c. 659; 1970, c. 638; 1977, c. 263; 1988, c. 167; 2016, cc. [68](#), [758](#).

§62.1-44.31. (For expiration date -- see notes) Violation of special order or certificate or failure to cooperate with Board.

It shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter, or to fail to comply with a pretreatment condition incorporated into the permit issued to it by the owner of a publicly owned treatment works or to fail to comply with any pretreatment standard or pretreatment requirement, or to discharge sewage, industrial waste or other waste in violation of any condition contained in a certificate issued by the Board or in excess of the waste covered by such certificate, or to fail or refuse to furnish information, plans, specifications or other data reasonably necessary and pertinent required by the Board under this chapter.

For the purpose of this section, the term "owner" shall mean, in addition to the definition contained in § [62.1-44.3](#), any responsible corporate officer so designated in the applicable discharge permit.

Code 1950, § 62.1-43; 1952, c. 478; 1968, c. 659; 1970, c. 638; 1977, c. 263; 1988, c. 167.

§62.1-44.32. (For expiration date -- see notes) Penalties.

(a) Except as otherwise provided in this chapter, any person who violates any provision of this chapter, or who fails, neglects, or refuses to comply with any order of the Board, or order of a court, issued as herein provided, shall be subject to a civil

penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 9 (§ [62.1-44.34:8](#) et seq.) or 10 (§ [62.1-44.34:10](#) et seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred, to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the owner in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 9 or 10 of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or its agent, may initiate a civil action against any user or users of a waste water treatment facility to recover that portion of any civil penalty imposed against the owner proximately resulting from the act or acts of such user or users in violation of any applicable federal, state, or local requirements.

(b) Except as otherwise provided in this chapter, any person who willfully or negligently violates any provision of this chapter, any regulation or order of the Board, any condition of a certificate or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates any provision of this chapter, any regulation or order of the Board, any condition of a certificate or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in

the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

(c) Except as otherwise provided in this chapter, any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

(d) Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.

Code 1950, § 62.1-44; 1968, c. 659; 1970, c. 638; 1974, c. 237; 1977, c. 263; 1980, c. 378; 1981, cc. 582, 596; 1989, c. 627; 1990, cc. 13, 717; 1991, c. 718; 2005, c. [706](#); 2013, cc. [756](#), [793](#).

§62.1-44.33. Board to adopt regulations; tidal waters no discharge zones.

A. The State Water Control Board is empowered and directed to adopt all necessary regulations for the purpose of controlling the discharge of sewage and other wastes from both documented and undocumented boats and vessels on all navigable and nonnavigable waters within this Commonwealth. No such regulation shall impose restrictions that are more restrictive than the regulations applicable under federal law; provided, however, the Board may adopt such regulations as are reasonably necessary with respect to: (i) vessels regularly berthed in marinas or other places where vessels are moored, in order to limit or avoid the closing of shellfish grounds; and (ii) no discharge zones. Documented and undocumented boats and vessels are prohibited from discharging into the Chesapeake Bay and the tidal portions of its

tributaries sewage that has not been treated by a Coast Guard-approved Marine Sanitation Device (MSD Type 1 or Type 2); however, the discharge of treated or untreated sewage by such boats and vessels is prohibited in areas that have been designated as no discharge zones by the United States Environmental Protection Agency. Any discharges, as defined in [9VAC-25-71-10](#), that are incidental to the normal operation of a vessel shall not constitute a violation of this section.

B. The tidal creeks of the Commonwealth are hereby established as no discharge zones for the discharge of sewage and other wastes from documented and undocumented boats and vessels. Criteria for the establishment of no discharge zones shall be premised on the improvement of impaired tidal creeks. Nothing in this section shall be construed to discourage the proper use of Type 1 and Type 2 Marine Sanitation Devices, as defined under 33 U.S.C. § 1332, in authorized areas other than properly designated no discharge zones. The Board shall adopt regulations for designated no discharge zones requiring (i) boats and vessels without installed toilets to dispose of any collected sewage from portable toilets or other containment devices at marina facilities approved by the Department of Health for collection of sewage wastes, or otherwise dispose of sewage in a manner that complies with state law; (ii) all boats and vessels with installed toilets to have a marine sanitation device to allow sewage holding capacity unless the toilets are rendered inoperable; (iii) all houseboats having installed toilets to have a holding tank with the capability of collecting and holding sewage and disposing of collected sewage at a pump-out facility; if the houseboats lack such tank then the marine sanitation device shall comply with clause (iv); (iv) y-valves, macerator pump valves, discharge conveyances or any other through-hull fitting valves capable of allowing a discharge of sewage from marine sanitation devices shall be secured in the closed position while in a no discharge zone by use of a padlock, nonreleasable wire tie, or removal of the y-valve handle. The method chosen shall present a physical barrier to the use of the y-valve or toilet; and (v) every owner or operator of a marina within a designated no discharge zone to notify boat patrons leasing slips of the sewage discharge restriction in the no discharge zone. As a minimum, notification shall consist of no discharge zone information in the slip rental contract and a sign indicating the area is a designated no discharge zone.

In formulating regulations pursuant to this section, the Board shall consult with the State Department of Health, the Department of Game and Inland Fisheries and the

Marine Resources Commission for the purpose of coordinating such regulations with the activities of such agencies.

For purposes of this section, "no discharge zone" means an area where the Commonwealth has received an affirmative determination from the U.S. Environmental Protection Agency that there are adequate facilities for the removal of sewage from vessels (holding tank pump-out facilities) in accordance with 33 U.S.C. § 1322 (f)(3), and where federal approval has been received allowing a complete prohibition of all treated or untreated discharges of sewage from all vessels.

C. Violation of such regulations and violations of the prohibitions created by this section on the discharge of treated and untreated sewage from documented and undocumented boats and vessels shall, upon conviction, be a Class 1 misdemeanor. Every law-enforcement officer of this Commonwealth and its subdivisions shall have the authority to enforce the regulations adopted under the provisions of this section and to enforce the prohibitions on the discharge of treated and untreated sewage created by this section.

Code 1950, § 62.1-44.1; 1968, c. 659; 1970, c. 638; 1975, c. 204; 1997, c. [502](#); 2001, c. [42](#); 2004, c. [287](#); 2009, c. [337](#); 2011, c. [220](#).

§62.1-44.34. Repealed.

Repealed by Acts 1978, c. 816.

§62.1-44.34:1. Repealed.

Repealed by Acts 1990, c. 917 .

§62.1-44.34:7. Repealed.

Repealed by Acts 1989, c. 627 .

§62.1-44.34:8. Definitions.

The following terms as used in this article shall have the meanings ascribed to them:

"Aboveground storage tanks" means any one or combination of tanks, including pipes used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended, and (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes aboveground storage tanks. This term does not include underground storage tanks or pipelines.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator of an underground storage tank" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

"Owner of an underground storage tank" means:

1. In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank for the storage, use, or dispensing of regulated substances; and
2. In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; or

2. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Responsible person" means any person who is an owner or operator of an underground storage tank or an aboveground storage tank at the time a release is reported to the Board.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground. Exemptions from this definition and regulations promulgated under this article include:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;
2. Tanks used for storing heating oil for consumption on the premises where stored;
3. Septic tanks;
4. Pipeline facilities, including gathering lines, regulated under: (i) the Natural Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or (iii) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (i) or (ii) of this subdivision;
5. Surface impoundments, pits, ponds, or lagoons;
6. Storm water or waste water collection systems;
7. Flow-through process tanks;
8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
9. Storage tanks situated in an underground area, such as a basement, cellar, mine-working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.

1987, c. 528; 1989, c. 430; 1992, c. 819; 1996, cc. [737](#), [979](#).

§62.1-44.34:9. Powers and duties of Board.

The Board is responsible for carrying out the provisions of this article and compatible provisions of federal acts and is authorized to:

1. Enforce the interim prohibition provisions in § 9003 (g) of United States Public Law 98-616. Until state underground storage tank standards promulgated by regulation become effective, the Board shall enforce the federal interim standard which prohibits installation of an underground storage tank for the purpose of storing regulated substances unless such tank:
 - a. Will prevent releases due to corrosion or structural failure for the operational life of the tank;
 - b. Is cathodically protected against corrosion, constructed of noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and
 - c. The material used in the construction or lining of the tank is compatible with the substance to be stored.
2. Exercise general supervision and control over underground storage tank activities in this Commonwealth.
3. Provide technical assistance and advice concerning all aspects of underground storage tank management.
4. Collect such data and information as may be necessary to conduct the state underground storage tank program.
5. Apply for such federal funds as may become available under federal acts and transmit such funds to appropriate persons.
6. Require notification by owners of underground storage tanks in accordance with the provisions of § 9002 of United States Public Law 98-616.
7. Require notification by owners of property who have actual knowledge of underground storage tanks on such property that were taken out of service before January 1, 1974; however, the civil penalties specified in § 9006 (d) of United States Public Law 98-616 shall not apply to the foregoing notification requirement.
8. Promulgate such regulations as may be necessary to carry out its powers and duties with regard to underground storage tanks in accordance with applicable federal laws and regulations.

9. Require the owner or operator of an underground storage tank who is the responsible person for the release to undertake corrective action for any release of petroleum or any other regulated substance when the Board determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs, regardless of when the release occurred; or undertake corrective action for any release of petroleum or any other regulated substance into the environment from an underground storage tank if such action is necessary, in the judgment of the Board, to protect human health and the environment.

10. Seek recovery of costs incurred, excluding moneys expended from the Virginia Petroleum Storage Tank Fund which are governed by § [62.1-44.34:11](#), for undertaking corrective action or enforcement action with respect to the release of a regulated substance from an underground storage tank or oil from a facility.

1987, c. 528; 1989, c. 430; 1992, c. 819; 1993, c. 231; 1996, c. [737](#).

§62.1-44.34:10. Definitions.

The following terms as used in this article shall have the meanings ascribed to them:

"Aboveground storage tanks" means any one or combination of tanks, including pipes used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended, and (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes aboveground storage tanks. This term does not include underground storage tanks or pipelines.

"Fund" means the Virginia Petroleum Storage Tank Fund.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator of a facility" means any person who owns, operates, rents or otherwise exercises control over or responsibility for a facility.

"Operator of an underground storage tank" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

"Owner of an underground storage tank" means:

1. In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; and
2. In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; or
2. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty degrees F and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Responsible person" means any person who is an owner or operator of an underground storage tank or an aboveground storage tank at the time the release is reported to the Board.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground. Exemptions from this definition include:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;
2. Tanks used for storing heating oil for consumption on the premises where stored;
3. Septic tanks;
4. Pipeline facilities, including gathering lines, regulated under: (i) the Natural Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or (iii) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (i) or (ii) of this definition;
5. Surface impoundments, pits, ponds, or lagoons;
6. Storm water or waste water collection systems;
7. Flow-through process tanks;
8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
9. Storage tanks situated in an underground area, such as a basement, cellar, mine-working, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

1987, c. 677; 1989, cc. 430, 627; 1992, c. 819; 1996, cc. [737](#), [979](#).

§62.1-44.34:11. Virginia Petroleum Storage Tank Fund.

A. The Virginia Petroleum Storage Tank Fund is hereby established as a nonlapsing revolving fund to be used by the Board for (i) administering the state regulatory

programs authorized by Articles 9, 10 and 11 (§ [62.1-44.34:8](#) et seq.) of this chapter, (ii) demonstrating financial responsibility, and (iii) other purposes as provided for by applicable provisions of state and federal law. All expenses, costs, civil penalties, charges and judgments recovered by or on behalf of the Board pursuant to Articles 9, 10 and 11 of this chapter, and all moneys received as reimbursement in accordance with applicable provisions of federal law and all fees collected pursuant to §§ [62.1-44.34:19.1](#) and [62.1-44.34:21](#), shall be deposited into the Fund. Interest earned on the Fund shall be credited to the Fund. No moneys shall be credited to the balance in the Fund until they have been received by the Fund. The Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund.

The Fund shall be administered by the Board consistent with the provisions of Subtitle I of the federal Solid Waste Disposal Act (P.L. 98-616, § 9001 et seq.) and any approved state underground storage tank program and in accordance with the following provisions:

1. The Fund shall be maintained in a separate account. An accounting of moneys received and disbursed shall be kept, and furnished upon request to the Governor or the General Assembly.

2. Disbursements from the Fund may be made only for the following purposes:

- a. Reasonable and necessary per occurrence costs incurred for releases reported after December 22, 1989, by the owner or operator who is the responsible person, in taking corrective action for any release of petroleum into the environment from an underground storage tank which are in excess of the per occurrence financial responsibility requirement imposed in subsection B of § [62.1-44.34:12](#), up to \$1 million.

- b. Reasonable and necessary per occurrence costs incurred for releases reported after December 22, 1989, by the owner or operator who is the responsible person for compensating third parties, including payment of judgments for bodily injury and property damage caused by the release of petroleum into the environment from an underground storage tank, which are in excess of the per occurrence financial responsibility requirement imposed by subsection B of § [62.1-44.34:12](#), up to \$1 million.

The reasonableness and necessity of costs shall be determined based upon documented or actual damage, loss in value, and other relevant factors. Disbursements for third party claims shall be subordinate to disbursements for the corrective action costs in subdivision A 2 a of this section. Compensation for bodily injury and

property damage shall be paid only in accordance with final court orders in cases which have been tried to final judgment no longer (i) subject to appeal, (ii) in accordance with final arbitration awards not subject to appeal, or (iii) where the Board approved the settlement of claim between the owner or operator and the third-party prior to execution by the parties.

c. Reasonable and necessary per occurrence costs incurred by an operator whose net annual profits from all facilities do not exceed \$10 million for containment and cleanup of a release from a facility of a product subject to § [62.1-44.34:13](#) as follows: (i) for an operator of a facility with a storage capacity less than 25,000 gallons, per occurrence costs in excess of \$2,500 up to \$1 million; (ii) for an operator of a facility with a storage capacity from 25,000 gallons to 100,000 gallons, per occurrence costs in excess of \$5,000 up to \$1 million; (iii) for an operator of a facility with a storage capacity from 100,000 gallons to four million gallons, per occurrence costs in excess of \$.05 per gallon of aboveground storage capacity up to \$1 million; and (iv) for an operator of a facility with a storage capacity greater than four million gallons, per occurrence costs in excess of \$200,000 up to \$1 million. For purposes of this subdivision (2 c), the per occurrence financial responsibility requirements for an operator shall be based on the total storage capacity for the facility from which the discharge occurs.

d. Reasonable and necessary per occurrence costs incurred by an operator whose net annual profits from all facilities exceed \$10 million for containment and cleanup of a release from a facility of a product subject to § [62.1-44.34:13](#) as follows: (i) for an operator of a facility with a storage capacity less than four million gallons, per occurrence costs in excess of \$200,000 up to \$1 million; (ii) for an operator of a facility with a storage capacity from four million gallons to 20 million gallons, per occurrence costs in excess of \$.05 per gallon of aboveground storage capacity up to \$1 million; and (iii) an operator of a facility with a storage capacity greater than 20 million gallons shall have no access to the Fund. For purposes of this subdivision, the per occurrence financial responsibility requirements for an operator shall be based on the total storage capacity for all facilities located within the Commonwealth.

e. Costs incurred by the Board in taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank or from underground storage tanks exempted in subdivisions 1 and 2 of the definition of underground storage tank in § [62.1-44.34:10](#), if such action

is necessary, in the judgment of the Board, to protect human health and the environment.

f. Costs of corrective action up to \$1 million for any release of petroleum into the environment from underground storage tanks or from underground storage tanks exempted in subdivisions 1 and 2 of the definition of underground storage tank in § [62.1-44.34:10](#) (i) whose owner or operator cannot be determined by the Board within 90 days; or (ii) whose owner or operator is incapable, in the judgment of the Board, of carrying out such corrective action properly.

g. Costs of corrective action incurred by the Board for any release of petroleum into the environment from underground storage tanks which are otherwise specifically listed in exemptions 1 through 9 of the definition of an underground storage tank in § [62.1-44.34:10](#).

h. Reasonable and necessary per occurrence costs of corrective action incurred for releases reported after December 22, 1989, by the owner or operator in excess of \$500 up to \$1 million for any release of petroleum into the environment from an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in § [62.1-44.34:10](#) and aboveground storage tanks with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

i. The "cost share" of corrective action with respect to any release of petroleum into the environment from underground storage tanks undertaken under a cooperative agreement with the Administrator of the United States Environmental Protection Agency, as determined by the Administrator of the United States Environmental Protection Agency in accordance with the provisions of § 9003 (h) (7) (B) of the United States Public Law 98-616 (as amended in 1986 by United States Public Law 99-662).

j. Administrative costs incurred by the Board in carrying out the provisions of regulatory programs authorized by Articles 9, 10, and 11 (§ [62.1-44.34:8](#) et seq.) of this chapter.

k. All costs and expenses, including but not limited to personnel, administrative, and equipment costs and expenses, directly incurred by the Board or by any other state agency acting at the direction of the Board, in and for the abatement, containment, removal and disposal of oil pursuant to Article 11 (§ [62.1-44.34:14](#) et seq.) of Chapter 3.1 of this title.

l. Procurement, maintenance and replenishment of materials, equipment and supplies, in such quantities and at such locations as the Board may deem necessary, for the abatement, containment, removal and disposal of oil pursuant to Article 11 (§ [62.1-44.34:14](#) et seq.) of Chapter 3.1 of this title.

m. Costs and expenses, incurred by the Board or by any other state agency, acting at the direction of the Board, for the protection, cleanup and rehabilitation of waterfowl, wildlife, shellfish beds and other natural resources, damaged or threatened by the discharge of oil, owned by the Commonwealth or held in trust by the Commonwealth for the benefit of its citizens.

n. Refund of cash deposits held in escrow pursuant to Article 11 (§ [62.1-44.34:14](#) et seq.) of Chapter 3.1 of this title and reasonable interest thereon, and refunds of fees collected pursuant to § [62.1-44.34:21](#) as authorized by this chapter.

o. Administrative costs incurred by the Department of Motor Vehicles in the collection of fees specified in § [62.1-44.34:13](#).

p. Reasonable and necessary costs incurred by the Virginia Department of Transportation in taking corrective action on property acquired for transportation purposes. If the costs of taking corrective action are recovered, in whole or in part, from any responsible party, the recovery shall be deposited to the Fund.

q. Reasonable and necessary per occurrence costs for releases reported after December 22, 1989, in taking corrective action for any release of petroleum into the environment from an underground storage tank, which are in excess of \$5,000 up to \$1 million, by any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

3. No funds shall be paid for reimbursement of costs incurred for corrective action taken prior to December 22, 1989, by an owner or operator of an underground storage tank, or an owner of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in § [62.1-44.34:10](#), or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

4. No funds shall be paid for reimbursement of costs incurred prior to January 1, 1992, by an operator of a facility for containment and cleanup of a release from a facility of a product subject to § [62.1-44.34:13](#).
5. No funds shall be paid for reimbursement of moneys expended for payment of interest or other finance charges on loans which were used for corrective action or containment and cleanup of a release by a person in subdivisions A 3 or A 4 of this section, except for an owner or operator which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, provided that: (i) the loan moneys have been paid for corrective action that was pre-approved by the Board, (ii) any and all disbursements received from the Fund shall be paid against the loan or for interest and points, and (iii) the payment of interest and points under this subdivision shall be limited to five years from the date the release is reported to the Board. The Board may extend the period for payment of interest and points if, in the judgment of the Board, such action is necessary. The restrictions imposed in clauses (i), (ii) and (iii) shall not apply to loans made prior to June 1, 1992, to an owner or operator exempt from taxation under § 501 (c) (3) of the Internal Revenue Code.
6. No funds shall be paid for penalties, charges or fines imposed pursuant to any applicable local, state or federal law.
7. No funds shall be paid for containment and cleanup costs that are reimbursed or are reimbursable from other applicable state or federal programs.
8. No funds shall be paid if the operator of the facility has not complied with applicable statutes or regulations governing reporting, prevention, containment and cleanup of a discharge of oil.
9. No funds shall be paid if the owner or operator of an underground storage tank or the operator of an aboveground storage tank facility fails to report a release of petroleum or a discharge of oil to the Board as required by applicable statutes, laws or regulations.
10. No funds shall be paid from the Fund unless a reimbursement claim has been filed with the Board within two years from the date the Board issues a site remediation closure letter for that release or July 1, 2000, whichever date is later.
11. The Fund balance shall be maintained at a level sufficient to ensure that the Fund can serve as a financial responsibility demonstration mechanism for the owners and operators of underground storage tanks. Any disbursements made by the Board

pursuant to subdivision 2 of this subsection may be temporarily reduced or delayed, in whole or in part, if such action is necessary, in the judgment of the Board, to maintain the Fund balance.

B. The Board shall seek recovery of moneys expended from the Fund for corrective action under this section where the owner or operator of an underground storage tank has violated substantive environmental protection rules and regulations pertaining to underground storage tanks which have been promulgated by the Board.

C. For costs incurred for corrective action as authorized in subdivision A 2 e of this section, the Board shall seek recovery of moneys from the owner or operator of an underground storage tank up to the minimum financial responsibility requirement imposed on the owner or operator in subsection B of § [62.1-44.34:12](#) if any, or seek recovery of such costs incurred from any available federal government funds.

D. For costs incurred for corrective action taken resulting from a release from underground storage tanks specified in subdivision A 2 f of this section, the Board shall seek recovery of moneys from the owner or operator up to the minimum financial responsibility requirement imposed on the owner or operator in subsection B of § [62.1-44.34:12](#) if any, or seek recovery of such costs incurred from any available federal government funds.

E. The Board shall seek recovery of moneys expended from the Fund for costs incurred for corrective action as authorized in subdivision A 2 g of this section or seek recovery of such costs incurred from any available federal government funds. However, the Board shall not seek recovery of moneys expended from the Fund for costs of corrective action in excess of \$500 from the owner or operator of an underground tank exempted in subdivisions 1 and 2 of the definition of underground storage tank in § [62.1-44.34:10](#) and aboveground storage tanks with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

F. The Board shall have the right of subrogation for moneys expended from the Fund as compensation for personal injury, death or property damage against any person who is liable for such injury, death or damage.

G. The Board shall promptly initiate an action to recover all costs and expenses incurred by the Commonwealth for investigation, containment and cleanup of a discharge of oil or threat of discharge against any person liable for a discharge of oil as

specified in Article 11 (§ [62.1-44.34:14](#) et seq.) of Chapter 3.1 of this title; however, the Board shall seek recovery from an operator of expenditures from the Fund only in the amount by which such expenditures exceed the amount authorized to be disbursed to the operator under subdivisions A 2 through A 8 of this section.

1987, c. 677; 1989, cc. 430, 627; 1990, cc. 580, 581, 582, 917; 1992, cc. 456, 819; 1993, cc. 20, 375; 1994, cc. [196](#), [535](#); 1996, cc. [737](#), [979](#); 1998, c. [87](#); 2004, c. [485](#).

§62.1-44.34:12. Financial responsibility.

A. The Board shall adopt regulations that conform to the federal financial responsibility requirements of 42 U.S.C. § 6991b (d) and any regulations adopted thereunder. Owners and operators of underground storage tanks shall annually demonstrate and maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage in accordance with regulations adopted by the Board. Financial responsibility established in accordance with regulations adopted by the Board may be demonstrated by any combination of the following mechanisms: insurance, guarantee, surety bond, letter of credit, irrevocable trust fund, qualification as a self-insurer, or the Fund. The Fund may be used as a mechanism to demonstrate the portion of the federal financial responsibility requirements that are in excess of the state financial responsibility requirements contained in subsection B.

B. State requirements for owners and operators of underground storage tanks for maintaining evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage shall be as follows:

1. Owners and operators with 600,000 gallons or less of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$5,000 per occurrence for taking corrective action and \$15,000 per occurrence for compensating third parties, with an annual aggregate of \$20,000;
2. Owners and operators with between 600,001 to 1,200,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$10,000 per occurrence for taking corrective action and \$30,000 per occurrence for compensating third parties, with an annual aggregate of \$40,000;
3. Owners and operators with between 1,200,001 to 1,800,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated,

\$20,000 per occurrence for taking corrective action and \$60,000 per occurrence for compensating third parties, with an annual aggregate of \$80,000;

4. Owners and operators with between 1,800,001 to 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$30,000 per occurrence for taking corrective action and \$120,000 per occurrence for compensating third parties, with an annual aggregate of \$150,000;

5. Owners and operators with in excess of 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$50,000 per occurrence for taking corrective action and \$150,000 per occurrence for compensating third parties, with an annual aggregate of \$200,000; and

6. Other owners and operators, \$50,000 per occurrence for taking corrective action and \$150,000 per occurrence for compensating third parties, with an annual aggregate of \$200,000.

C. Any claim arising out of conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the person guaranteeing or providing evidence of financial responsibility. In such a case, the person against whom the claim is made shall be entitled to invoke all rights and defenses which would have been available to the owner or operator had such action been brought directly against the owner or operator.

This section shall not limit any other state or federal statutory, contractual, or common law liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This section does not diminish the liability of any person under § 107 or § 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or other applicable law.

The Board shall adopt regulations specifying compliance dates for the demonstration of financial responsibility required by this section, in accordance with the compliance dates established in federal regulations by the United States Environmental Protection Agency.

D. Owners and operators of underground storage tanks who are unable to demonstrate financial responsibility in the minimum amounts specified in subsection B, and operators of facilities who are unable to demonstrate financial responsibility in amounts established pursuant to subsection D of § [62.1-44.34:16](#), may establish an

insurance pool in order to demonstrate such financial responsibility. Any contract establishing such an insurance pool shall provide:

1. For election by pool members of a governing authority for the pool, which may be a board of directors, a majority of whom shall be elected or appointed officials of pool members.

2. A financial plan setting forth in general terms:

a. The insurance coverages to be offered by the insurance pool, applicable deductible levels, and the maximum level of claims which the pool will self-insure;

b. The amount of cash reserves to be set aside for the payment of claims;

c. The amount of insurance to be purchased by the pool to provide coverage over and above the claims which are not to be satisfied directly from the pool's resources; and

d. The amount, if any, of aggregate excess insurance coverage to be purchased and maintained in the event that the insurance pool's resources are exhausted in a given fiscal period.

3. A plan of management which provides for all of the following:

a. The means of establishing the governing authority of the pool;

b. The responsibility of the governing authority for fixing contributions to the pool, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surpluses, and administration of the pool in the event of termination or insolvency;

c. The basis upon which new members may be admitted to, and existing members may leave, the pool;

d. The identification of funds and reserves by exposure areas; and

e. Such other provisions as are necessary or desirable for the operation of the pool.

E. The formation and operation of an insurance pool under this section shall be subject to approval by the State Corporation Commission which may, after notice and hearing, establish reasonable requirements and regulations for the approval and monitoring of such pools, including prior approval of pool administrators and provisions for periodic examinations of financial condition.

The State Corporation Commission may disapprove an application for the formation of an insurance pool, and may suspend or withdraw such approval whenever it finds that such applicant or pool:

1. Has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the Commission or its representative;
2. Has refused, or its officers or agents have refused, to furnish satisfactory evidence of its financial and business standing or solvency;
3. Is insolvent, or is in such condition that its further transaction of business in this Commonwealth is hazardous to its members and creditors in this Commonwealth, and to the public;
4. Has refused or neglected to pay a valid final judgment against it within sixty days after its rendition;
5. Has violated any law of this Commonwealth or has violated or exceeded the powers granted by its members;
6. Has failed to pay any fees, taxes or charges imposed in this Commonwealth within sixty days after they are due and payable, or within sixty days after final disposition of any legal contest with respect to liability therefor; or
7. Has been found insolvent by a court of any other state, or by the Insurance Commissioner or other proper officer or agency of any other state, and has been prohibited from doing business in such state.

1987, c. 677; 1989, c. 627; 1990, c. 581; 1992, c. 819; 1993, c. 375; 1996, c. [737](#); 1998, c. [87](#).

§62.1-44.34:13. Levy of fee for Fund maintenance.

A. In order to generate revenue for the Fund and to make the Fund available to owners and operators of underground storage tanks and to owners and operators of above-ground storage tanks, there shall be imposed a fee of one-fifth of one cent on each gallon of the following fuels sold and delivered or used in the Commonwealth: gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil, as such terms are defined in § [58.1-2201](#); however, such fee shall not be imposed on (i) gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered to the United States or its departments, agencies and instrumentalities for the exclusive use by the United States or

its departments, agencies and instrumentalities, (ii) alternative fuel as defined in § [58.1-2201](#), or (iii) aviation jet fuel as defined in § [58.1-2201](#).

B. The fee shall be remitted to the Department of Motor Vehicles in the same manner and subject to the same provisions specified in Chapter 22 (§ [58.1-2200](#) et seq.) of Title 58.1, except § [58.1-2236](#) shall not apply.

C. Any person who purchases gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, or heating oil upon which the fee imposed by this article has been paid shall be entitled to a refund for the amount of the fee paid if such person subsequently transports and delivers such fuel to another state, district or country for sale or use outside the Commonwealth. The application for refund shall be accompanied by a paid ticket or invoice covering the sales of such fuel and shall be filed with the Commissioner of the Department of Motor Vehicles within one year of the date of payment of the fee for which the refund is claimed. A refund shall not be granted pursuant to this article on any fuel which is transported and delivered outside the Commonwealth in the fuel supply tank of a highway vehicle or aircraft.

D. To maintain the Fund at an appropriate operating level, the Commissioner of the Department of Motor Vehicles shall increase the fee to three-fifths of one cent when notified by the Comptroller that the Fund has been or is likely in the near future to be reduced below three million dollars, exclusive of fees collected pursuant to § [62.1-44.34:21](#), and he shall reinstitute the one-fifth of one cent fee when the Comptroller notifies him that the Fund has been restored to twelve million dollars exclusive of fees collected pursuant to § [62.1-44.34:21](#).

E. The Comptroller shall report to the Commissioner quarterly regarding the Fund expenditures and Fund total for the preceding quarter.

F. Revenues from such fees, less refunds and administrative expenses, shall be deposited in the Fund and used for the purposes set forth in this article.

1989, c. 627; 1992, c. 819; 1993, c. 422; 1995, c. [664](#); 1996, c. [737](#); 1998, c. [87](#); 1999, cc. [119](#), [124](#); 2000, cc. [729](#), [758](#).

§62.1-44.34:14. Definitions.

As used in this article unless the context requires a different meaning:

"Aboveground storage tank" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the

surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.

"Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

"Pipeline" means all new and existing pipe, rights-of-way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel or plastic, which provide structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280.

"Tank vessel" means any vessel used in the transportation of oil as cargo.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

1973, c. 417; 1976, c. 51; 1978, c. 816; 1990, c. 917; 1992, c. 456; 1994, c. [277](#); 1996, c. [737](#).

§62.1-44.34:15. Oil discharge contingency plans.

A. No operator shall cause or permit the operation of a facility in the Commonwealth unless an oil discharge contingency plan applicable to the facility has been filed with and approved by the Board. No operator shall cause or permit a tank vessel to transport or transfer oil in state waters unless an oil discharge contingency plan applicable to the tank vessel has been filed with and approved by the Board or a vessel response plan applicable to the tank vessel and approved by the U.S. Coast Guard, pursuant to § 4202 of the federal Oil Pollution Act of 1990.

B. Application for approval of an oil discharge contingency plan shall be made to the Board and shall be accompanied by plans, specifications, maps and such other relevant information as may be required, in scope and detail satisfactory to the Board. An oil discharge contingency plan must conform to the requirements and standards determined by the Board to be necessary to ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of an oil discharge, and to contain, clean up and mitigate an oil discharge within the shortest feasible time. Each such plan shall provide for the use of the best available technology at the time the plan is submitted for approval. The applicant shall notify the Board immediately of any significant change in the operation or capacity of or the type of product dealt in, stored, handled, transported or transferred in or by any facility or vessel covered by the plan that will necessitate a change in the plan and shall update the plan periodically as required by the Board, but in no event more frequently than once every 36 months. The Board, on a finding of need, may require an oil discharge exercise designed to demonstrate the facility's or vessel's ability to implement its oil discharge contingency plan either before or after the plan is approved.

C. The Board, after notice and opportunity for a conference pursuant to § [2.2-4019](#), may modify its approval of an oil discharge contingency plan if it determines that:

1. A change has occurred in the operation of any facility or vessel covered by the plan that necessitates an amended or supplemented plan;

2. The facility's or vessel's discharge experience or its inability to implement its plan in an oil discharge exercise demonstrates a necessity for modification; or

3. There has been a significant change in the best available technology since the plan was approved.

D. The Board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;

2. The plan cannot be implemented as approved; or

3. A term or condition of approval has been violated.

1990, c. 917; 2004, c. [276](#).

§62.1-44.34:15.1. Regulations for aboveground storage tanks.

The Board shall adopt regulations and develop procedures necessary to prevent pollution of state waters, lands, or storm drain systems from the discharge of oil from new and existing aboveground storage tanks. These regulations shall be developed in substantial conformity with the current codes and standards recommended by the National Fire Protection Association. To the extent that they are consistent with the Board's program, the Board shall incorporate accepted industry practices contained in the American Petroleum Institute publications and other accepted industry standards when developing the regulations contemplated by this section. The regulations shall provide the following:

1. For existing aboveground storage tanks at facilities with an aggregate capacity of one million gallons or greater:

a. To prevent leaks from aboveground storage tanks, requirements for inventory control, testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board) and formal tank inspections every five years in accordance with accepted industry practices and procedures approved by the Board. Initial testing shall be on a schedule approved by the Board. Aboveground storage tanks totally off ground with all associated piping off ground, aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and

testing for significant variations. In accordance with subdivision 6, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;

b. To prevent overfills, requirements for safe fill and shut down procedures, including an audible staged alarm with immediate and controlled shut down procedures, or equivalent measures established by the Board;

c. To prevent leaks from piping, requirements for cathodic protection, and pressure testing to be conducted at least once every five years, or equivalent measures established by the Board;

d. To prevent and identify leaks from any source, requirements (i) for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements, (ii) for monthly gauging and inspection of all ground water monitoring wells located at the facility, and monitoring of the well head space for the presence of vapors indicating the presence of petroleum, and (iii) for quarterly sampling and laboratory analysis of the fluids present in each such monitoring well to determine the presence of petroleum or petroleum by-product contamination; and

e. To ensure proper training of individuals conducting inspections, requirements for proper certification or training by operators relative to aboveground storage tanks.

2. For existing aboveground storage tanks at facilities with an aggregate capacity of less than one million gallons but more than 25,000 gallons:

a. To prevent leaks from aboveground storage tanks, requirements for inventory control and testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board). Initial testing shall be on a schedule approved by the Board. Aboveground storage tanks totally off ground with all associated piping off ground, aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks

containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and testing for significant variations. In accordance with subdivision 6, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;

- b. To prevent overfills, requirements for safe fill and shut down procedures;
- c. To prevent leaks from piping, requirements for pressure testing to be conducted at least once every five years or equivalent measures established by the Board; and
- d. To prevent and identify leaks from any source, requirements for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements developed in accordance with subdivision 1.

3. For aboveground storage tanks existing prior to the effective date of the regulations required by this section, when the results of a tank inspection indicate the need for replacement of the tank bottom, the operator of a facility shall install a release prevention barrier (RPB) capable of: (i) preventing the release of the oil and (ii) containing or channeling the oil for leak detection. The decision to replace an existing tank bottom shall be based on the criteria established by regulations pursuant to this section.

4. For aboveground storage tanks at facilities with an aggregate capacity of one million gallons or greater existing prior to January 29, 1992, and located in the City of Fairfax, the Board shall establish performance standards for operators to bring aboveground storage tanks into substantial conformance with regulations adopted in accordance with subdivision 5. Operators shall meet such performance standards no later than July 1, 2021.

5. The Board shall establish performance standards for aboveground storage tanks installed, retrofitted or brought into use after the effective date of the regulations promulgated pursuant to this subsection that incorporate all technologies designed to

prevent oil discharges that have been proven in accordance with accepted industry practices and shown to be cost-effective.

6. The Board shall establish criteria for granting variances from the requirements of the regulations promulgated pursuant to this section (i) on a case-by-case basis and (ii) by regulation for categories of aboveground storage tanks, except that the Board shall not grant a variance that would result in an unreasonable risk to the public health or the environment. Variances by regulation shall be based on relevant factors such as tank size, use, and location. Within 30 days after the grant of a variance for a facility, the Board shall send written notification of the variance to the chief administrative officer of the locality in which the facility is located.

1992, c. 456; 1993, c. 353; 1994, c. [277](#); 1996, c. [737](#); 2011, cc. [883](#), [884](#).

§62.1-44.34:16. Financial responsibility for vessels and facilities.

A. The operator of any tank vessel entering upon state waters shall have a Certificate of Financial Responsibility approved by the U.S. Coast Guard pursuant to § 4202 of the federal Oil Pollution Act of 1990 or shall deposit with the Board cash or its equivalent in the amount of \$500 per gross ton of such vessel. Any such cash deposits received by the Board shall be held in escrow in the Virginia Petroleum Storage Tank Fund.

B. If the Board determines that oil has been discharged in violation of this article or that there has been a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under this chapter.

C. The Board shall exempt an operator of a tank vessel from the cash deposit requirements specified in this section if the operator of the tank vessel provides evidence of financial responsibility pursuant to the terms and conditions of this subsection. The Board shall adopt requirements for operators of tank vessels for maintaining evidence of financial responsibility in an amount equivalent to the cash deposit which would be required for such tank vessel pursuant to this section.

D. The Board is authorized to promulgate regulations requiring operators of facilities to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation. Operators of facilities shall demonstrate financial responsibility based on the total storage capacity of all facilities operated within the Commonwealth. Regulations governing the amount of any financial

responsibility required shall take into consideration the type, oil storage or handling capacity and location of a facility, the risk of a discharge of oil at that type of facility in the Commonwealth, the potential damage or injury to state waters or the impairment of their beneficial use that may result from a discharge at that type of facility, the potential cost of containment and cleanup at that type of facility, and the nature and degree of injury or interference with general health, welfare and property that may result from a discharge at that type of facility. In no instance shall the financial responsibility requirements for facilities exceed \$.05 per gallon of aboveground storage capacity or \$5 million for a pipeline. In no instance shall any financial test of self-insurance require the operator of a facility to demonstrate more than \$1 of net worth for each dollar of required financial responsibility. If such net worth does not equal the required financial responsibility, then the operator shall demonstrate the minimum required amount by a combination of financial responsibility mechanisms in accordance with subsection E of this section. No governmental agency shall be required to comply with any such regulations.

E. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any other method approved by the Board, or any combination thereof, under the terms the Board may prescribe. To obtain an exemption from the cash deposit requirements under this section: the operator of a tank vessel and insurer, guarantor or surety shall appoint an agent for service of process in the Commonwealth; any insurer must be authorized by the Commonwealth to engage in the insurance business; and any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation of this chapter by the operator up to, but not exceeding, the amount insured, guaranteed or otherwise pledged. An operator of a tank vessel or facility whose financial responsibility is accepted by the Board under this subsection shall notify the Board at least 30 days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety. Operators of facilities who are unable to demonstrate financial responsibility in the amounts established pursuant to subsection D may establish an insurance pool pursuant to the requirements of § [62.1-44.34:12](#) in order to demonstrate such financial responsibility.

F. Acceptance of proof of financial responsibility for tank vessels shall expire:

1. One year from the date on which the Board exempts an operator from the cash deposit requirement based on evidence of self-insurance, except that the Board may establish by regulation a different expiration date for acceptance of evidence of self-insurance submitted by public agencies;
2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or
3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

Application for renewal of acceptance of proof of financial responsibility shall be filed 30 days before the date of expiration.

G. Operators of facilities shall annually demonstrate and maintain evidence of financial responsibility for containment and cleanup in accordance with regulations adopted by the Board.

H. The Board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or
2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.

I. It is not a defense to any action brought for failure to comply with the cash deposit requirement or to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the tank vessel or facility or the operator of the tank vessel or facility had made the required cash deposit or possessed evidence of financial responsibility accepted by the Board.

1990, c. 917; 1992, cc. 456, 819; 1993, c. 375; 1994, c. [196](#); 1999, c. [91](#); 2004, c. [276](#).

§62.1-44.34:17. Exemptions.

A. Sections [62.1-44.34:15](#) and [62.1-44.34:16](#) do not apply to a facility having a maximum storage or handling capacity of less than 25,000 gallons of oil or to a tank vessel having a maximum storage, handling or transporting capacity of less than 15,000 gallons of oil or to a tank used to contain oil for less than 120 days and only in connection with activities related to the containment and cleanup of oil or to any vessel

engaged only in activities within state waters related to the containment and cleanup of oil, including response-related training or drills.

B. Facilities having a maximum storage or handling capacity of between 25,000 gallons and one million gallons of oil shall be exempt until July 1, 1993, from any requirement under § [62.1-44.34:15](#) to install ground water monitoring wells or other ground water protection devices.

C. For purposes of §§ [62.1-44.34:15](#) and [62.1-44.34:16](#), the definition of oil does not include nonpetroleum hydrocarbon-based animal and vegetable oils, or petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601) and which is subject to the provisions of that Act.

D. Facilities not engaged in the resale of oil from aboveground storage tanks shall not be subject to regulations promulgated pursuant to § [62.1-44.34:15.1](#) until July 1, 1995, or any date later specified by the Board.

E. Aboveground storage tanks with a capacity of 5,000 gallons or less containing heating oil for consumption on the premises where stored shall be exempt from the provisions of § [62.1-44.34:15.1](#).

F. For purposes of §§ [62.1-44.34:15.1](#) and [62.1-44.34:16](#), and for the purposes of any requirement under § [62.1-44.34:15](#) to install ground water monitoring wells, ground water protection devices, or to conduct ground water characterization studies, the definition of oil does not include asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and [14.7](#) pounds per square inch absolute).

1990, c. 917; 1992, c. 456; 1994, cc. [277](#), [460](#).

§62.1-44.34:18. Discharge of oil prohibited; liability for permitting discharge.

A. The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

B. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such discharge shall, immediately upon learning of such discharge or threat of discharge, implement any applicable oil spill contingency plan approved under this article or take such other action as may be deemed necessary in the judgment of the Board to contain and clean up such discharge or threat of such discharge. In the event of such discharge or threat of discharge, if it cannot be determined immediately the person responsible therefor, or if the person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the Board may take such action as is necessary to contain and clean up the discharge or threat of discharge, including the engagement of contractors or other competent persons.

C. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such discharge, shall be liable to:

1. The Commonwealth of Virginia or any political subdivision thereof for all costs and expenses of investigation, containment and cleanup incurred as a result of such discharge or threat of discharge, including, but not limited to, reasonable personnel, administrative, and equipment costs and expenses directly incurred by the Commonwealth or political subdivision, in and for preventing or alleviating damage, loss, hardship, or harm to human health or the environment caused or threatened to be caused by such discharge or threat of discharge;

2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of the Commonwealth of Virginia or the political subdivision caused by such discharge;

3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other revenues caused by such discharge, and compensation for the loss of any natural resources that cannot be restocked, replenished or restored; and

4. Any person for injury or damage to person or property, real or personal, loss of income, loss of the means of producing income, or loss of the use of the damaged property for recreational, commercial, industrial, agricultural or other reasonable uses, caused by such discharge.

D. Notwithstanding any other provision of law, a person who renders assistance in containment and cleanup of a discharge of oil prohibited by this article or a threat of such discharge shall be liable under this section for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages or costs and expenses of containment and cleanup under this section that are caused by the acts or omissions of such person in rendering such assistance; however, such liability provision shall not apply to a person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge, or to such person's employee. Nothing in this article shall affect the right of any person who renders such assistance to reimbursement for the costs of the containment and cleanup under the applicable provisions of this article or the Federal Water Pollution Control Act, as amended, or any rights that person may have against any third party whose acts or omissions caused or contributed to the prohibited discharge of oil or threat of such discharge. In addition, a person, other than an operator, who voluntarily, without compensation, and upon the request of a governmental agency, assists in the containment or cleanup of a discharge of oil, shall not be liable for any civil damages resulting from any act or omission on his part in the course of his rendering such assistance in good faith; nor shall any person or any organization exempt from income taxation under § 501(c) (3) of the Internal Revenue Code who notifies or assists in notifying the membership of such organization to assist in the containment or cleanup of a discharge of oil,

voluntarily, without compensation, and upon the request of a government agency, be liable for any civil damages resulting from such notification rendered in good faith.

E. In any action brought under this article, it shall not be necessary for the Commonwealth, political subdivision or any person, to plead or prove negligence in any form or manner.

F. In any action brought under this article, the Commonwealth, political subdivision or any person, if a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

G. It shall be a defense to any action brought under subdivision C 2, C 3, or C 4 of this section that the discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) a willful act or omission of a third party who is not an employee, agent or contractor of the operator, or (iv) any combination of the foregoing; however, this subsection shall not apply to any action brought against (a) a person or operator who failed or refused to report a discharge as required by § [62.1-44.34:19](#); or (b) a person or operator who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to effect containment and cleanup as required by subsection B of this section.

H. In any action brought under subdivision C 2, C 3, or C 4 of this section, the total liability of a person or operator under this section for each discharge of oil or threat of such discharge shall not exceed the amount of financial responsibility required under § [62.1-44.34:16](#) or \$10,000,000, whichever is greater; however, there shall be no limit of liability imposed under this section: (a) if the discharge of oil or threat of such discharge was caused by gross negligence or willful misconduct on the part of the person or the operator discharging or causing or permitting discharge or threat of discharge or by an agent, employee or contractor of such person or operator, or by the violation of any applicable safety, construction or operation regulations by such person or operator or an agent, employee or contractor of such person or operator; or (b) if the operator or person discharging or causing or permitting a discharge or threat of discharge failed or refused to report the discharge as required by § [62.1-44.34:19](#), or failed or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as required by subsection B of this section.

I. An operator that incurs costs pursuant to subsection B shall have the right to recover all or part of such costs in an action for contribution against any person or persons whose acts or omissions caused or contributed to the discharge or threat of

discharge. In resolving contribution claims under this article, the court may allocate costs among the parties using such equitable factors as the court deems appropriate.

J. Any person or operator who pays costs or damages pursuant to subsection C shall have the right to recover all or part of such costs or damages in an action for contribution against any person or persons whose act or omission has caused or contributed to the discharge or threat of discharge. In resolving contribution claims under this article, the court may allocate costs or damages among the parties using such equitable factors as the court deems appropriate.

1973, c. 417; 1976, c. 51; 1978, c. 816; 1989, c. 627; 1990, cc. 917, 962; 1992, c. 456; 1998, cc. [90](#), [836](#).

§62.1-44.34:19. Reporting of discharge.

A. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, lands, or storm drain systems, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, shall, immediately upon learning of the discharge, notify the Board, the director or coordinator of emergency services appointed pursuant to § [44-146.19](#) for the political subdivision in which the discharge occurs and any other political subdivision reasonably expected to be affected by the discharge, and appropriate federal authorities of such discharge. Notice will be deemed to have been given under this section for any discharge of oil to state lands in amounts less than twenty-five gallons if the record-keeping requirements of subsection C of § [62.1-44.34:19](#). 2 have been met and the oil has been cleaned up in accordance with the requirements of this article.

B. Observations and data gathered as a result of the monthly and quarterly inspection activities required by § [62.1-44.34:15](#). 1 (1) (d) shall be maintained on site pursuant to § [62.1-44.34:19](#). 2, and compiled into a summary, on a form developed by the Board, such summary to be submitted to the Board annually on a schedule established by the Board. Should any such observations or data indicate the presence of petroleum hydrocarbons in ground water, the results shall be reported immediately to the Board and to the local director or coordinator of emergency services appointed pursuant to § [44-146.19](#).

1978, c. 816; 1990, cc. 917, 962; 1992, c. 456 .

§62.1-44.34:19.1. Registration of aboveground storage tanks.

A. The Board shall compile an inventory of facilities with an aboveground storage capacity of more than 1320 gallons of oil or individual aboveground storage tanks having a storage capacity of more than 660 gallons of oil within the Commonwealth. To develop such an inventory, the Board is hereby authorized to develop regulations regarding registration requirements for facilities and aboveground storage tanks. In adopting such regulations, the Board shall consider whether any registration program required under federal law or regulations is sufficient for purposes of this section.

B. Within ninety days of the effective date of the regulations referred to in subsection A, the operators of a facility shall register the facility with the Board and the local director or coordinator of emergency services appointed pursuant to § [44-146.19](#), and provide an inventory of aboveground storage tanks at the facility. If the Board determines that registration under federal law or regulations is inadequate for the purpose of compiling its inventory and that additional registration requirements are necessary, the Board is authorized to assess a fee, according to a schedule based on the size and type of the facility or tank, not to exceed \$100 per facility or \$50 per tank, whichever is less. Such fee shall be paid at the time of registration or registration renewal. Registration shall be renewed every five years or whenever title to a facility or tank is transferred, whichever first occurs.

C. The operator shall, within thirty days after the upgrade, repair, replacement, or closure of an existing tank or installation of a new tank, notify the Board in writing of such upgrade, repair, replacement, closure or installation.

1992, c. 456 .

§62.1-44.34:19.2. Recordkeeping and access to records and facilities.

A. All records relating to compliance with the requirements of this article shall be maintained by the operator of a facility at the facility or at an alternate location approved by the Board for a period of at least five years. Such records shall be available for inspection and copying by the Board and shall include books, papers, documents and records relating to the daily measurement and inventory of oil stored at a facility, all information relating to tank testing, all records relating to spill events or other discharges of oil from the facility, all supporting documentation for developed contingency plans, and any records required to be kept by regulations of the Board.

B. In the case of a pipeline, all records relating to compliance with the requirements of the Hazardous Liquid Pipeline Safety Act of 1979, all records relating to spill events or other discharges of oil from the pipeline in the Commonwealth, and all supporting documentation for approved contingency plans shall be maintained by the operator of a pipeline at the facility or at an alternate location approved by the Board for a period of at least five years.

C. A record of all discharges of oil to state lands in amounts less than twenty-five gallons shall be established and maintained for a period of five years in accordance with subsections A and B of this section.

D. Every operator of a facility shall, upon reasonable notice, permit at reasonable times and under reasonable circumstances a duly designated official of the political subdivision in which the facility is located or of any political subdivision within one mile of the facility or duly designated agent retained or employed by such political subdivisions to have access to and to copy all information required to be kept in subsections A, B and C.

E. Any duly designated official of the political subdivision in which the facility is located or of any political subdivision within one mile of the facility or duly designated agent retained or employed by such political subdivisions may, at reasonable times and under reasonable circumstances, enter and inspect any facility, provided that in nonemergency situations such local official, agent or employee shall be accompanied by the operator or his designee.

1992, c. 456 .

§62.1-44.34:20. Enforcement and penalties.

A. Upon a finding of a violation of this article or a regulation or term or condition of approval issued pursuant to this article, the Board is authorized to issue a special order requiring any person to cease and desist from causing or permitting such violation or requiring any person to comply with any such provision, regulation or term or condition of approval. Such special orders shall be issued only after notice and an opportunity for hearing except that, if the Board finds that any discharge in violation of this article poses a serious threat to (i) the public health, safety or welfare or the health of animals, fish, botanic or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, the Board may issue, without advance notice or hearing, an emergency special order requiring the operator of any facility, vehicle or vessel to cease such discharge immediately, to

implement any applicable contingency plan and to effect containment and cleanup. Such emergency special order may also require the operator of a facility to modify or cease regular operation of the facility, or any portion thereof, until the Board determines that continuing regular operation of the facility, or such portion thereof, will not pose a substantial threat of additional or continued discharges. The Board shall affirm, modify, amend or cancel any such emergency order after providing notice and opportunity for hearing to the operator charged with the violation. The notice of the hearing and the emergency order shall be issued at the same time. If an operator who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with subsection B of this section, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires modification or cessation of operations, the Board shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

B. In the event of a violation of this article or a regulation, administrative or judicial order, or term or condition of approval issued under this article, or in the event of failure to comply with a special order issued by the Board pursuant to this section, the Board is authorized to proceed by civil action to obtain an injunction of such violation, to obtain such affirmative equitable relief as is appropriate and to recover all costs, damages and civil penalties resulting from such violation or failure to comply. The Board shall be entitled to an award of reasonable attorneys' fees and costs in any action in which it is a prevailing party.

C. Any person who violates or causes or permits to be violated a provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, shall be subject to a civil penalty for each such violation as follows:

1. For failing to obtain approval of an oil discharge contingency plan as required by § [62.1-44.34:15](#), not less than \$1,000 nor more than \$50,000 for the initial violation, and \$5,000 per day for each day of violation thereafter;
2. For failing to maintain evidence of financial responsibility as required by § [62.1-44.34:16](#), not less than \$1,000 nor more than \$100,000 for the initial violation, and \$5,000 per day for each day of violation thereafter;

3. For discharging or causing or permitting a discharge of oil into or upon state waters, or owning or operating any facility, vessel or vehicle from which such discharge originates in violation of § [62.1-44.34:18](#), up to \$100 per gallon of oil discharged;

4. For failing to cooperate in containment and cleanup of a discharge as required by § [62.1-44.34:18](#) or for failing to report a discharge as required by § [62.1-44.34:19](#), not less than \$1,000 nor more than \$50,000 for the initial violation, and \$10,000 for each day of violation thereafter; and

5. For violating or causing or permitting to be violated any other provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, up to \$32,500 for each violation. Each day of violation of each requirement shall constitute a separate offense.

D. Civil penalties may be assessed under this article either by a court in an action brought by the Board pursuant to this section, as specified in § [62.1-44.15](#), or with the consent of the person charged, in a special order issued by the Board. All penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Underground Petroleum Storage Tank Fund as established in § [62.1-44.34:11](#). In determining the amount of any penalty, consideration shall be given to the willfulness of the violation, any history of noncompliance, the actions of the person in reporting, containing and cleaning up any discharge or threat of discharge, the damage or injury to state waters or the impairment of their beneficial use, the cost of containment and cleanup, the nature and degree of injury to or interference with general health, welfare and property, and the available technology for preventing, containing, reducing or eliminating the discharge.

E. Any person who knowingly violates, or causes or permits to be violated, a provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not more than \$100,000, either or both. Any person who knowingly or willfully makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by this article or by administrative or judicial order issued under this article shall be guilty of a felony punishable by a term of imprisonment of not less than one nor more than three years

and a fine of not more than \$100,000, either or both. In the case of a discharge of oil into or upon state waters:

1. Any person who negligently discharges or negligently causes or permits such discharge shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not more than \$50,000, either or both.

2. Any person who knowingly and willfully discharges or knowingly and willfully causes or permits such discharge shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than 10 years and a fine of not more than \$100,000, either or both.

F. Each day of violation of each requirement shall constitute a separate offense. In the event the violation of this article follows a prior felony conviction under subdivision E 2 of this section, such violation shall constitute a felony and shall be punishable by a term of imprisonment of not less than two years nor more than 10 years and a fine of not more than \$200,000, either or both.

G. Upon conviction for a violation of any provision of this article, or a regulation, administrative or judicial order, or term or condition of approval issued under this article, a defendant who is not an individual shall be sentenced to pay a fine not exceeding the greater of:

1. \$1 million; or

2. An amount that is three times the economic benefit, if any, realized by the defendant as a result of the offense.

H. Any tank vessel entering upon state waters which fails to provide evidence of financial responsibility required by § [62.1-44.34:16](#), and any vessel from which oil is discharged into or upon state waters, may be detained and held as security for payment to the Commonwealth of any damages or penalties assessed under this section. Such damages and penalties shall constitute a lien on the vessel and the lien shall secure all costs of containment and cleanup, damages, fines and penalties, as the case may be, for which the operator may be liable. The vessel shall be released upon posting of a bond with surety in the maximum amount of such damages or penalties.

1990, c. 917; 1992, c. 456; 2005, c. [706](#).

§62.1-44.34:21. Administrative fees.

A. The Board is authorized to collect from any applicant for approval of an oil discharge contingency plan and from any operator seeking acceptance of evidence of financial responsibility fees sufficient to meet, but not exceed, the costs of the Board related to implementation of § [62.1-44.34:15](#) as to an applicant for approval of an oil discharge contingency plan and of § [62.1-44.34:16](#) as to an operator seeking acceptance of evidence of financial responsibility. The Board shall establish by regulation a schedule of fees that takes into account the nature and type of facility and the effect of any prior professional certification or federal review or approval on the level of review required by the Board. All such fees received by the Board shall be used exclusively to implement the provisions of this article.

B. Fees charged an applicant should reflect the average time and complexity of processing approvals in each of the various categories.

C. When adopting regulations for fees, the Board shall take into account the fees charged in neighboring states, and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage. Within six months of receipt of any federal moneys that would offset the costs of implementing this article, the Board shall review the amount of fees set by regulation to determine the amount of fees which should be refunded. Such refunds shall only be required if the fees plus the federal moneys received for the implementation of the program under this article as it applies to facilities exceed the actual cost to the Board of administering the program.

D. On October 1, 1995, and every two years thereafter, the Board shall make an evaluation of the implementation of the fee programs and provide this evaluation in writing to the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Chesapeake and Its Tributaries, and Finance.

1990, c. 917; 1992, c. 345 .

§62.1-44.34:22. Applicability of Administrative Process Act.

The Administrative Process Act (§ [2.2-4000](#) et seq.) shall govern the activities and the proceedings of the Board under this article.

1990, c. 917 .

§62.1-44.34:23. Exceptions.

A. Nothing in this article shall apply to: (i) normal discharges from properly functioning vehicles and equipment, marine engines, outboard motors or hydroelectric facilities; (ii) accidental discharges from farm vehicles or noncommercial vehicles; (iii) accidental discharges from the fuel tanks of commercial vehicles or vessels that have a fuel tank capacity of 150 gallons or less; (iv) discharges authorized by a valid permit issued by the Board pursuant to § [62.1-44.15](#) (5) or by the United States Environmental Protection Agency; (v) underground storage tanks regulated under a state program; (vi) releases from underground storage tanks as defined in § [62.1-44.34:8](#), regardless of when the release occurred; (vii) discharges of hydrostatic test media from a pipeline undergoing a hydrostatic test in accordance with federal pipeline safety regulations; or (viii) discharges authorized by the federal on-scene coordinator and the Executive Director or his designee in connection with activities related to the recovery of spilled oil where such activities are undertaken to minimize overall environmental damage due to an oil spill into or on state waters. However, the exception provided in clause (viii) shall in no way reduce the liability of the person who initially spilled the oil which is being recovered.

B. Notwithstanding the exemption set forth in clause (vi) of subsection A of this section, a political subdivision may recover pursuant to subsection C of § [62.1-44.34:18](#) for a discharge of oil into or upon state waters, lands, or storm drain systems from an underground storage tank regulated under a state program at facilities with an aggregate capacity of one million gallons or greater.

1978, c. 816; 1987, c. 677; 1990, c. 917; 1992, cc. 302, 456; 1993, cc. 18, 231; 1994, c. [416](#).

§62.1-44.34:24. Definitions.

As used in this article, unless the context requires otherwise:

"Council" means the Virginia Spill Response Council.

"Discharge" means spillage, leakage, pumping, pouring, seepage, emitting, dumping, emptying, injecting, escaping, leaching, fire, explosion, or other releases.

"Hazardous materials" means substances or materials which may pose unreasonable risks to health, safety, property, or the environment when used, transported, stored, or disposed of, which may include materials which are solid, liquid, or gas. Hazardous materials may include toxic substances, flammable and ignitable materials, explosives, corrosive materials, and radioactive materials and include (i) those substances

or materials in a form or quantity which may pose an unreasonable risk to health, safety, or property when transported, and which the Secretary of Transportation of the United States has so designated by regulation or order; (ii) hazardous substances as defined or designated by law or regulation of the Commonwealth or law or regulation of the United States government; and (iii) hazardous waste as defined or designated by law or regulation of the Commonwealth.

"Oil" means oil of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with waste, crude oils, and other liquid hydrocarbons regardless of specific gravity.

1990, c. 598 .

§62.1-44.34:25. Virginia Spill Response Council created; purpose; membership.

A. There is hereby created the Virginia Spill Response Council. The purpose of the Council is to (i) improve the Commonwealth's capability to respond in a timely and coordinated fashion to incidents involving the discharge of oil or hazardous materials which pose a threat to the environment, its living resources, and the health, safety, and welfare of the people of the Commonwealth and (ii) provide an ongoing forum for discussions between agencies which are charged with the prevention of, and response to, oil spills and hazardous materials incidents, and those agencies responsible for the remediation of such incidents.

B. The Secretary of Natural Resources and the Secretary of Public Safety and Homeland Security, upon the advice of the director of the agency, shall select one representative from each of the following agencies to serve as a member of the Council: Department of Emergency Management, State Water Control Board, Department of Environmental Quality, Virginia Marine Resources Commission, Department of Game and Inland Fisheries, Department of Health, Department of Fire Programs, and the Council on the Environment.

C. The Secretary of Natural Resources or his designee shall serve as chairman of the Council.

1990, c. 598; 1991, c. 66; 2014, cc. [115](#), [490](#).

§62.1-44.34:26. Responsibilities of the Council.

The Council shall have the following responsibilities:

1. To foster the exchange of information between the federal, state, and local government;

2. To enhance Virginia's participation in the United States Environmental Protection Agency's Region III Response Team;
3. To review and evaluate the response to emergency situations and recommend changes to the Commonwealth of Virginia's Oil and Hazardous Materials Emergency Response Plan;
4. To provide ongoing analysis of the most recent technical developments for the remediation of discharges; and
5. To coordinate its activities with the Secure and Resilient Commonwealth Panel.

1990, c. 598; 2011, cc. [594](#), [681](#).

§62.1-44.34:27. Cooperation of agencies and institutions.

Technical support shall be made available to the Council by the appropriate state agencies and educational institutions.

1990, c. 598 .

§62.1-44.34:28. Council to submit annual report.

The Council shall submit a report annually to the Secretaries of Natural Resources and Transportation and Public Safety, which includes (i) an evaluation of the emergency response preparedness activities undertaken and the emergency response activities conducted during the year and (ii) a description of the activities of the Council during the year.

1990, c. 598 .

Statewide Fire Prevention Code Act

§27-94. Short title.

This chapter may be cited as the "Virginia Statewide Fire Prevention Code Act."

1986, c. 429.

§27-95. Definitions.

As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them:

"Board" means the Board of Housing and Community Development.

"Code provisions" means the provisions of the Fire Prevention Code as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated from time to time by such Board.

"Enforcement agency" means the agency or agencies of any local governing body or the State Fire Marshal charged with the administration or enforcement of the Fire Prevention Code.

"Fire Prevention Code" or "Code" means the Statewide Fire Prevention Code.

"Fire prevention regulation" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling and use of substances, materials and devices, including explosives and blasting agents, wherever located, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions or other agencies.

"Fire Services Board" means the Virginia Fire Services Board as provided for in § [9.1-202](#).

"Fireworks" means any firecracker, torpedo, skyrocket, or other substance or object, of whatever form or construction, that contains any explosive or inflammable compound or substance, and is intended, or commonly known as fireworks, and which explodes, rises into the air or travels laterally, or fires projectiles into the air.

"Fireworks operator" or "pyrotechnician" means any person engaged in the design, setup, and firing of any fireworks other than permissible fireworks either inside a building or structure or outdoors.

"Inspection warrant" means an order in writing, made in the name of the Commonwealth, signed by any judge or magistrate whose territorial jurisdiction encompasses the building, structure or premises to be inspected or entered, and directed to a state or local official, commanding him to enter and to conduct any inspection, examination, testing or collection of samples for testing required or authorized by the Virginia Statewide Fire Prevention Code.

"Local government" means the governing body of any city, county or town in this Commonwealth.

"Permissible fireworks" means any sparklers, fountains, Pharaoh's serpents, caps for pistols, or pinwheels commonly known as whirligigs or spinning jennies.

"State Fire Marshal" means the State Fire Marshal as provided for by § [9.1-206](#).

1986, c. 429; 1988, cc. 340, 549; 1989, c. 258; 2002, c. [856](#); 2010, cc. [587](#), [643](#).

§27-96. Statewide standards.

The purposes of this chapter are to provide for statewide standards for optional local enforcement to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling, and use of substances, materials and devices, including fireworks, explosives and blasting agents, wherever located.

1986, c. 429; 1988, c. 340; 2002, c. [856](#).

§27-96.1. Chapter inapplicable to certain uses of fireworks.

Unless prohibited by a local ordinance, the provisions of this chapter pertaining to fireworks shall not apply to the sale of or to any person using, igniting or exploding permissible fireworks on private property with the consent of the owner of such property.

2002, c. [856](#).

§27-96.2. Exemptions generally.

The provisions of this chapter concerning fireworks shall have no application to any officer or member of the armed forces of this Commonwealth, or of the United States, while acting within the scope of his authority and duties as such, nor to any offer of sale or sale of fireworks to any authorized agent of such armed forces; nor shall it be applicable to the sale or use of materials or equipment, otherwise prohibited by this chapter, when such materials or equipment is used or to be used by any person for signaling or other emergency use in the operation of any boat, railroad train or other vehicle for the transportation of persons or property.

2002, c. [856](#).

§27-97. Adoption of Fire Prevention Code.

The Board of Housing and Community Development is hereby empowered to adopt and promulgate a Statewide Fire Prevention Code which shall be cooperatively developed with the Fire Services Board pursuant to procedures agreed to by the two

Boards. The Fire Prevention Code shall prescribe regulations to be complied with for the protection of life and property from the hazards of fire or explosion and for the handling, storage, sale and use of fireworks, explosives or blasting agents, and shall provide for the administration and enforcement of such regulations. The Fire Prevention Code shall require manufacturers of fireworks or explosives, as defined in the Code, to register and report information concerning their manufacturing facilities and methods of operation within the Commonwealth in accordance with regulations adopted by the Board. In addition to conducting criminal background checks pursuant to § [27-97.2](#), the Board shall also establish regulations for obtaining permits for the manufacturing, storage, handling, use, or sales of fireworks or explosives. In the enforcement of such regulations, the enforcing agency may issue annual permits for such activities to any state regulated public utility. Such permits shall not apply to the storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1.

The Fire Prevention Code shall prohibit any person, firm, or corporation from transporting, manufacturing, storing, selling, offering for sale, exposing for sale, or buying, using, igniting, or exploding any fireworks except for those persons, firms, or corporations that manufacture, store, market and distribute fireworks for the sole purpose of fireworks displays permitted by an enforcement agency or by any locality.

The Fire Prevention Code shall supersede fire prevention regulations heretofore adopted by local governments or other political subdivisions. Local governments are hereby empowered to adopt fire prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code provided such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure, including the voluntary installation of smoke alarms and regulation and inspections thereof in commercial buildings where such smoke alarms are not required under the provisions of the Code. The Fire Prevention Code shall prohibit any person not certified by the State Fire Marshal's Office as a fireworks operator or pyrotechnician to design, set up, or conduct or supervise the design, setup, or conducting of any fireworks display, either inside a building or structure or outdoors and shall require that at least one person holding a valid certification is present at the site where the fireworks display is being conducted. Certification shall not be required for the design, storage, sale, use, conduct, transportation, and set up of permissible fireworks or the supervision thereof or in

connection with any fireworks display conducted by a volunteer fire department provided one member of the volunteer fire department holds a valid certification.

In formulating the Fire Prevention Code, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations including, but not limited to, standards of the International Code Council, the National Fire Protection Association, and recognized organizations issuing standards for the protection of the public from the hazards of explosives and blasting agents. Such standards shall be based on the companion document to the model building code referenced by the Uniform Statewide Building Code.

The Fire Prevention Code shall require that buildings constructed prior to 1973 be maintained in accordance with state fire and public building regulations in effect prior to March 31, 1986, and that any building which is (i) more than 75 feet or more than six stories high and (ii) used, in whole or in part, as a dormitory to house students by any public or private institution of higher education shall be required to comply with the provisions of § [36-99.3](#). The Fire Prevention Code shall also require annual fire drills in all buildings having floors used for human occupancy located more than 75 feet above the lowest level of fire department vehicle access. The drills shall be conducted by building staff personnel or the owner of the building in accordance with a plan approved by the appropriate fire official and shall not affect other current occupants. The Board may modify, amend or repeal any Code provisions as the public interest requires. Any such Code changes shall be developed in cooperation with the Fire Services Board pursuant to procedures agreed to by the two Boards.

1986, c. 429; 1988, cc. 199, 340; 1989, cc. 90, 420; 1990, c. 69; 1991, c. 53; 1994, c. [275](#); 1997, c. [584](#); 2000, cc. [951](#), [1065](#); 2002, c. [856](#); 2007, cc. [647](#), [741](#); 2010, cc. [587](#), [643](#).

§27-97.1. Reports of stolen explosives.

Any person holding a permit for the manufacture, storage, handling, use or sale of explosives issued in accordance with the provisions of the Code shall report to the office of the chief arson investigator for the Commonwealth as well as the chief local law-enforcement official any theft or other unauthorized taking or disappearance of any explosives or blasting devices from their inventory. An initial verbal report shall be made within three days of the discovery of the taking or disappearance. A subsequent written report shall be filed within such time, and in such form, as is specified by the chief arson investigator.

Failure to comply with the provisions of this section shall constitute a Class 1 misdemeanor punishable by the same penalties applicable to violations of the Fire Prevention Code.

1988, c. 340.

§27-97.2. Issuance of permit; background investigations.

A. The State Fire Marshal or other issuing authority shall consider all permit applications for manufacturing, storage, handling, use or sales of explosives and applications for certification as a blaster or as a fireworks operator or pyrotechnician, and may grant a valid permit or certification to applicants who meet the criteria established in the Statewide Fire Prevention Code. The State Fire Marshal shall require a background investigation, to include a national criminal history record information check, of all individual applicants and all designated persons representing an applicant that is not an individual, for a permit to manufacture, store, handle, use or sell explosives, and for any applicant for certification as a blaster or as a fireworks operator or pyrotechnician. Each such applicant shall submit his fingerprints to the State Fire Marshal on a form provided by the State Fire Marshal and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant. Any firm or company manufacturing, storing, using, or selling explosives shall provide to the enforcement agency, the State Fire Marshal or other issuing authority the name of a representative responsible for (i) ensuring compliance with state law and regulations relating to blasting agents and explosives and (ii) applying for permits. The State Fire Marshal or other issuing authority shall deny any application for a permit or for certification as a blaster or as a fireworks operator or pyrotechnician if the applicant or designated person representing an applicant has been convicted of any felony, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, unless his civil rights have been restored by the Governor or other appropriate authority. The provisions of this section shall not apply to the manufacturing, storage, handling, use or sales of permissible fireworks or in connection with any fireworks display conducted by a volunteer fire department provided one member of the volunteer fire department holds a valid certification.

B. No permit under this section shall be required of any person holding a certification or permit issued pursuant to the provisions of Title 45.1.

2000, cc. [951](#), [1065](#); 2007, cc. [647](#), [741](#); 2010, cc. [587](#), [643](#).

§27-98. Enforcement of Fire Prevention Code; appeals from decisions of local enforcing agencies; inspection of buildings.

Any local government may enforce the Fire Prevention Code in its entirety or with respect only to those provisions of the Fire Prevention Code relating to open burning, fire lanes, fireworks, and hazardous materials. If a local governing body elects to enforce only those provisions of the Fire Prevention Code relating to open burning, it may do so in all or in any designated geographic areas of its jurisdiction. The State Fire Marshal shall also have the authority, in cooperation with any local governing body, to enforce the Code. The State Fire Marshal shall also have authority to enforce the Code in those jurisdictions in which the local governments do not enforce the Code and may establish such procedures or requirements as may be necessary for the administration and enforcement of the Code in such jurisdictions. In addition, subject to the approval of the Board of Housing and Community Development, the State Fire Marshal may charge a fee to recover the actual cost of administering and enforcing the Code in jurisdictions for which he serves as the enforcement authority. No fee may be charged for the inspection of any school. The local governing body of any jurisdiction that enforces the Code may establish such procedures or requirements as may be necessary for the administration and enforcement of the Code. Appeals concerning the application of the Code by the local enforcing agency shall first lie to a local board of appeals and then to the State Building Code Technical Review Board. Appeals from the application of the Code by the State Fire Marshal shall be made directly to the State Building Code Technical Review Board as provided in Article 2 (§ [36-108](#) et seq.) of Chapter 6 of Title 36. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals; however, for the City of Chesapeake no fee charged for the inspection of any place of religious worship designated as Assembly Group A-3 under the Fire Prevention Code shall exceed \$50. For purposes of this section, "defray the cost" may include the fair and reasonable costs incurred for such enforcement during normal business hours, but shall not include overtime costs, unless conducted outside of the normal working hours established by the locality. A schedule of such costs shall be adopted by the local governing body in a local ordinance. A locality shall not charge an overtime rate for inspections conducted during the normal business hours established by the locality.

Nothing herein shall be construed to prohibit a private entity from conducting such inspections, provided the private entity has been approved to perform such inspections in accordance with the written policy of the fire official for the locality. Any local fire code may provide for an appeal to a local board of appeals. If no local board of appeals exists, the State Building Code Technical Review Board shall hear appeals of any local fire code violation.

1986, c. 429; 1994, c. [275](#); 2000, cc. [941](#), [1001](#); 2001, c. [570](#); 2004, c. [787](#); 2008, c. [499](#); 2010, c. [102](#); 2012, cc. [607](#), [635](#).

§27-98.1. Inspections of buildings, structures, properties and premises.

In order to carry out the purposes of the Code and any regulations or standards adopted in pursuance thereof, the local fire official, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized, with the consent of the owner, operator, or agent in charge to enter a building, structure, property or premises for the purpose of conducting an inspection, examination, testing, or collection of samples for testing, during regular working hours and at other reasonable times, and in a reasonable manner, to determine if the building, structures, systems, machines, apparatus, devices, equipment, and materials stored, used or handled, and all pertinent conditions therein, are in compliance with the requirements, regulations or standards set forth in the Code.

1988, c. 549.

§27-98.2. Issuance of warrant.

Search warrants for inspections or reinspection of buildings, structures, property, or premises subject to inspections pursuant to the Code, to determine compliance with regulations or standards set forth in the Code, shall be based upon a demonstration of probable cause and supported by affidavit. Such inspection warrants may be issued by any judge or magistrate having authority to issue criminal warrants whose territorial jurisdiction encompasses the building, structure, property or premises to be inspected or entered, if he is satisfied from the affidavit that there is probable cause for the issuance of an inspection warrant. No inspection warrant shall be issued pursuant to this chapter except upon probable cause, supported by affidavit, particularly describing the place, thing or property to be inspected, examined or tested and the purpose for which the inspection, examination, testing or collection of samples for testing is to be made. Probable cause shall be deemed to exist if such inspection, examination, testing or collection of samples for testing are necessary to ensure

compliance with the Fire Prevention Code for the protection of life and property from the hazards of fire or explosion. The supporting affidavit shall contain either a statement that consent to inspect, examine, test or collect samples for testing has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the fire safety laws, regulations or standards of the Commonwealth which authorize such inspection, examination, testing or collection of samples for testing. In the case of an inspection warrant based upon legislative or administrative standards for selecting buildings, structures, property or premises for inspections, the affidavit shall contain factual allegations sufficient to justify an independent determination by the judge or magistrate that the inspection program is based on reasonable standards and that the standards are being applied to a particular place in a neutral and fair manner. The issuing judge or magistrate may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit. After issuing the warrant, the judge or magistrate shall file the affidavit in the manner prescribed by § [19.2-54](#).

1988, c. 549; 2014, c. [354](#).

§27-98.3. Duration of warrant.

An inspection warrant shall be effective for the time specified therein, for a period of not more than seven days, unless extended or renewed by the judicial officer who signed and issued the original warrant. The judicial officer may extend or renew the inspection warrant upon application for extension or renewal setting forth the results which have been obtained or a reasonable explanation of the failure to obtain such results. The extension or renewal period of the warrant shall not exceed seven days. The warrant shall be executed and returned to the clerk of the circuit court of the city or county wherein the inspection was made. The return shall list any samples taken pursuant to the warrant. After the expiration of such time, the warrant, unless executed, shall be void.

1988, c. 549; 2014, c. [354](#).

§27-98.4. Conduct of inspections, examinations, testing, or collection of samples.

No warrant shall be executed in the absence of the owner, operator or agent in charge of the particular building, structure, property or premises unless specifically authorized by the issuing judicial officer upon showing that such authority is reasonably necessary to effect the purposes of a statute or regulation being enforced. An

entry pursuant to this warrant shall not be made forcibly, except that the issuing officer may expressly authorize a forcible entry (i) where facts are shown sufficient to create a reasonable suspicion of an immediate threat to an occupant of the particular building, structure, property, or premises, or, to the general safety and welfare of the public, or, to adjacent buildings, structures, properties or premises, or (ii) where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. If forcible entry is authorized, the warrant shall be issued jointly to the fire official and to a law-enforcement officer who shall accompany the fire official during the execution.

1988, c. 549.

§27-98.5. Review by courts.

A. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to its return to the clerk of the circuit court of the city or county wherein the inspection was made except as a defense in a contempt proceeding, unless the owner or custodian of the building, structure, property or premises to be inspected makes by affidavit a substantial preliminary showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in his affidavit for the inspection warrant and (ii) the false statement was necessary to the finding of probable cause. The court shall conduct such expeditious in camera view as the court may deem appropriate.

B. After the warrant has been executed and returned to the clerk of the circuit court of the city or county wherein the inspection was made, the validity of the warrant may be reviewed either as a defense to any citation issued by the fire official or otherwise by declaratory judgment action brought in a circuit court. In any such action, the review shall be confined to the face of the warrant and affidavits and supporting materials presented to the issuing judge unless the owner, operator, or agent in charge of whose building, structure, property or premises has been inspected makes a substantial showing by affidavit accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was made in support of the warrant and (ii) the false statement was necessary to the finding of probable cause. The review shall only determine whether there is substantial evidence in the record supporting the decision to issue the warrant.

1988, c. 549; 2014, c. [354](#).

§27-99. State buildings.

The Fire Prevention Code shall be applicable to all state-owned buildings and structures. Every agency, commission or institution, including all institutions of higher education, of the Commonwealth shall permit, at all reasonable hours, a local fire official reasonable access to existing structures or a structure under construction or renovation, for the purposes of performing an informational and advisory fire safety inspection. The local fire official may submit, subsequent to performing such inspection, his findings and recommendations including a list of corrective actions necessary to ensure that such structure is reasonably safe from the hazards of fire to the appropriate official of such agency, commission, or institution and the State Fire Marshal. Such agency, commission or institution shall notify, within 60 days of receipt of such findings and recommendations, the State Fire Marshal and the local fire official of the corrective measures taken to eliminate the hazards reported by the local fire official. The State Fire Marshal shall have the same power in the enforcement of this section as is provided for in § [27-98](#).

The State Fire Marshal may enter into an agreement as is provided for in § [9.1-207](#) with any local enforcement agency that enforces the Fire Prevention Code to enforce this section and to take immediate enforcement action upon verification of a complaint of an imminent hazard such as a chained or blocked exit door, improper storage of flammable liquids, use of decorative materials and overcrowding.

1986, c. 429; 1989, c. 258; 1994, c. [275](#); 1997, c. [584](#); 2007, cc. [647](#), [741](#).

§27-100. Violation a misdemeanor.

It shall be unlawful for any owner or any other person, firm, or corporation, on or after the effective date of any Code provisions, to violate any provisions of the Fire Prevention Code. Any such violation shall be deemed a Class 1 misdemeanor, and any owner, or any other person, firm, or corporation convicted of such violation shall be punished in accordance with the provisions of § [18.2-11](#).

1986, c. 429.

§27-100.1. Seizure and destruction of certain fireworks.

Any law-enforcement officer arresting any person for a violation of this chapter related to fireworks shall seize any article of fireworks in the possession or under the control of the person so arrested and shall hold the same until final disposition of any criminal proceedings against such person. If a judgment of conviction be entered

against such person, the court shall order destruction of such articles upon expiration of the time allowed for appeal of such judgment of conviction.

2002, c. [856](#).

§27-101. Injunction upon application.

Every court having jurisdiction under existing or any future law is empowered to and shall, upon the application of the local enforcing agency or State Fire Marshal, issue either a mandatory or restraining injunction in aid of the enforcement of, or in prevention of the violation of, any of the provisions of this law or any valid rule or regulation made in pursuance thereof. The procedure for obtaining any such injunction shall be in accordance with the laws then current governing injunctions generally except that the enforcing agency shall not be required to give bond as a condition precedent to obtaining an injunction.

1986, c. 429.

Structured Settlement Protection Act

§59.1-475. Definitions.

For purposes of this chapter:

"Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

"Applicable federal rate" means the most recently published applicable federal rate for determining the present value of an annuity, as prescribed by the U.S. Internal Revenue Service pursuant to 26 U.S.C. § 7520, as amended.

"Assignee" means a party acquiring or proposing to acquire structured settlement payment rights directly or indirectly from a transferee of such rights.

"Dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

"Discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

"Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

"Independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser.

"Interested parties" means, with respect to any structured settlement:

1. The payee;
2. Any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death or, if such beneficiary is a minor, the designated beneficiary's parent or guardian;
3. The annuity issuer;
4. The structured settlement obligor; and
5. Any other party to such structured settlement that has continuing rights or obligations to receive or make payments under such structured settlement.

"Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under subdivision 5 of § [59.1-475.1](#).

"Payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

"Periodic payments" includes both recurring payments and scheduled future lump sum payments.

"Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of § 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time.

"Settled claim" means the original tort claim resolved by a structured settlement.

"Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

"Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

"Structured settlement obligor" means, with respect to any structured settlement, a party that has a continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

"Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where the payee is domiciled in the Commonwealth or the structured settlement agreement was approved by a court in the Commonwealth.

"Terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or other approval of any court or other government authority that authorized or approved such structured settlement.

"Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; however, the term "transfer" shall not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights.

"Transfer agreement" means the agreement providing for transfer of structured settlement payment rights.

"Transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys' fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary; however, "transfer expenses" shall not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

"Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

1999, c. [993](#); 2001, c. [537](#); 2006, c. [786](#); 2016, cc. [273](#), [739](#).

§59.1-475.1. Required disclosures to payee.

Not less than three days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than fourteen points, setting forth:

1. The amounts and due dates of the structured settlement payments to be transferred;
2. The aggregate amount of such payments;
3. The discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities," and the amount of the Applicable Federal Rate used in calculating such discounted present value;
4. The gross advance amount;
5. An itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;
6. The effective annual interest rate, which shall be disclosed in a statement in the following form: "On the basis of the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are transferring to us, you will in effect be paying interest to us at a rate of ____ percent per year";
7. The net advance amount;
8. The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
9. A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

2001, c. [537](#); 2016, cc. [273](#), [739](#).

§59.1-476. Approval of transfers of structured settlement payment rights.

No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee or assignee of structured settlement payment rights unless the transfer has been authorized in advance in a final court order based on express findings by such court that:

1. The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
2. The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived in writing the opportunity to seek and receive such advice; and
3. The transfer does not contravene any applicable statute or the order of any court or other government authority.

1999, c. [993](#); 2001, c. [537](#); 2016, cc. [273](#), [739](#).

§59.1-476.1. Effects of transfer of structured settlement payment rights.

Following issuance of a court order approving a transfer of structured settlement payment rights under this chapter:

1. The structured settlement obligor and the annuity issuer may rely on the court order in redirecting periodic payments to an assignee or transferee in accordance with the order and shall, as to all parties except the transferee or an assignee designated by the transferee, be discharged and released from any and all liability for the redirected payments, and such discharge and release shall not be affected by the failure of any party to the transfer to comply with this chapter or with the order of the court approving the transfer;
2. The transferee shall be liable to the structured settlement obligor and the annuity issuer:
 - a. If the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and
 - b. For any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the structured settlement obligor or annuity issuer with the order of the court or from the failure of any party to the transfer to comply with this chapter;
3. Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees; and
4. Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this chapter.

2001, c. [537](#); 2016, cc. [273](#), [739](#).

§59.1-477. Procedure for approval of transfers.

A. An application under this chapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and shall be brought in the circuit court for the county or city in which the payee is domiciled in the Commonwealth, except that if the payee is not domiciled in the Commonwealth, the application may be brought in the court in the Commonwealth that approved the structured settlement agreement. The circuit court may refer the matter to a commissioner of accounts for a report to such court and a recommendation on the findings required by § [59.1-476](#). Such report and recommendation shall be filed with the court and mailed to all interested parties served under subsection B of this section, and such report and recommendation and any exceptions thereto shall be examined by the court and confirmed or corrected as provided in § [64.2-1212](#).

B. A timely hearing shall be held on an application for approval of a transfer of structured settlement payment rights. The payee shall appear in person at the hearing unless the court determines that good cause exists to excuse the payee from appearing in person. Not less than 20 days prior to the scheduled hearing on an application for approval of a transfer of structured settlement payment rights under § [59.1-476](#), the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its approval. In addition to complying with the other requirements of this chapter, the application shall include:

1. A copy of the transfer agreement;
2. A copy of the disclosure statement required under § [59.1-475.1](#);
3. The payee's name, age, and county or city of domicile and the number and ages of each of the payee's dependents;
4. A summary of:
 - a. Any prior transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, within the four years preceding the date of the transfer agreement and any proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate, applications for approval of which were denied within the two years preceding the date of the transfer agreement; and
 - b. Any prior transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of the transferee or an affiliate within the three years

preceding the date of the transfer agreement and any prior proposed transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval of which were denied within the one year preceding the date of the current transfer agreement, to the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee in writing or otherwise are actually known by the transferee;

5. Notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing; and

6. Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than five days prior to the hearing, in order to be considered by the court.

1999, c. [993](#); 2001, c. [537](#); 2016, cc. [273](#), [739](#).

§59.1-477.1. General provisions, construction.

A. Compliance with the provisions of this chapter may not be waived by any payee.

B. Any transfer agreement entered into on or after the effective date of the act of the General Assembly enacting this section by a payee who resides in the Commonwealth shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of the Commonwealth. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

C. No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for periodically confirming the payee's survival, and giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

D. No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this chapter.

E. Nothing contained in this chapter shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law. A court shall not be precluded from hearing an application for approval of a transfer of payment rights under a structured settlement where the terms of the structured settlement prohibit the sale, assignment, or encumbrance of such payment rights, nor shall the interested parties be precluded from waiving or asserting their rights under those terms. The provisions of this chapter shall not be applicable to transfers of workers' compensation claims, awards, benefits, settlements or payments made or payable pursuant to Title 65.2.

F. Compliance with the requirements set forth in § [59.1-475.1](#) and fulfillment of the conditions set forth in §§ [59.1-476](#) and [59.1-477](#) shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any other liability arising from, non-compliance with such requirements or failure to fulfill such conditions.

2001, c. [537](#); 2006, c. [786](#); 2016, cc. [273](#), [739](#).

Subdivided Land Sales Act

§55-336. Short title.

This chapter may be cited as the Subdivided Land Sales Act of 1978.

1978, c. 510.

§55-337. Definitions.

When used in this chapter, unless the context otherwise requires:

1. "Agent" means any person who represents or acts for or on behalf of a developer in the disposition of any lot or lots in a subdivision; but shall not include an attorney-at-law whose representation of another person consists solely of rendering legal services.

2. "Blanket encumbrance" means a trust, deed, mortgage, judgment or any other lien or encumbrance, securing or evidencing the payment of money and affecting the land in toto comprising the subdivision to be offered and sold or leased or affecting more than ten lots or parcels of such lands, or an agreement affecting more than ten lots or parcels of such lands by which the developer holds said subdivision under option,

contract, sale or trust agreement. The term shall not include mechanics' liens, taxes or assessments levied by a public authority, or easements granted to public utilities or governmental agencies for the purpose of bringing services to the lot or parcel within the subdivision.

3. "Developer" means any person who offers, directly or indirectly, for disposition, any lots in a subdivision, but shall not include a trustee under a deed of trust securing an indebtedness or other obligation who sells lots within such subdivision under foreclosure proceedings provided the purpose in so doing is not to evade the provisions of this chapter.

4. "Subdivision" means:

a. Any subdivision of land into one hundred or more lots, whether contiguous or not, where any lots therein are, from July 1, 1978, sold or disposed of, by land sales installment contracts, and pursuant to a common promotional plan, where lot purchasers within said subdivision have use of and access to the facilities and amenities within such subdivision for which the said lot owners are assessed on a regular or special basis for the use and enjoyment thereof.

b. Any existing subdivision of land of thirty or more lots wherein the developer has concluded its sales effort for a period of six consecutive months and has transferred to the association described in subdivision A 1 of § [55-344](#) all the title, control, and maintenance responsibilities of the common areas and common facilities.

5. "Disposition" or "sale" means any lease, assignment or exchange or any interest in any lot which is a part of or included in a subdivision.

6. "Offer" means any inducement, solicitation, media advertisement or attempt performed by or on behalf of a developer which has as its objective the disposition of a lot or lots in a subdivision.

7. "Person" means any individual, corporation, government or governmental agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

8. "Purchaser" means a person who acquires or attempts to acquire any lot or lots in a subdivision.

9."Lot" means any unit, parcel, division, or piece of land or interest in land except utility easements if such interest carries with it the exclusive right to use a specific portion of property.

10."Land sales installment contract" means any installment contract for the sale or disposition of land whereby the purchaser does not receive a deed conveying the property purchased until part or all installment payments have been made as called for in the contract and record title to said property remains in another pending full performance of the contract.

1978, c. 510; 1980, c. 546; 1996, c. [372](#).

§55-338. Exemptions.

Unless the method of disposition is adopted for the purposes of evasion of this chapter, the provisions of this chapter shall not apply to:

1. The sale of a subdivision to a single purchaser for his own account in a single or isolated transaction;
2. The disposition of lots in a subdivision if each lot in the subdivision is at least five acres or more in size;
3. The disposition of a lot on which there is a residential, commercial or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within a period of two years from the date of disposition;
4. The disposition of land pursuant to court order, provided the court reviews and approves the disposition on an individual basis;
5. The disposition of cemetery lots;
6. Offers or dispositions of evidence of indebtedness secured by a mortgage or deed of trust on real estate;
7. Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;
8. Offers or dispositions of any interest in real estate, oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by this Commonwealth;

9. The disposition of a lot or lots to any person whose purpose in acquiring the land is to engage in the business of constructing residential, commercial, or industrial buildings thereon;

10. The lease of a lot where the right to possession or the rental term does not exceed one year in the aggregate and where the conditions of the lease do not obligate the lessee to renew;

11. The sale or lease of condominium units registered pursuant to the Virginia Condominium Act (§ [55-79.39](#) et seq.);

12. The disposition of real estate which is zoned or otherwise designated by the appropriate governmental authority for, or restricted by a valid recorded declaration of covenants to, commercial or industrial use.

1978, c. 510; 1980, c. 546.

§55-339. Repealed.

Repealed by Acts 1996, c. [372](#).

§55-341. Transfer of ownership.

It shall be unlawful for the developer to transfer fee simple ownership of lots or parcels within a subdivision to a lot purchaser by any other means than by a general or special warranty deed or other deed complying with Title 55, Chapter 4 (§ [55-48](#) et seq.).

1978, c. 510.

§55-342. Blanket encumbrances.

A. It shall be unlawful for any developer or agent to sell or lease lots in a subdivision that is subject to a blanket encumbrance unless the blanket encumbrance or effective supplemental agreement contains a release provision permitting legal title to individual lots or other interest contracted for to be obtained free and clear of the blanket encumbrance. Nothing herein shall be construed to limit the conditions upon which such release may be premised or the modification or amendment of such release provision as to (i) any purchaser other than a purchaser under an installment sales contract; or (ii) purchasers under installment sales contracts which are executed subsequent to the recordation of the amendment or modification.

B. Unless blanket encumbrance release provisions provide that the lien of the blanket encumbrance is subordinate to the rights of persons purchasing from the developer or

agent and that those purchasers have the unconditional right to obtain legal title or other interest contracted for free and clear of the blanket encumbrance upon compliance with the terms and conditions of the purchase or lease, it shall be unlawful for a developer or agent to sell or lease lots unless one of the following conditions is complied with:

1. Any earnest money deposit or advance or other payment made by the purchaser on account of the purchase of a lot is placed in an escrow account which fully protects the interest of the purchaser until either:

a. Fee title or other interest contracted for is conveyed to the purchaser free and clear of the blanket encumbrance; or

b. Either the developer or purchaser defaults under the contract and a final determination as to the dispersal of sums paid is made by either a court of competent jurisdiction; or

c. The developer voluntarily orders the return of the money to the purchaser. Such escrow shall be held in a trust account maintained in a federally insured depository located in the Commonwealth of Virginia.

2. Title to the subdivision is held in trust under a trust agreement until a proper release is obtained and legal title or other interest contracted for is conveyed to the purchaser.

1978, c. 510; 1980, c. 546; 1996, c. [372](#).

§55-343. Restraints on alienation.

It shall be unlawful to restrain the owner of a lot in a subdivision from offering that lot for sale or lease, provided leasing of the lot is not specifically prohibited by recorded covenant, or from selling or leasing such lot. Any deed restriction or recorded covenant which creates a right of first refusal in excess of thirty days or creates a sales restraint which denies lot owners the right to post for-sale signs of reasonable size, shall be null and void.

1978, c. 510.

§55-344. Management, regulation and control of subdivisions in which there are common facilities or property owners' associations.

A. The covenants, deed restrictions, articles of incorporation, bylaws or other instruments for the management, regulation and control of subdivisions which include

facilities or amenities for which the lot owners are assessed on a regular or special basis for the use, enjoyment, and maintenance thereof shall provide for, but need not be limited to:

1. Formation of an association to be composed of lot owners within the subdivision, such formation occurring prior to the sale of the first lot within the subdivision by the developer;
2. A description of the areas or interests to be owned or controlled by the association, which shall include those facilities or amenities for which the lot owners are subject to special or regular assessments;
3. The transfer of title and control and maintenance responsibilities of common areas and common facilities to the association, which transfer is to take place no later than at such time as the developer transfers legal or equitable ownership of at least seventy-five percent of the lots within the subdivision to purchasers of such lots or when all of the amenities and facilities are completed, whichever shall first occur, but in no event any sooner than two years from the date the developer sells his first lot within the subdivision should the developer elect to retain title to the common areas and common facilities for such period. The transfer herein required of the developer shall not exonerate him from the responsibility of completion of the common areas and facilities once the transfer takes place.

Nothing herein shall preclude the developer from transferring the common areas and common facilities for consideration, provided, (i) that such consideration does not exceed the lesser of the fair market value thereof at the time of transfer or the actual cost expended by the developer therefor, and (ii) that the developer affirmatively discloses the following information to the purchaser, in writing, at the time the initial contract of purchase is signed:

- a. That the common areas and common facilities will be transferred only upon payment of consideration by the association;
- b. The terms upon which such transfer will be made; and
- c. An estimate of the amount of consideration to be paid by the association.

In the event the developer seeks payment for the areas or facilities transferred, the association shall have the option of deferring payment therefor evidenced by a deed of trust note covering a period of not less than five years at the legal rate of interest

allowed in this Commonwealth, and secured by a deed of trust covering the facilities or areas transferred;

4. Procedures for determining and collecting regular assessments to defray expenses attributable to the ownership, use, enjoyment and operation of common areas and facilities transferred to the association;

5. Procedures for establishing and collecting special assessments for capital improvements or other purposes;

6. Procedures to be employed upon the annexation of additional land to the existing subdivision which procedures shall disclose whether or not per capita assessments on account of such annexation shall be subject to an increase, in the event additional amenities or common facilities are provided lot owners within the subdivision;

7. Such procedures and restrictions, if any, as apply with respect to the voluntary or involuntary resale of a lot within a subdivision by a purchaser or his agent, which procedures and restrictions, if any, shall be established prior to the sale of the first lot by the developer within the subdivision;

8. Monetary penalties or use privilege and voting suspension of members for breaches of the restrictions, bylaws or other instruments for management and control of the subdivision, or for nonpayment of regular or special assessments, with procedures for hearings for the disciplined members;

9. Creation of a board of directors or other governing body for the association with the members of the board or body to be elected by a vote of members of the association in good standing at an annual meeting or special meeting to be held not later than six months after the transfer of the areas of facilities outlined in subdivision 3 above;

10. Enumeration of the power of the board of directors or governing body which are consistent with and not otherwise provided by law;

11. The preparation of an annual balance sheet and operating statement for each fiscal year with provision for distribution of a copy of the reports to each member of the association in good standing within ninety days after the end of the fiscal year;

12. Quorum requirements for meetings of members of the association who are in good standing; and

13. Such other provisions as may be required by Chapter 10 (§ [13.1-801](#) et seq.) of Title 13.1, if the association is a Virginia nonstock corporation.

B. Any developer of a subdivision, successor or otherwise, which subdivision is subject to the provisions of this chapter, shall be obligated to complete the facilities and amenities as promised and outlined in subsection A of this section by the initial developer of the subdivision subject to the transfer of title and control and maintenance responsibilities of common areas and common facilities to the lot owners' association. The foregoing shall not be deemed to apply to any purchaser at foreclosure or grantee in a deed in lieu of foreclosure, provided the purchaser or grantee is a financial institution and the mortgagee, creditor, or beneficiary under the instrument being foreclosed or giving rise to the deed in lieu of foreclosure. The term financial institution shall mean a bank, savings institution, real estate investment trust, insurance company, pension or profit sharing trust, or other institution regularly engaged in the business of making real estate loans. For purposes of this subsection, the lot owners' association shall not be deemed a developer if at a meeting of its members in good standing a vote is taken whereby at least fifty percent of the members vote to be exempt from the requirements of this subsection.

C. The association, once formed and in existence and the title owner of the common areas and common facilities within the subdivision and which has been in existence for a period of at least five years, shall have the authority to pass special assessments against and raise the annual assessments of the members of the association and to collect said assessments from such members according to law, if the purpose in so doing is for the maintenance of the aforesaid common areas and common facilities. The authority hereby granted and conferred upon the association shall exist only where the restrictions and covenants of record have no specific language contained therein which precludes the adoption of special assessments or increases the annual dues or assessments.

D. The association shall have a lien on every lot within its subdivision for unpaid regular or special assessments levied against that lot in accordance with the provisions of this chapter. The lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that lot (ii) liens and encumbrances recorded prior to the perfected lien and (iii) any sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of the lien for regular or special

assessments and securing institutional lenders. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

Notwithstanding any other provision of this chapter, or any other provisions of law requiring documents to be recorded in the miscellaneous lien books or the deed books of the clerk's office of any court, from July 1, 1978, all memoranda of liens arising under this subsection shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for subdivision regular or special assessments.

The association, in order to perfect the lien given by this subsection, shall file before the expiration of ninety days from the time such special or regular assessment became due and payable in the clerk's office of the county or city in which the subdivision is situated, a memorandum, verified by the oath of the president of the association, which memorandum shall contain:

1. A description of the subdivision;
2. The name or names of the persons constituting the owners of the lot;
3. The amount of unpaid special or regular assessments currently due or past due applicable to the lot, together with the date when each fell due; and
4. The date of issuance of the memorandum.

It shall be the duty of the clerk in whose office the memorandum shall be filed as hereinabove provided to record and index the same as provided in this subsection, in the names of the persons identified therein as well as in the name of the association. The cost of recording such memorandum shall be taxed against the person found liable for any judgment or decree enforcing such lien. It shall be lawful for such memorandum to be filed as one statement listing therein the above required information and each of the lot owners whose property within the subdivision is lien-ed thereby. The cost of filing shall be as provided in subdivision A 2 of § [17.1-275](#).

No suit to enforce any lien perfected under this subsection shall be brought after one year from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this subsection; and provided, further, that nothing herein shall extend the time within which any such lien may be perfected. Nothing shall preclude the association from filing a single suit

listing all unpaid delinquent and enumerated lot owners as defendants, and obtaining judgment against those so adjudicated by the court hearing the cause.

The judgment or decree in an action brought pursuant to this subsection shall include, without limitation, reimbursement for costs and attorney's fees, together with the interest at the maximum lawful rate for the sums secured by the lien from the time each such sum became due and payable.

When payment or satisfaction is made of a debt secured by the lien perfected by this subsection, the lien shall be released in accordance with the provisions of § [55-66.3](#). For the purposes of § [55-66.3](#), the president or secretary of the association shall be deemed the duly authorized agent of the lien creditor.

Nothing in this subsection shall be construed to prohibit the recovery of sums for which this subsection creates a lien.

Any lot owner within the subdivision having executed a contract for the disposition of the lot, shall be entitled, upon request, to a recordable statement setting forth the amount of unpaid regular or special assessments currently levied against that lot. Such request shall be in writing, directed to the president of the association and delivered to the principal office of the association. Failure of the association to furnish or make available such a statement within five business days from the receipt of such written request shall extinguish the lien created by this subsection as to the lot involved. Payment of a fee not exceeding fifteen dollars may be required as a prerequisite to the issuance of such a statement if the bylaws of the association so provide.

E. Upon July 1, 1978, and a subdivision becoming subject to the terms thereof and the requirements outlined in subdivisions 1 through 8 of subsection A of this section have not been performed then the requirements shall have to be fully complied with within a period of ninety days from July 1, 1978, and upon failure to fully perform all of such requirements within the ninety-day period the failure so to do shall constitute a violation of this subsection.

F. Each lot owner within a subdivision which falls within the definition of this chapter shall be responsible for his pro rata share of the cost of maintaining the common areas and common facilities owned by the association. For purposes of this subsection, common facilities and common areas shall be defined to mean only the roads and lakes within the subdivision and maintenance shall include any orderly

program for the continued upkeep and improvement of such roads and lakes. The association shall have the responsibility of determining the pro rata share assessed against each lot owner and such amount assessed thereby shall be in addition to the annual or special assessment otherwise obligated by each member of the association.

G. Providing the definition of subdivision as detailed in subdivision 4 b of § [55-337](#) is complied with, the property owners' association at the subject subdivision shall have the powers and duties enumerated in subsections C, D and F of this section as well as the rights and authority to establish those procedures outlined in subdivisions A 4, A 5 and A 6 and the penalties in subdivision A 8 herein, but shall also have the obligations imposed by such subdivisions and those of subdivisions A 9 through A 12.

1978, c. 510; 1980, c. 546; 1989, c. 68; 1993, c. 36; 1996, c. [77](#).

§55-345. Repealed.

Repealed by Acts 1996, c. [372](#).

§55-347. Penalties.

Any person violating any of the provisions of §§ [55-341](#) through [55-344](#) shall be guilty of a Class 2 misdemeanor. At the discretion of the court, any imprisonment may be rendered to run concurrently with imprisonment rendered or imposed by any court for violation of any law similar to the provisions of this chapter.

1978, c. 510; 1979, c. 243; 1996, c. [372](#).

§55-348. Repealed.

Repealed by Acts 1996, c. [372](#).

§55-349. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§55-350. Repealed.

Repealed by Acts 1996, c. [372](#).

§55-351. Reserved.

Reserved.

Telephone Cooperatives Act

§56-485. Short title.

This chapter may be cited as the "Telephone Cooperatives Act."

1950, p. 588; 1956, c. 434.

§56-486. Who may form cooperative; purpose.

Any number of natural persons not less than five may, by executing, filing and recording a certificate as hereinafter set forth, form a cooperative, either with or without capital stock, not organized for pecuniary profit, for the purpose of promoting and encouraging the fullest possible use of telephone service by making telephone service and facilities available at the lowest cost consistent with sound economy and prudent management of the business of such cooperatives.

1950, p. 588; 1956, c. 434.

§56-487. Definitions.

The following terms, whenever used or referred to in this chapter, shall have the following meanings, unless a different meaning appears from the context:

- (1) "Cooperative" shall mean a telephone corporation formed under this chapter.
- (2) "Municipality" shall mean any city or incorporated town of the Commonwealth.
- (3) "Person" shall mean and include natural persons, firms, associations, cooperatives, corporations, business trusts, partnerships and bodies politic.
- (4) "Telephone service" shall mean and include service over wire or cable lines, including voice carrier, service by voice carrier system over electric distribution and transmission lines, service over radio circuits, and any other service involving the transmission of voice, video or data between fixed points.
- (5) "Acquire" shall mean and include construct, acquire by purchase, lease, devise, gift or the exercise of the power of eminent domain, or other mode of acquisition.
- (6) "System" shall mean and include any plant, works, system, facilities, or properties, or any part or parts thereof, together with all appurtenances thereto, used or useful in connection with the transmission of voice, video or data.
- (7) "Obligations" shall mean and include bonds, interim certificates or receipts, notes, debentures, and all other evidences of indebtedness either issued or the payment thereof assumed by a cooperative.

(8) "Federal agency" shall mean and include the United States of America, the President of the United States of America, and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.

(9) "Improve" shall mean and include construct, reconstruct, improve, replace, extend, enlarge, alter, better or repair.

(10) "Board" shall mean the board of directors of a cooperative formed under this chapter.

(11) "Member" shall mean and include each person admitted to membership in the cooperative pursuant to law or its bylaws.

1950, p. 588; 1956, c. 434; 1996, c. [708](#).

§56-488. Certificate of incorporation.

The certificate of incorporation shall be entitled and endorsed "Certificate of Incorporation of the Telephone Co-operative" (the blank space being filled in with the distinguishing part of the name of the cooperative) and shall state:

(1) The name of the cooperative, which name need not contain the word "corporation" or "incorporated" but shall be such as to distinguish it from any other cooperative.

(2) A reasonable designation of the territory in which its operations are principally to be conducted.

(3) The location of its principal office and post-office address thereof.

(4) The maximum number of directors, not less than five.

(5) The names and post-office addresses of the officers and directors who are to manage the affairs of the cooperative for the first year of its existence, or until their successors are chosen.

(6) The period, if any, limited for the duration of the cooperative.

(7) The terms and conditions upon which persons shall be admitted to membership in the cooperative, and in the case of a cooperative incorporating with capital stock a statement of the maximum and minimum amount of the capital stock of the cooperative, and its division into shares.

The certificate of incorporation may also contain any provision not inconsistent with Title 13.1 which the incorporators may choose to insert for the regulation of the

business and the conduct of the affairs of the cooperative; and any provision as to the plan of financial organization, or relating to the internal regulation or government of the cooperative, its directors and members.

1950, p. 589; 1956, c. 434.

§56-489. Limitation of use of words "telephone cooperative."

The words "telephone cooperative" shall not be used in the corporate names of corporations other than those formed pursuant to the provisions of this chapter.

1950, p. 590; 1956, c. 434.

§56-490. Filing certificate of incorporation.

The natural persons executing the certificate of incorporation shall be residents of the territory in which the principal operations of the cooperative are to be conducted who intend to use telephone service to be furnished by the cooperative. The certificate of incorporation shall be subscribed by at least five such persons and acknowledged by them before an officer authorized by the law of this Commonwealth to take and certify acknowledgments of deeds and conveyances. When so acknowledged the certificate shall be filed in accordance with the provisions of Article 3 (§ [13.1-618](#) et seq.) of Chapter 9 of Title 13.1, and when so filed the articles of incorporation, or certified copies thereof, shall be received in all the courts of this Commonwealth and elsewhere as prima facie evidence of the facts contained therein, and of the due incorporation of the cooperative. All of the provisions of the Virginia Stock Corporation Act (§ [13.1-601](#) et seq.) and the Virginia Nonstock Corporation Act (§ [13.1-801](#) et seq.) insofar as not inconsistent with this chapter are hereby made applicable to such cooperatives, and as soon as the charter is lodged for recordation in the office of the State Corporation Commission, the proposed cooperative described therein, under its designated name, shall be and constitute a body corporate with all of the applicable powers provided for in § [56-49](#). A cooperative need not have a registered office or a registered agent.

1950, p. 590; 1956, c. 434.

§56-491. Board of directors; officers.

Every cooperative formed hereunder shall have a board of directors of five or more members, which shall constitute the governing body of the cooperative. The directors, other than those named in the certificate of incorporation, shall be elected annually by the members entitled to vote, unless the bylaws provide that, in lieu of electing

the whole number of directors annually, the directors shall be divided into either two or three classes at the first or any subsequent annual meeting, each class to be as nearly equal in number as possible, with the term of office of the directors of the first class to expire at the next succeeding annual meeting, the term of the second class to expire at the second succeeding annual meeting, and the term of the third class, if any, to expire at the third succeeding annual meeting; and that at each annual meeting after such classification a number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting where the bylaws provide for two classes of directors; or until the third succeeding annual meeting where the bylaws provide for three classes of directors. The directors must be members of the cooperative. The board of directors shall have authority to fix the compensation of directors. Directors shall be entitled to reimbursement for expenses incurred by them in the performance of their duties. The directors shall elect annually from their own number a president and one or more vice-presidents. They shall also elect a secretary and a treasurer, who need not be directors or members, and may combine the offices of secretary and treasurer and designate the combined office as secretary-treasurer.

1950, p. 590; 1956, c. 434; 1974, c. 73; 1978, c. 236.

§56-492. Powers of board of directors.

The board of directors of a cooperative shall have power to do all things necessary and incidental in conducting the business of the cooperative, including but not limited to:

(1) If authorized by the certificate of incorporation, or by resolution of its members, the power to adopt and amend bylaws for the management and regulation of the affairs of the cooperative, subject, however, to the right of such members to alter or repeal such bylaws. The bylaws of a cooperative may make provisions, not inconsistent with law or its certificate of incorporation regulating the admission, suspension or expulsion of members; the transfer of memberships, the fees and dues of members and the termination of memberships on nonpayment of dues or otherwise; the number, times and manner of choosing, qualifications, terms of office, official designations, powers, duties and compensation of its officers; defining a vacancy in the board or in any office and the manner of filling it; the number of members to constitute a quorum at meetings, the date of the annual meeting and the giving of notice thereof and the holding of special meetings and the giving of notice thereof; the

terms and conditions upon which the cooperative is to render service to its members, the disposition of the revenues and receipts of the cooperative; regular and special meetings of the board and the giving of notice thereof.

(2) To appoint agents and employees and to fix their compensation and the compensation of the officers of the cooperative.

(3) To execute all instruments.

(4) To make its own rules and regulations as to its procedure.

1950, p. 591; 1956, c. 434; 1974, c. 73; 2001, c. [386](#).

§56-493. Membership; voting; nonprofit operation.

A cooperative may issue to its members certificates of membership. Only members shall be entitled to vote at the meetings of the members of the cooperative. A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member, appointing some other member to cast his vote, or may vote by his duly authorized attorney-in-fact, who shall be a member. If a member is not voting in person, by proxy, or by attorney-in-fact, the spouse of such member shall be entitled to vote for the member, in person or by proxy, if permitted by the articles of incorporation or bylaws. No proxy shall be valid after eleven months from its date unless otherwise provided in the proxy. When directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail. The liability of each member shall be limited to the unpaid portion of his membership fee or subscription to capital stock, and any unpaid bills for telephone service from the cooperative. The equity of members of a nonstock cooperative shall be in proportion to the revenue paid the cooperative by each member. A cooperative shall be operated on a nonprofit basis for the mutual benefit of its members. The bylaws of the cooperative or its contract with its members shall contain such provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its nonprofit and cooperative character.

1950, p. 591; 1956, c. 434; 1968, c. 100; 1992, c. 6; 1996, c. [708](#).

§56-494. Service to members; to nonmembers.

Except as hereinafter provided, the corporate purpose of each cooperative formed hereunder shall be to render service to its members only, and no person shall become or remain a member unless such person uses telephone service supplied by the

cooperative and shall have complied with the terms and conditions in respect to membership contained in the bylaws of the cooperative. Should the cooperative acquire any telephone facilities already dedicated or devoted to the public use it may, for the purpose of continuing existing service and avoiding hardship, continue to serve the persons served directly from such facilities at the time of such acquisition without requiring that such persons become members.

The rates to such nonmembers shall be on a cost basis similar to those charged members.

1950, p. 592; 1956, c. 434; 1996, c. [708](#).

§56-495. Powers granted corporation.

Each corporation formed under this chapter shall have power to do any and all acts or things necessary or incidental for carrying out the purpose for which it was formed, including, but not limited to:

1. To furnish or provide telephone service or any of the facilities necessary therefor in connection with the furnishing or providing of such service with others both within and without this Commonwealth and to provide such services or facilities as may be incidental or related to providing telephone service.
2. To sue and be sued.
3. To have a seal and alter the same at pleasure.
4. To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay therefor in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.
5. To acquire, own and dispose of shares or interests in other entities engaged in communications businesses.
6. To render service and to acquire, own, operate, maintain and improve a system or systems.
7. To accept gifts or grants of money, or property, real or personal, from any person, municipality or federal agency and to accept voluntary and uncompensated services.
8. To sell, lease, mortgage or otherwise encumber or dispose of all or any part of its property, as hereinafter provided.

9. To contract debts, borrow money and to issue or assume the payment of bonds, and other obligations.
10. To fix, maintain and collect reasonable fees, rents, tolls and other charges for services rendered.
11. To exercise all the powers set forth in § [56-49](#), including the power of eminent domain as prescribed for other public service corporations by general law.
12. To issue nonassessable nonvoting common and preferred capital stock and pay annually noncumulative dividends thereon not exceeding four percent and no cooperative operating hereunder shall pay annually more than four percent interest on membership capital.
13. To perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person, federal agency or municipality.

1950, p. 592; 1956, c. 434; 1989, c. 185; 2001, c. [386](#).

§56-496. Disposition of property.

No cooperative may sell, lease or dispose of any of its property other than property which, in the judgment of the board, is neither necessary nor useful in operating or maintaining the cooperative's system and which in any one year shall not exceed ten per centum in value of the value of all the property of the cooperative, unless authorized so to do by the votes of at least a two-thirds majority of its members; provided, however, that a cooperative: (i) may mortgage or otherwise encumber its assets by a vote of at least two-thirds of its board of directors; or (ii) may sell or transfer its assets to another cooperative upon the vote of a majority of its members at any regular or special meeting if the notice of such meeting contains a copy of the terms of the proposed sale or transfer.

1950, p. 593; 1956, c. 434; 1979, c. 103.

§56-497. Issue of obligations.

A cooperative shall have the power and is hereby authorized, from time to time, to issue its obligations in anticipation of its revenues for any corporate purpose. Such obligations may be authorized by resolution of the board, and may bear such date or dates, mature at such time or times, not exceeding fifty years from their respective dates, bear such interest, be payable at such times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed

in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, not exceeding par and accrued interest, as such resolution may provide. Such obligations may be sold in such manner and upon such terms as the board may determine at not less than par and accrued interest. Pending the preparation or execution of definitive bonds, or obligations, interim receipts or certificates or temporary bonds may be delivered to purchasers of such obligations.

1950, p. 593; 1956, c. 434; 1979, c. 129.

§56-498. Covenants.

In connection with the issuance of any obligations a cooperative may make covenants or agreements and do any and all acts or things that a corporation can make or do under the laws of the Commonwealth of Virginia.

1950, p. 593; 1956, c. 434.

§56-499. Purchase of own obligations.

A cooperative shall have power out of any funds available therefor to purchase any obligations issued by it at a price not exceeding the principal amount thereof and accrued interest thereon. All bonds so purchased shall be cancelled.

1950, p. 593; 1956, c. 434.

§56-500. Consolidation or merger.

Any two or more cooperatives created under the provisions of this chapter may consolidate or merge into a single corporation in the manner prescribed by Title 13.1, which consolidated or merged corporation shall exercise all the powers and authority and shall be vested with all the rights, franchises and privileges of each of the corporations so consolidated or merged.

1950, p. 594; 1956, c. 434.

§56-501. Repealed.

Repealed by Acts 1998, c. [252](#).

§56-501.1. Payment of certain patronage capital to spouse or next of kin of deceased person.

When there is held by any telephone cooperative, engaged in the business of furnishing telephone service, any patronage capital to the credit of a deceased person, in an amount not exceeding \$500, upon whose estate there shall have been no

qualification, it shall be lawful for such telephone cooperative, after 120 days from the death of such person, to pay such balance to his or her spouse, and if none, to his or her next of kin, whose receipt therefor shall be a full discharge and acquittance to such telephone cooperative to all persons whomsoever on account of such patronage capital.

1979, c. 442.

§56-502. Regulation by State Corporation Commission.

Every cooperative organized under this chapter shall be subject to the jurisdiction of the State Corporation Commission with respect to telephone services and facilities in the same manner and to the same extent as are other similar utilities under the laws of Virginia, except that (i) the Commission shall have no jurisdiction over the rates, service quality and types of service offerings of the cooperative to its members; (ii) a cooperative shall not be required to file a local service tariff with the Commission; and (iii) where a cooperative establishes a cable television system, it shall be subject to Article 1.2 (§ [15.2-2108.19](#) et seq.) of Chapter 21 of Title 15.2.

1950, p. 594; 1956, c. 434; 1985, c. 405; 1996, c. [708](#); 1998, c. [252](#); 2001, c. [386](#); 2006, cc. [73](#), [76](#).

§56-503. Dissolution.

A cooperative created hereunder may be dissolved in the manner prescribed by Article 16 (§ [13.1-742](#) et seq.) of Chapter 9 or Article 13 (§ [13.1-902](#) et seq.) of Chapter 10 of Title 13.1.

1950, p. 594; 1956, c. 434.

§56-504. Charter amendments.

A cooperative created hereunder may amend its certificate of incorporation to change its corporate name, to increase or reduce the number of its directors or change any other provision therein, provided that no cooperative shall amend its certificate of incorporation to embody therein any purpose, power or provision which would not be authorized if its original certificate including such additional or changed purpose, power or provision were offered for filing at the time a certificate under this section is offered. Such amendment may be accomplished in the method prescribed by law for corporations generally.

1950, p. 594; 1956, c. 434.

§56-505. Charter fees.

The general laws of Virginia relating to fees and other charges in connection with issuing charters, amendments thereto, consolidations and dissolutions of corporations organized on a mutual basis or without capital stock, shall apply to cooperatives organized under the provisions of this chapter.

1950, p. 595; 1956, c. 434.

§56-506. Construction of chapter; conflicting laws.

This chapter is to be liberally construed and the enumeration of any object, purpose, power, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things, and any provisions of other laws in conflict with the provisions of this chapter shall not apply to cooperatives operating hereunder.

1950, p. 595; 1956, c. 434.

§56-507. Adoption of provisions by existing corporation.

Any Virginia corporation engaged in the furnishing of telephone service in the Commonwealth may come under the provisions of this chapter by filing with the Commission a certificate of adoption in the manner provided by paragraph (b) of § [13.1-334](#), and relinquishing all rights and powers granted by the former charter.

1950, p. 595; 1956, c. 434.

§56-508. Extension of service to territory not being served.

If, from any rural territory not now being served, application be made to the State Corporation Commission by a group of five or more persons, natural or artificial, to require an extension of telephone service to such territory, the Commission shall, if necessary to accomplish the purposes sought, fix a time for hearing upon the application, on such terms and conditions as the Commission prescribes, and, if it be established to the satisfaction of the Commission that a proper guaranteed revenue for a sufficient number of years will accrue to any company which may be required to construct the desired extension, and that a reasonable return will accrue to the company constructing the extension, then the Commission is authorized to require the nearest, or most advantageously located public telephone company to such territory to construct such extension to such point or points in such territory and to serve such customer or customers therein, as in its judgment is deemed right and proper.

1950, p. 595; 1956, c. 434.

The Public-Private Education Facilities and Infrastructure Act of 2002

§56-575.1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affected jurisdiction" means any county, city or town in which all or a portion of a qualifying project is located.

"Appropriating body" means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § [56-575.9](#).

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"Interim agreement" means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

"Lease payment" means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project.

"Material default" means any default by the private entity in the performance of its duties under subsection E of § [56-575.8](#) that jeopardizes adequate service to the public from a qualifying project.

"Operate" means to finance, maintain, improve, equip, modify, repair, or operate.

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity, or other business entity.

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth, any public body politic and corporate, or any regional entity that serves a public purpose.

"Qualifying project" means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any services designed to increase the productivity or efficiency of the responsible public entity through the use of technology or other means, (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; (ix) any improvements necessary or desirable to any unimproved locally- or state-owned real estate; or (x) any solid waste management facility as defined in § [10.1-1400](#) that produces electric energy derived from solid waste.

"Responsible public entity" means a public entity that has the power to develop or operate the applicable qualifying project.

"Revenues" means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project, including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

"Service contract" means a contract entered into between a public entity and the private entity pursuant to § [56-575.5](#).

"Service payments" means payments to the private entity of a qualifying project pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"User fees" mean the rates, fees or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to § [56-575.9](#).

2002, c. [571](#); 2003, c. [1034](#); 2005, cc. [618](#), [865](#); 2007, cc. [649](#), [764](#); 2008, cc. [273](#), [731](#); 2009, cc. [754](#), [762](#).

§56-575.2. Declaration of public purpose.

A. The General Assembly finds that:

1. There is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of education facilities, technology infrastructure and other public infrastructure and government facilities within the Commonwealth that serve a public need and purpose;
2. Such public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;
3. There are inadequate resources to develop new education facilities, technology infrastructure and other public infrastructure and government facilities for the benefit of citizens of the Commonwealth, and there is demonstrated evidence that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;
4. Financial incentives exist under state and federal tax provisions that promote public entities to enter into partnerships with private entities to develop qualifying projects;
5. Authorizing private entities to develop or operate one or more qualifying projects may result in the availability of such projects to the public in a more timely or less costly fashion, thereby serving the public safety, benefit, and welfare.

B. An action under § [56-575.4](#) shall serve the public purpose of this chapter if such action facilitates the timely development or operation of qualifying projects.

C. It is the intent of this chapter, among other things, to encourage investment in the Commonwealth by private entities and facilitate the bond financing provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 or other similar financing mechanisms, private capital and other funding sources that support the

development or operation of qualifying projects, to the end that financing for qualifying projects be expanded and accelerated to improve and add to the convenience of the public, and such that public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services that are the subject of this chapter.

D. This chapter shall be liberally construed in conformity with the purposes hereof.

2002, c. [571](#); 2003, c. [1034](#); 2005, c. [865](#).

§56-575.3. Prerequisite for operation of a qualifying project.

A. Any private entity seeking authorization under this chapter to develop or operate a qualifying project shall first obtain approval of the responsible public entity under § [56-575.4](#). Such private entity may initiate the approval process by requesting approval pursuant to subsection A of § [56-575.4](#) or the responsible public entity may request proposals or invite bids pursuant to subsection B of § [56-575.4](#).

B. Any facility, building, infrastructure or improvement included in a proposal as a part of a qualifying project shall be identified specifically or conceptually.

C. Upon receipt by the responsible public entity of a proposal submitted by a private entity initiating the approval process pursuant to subsection A of § [56-575.4](#), the responsible public entity shall determine whether to accept such proposal for consideration in accordance with § [56-575.16](#). If the responsible public entity determines not to accept for consideration the proposal submitted by the private entity pursuant to subsection A of § [56-575.4](#), it shall return the proposal, together with all fees and accompanying documentation, to the private entity.

D. The responsible public entity may reject any proposal initiated by a private entity pursuant to subsection A of § [56-575.4](#) at any time. If the responsible public entity rejects a proposal initiated by a private entity that purports to develop specific cost savings, the public entity shall specify the basis for the rejection.

2002, c. [571](#); 2003, cc. [292](#), [1034](#); 2005, c. [865](#); 2011, c. [308](#).

§56-575.3:1. Adoption of guidelines by responsible public entities.

A. A responsible public entity shall, prior to requesting or considering a proposal for a qualifying project, adopt and make publicly available guidelines that are sufficient to enable the responsible public entity to comply with this chapter. Such guidelines shall be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible public entity.

B. For a responsible public entity that is an agency or institution of the Commonwealth, the guidelines shall include, but not be limited to:

1. Opportunities for competition through public notice and availability of representatives of the responsible public entity to meet with private entities considering a proposal;
2. Reasonable criteria for choosing among competing proposals;
3. Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement;
4. Authorization for accelerated selection and review and documentation timelines for proposals involving a qualifying project that the responsible public entity deems a priority;
5. Financial review and analysis procedures that shall include, at a minimum, a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project. These procedures shall also include requirements for the disclosure of such analysis to the appropriating body for review prior to execution of an interim or comprehensive agreement;
6. Consideration of the nonfinancial benefits of a proposed qualifying project;
7. A mechanism for the appropriating body to review a proposed interim or comprehensive agreement prior to execution, which shall be in compliance with applicable law and the provisions of subsection I of § [56-575.4](#) pertaining to the approval of qualifying projects;
8. Establishment of criteria for (i) the creation of and the responsibilities of a public-private partnership oversight committee with members representing the responsible public entity and the appropriating body or (ii) compliance with the requirements of Chapter 42 (§ [30-278](#) et seq.) of Title 30. Such criteria shall include the scope, costs, and duration of the qualifying project, as well as whether the project involves or impacts multiple public entities. The oversight committee, if formed, shall be an advisory committee to review the terms of any proposed interim or comprehensive agreement;

9. Analysis of the adequacy of the information released when seeking competing proposals and providing for the enhancement of that information, if deemed necessary, to encourage competition pursuant to subsection G of § [56-575.4](#);

10. Establishment of criteria, key decision points, and approvals required to ensure that the responsible public entity considers the extent of competition before selecting proposals and negotiating an interim or comprehensive agreement; and

11. The posting and publishing of public notice of a private entity's request for approval of a qualifying project, including (i) specific information and documentation to be released regarding the nature, timing, and scope of the qualifying project pursuant to subsection A of § [56-575.4](#); (ii) a reasonable time period as determined by the responsible public entity to encourage competition and public-private partnerships in accordance with the goals of this chapter, such reasonable period not to be less than 45 days, during which time the responsible public entity shall receive competing proposals pursuant to subsection A of § [56-575.4](#); and (iii) a requirement for advertising the public notice in the Virginia Business Opportunities publication and posting a notice on the Commonwealth's electronic procurement website shall be included.

C. For a responsible public entity that is not an agency or institution of the Commonwealth the guidelines may include the provisions set forth in subsection B in the discretion of such public entity. However, the guidelines of a responsible public entity that is not an agency or institution of the Commonwealth shall include:

1. A requirement that it engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by the responsible public entity, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a private entity for approval of a qualifying project unless the governing body of the responsible public entity determines that such analysis of a request by a private entity for approval of a qualifying project shall be performed by employees of the responsible public entity; and

2. A mechanism for the appropriating body to review a proposed interim or comprehensive agreement prior to execution.

2005, c. [865](#); 2007, c. [764](#).

§56-575.4. Approval of qualifying projects by the responsible public entity.

A. A private entity may request approval of a qualifying project by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the qualifying project;
2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity;
3. A statement setting forth the method by which the private entity proposes to secure necessary property interests required for the qualifying project;
4. Information relating to the current plans for development of facilities or technology infrastructure to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction;
5. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
6. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings;
7. A statement setting forth the private entity's general plans for financing the qualifying project including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the private entity;
8. The names and addresses of the persons who may be contacted for further information concerning the request;
9. User fees, lease payments, and other service payments over the term of the interim or comprehensive agreement pursuant to § [56-575.9](#) or [56-575.9:1](#) and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time; and
10. Such additional material and information as the responsible public entity may reasonably request.

B. The responsible public entity may request proposals or invite bids from private entities for the development or operation of qualifying projects.

C. The responsible public entity may grant approval of the development or operation of the education facility, technology infrastructure or other public infrastructure or government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if the responsible public entity determines that the project serves the public purpose of this chapter. The responsible public entity may determine that the development or operation of the qualifying project as a qualifying project serves such public purpose if:

1. There is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project;
2. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and
3. The private entity's plans will result in the timely development or operation of the qualifying project.

In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

D. The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing and evaluating the request, including without limitation, reasonable attorney's fees and fees for financial, technical, and other necessary advisors or consultants.

E. The approval of the responsible public entity shall be subject to the private entity's entering into an interim or comprehensive agreement pursuant to § [56-575.9](#) with the responsible public entity.

F. In connection with its approval of the qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend such date from time to time.

G. The responsible public entity shall take appropriate action to protect confidential and proprietary information provided by the private entity pursuant to an agreement under subdivision 11 of § [2.2-3705.6](#).

H. Nothing in this chapter or in an interim or comprehensive agreement entered into pursuant to this chapter shall be deemed to enlarge, diminish or affect the authority, if any, otherwise possessed by the responsible public entity to take action that would impact the debt capacity of the Commonwealth.

I. Prior to entering into the negotiation of an interim or comprehensive agreement, each responsible public entity that is an agency or institution of the Commonwealth shall submit copies of detailed proposals to the Public-Private Partnership Advisory Commission as provided by Chapter 42 (§ [30-278](#) et seq.) of Title 30.

J. Any proposed comprehensive agreement for a qualifying project where the responsible public entity is an agency or institution of the Commonwealth that (i) creates state tax-supported debt, (ii) requires a level of appropriation significantly beyond the appropriation received by the responsible public entity in the most recent appropriation act, or (iii) significantly alters the Commonwealth's discretion to change the level of services or the funding for such services over time, shall be reviewed by the appropriating body prior to execution.

2002, c. [571](#); 2003, c. [1034](#); 2004, c. [690](#); 2005, c. [865](#); 2007, c. [764](#).

§56-575.5. Service contracts.

In addition to any authority otherwise conferred by law, any public entity may contract with a private entity for the delivery of services to be provided as part of a qualifying project in exchange for such service payments and other consideration as such public entity may deem appropriate.

2002, c. [571](#); 2005, c. [865](#).

§56-575.6. Affected local jurisdictions.

A. Any private entity requesting approval from, or submitting a proposal to, a responsible public entity under § [56-575.4](#) shall notify each affected local jurisdiction by furnishing a copy of its request or proposal to each affected local jurisdiction.

B. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project shall, within sixty days after receiving such notice, submit any comments it may have in writing on the proposed qualifying project to the responsible public entity and indicate whether the facility is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan. Such comments shall be given

consideration by the responsible public entity prior to entering a comprehensive agreement pursuant to § [56-575.9](#) with a private entity.

2002, c. [571](#).

§56-575.7. Dedication of public property.

Any public entity may dedicate any property interest, including land, improvements, and tangible personal property, that it has for public use in a qualifying project if it finds that so doing will serve the public purpose of this chapter by minimizing the cost of a qualifying project to the public entity or reducing the delivery time of a qualifying project. In connection with such dedication, a public entity may convey any property interest that it has, subject to the conditions imposed by general law governing such conveyances, to the private entity subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include, without limitation, the agreement of the private entity to develop or operate the qualifying project. The property interests that the public entity may convey to the private entity in connection with a dedication under this section may include licenses, franchises, easements, or any other right or interest the public entity deems appropriate.

2002, c. [571](#); 2005, c. [865](#).

§56-575.8. Powers and duties of the private entity.

A. The private entity shall have all power allowed by law generally to a private entity having the same form of organization as the private entity and shall have the power to develop or operate the qualifying project and collect lease payments, impose user fees or enter into service contracts in connection with the use thereof.

B. The private entity may own, lease or acquire any other right to use or operate the qualifying project.

C. Any financing of the qualifying project may be in such amounts and upon such terms and conditions as may be determined by the private entity. Without limiting the generality of the foregoing, the private entity may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying project.

D. In operating the qualifying project, the private entity may:

1. Make classifications according to reasonable categories for assessment of user fees; and

2. With the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity may make and enforce rules with respect to similar facilities.

E. The private entity shall:

1. Develop or operate the qualifying project in a manner that is acceptable to the responsible public entity, all in accordance with the provisions of the interim or comprehensive agreement pursuant to § [56-575.9](#) or [56-575.9:1](#);

2. Keep the qualifying project open for use by the members of the public at all times, or as appropriate based upon the use of the facility, after its initial opening upon payment of the applicable user fees, lease payments, or service payments; provided that the qualifying project may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance activities. In the event that a qualifying project is technology infrastructure, access may be limited as determined by the conditions of the interim or comprehensive agreement;

3. Maintain, or provide by contract for the maintenance or upgrade of the qualifying project, if required by the interim or comprehensive agreement;

4. Cooperate with the responsible public entity in making best efforts to establish any interconnection with the qualifying project requested by the responsible public entity; and

5. Comply with the provisions of the interim or comprehensive agreement and any lease or service contract.

F. Nothing shall prohibit an private entity of a qualifying project from providing additional services for the qualifying project to public or private entities other than the responsible public entity so long as the provision of additional service does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the interim or comprehensive agreement as provided for in § [56-575.9](#) or [56-575.9:1](#).

2002, c. [571](#); 2003, c. [1034](#); 2005, c. [865](#).

§56-575.9. Comprehensive agreement.

A. Prior to developing or operating the qualifying project, the private entity shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:

1. Delivery of maintenance, performance and payment bonds, letters of credit in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible public entity and in compliance with § [2.2-4337](#) for those components of the qualifying project that involve construction;
2. Review of plans and specifications for the qualifying project by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standards acceptable to the responsible public entity. This shall not be construed as requiring the private entity to complete design of a qualifying project prior to the execution of a comprehensive agreement;
3. Inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement;
4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage) or self-insurance, each in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. Monitoring of the practices of the private entity by the responsible public entity to ensure that the qualifying project is properly maintained;
6. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity;
7. Filing of appropriate financial statements on a periodic basis; and
8. Policies and procedures governing the rights and responsibilities of the responsible public entity and the private entity in the event the comprehensive agreement is terminated or there is a material default by the private entity. Such policies and guidelines shall include conditions governing assumption of the duties and responsibilities of the private entity by the responsible public entity and the transfer or purchase of property or other interests of the private entity by the responsible public entity.

B. The comprehensive agreement shall provide for such user fees, lease payments, or service payments as may be established from time to time by agreement of the parties. A copy of any service contract shall be filed with the responsible public entity. In negotiating user fees under this section, the parties shall establish payments or fees that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees, lease payments, or service payments provided for comply with this chapter. User fees or lease payments established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans to the private entity from time to time from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

D. The comprehensive agreement shall incorporate the duties of the private entity under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the private entity and the persons specified therein as providing financing for the qualifying project. The comprehensive agreement may contain such other lawful terms and conditions to which the private entity and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the private entity to develop or operate one or more qualifying projects. The comprehensive agreement may also contain provisions where the authority and duties of the private entity under this chapter shall cease, and the qualifying project is dedicated to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.

E. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

F. When a responsible public entity that is not an agency or authority of the Commonwealth enters into a comprehensive agreement pursuant to this chapter, it shall

within 30 days thereafter submit a copy of the comprehensive agreement to the Auditor of Public Accounts.

G. The comprehensive agreement may provide for the development or operation of phases or segments of the qualifying project.

2002, c. [571](#); 2003, c. [1034](#); 2004, c. [986](#); 2005, c. [865](#).

§56-575.9:1. Interim agreement.

Prior to or in connection with the negotiation of the comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. Such interim agreement may (i) permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying project, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities; (ii) establish the process and timing of the negotiation of the comprehensive agreement; and (iii) contain any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate.

2005, c. [865](#).

§56-575.10. Federal, state and local assistance.

A. Any financing of a qualifying facility may be in such amounts and upon such terms and conditions as may be determined by the parties to the interim or comprehensive agreement. Without limiting the generality of the terms and conditions of the financing, the private entity and the responsible public entity may propose to utilize any and all funding resources that may be available to them and may, to the fullest extent permitted by applicable law, issue debt, equity, or other securities or obligations, enter into leases, access any designated trust funds, borrow or accept grants from any state infrastructure bank, and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying facility.

B. The responsible public entity may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter and may enter into any contracts required to receive such assistance. If the responsible public entity is a state agency, any funds received from the state or federal

government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state, or federal government or any agency or instrumentality thereof.

2002, c. [571](#); 2005, c. [865](#).

§56-575.11. Material default; remedies.

A. In the event of a material default by the private entity, the responsible public entity may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the right, title and interest in such qualifying project, subject to any liens on revenues previously granted by the private entity to any person providing financing thereof.

B. Any responsible public entity having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has provided financing for the qualifying project, and the private entity, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

C. The responsible public entity may terminate, with cause, the interim or comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity.

D. The responsible public entity may make or cause to be made any appropriate claims under the maintenance, performance, or payment bonds; or lines of credit required by subsection A 1 of § [56-575.9](#).

E. In the event the responsible public entity elects to take over a qualifying project pursuant to subsection A, the responsible public entity may develop or operate the qualifying project, impose user fees, impose and collect lease payments for the use thereof and comply with any service contracts as if it were the private entity. Any revenues that are subject to a lien shall be collected for the benefit of and paid to secured parties, as their interests may appear, to the extent necessary to satisfy the private entity's obligations to secured parties, including the maintenance of reserves. Such liens shall be correspondingly reduced and, when paid off, released. Before any

payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the qualifying project, including compensation to the responsible public entity for its services in operating and maintaining the qualifying project. The right to receive such payment, if any, shall be considered just compensation for the qualifying project. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the private entity by the election to take over the qualifying project. Assumption of operation of the qualifying project shall not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues.

2002, c. [571](#); 2003, c. [1034](#); 2005, c. [865](#).

§56-575.12. Condemnation.

At the request of the private entity, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the private entity.

2002, c. [571](#); 2005, c. [865](#).

§56-575.13. Utility crossing.

The private entity and each public service company, public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other entity in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying project or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of, renovation to, or improvements to the qualifying project, which shall be construed to include construction of, renovation to, or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Any amount to be paid for such crossing, construction, moving or relocating of facilities shall be paid for by the private entity. Should the private entity and any such public service company, public utility, railroad, and cable television provider not be able to agree upon a plan for the crossing or relocation, the Commission may determine the manner in which the crossing or relocation is to be accomplished

and any damages due arising out of the crossing or relocation. The Commission may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne by the private entity. Such determination shall be made by the Commission within ninety days of notification by the private entity that the qualifying project will cross utilities subject to the Commission's jurisdiction.

2002, c. [571](#); 2005, c. [865](#).

§56-575.14. Police powers; violations of law.

All police officers of the Commonwealth and of each affected local jurisdiction shall have the same powers and jurisdiction within the limits of such qualifying project as they have in their respective areas of jurisdiction and such police officers shall have access to the qualifying project at any time for the purpose of exercising such powers and jurisdiction.

2002, c. [571](#).

§56-575.15. Sovereign immunity.

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity or any affected local jurisdiction or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying project or its operation, including but not limited to interconnection of the qualifying project with any other infrastructure or project. Counties, cities and towns in which a qualifying project is located shall possess sovereign immunity with respect to its design, construction, and operation.

2002, c. [571](#).

§56-575.16. Procurement.

The Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) and any interpretations, regulations, or guidelines of the Division of Engineering and Buildings of the Department of General Services or the Virginia Information Technologies Agency, including the Capital Outlay Manual and those interpretations, regulations or guidelines developed pursuant to §§ [2.2-1131](#), [2.2-1132](#), [2.2-1133](#), [2.2-1149](#), and [2.2-1502](#), except those developed by the Division or the Virginia Information Technologies Agency in accordance with this chapter when the Commonwealth is the responsible public entity, shall not apply to this chapter. However, a responsible public entity

may enter into a comprehensive agreement only in accordance with guidelines adopted by it as follows:

1. A responsible public entity may enter into a comprehensive agreement in accordance with guidelines adopted by it that are consistent with procurement through competitive sealed bidding as set forth in § [2.2-4302.1](#) and subsection B of § [2.2-4310](#).
2. A responsible public entity may enter into a comprehensive agreement in accordance with guidelines adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as set forth in § [2.2-4302.2](#) and subsection B of § [2.2-4310](#). Such responsible public entity shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience, and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under the responsible public entity's guidelines; (v) local citizen and government comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; and (ix) other criteria that the responsible public entity deems appropriate.

A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (i) the probable scope, complexity, or priority of the project; (ii) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available. When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the responsible Governor's Secretary, or the Governor, shall be required before the responsible public entity may enter into a comprehensive agreement pursuant to this subdivision.

3. Nothing in this chapter shall authorize or require that a responsible public entity obtain professional services through any process except in accordance with guidelines adopted by it that are consistent with the procurement of "professional services" through competitive negotiation as set forth in § [2.2-4302.2](#) and subsection B of § [2.2-4310](#).

4. A responsible public entity shall not proceed to consider any request by a private entity for approval of a qualifying project until the responsible public entity has adopted and made publicly available guidelines pursuant to § [56-575.3:1](#) that are sufficient to enable the responsible public entity to comply with this chapter.

5. A responsible public entity that is a school board or a county, city, or town may enter into an interim or comprehensive agreement under this chapter only with the approval of the local governing body.

2002, c. [571](#); 2003, cc. [292](#), [968](#), [1034](#); 2004, c. [986](#); 2005, c. [865](#); 2006, c. [936](#); 2007, c. [764](#); 2013, c. [583](#).

§56-575.17. Posting of conceptual proposals; public comment; public access to procurement records.

A. Conceptual proposals submitted in accordance with subsection A or B of § [56-575.4](#) to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities that are state agencies, authorities, departments, institutions, and other units of state government, posting shall be on the Department of General Services' centralized electronic procurement website; and

2. For responsible public entities that are local bodies, posting shall be on the responsible public entity's website or on the Department of General Services' central electronic procurement website. In addition, such public bodies may publish in a newspaper of general circulation in the area in which the contract is to be performed a summary of the proposals and the location where copies of the proposals are available for public inspection. Such local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to

prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § [2.2-3705.6](#) shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

B. The responsible public entity shall hold a public hearing on the proposals during the proposal review process, but not later than 30 days prior to entering into an interim or comprehensive agreement.

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete, but before an interim agreement or a comprehensive agreement is entered into, a responsible public entity shall make available the proposed agreement in a manner provided in subsection A.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, upon request. For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.

2006, c. [936](#); 2008, c. [667](#); 2009, c. [762](#); 2011, c. [332](#).

§56-575.17:1. Contributions and gifts; prohibition during approval process.

A. No private entity that has submitted a bid or proposal to a public entity that is an executive branch agency directly responsible to the Governor and is seeking to develop or operate a qualifying project pursuant to this chapter, and no individual who is an officer or director of such a private entity, shall knowingly provide a

contribution, gift, or other item with a value greater than \$50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, following the submission of a proposal under this chapter until the execution of a comprehensive agreement thereunder. The provisions of this section shall apply only for any proposal or an interim or comprehensive agreement where the stated or expected value of the contract is \$5 million or more.

B. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

2010, c. [732](#); 2011, c. [624](#).

§56-575.18. Auditor of Public Accounts.

The Auditor of Public Accounts shall periodically review interim and comprehensive agreements entered into pursuant to this chapter to ensure compliance with the provisions of this chapter. Copies of the agreements and supporting documents must be electronically filed with the Auditor of Public Accounts. Electronic agreements shall be made available in the online database maintained pursuant to § [30-133](#).

2007, c. [764](#); 2009, c. [762](#).

The Virginia Gas and Oil Act

§45.1-361.1. Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

"Abandonment of a well" or "cessation of well operations" means the time at which (i) a gas or oil operator has ceased operation of a well and has not properly plugged the well and reclaimed the site as required by this chapter, (ii) the time at which a gas or oil operator has allowed the well to become incapable of production or conversion to another well type, or (iii) the time at which the Director revokes a permit or forfeits a bond covering a gas or oil operation.

"Associated facilities" means any facility utilized for gas or oil operations in the Commonwealth, other than a well or a well site.

"Barrel" means forty-two U.S. gallons of liquids, including slurries, at a temperature of sixty degrees Fahrenheit.

"Board" means the Virginia Gas and Oil Board.

"Coalbed methane gas" means occluded natural gas produced from coalbeds and rock strata associated therewith.

"Coalbed methane gas well" means a well capable of producing coalbed methane gas.

"Coalbed methane gas well operator" means any person who has been designated to operate or does operate a coalbed methane gas well.

"Coal claimant" means a person identified as possessing an interest in production royalties when a drilling unit is force-pooled or who asserts or possesses a claim to funds that are held in escrow, for a force-pooled coalbed methane gas well, or in suspense, for a voluntarily pooled coalbed methane gas well, by virtue of owning an interest in the coal estate contained within the drilling unit subject to the pooling order or agreement.

"Coal operator" means any person who has the right to operate or does operate a coal mine.

"Coal owner" means any person who owns, leases, mines and produces, or has the right to mine and produce, a coal seam.

"Coal seam" means any stratum of coal twenty inches or more in thickness, unless a stratum of less thickness is being commercially worked, or can in the judgment of the Department foreseeably be commercially worked and will require protection if wells are drilled through it.

"Correlative rights" means the right of each gas or oil owner having an interest in a single pool to have a fair and reasonable opportunity to obtain and produce his just and equitable share of production of the gas or oil in such pool or its equivalent without being required to drill unnecessary wells or incur other unnecessary expenses to recover or receive the gas or oil or its equivalent.

"Cubic foot of gas" means the volume of gas contained in one cubic foot of space at a standard pressure base of 14.73 pounds per square foot and a standard temperature base of sixty degrees Fahrenheit.

"Disposal well" means any well drilled or converted for the disposal of drilling fluids, produced waters, or other wastes associated with gas or oil operations.

"Drilling unit" means the acreage on which one gas or oil well may be drilled.

"Enhanced recovery" means (i) any activity involving injection of any air, gas, water or other fluid into the productive strata, (ii) the application of pressure, heat or other means for the reduction of viscosity of the hydrocarbons, or (iii) the supplying of additional motive force other than normal pumping to increase the production of gas or oil from any well, wells or pool.

"Evidence of a proceeding or agreement" means written evidence that (i) the coal claimant has filed and has pending a judicial or arbitration proceeding against the gas claimant to determine the ownership of the coalbed methane gas and the right to the funds held in escrow or suspense or (ii) the coal claimant and gas claimant have reached an agreement to apportion the funds between them.

"Exploratory well" means any well drilled (i) to find and produce gas or oil in an unproven area, (ii) to find a new reservoir in a field previously found to be productive of gas or oil in another reservoir, or (iii) to extend the limits of a known gas or oil reservoir.

"Field rules" means rules established by order of the Virginia Gas and Oil Board that define a pool, drilling units, production allowables, or other requirements for gas or oil operations within an identifiable area.

"First point of sale" means, for oil, the point at which the oil is sold, exchanged or transferred for value from one person to another person, or when the original owner of the oil uses the oil, the point at which the oil is transported off the permitted site and delivered to another facility for use by the original owner; and for gas, the point at which the gas is sold, exchanged or transferred for value to any interstate or intrastate pipeline, any local distribution company, any person for use by such person, or when the gas is used by the owner of the gas for a purpose other than the production or transportation of the gas, the point at which the gas is delivered to a facility for use.

"Fund" means the Gas and Oil Plugging and Restoration Fund.

"Gas" or "natural gas" means all natural gas whether hydrocarbon or nonhydrocarbon or any combination or mixture thereof, including hydrocarbons, hydrogen sulfide,

helium, carbon dioxide, nitrogen, hydrogen, casing head gas, and all other fluids not defined as oil pursuant to this section.

"Gas claimant" means a person identified as possessing an interest in production royalties when a drilling unit is forced-pooled or who asserts or possesses a claim to funds that are held in escrow, for a force-pooled coalbed methane gas well, or in suspense, for a voluntarily pooled coalbed methane gas well, by virtue of owning an interest in the gas estate contained within the drilling unit subject to the pooling order or agreement.

"Gas or oil operations" means any activity relating to drilling, redrilling, deepening, stimulating, production, enhanced recovery, converting from one type of a well to another, combining or physically changing to allow the migration of fluid from one formation to another, plugging or replugging any well; ground disturbing activity relating to the development, construction, operation and abandonment of a gathering pipeline; the development, operation, maintenance, and restoration of any site involved with gas or oil operations; or any work undertaken at a facility used for gas or oil operations. The term embraces all of the land or property that is used for or which contributes directly or indirectly to a gas or oil operation, including all roads.

"Gas or oil operator" means any person who has been designated to operate or does operate any gas or oil well or gathering pipeline.

"Gas or oil owner" means any person who owns, leases, has an interest in, or who has the right to explore for, drill or operate a gas or oil well as principal or as lessee. In the event that the gas is owned separately from the oil, the definitions contained herein shall apply separately to the gas owner or oil owner.

"Gas title conflicts" means conflicting ownership claims between gas claimants; the term does not include conflicting ownership claims between gas claimants and coal claimants.

"Gathering pipeline" means (i) a pipeline which is used or intended for use in the transportation of gas or oil from the well to a transmission pipeline regulated by the United States Department of Transportation or the State Corporation Commission or (ii) a pipeline which is used or intended for use in the transportation of gas or oil from the well to an off-site storage, marketing, or other facility where the gas or oil is sold.

"Geophysical operator" means a person who has the right to explore for gas or oil using ground disturbing geophysical exploration.

"Gob" means the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coal seam.

"Ground disturbing" means any changing of land which may result in soil erosion from water or wind and the movement of sediments into state waters, including, but not limited to, clearing, grading, excavating, drilling, and transporting and filling of land.

"Ground disturbing geophysical exploration" or "geophysical operation" means any activity in search of gas or oil that breaks or disturbs the surface of the earth, including but not limited to road construction or core drilling. The term shall not include the conduct of gravity, magnetic, radiometric and similar geophysical surveys, and vibroseis or other similar seismic surveys.

"Injection well" means any well used to inject or otherwise place any substance associated with gas or oil operations into the earth or underground strata for disposal, storage or enhanced recovery.

"Inspector" means the Virginia Gas and Oil Inspector, appointed by the Director pursuant to § [45.1-361.4](#), or such other public officer, employee or other authority as may in emergencies be acting in the stead, or by law be assigned the duties of, the Virginia Gas and Oil Inspector.

"Log" means the written record progressively describing all strata, water, oil or gas encountered in drilling, depth and thickness of each bed or seam of coal drilled through, quantity of oil, volume of gas, pressures, rate of fill-up, fresh and salt water-bearing horizons and depths, cavings strata, casing records and such other information as is usually recorded in the normal procedure of drilling. The term shall also include electrical survey records or electrical survey logs.

"Mine" means an underground or surface excavation or development with or without shafts, slopes, drifts or tunnels for the extraction of coal, minerals or nonmetallic materials, commonly designated as mineral resources, and the hoisting or haulage equipment or appliances, if any, for the extraction of the mineral resources. The term embraces all of the land or property of the mining plant, including both the surface and subsurface, that is used or contributes directly or indirectly to the mining, concentration or handling of the mineral resources, including all roads.

"Mineral" shall have the same meaning as ascribed to it in § [45.1-180](#).

"Mineral operator" means any person who has the right to or does operate a mineral mine.

"Mineral owner" means any person who owns, leases, mines and produces, or who has the right to mine and produce minerals and to appropriate such minerals that he produces therefrom, either for himself or for himself and others.

"Nonparticipating operator" means a gas or oil owner of a tract included in a drilling unit who elects to share in the operation of the well on a carried basis by agreeing to have his proportionate share of the costs allocable to his interest charged against his share of production from the well.

"Offsite disturbance" means any soil erosion, water pollution, or escape of gas, oil, or waste from gas, oil, or geophysical operations off a permitted site which results from activity conducted on a permitted site.

"Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir.

"Orphaned well" means any well abandoned prior to July 1, [1950](#), or for which no records exist concerning its drilling, plugging or abandonment.

"Participating operator" means a gas or oil owner who elects to bear a share of the risks and costs of drilling, completing, equipping, operating, plugging and abandoning a well on a drilling unit and to receive a share of production from the well equal to the proportion which the acreage in the drilling unit he owns or holds under lease bears to the total acreage of the drilling unit.

"Permittee" means any gas, oil, or geophysical operator holding a permit for gas, oil, or geophysical operations issued under authority of this chapter.

"Person under a disability" shall have the same meaning as ascribed to it in § [8.01-2](#).

"Pipeline" means any pipe above or below the ground used or to be used to transport gas or oil.

"Plat" or "map" means a map, drawing or print showing the location of a well or wells, mine, quarry, or other information required under this chapter.

"Pool" means an underground accumulation of gas or oil in a single and separate natural reservoir. It is characterized by a single natural pressure system so that production of gas or oil from one part of the pool tends to or does affect the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, or water in the formation, so that it is effectively separated from any other pool which may be present in the same geologic structure. A coalbed methane pool means an area which is underlain or appears to be underlain by at least one coalbed capable of producing coalbed methane gas.

"Project area" means the well, gathering pipeline, associated facilities, roads, and any other disturbed area, all of which are permitted as part of a gas, oil, or geophysical operation.

"Restoration" means all activity required to return a permitted site to other use after gas, oil, or geophysical operations have ended, as approved in the operations plan for the permitted site.

"Royalty owner" means any owner of gas or oil in place, or owner of gas or oil rights, who is eligible to receive payment based on the production of gas or oil.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction and which affect the public welfare.

"Stimulate" means any action taken by a gas or oil operator to increase the inherent productivity of a gas or oil well, including, but not limited to, fracturing, shooting or acidizing, but excluding (i) cleaning out, bailing or workover operations and (ii) the use of surface-tension reducing agents, emulsion breakers, paraffin solvents, and other agents which affect the gas or oil being produced, as distinguished from the producing formation.

"Storage well" means any well used for the underground storage of gas.

"Surface owner" means any person who is the owner of record of the surface of the land.

"Waste from gas, oil, or geophysical operations" means any substance other than gas or oil which is (i) produced or generated during or results from the development, drilling and completion of wells and associated facilities or the development and construction of gathering pipelines or (ii) produced or generated during or results from

well, pipeline and associated facilities' operations, including, but not limited to, brines and produced fluids other than gas or oil. In addition, this term shall include all rubbish and debris, including all material generated during or resulting from well plugging, site restoration, or the removal and abandonment of gathering pipelines and associated facilities.

"Waste" or "escape of resources" means (i) physical waste, as that term is generally understood in the gas and oil industry; (ii) the inefficient, excessive, improper use, or unnecessary dissipation of reservoir energy; (iii) the inefficient storing of gas or oil; (iv) the locating, drilling, equipping, operating, or producing of any gas or oil well in a manner that causes, or tends to cause, a reduction in the quantity of gas or oil ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss or destruction of gas or oil; (v) the production of gas or oil in excess of transportation or marketing facilities; (vi) the amount reasonably required to be produced in the proper drilling, completing, or testing of the well from which it is produced, except gas produced from an oil well or condensate well pending the time when with reasonable diligence the gas can be sold or otherwise usefully utilized on terms and conditions that are just and reasonable; or (vii) underground or above ground waste in the production or storage of gas, oil, or condensate, however caused. The term "waste" does not include gas vented from methane drainage boreholes or coalbed methane gas wells, where necessary for safety reasons or for the efficient testing and operation of coalbed methane gas wells; nor does it include the plugging of coalbed methane gas wells for the recovery of the coal estate.

"Water well" means any well drilled, bored or dug into the earth for the sole purpose of extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use.

"Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction, injection or placement of any gaseous or liquid substance, or any shaft or hole sunk or used in conjunction with such extraction, injection or placement. The term shall not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural, or public use and shall not include water boreholes, methane drainage boreholes where the methane is vented or flared rather than produced and saved, subsurface boreholes

drilled from the mine face of an underground coal mine, any other boreholes necessary or convenient for the extraction of coal or drilled pursuant to a uranium exploratory program carried out pursuant to the laws of this Commonwealth, or any coal or non-fuel mineral core hole or borehole for the purpose of exploration.

1982, c. 347, § 45.1-288; 1984, c. 590; 1987, c. 452; 1988, c. 160; 1990, c. 92; 1992, c. 812; 1993, c. 254; 2015, c. [396](#).

§45.1-361.2. Regulation of coal surface mining not affected by chapter.

Nothing in this chapter shall be construed as limiting the powers of the Director relating to coal surface mining operations and reclamation. The provisions of Chapter 19 (§ [45.1-226](#) et seq.), including requirements for permits and bonds, shall apply to gas, oil, or geophysical operations located on areas for which a coal surface mining permit is in effect and shall be in addition to the requirements for gas, oil, or geophysical operations set forth in this chapter, except that well work and the operation of pipelines on areas that have been reclaimed by the surface mine operator or the Director shall be treated as postmining uses. The Director shall give special consideration to the development and promulgation of variances from the postmining use requirements of Chapter 19 for gas, oil, or geophysical operations; however, all such variances shall be consistent with the provisions of Chapter 19.

1982, c. 347, § 45.1-289; 1984, c. 590; 1990, c. 92; 2013, cc. [47](#), [129](#).

§45.1-361.3. Construction.

The provisions of this chapter shall be liberally construed so as to effectuate the following purposes:

1. To foster, encourage and promote the safe and efficient exploration for and development, production, utilization and conservation of the Commonwealth's gas and oil resources;
2. To provide a method of gas and oil conservation for maximizing exploration, development, production and utilization of gas and oil resources;
3. To recognize and protect the rights of persons owning interests in gas or oil resources contained within a pool;
4. To ensure the safe recovery of coal and other minerals;

5. To maximize the production and recovery of coal without substantially affecting the right of a gas or oil owner proposing to drill a gas or oil well to explore for and produce gas or oil;
6. To protect the citizens and the environment of the Commonwealth from the public safety and environmental risks associated with the development and production of gas or oil; and
7. To recognize that use of the surface for gas or oil development shall be only that which is reasonably necessary to obtain the gas or oil.

1982, c. 347, § 45.1-290; 1990, c. 92 .

§45.1-361.4. Duties and responsibilities of the Director.

A. The Director shall have the jurisdiction and authority necessary to enforce the provisions of this chapter. The Director shall have the power and duty to regulate gas, oil, or geophysical operations, collect fees, and perform other responsibilities as may be prescribed in regulations promulgated by the Department or the Board.

B. The Director shall appoint the Gas and Oil Inspector.

1990, c. 92 .

§45.1-361.5. Exclusivity of regulation and enforcement.

No county, city, town or other political subdivision of the Commonwealth shall impose any condition, or require any other local license, permit, fee or bond to perform any gas, oil, or geophysical operations which varies from or is in addition to the requirements of this chapter. However, no provision of this chapter shall be construed to limit or supersede the jurisdiction and requirements of other state agencies, local land-use ordinances, regulations of general purpose, or §§ [58.1-3712](#), [58.1-3713](#), [58.1-3713.3](#), [58.1-3741](#), [58.1-3742](#), and [58.1-3743](#).

1990, c. 92; 2013, cc. [305](#), [618](#); 2016, c. [305](#).

§45.1-361.6. Confidentiality.

The Director shall hold confidential all logs, surveys and reports relating to the drilling, completion and testing of a well which are filed by gas or oil operators under this chapter for a period of ninety days after the completion of the well or eighteen months after the total depth of the well has been reached, whichever occurs first. Upon receipt of a gas, oil, or geophysical operator's written request, the Director shall hold confidential this information concerning an exploratory well or corehole for a

period of two years after completion of the well or four years from the date such well or hole reaches total depth, whichever occurs first. The Director, for good cause shown by the gas, oil, or geophysical operator, may annually extend the period of time for which information regarding exploratory drilling is held confidential. However, the Director shall upon request provide a copy of any survey or log for strata through the lowest coal seam to the coal owner.

1990, c. 92 .

§45.1-361.7. Expenditure of funds.

All funds, except civil charges collected pursuant to § [45.1-361.8](#), collected by or appropriated to the Department pursuant to the provisions of this chapter shall be expended only for the purpose of carrying out the provisions of this chapter.

1990, c. 92 .

§45.1-361.8. Violations; penalties.

A. Any person who violates or refuses, fails or neglects to comply with any regulation or order of the Board, Director, or Inspector, any condition of a permit or any provision of this chapter shall be guilty of a Class 1 misdemeanor.

B. In addition, any person who violates any provision of this chapter, any condition of a permit, or any regulation or order of the Board, Director, or Inspector shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than \$10,000 for each day of such violation. All civil penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. The court shall direct that all civil penalties assessed under this section be paid into the treasury of the county or city wherein lies the gas, oil, or geophysical operation determined by the court to be in violation.

C. The Board, with the consent of the gas, oil, or geophysical operator, may provide, in an order issued by the Board against such operator, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in subsection B of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under this section and shall not be subject to the provision of § [2.2-514](#). Civil charges collected under this section shall be paid into the treasury of the county or city wherein lies the gas, oil, or geophysical operation subject to the order issued by the Board.

1982, c. 347, §§ 45.1-358, 45.1-360; 1984, c. 590; 1990, c. 92 .

§45.1-361.9. Appeals; venue; standing.

A. Any order or decision of the Board may be appealed to the appropriate circuit court. Whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo. The court shall have the power to enter interlocutory orders as may be necessary to protect the rights of all interested parties pending a final decision.

B. Unless the parties otherwise agree, the venue for court review shall be the county or city wherein lies the gas, oil, or geophysical operation which is the subject of such order or decision.

C. The Director and all parties required to be given notice of hearings of the Board pursuant to the provisions of § [45.1-361.19](#) shall have standing to appeal any order or decision of the Board which directly affects them. The permittee or permit applicant, the Director, and those parties with standing to object, pursuant to the provisions of § [45.1-361.30](#), shall have standing to appeal any order or decision of the Board which directly affects them; provided, however, with the exception of an aggrieved permit applicant or the Director, no person shall have standing to appeal a decision of the Board concerning a permit application unless such person has previously filed an objection with the Director pursuant to the provisions of § [45.1-361.35](#). The filing of any petition for appeal concerning the issuance of a new permit which was objected to pursuant to the provisions of § [45.1-361.11](#), § [45.1-361.12](#) or by a gas storage field operator who asserts that the proposed well work will adversely affect the operation of a State Corporation Commission certificated gas storage field shall automatically stay the permit until such stay is dissolved or the appeal is decided by the circuit court. However, in an appeal by a gas storage field operator such automatic stay shall not apply to oil, gas or coalbed methane wells completed more than one hundred feet above the cap rock above the storage stratum.

1990, c. 92; 1997, c. [759](#).

§45.1-361.10. Duplicate leases.

Any person, either as principal or agent, who executes a lease of land or right therein for drilling for gas or oil, or for the development or production of gas or oil, shall do so in duplicate. One copy of the lease, duly executed by the lessee, shall be furnished to the lessor.

1982, c. 347, § 45.1-352; 1990, c. 92 .

§45.1-361.11. Objections by coal owner.

A. In deciding on objections by a coal owner to a proposed permit modification or drilling unit modification, only the following questions shall be considered:

1. Whether the work can be done safely with respect to persons engaged in coal mining at or near the well site; and
2. Whether the well work is an unreasonable or arbitrary exercise of the well operator's right to explore for, market and produce oil and gas.

B. In deciding on objections by a coal owner to the establishment of a drilling unit, a permit for a new well, or the stimulation of a coalbed methane gas well, the following safety aspects shall first be considered, and no order or permit shall be issued where the evidence indicates that the proposed activities will be unsafe:

1. Whether the drilling unit or drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or in any coal mine already surveyed and platted but not yet being operated;
2. Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;
3. Whether the proposed well can be drilled safely or the proposed coalbed methane gas well can be stimulated safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and
4. The extent to which the proposed drilling unit or drilling location or stimulation of the coalbed methane gas well unreasonably interferes with the safe recovery of coal, oil and gas.

C. The following questions with respect to the drilling unit or drilling location of a new well or stimulation of a new coalbed methane gas well shall also be considered:

1. The extent to which the proposed drilling unit or drilling location or coalbed methane gas well stimulation will unreasonably interfere with present or future coal mining operations;
2. The feasibility of moving the proposed drilling unit or drilling location to a mined-out area, below the coal outcrop or to some other area;

3. The feasibility of a drilling moratorium for not more than two years in order to permit the completion of coal mining operations;
4. The method proposed for the recovery of coal and gas;
5. The practicality of locating the unit or the well on a uniform pattern with other units or wells;
6. The surface topography and use; and
7. Whether the decision will substantially affect the right of the gas operator to explore for and produce the gas.

The factors in subsection C of this section are not intended to and shall not be construed to authorize the Director, or the Board under § [45.1-361.36](#), to supersede, impair, abridge or affect any contractual rights or obligations now or hereafter existing between the respective owners of coal and gas or any interest therein.

1982, c. 347, § 45.1-318; 1990, c. 92 .

§45.1-361.12. Distance limitations of certain wells.

A. If the well operator and the objecting coal owners present or represented at the hearing to consider the objections to the proposed drilling unit or location are unable to agree upon a drilling unit or location for a new well within 2,500 linear feet of the location of an existing well or a well for which a permit application is on file, then the permit or drilling unit shall be refused.

B. The minimum distance limitations established by this section shall not apply if the proposed well will be drilled through an existing or planned pillar of coal required for protection of a preexisting well drilled to any depth, and the proposed well will neither require enlargement of the pillar nor otherwise have an adverse effect on existing or planned coal mining operations.

1982, c. 347, § 45.1-319; 1990, c. 92 .

§45.1-361.13. Virginia Gas and Oil Board; membership; compensation.

A. The Virginia Gas and Oil Board is hereby established. The Board shall be composed of seven members and shall have the powers and duties as specified under this chapter.

B. The Governor shall appoint, subject to confirmation by the General Assembly, the chairman and six additional members of the Board as follows: two for an initial term of two years, two for an initial term of four years, and three for an initial term of six

years. Thereafter, the members shall be appointed for terms of six years. At all times, the Board shall consist of the following qualified members: the Director or his designee; one but not more than one individual who is a representative of the gas and oil industry; one but not more than one individual who is a representative of the coal industry; and four other individuals who are not representatives of the gas, oil or coal industry. All vacancies occurring on the Board shall be filled by the Governor, subject to confirmation by the General Assembly, for the unexpired term within sixty days of the occurrence of the vacancy. As the terms of office, respectively, of the members expire, the Governor shall appoint, subject to confirmation by the General Assembly, to fill the vacancies so occasioned, qualified persons whose terms shall be for six years from the day on which that of their immediate predecessor expired. The Governor shall seek to appoint persons who reside in localities with significant oil or gas production or storage.

C. Each member of the Board shall receive compensation and expenses in accordance with the provisions of § [2.2-2813](#).

1982, c. 347, § 45.1-295; 1985, c. 448; 1987, c. 452; 1988, c. 483; 1989, c. 529; 1990, c. 92; 1998, c. [159](#).

§45.1-361.14. Meetings of the Board; notice; general powers and duties.

A. The Board shall schedule a monthly meeting at a time and place designated by the chairman. Should no petition for action be filed with the Board prior to such a meeting, the meeting may be cancelled. Notification or cancellation of each meeting shall be given in writing to the other members by the chairman at least five days in advance of the meeting. Four members shall constitute a quorum for the transaction of any business which shall come before the Board. All determinations of the Board shall be by majority vote of the quorum present.

B. The Board shall have the power necessary to execute and carry out all of its duties specified in this chapter. The Board is authorized to investigate and inspect such records and facilities as are necessary and proper to perform its duties under this chapter. The Board may employ such personnel and consultants as may be necessary to perform its duties under this chapter.

1982, c. 347, § 45.1-296; 1987, c. 452; 1990, c. 92 .

§45.1-361.15. Additional duties and responsibilities of the Board.

A. In executing its duties under this chapter, the Board shall:

1. Foster, encourage and promote the safe and efficient exploration for and development, production and conservation of the gas and oil resources located in the Commonwealth;
2. Administer a method of gas and oil conservation for the purpose of maximizing exploration, development, production and utilization of gas and oil resources;
3. Administer procedures for the recognition and protection of the rights of gas or oil owners with interests in gas or oil resources contained within a pool;
4. Promote the maximum production and recovery of coal without substantially affecting the right of a gas owner proposing a gas well to explore for and produce gas; and
5. Hear and decide appeals of Director's decisions and orders issued under Article 3 of this chapter.

B. Without limiting its general authority, the Board shall have the specific authority to issue rules, regulations or orders pursuant to the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) in order to:

1. Prevent waste through the design spacing, or unitization of wells, pools, or fields.
2. Protect correlative rights.
3. Enter spacing and pooling orders.
4. Establish drilling units.
5. Establish maximum allowable production rates for the prevention of waste and for the protection of correlative rights.
6. Provide for the maximum recovery of coal.
7. Classify pools and wells as gas, oil, gas and oil, or coalbed methane gas.
8. Collect data, make investigations and inspections, examine property, leases, papers, books and records and require or provide for the keeping of records and the making of reports.
9. Set application fees.
10. Govern practices and procedures before the Board.
11. Require additional data from parties to any hearing.
12. Take such actions as are reasonably necessary to carry out the provisions of this chapter.

1982, c. 347, § 45.1-296; 1987, c. 452; 1990, c. 92 .

§45.1-361.16. Applicability and construction.

A. The provisions of this article shall apply to all lands in the Commonwealth, whether publicly or privately owned. However, no well commenced prior to July 1, 1990, shall be required to be plugged or abandoned solely for purposes of complying with the conservation provisions contained in this article.

B. No provision contained in this article shall be construed to grant to the Board the authority or power to fix prices of gas or oil.

1982, c. 347, § 45.1-300; 1987, c. 452; 1990, c. 92 .

§45.1-361.17. Statewide spacing of wells.

A. Unless prior approval has been received from the Board or a provision of the field or pool rules so allows:

1. Wells drilled in search of oil shall not be located closer than 1,250 feet to any well completed in the same pool; however, this spacing requirement is subject to § [45.1-361.12](#);

2. Wells drilled in search of gas shall not be located closer than 2,500 feet to any other well completed in the same pool, or closer than 2,500 feet to any storage well within the boundary of a gas storage field certificated by the State Corporation Commission prior to January 1, 1997, if the well to be drilled is to be completed within the same horizon as the certificated gas storage field; and

3. A well shall not be drilled closer to the boundary of the acreage supporting the well, whether such acreage is a single leasehold or other tract or a contractual or statutory drilling unit, than one-half of the minimum well spacing distances prescribed in this section.

B. Unless prior approval has been received from the Board or a provision of the field or pool rules so allows:

1. Wells drilled in search of coalbed methane gas shall not be located closer than 1,000 feet to any other coalbed methane gas well, or in the case of coalbed methane gas wells located in the gob, such wells shall not be located closer than 500 feet to any other coalbed methane gas wells located in the gob.

2. A coalbed methane gas well shall not be drilled closer than 500 feet, or in the case of such well located in the gob, not closer than 250 feet, from the boundary of the

acreage supporting the well, whether such acreage is a single leasehold or other tract or a contractual or statutory drilling unit.

3. The spacing limitations set forth in this subsection are subject to the provisions of §§ [45.1-361.11](#) and [45.1-361.12](#).

1990, c. 92; 1996, c. [854](#); 1997, c. [759](#).

§45.1-361.18. Voluntary pooling of interests in drilling units; validity of unit agreements.

A. When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of any such drilling unit, the gas or oil owners owning such interests may pool their interests for the development and operation of the drilling unit by voluntary agreement. Such agreements may be based on the exercise of pooling rights or rights to establish drilling units which are granted in any gas or oil lease.

B. No voluntary pooling agreement between or among gas or oil owners shall be held to violate the statutory or common law of the Commonwealth which prohibits monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce.

1982, c. 347, § 45.1-302; 1987, c. 452; 1989, c. 529; 1990, c. 92 .

§45.1-361.19. Notice of hearing; standing; form of hearing.

A. Any person who applies for a hearing in front of the Board pursuant to the provisions of § [45.1-361.20](#), [45.1-361.21](#), or [45.1-361.22](#) shall simultaneously with the filing of such application, provide notice by certified mail, return receipt requested, to each gas or oil owner, coal owner, or mineral owner having an interest underlying the tract which is the subject of the hearing, and to the operator of any gas storage field certificated by the State Corporation Commission as a public utility facility whose certificated area includes the tract which is the subject of the hearing.

Whenever a hearing applicant is unable to provide such written notice because the identity or location of a person to whom notice is required to be given is unknown, the hearing applicant shall promptly notify the Board of such inability.

B. At least 10 days prior to a hearing, the Board shall publish its agenda in newspapers of general circulation that are widely circulated in the localities where the lands that are the subject of the hearing are located. The agenda shall include the name of each applicant, the localities where the lands that are the subject of the

hearing are located, the purpose of the hearing, and the date, time and location thereof.

C. The Board shall conduct all hearings on applications made to it pursuant to the formal litigated issues hearing provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.). The applicant and any person to whom notice is required to be given pursuant to the provisions of subsection A of this section shall have standing to be heard at the hearing. The Board shall render its decision on such applications within thirty days of the hearing's closing date and shall provide notification of its decision to all parties to the hearing pursuant to the provisions of the Administrative Process Act.

1982, c. 347, § 45.1-304; 1989, c. 529; 1990, c. 92; 1997, c. [759](#); 2008, c. [534](#).

§45.1-361.20. Field rules and drilling units for wells; hearings and orders.

A. In order to prevent the waste of gas or oil, the drilling of unnecessary wells, or to protect correlative rights, the Board on its own motion or upon application of the gas or oil owner shall have the power to establish or modify drilling units. Drilling units, to the extent reasonably possible, shall be of uniform shape and size for an entire pool. Any gas, oil, or royalty owner may apply to the Board for the establishment of field rules and the creation of drilling units for the field. Unless such motion is made or an application is received at least thirty days prior to the next regularly scheduled monthly meeting of the Board, it shall not be heard by the Board at such meeting and shall be heard at the next meeting of the Board thereafter.

B. At any hearing of the Board regarding the establishment or modification of drilling units, the Board shall make the following determinations:

1. Whether the proposed drilling unit is an unreasonable or arbitrary exercise of a gas or oil owner's right to explore for or produce gas or oil;
2. Whether the proposal would unreasonably interfere with the present or future mining of coal or other minerals;
3. The acreage to be included in the order;
4. The acreage to be embraced within each drilling unit and the shape thereof;
5. The area within which wells may be drilled on each unit; and
6. The allowable production of each well.

C. In establishing or modifying a drilling unit for coalbed methane gas wells, and in order to accommodate the unique characteristics of coalbed methane development, the Board shall require that drilling units conform to the mine development plan, if any, and if requested by the coal operator, well spacing shall correspond with mine operations, including the drilling of multiple coalbed methane gas wells on each drilling unit.

D. If an order to establish or modify a drilling unit will allow a well to be drilled into or through a coal seam, any coal owner within the area to be covered by the drilling unit may object to the establishment of the drilling unit. Upon a coal owner's objection, and without superseding, impairing, abridging or affecting any contractual rights or obligations existing between coal and gas owners, the Board shall make its determination in accordance with the provisions of §§ [45.1-361.11](#) and [45.1-361.12](#).

E. The Board may continue a hearing to its next meeting to allow for further investigation and the gathering and taking of additional data and evidence. If at the time of a hearing there is not sufficient evidence for the Board to determine field boundaries, drilling unit size or shape, or allowable production, the Board may enter a temporary order establishing provisional drilling units, field boundaries, and allowable production for the orderly development of the pool pending receipt of the information necessary to determine the ultimate pool boundaries, spacing of wells for the pool, and allowable production. Upon additional findings of fact, the boundaries of a pool, drilling units for the pool, and allowable production may be modified by the Board.

F. Unless otherwise provided for by the Board, after an application for a hearing to establish or modify drilling units or pool boundaries has been filed, no additional wells shall be permitted in the pool until the Board's order establishing or modifying the pool or units has been entered.

G. After the Board issues a field or pool spacing order which creates drilling units or a pattern of drilling units for a pool, should a gas or oil owner apply for a permit or otherwise indicate his desire to drill a well outside of such drilling units or pattern of drilling units and thereby potentially extend the pool, the Board may, on its own motion or the motion of any interested person, require that the well be located and drilled in compliance with the provisions of the order affecting the pool.

1982, c. 347, § 45.1-301; 1987, c. 452; 1989, c. 529; 1990, c. 92 .

§45.1-361.21. Pooling of interests in drilling units.

A. The Board, upon application from any gas or oil owner, shall enter an order pooling all interests in the drilling unit for the development and operation thereof when:

1. Two or more separately owned tracts are embraced in a drilling unit;
2. There are separately owned interests in all or part of any such drilling unit and those having interests have not agreed to pool their interests; or
3. There are separately owned tracts embraced within the minimum statewide spacing requirements prescribed in § [45.1-361.17](#).

However, no pooling order shall be entered until the notice and hearing requirements of this article have been satisfied.

B. Subject to any contrary provision contained in a gas or oil lease respecting the property, gas or oil operations incident to the drilling of a well on any portion of a unit covered by a pooling order shall be deemed to be the conduct of such operations on each tract in the unit. The portion of production allocated to any tract covered by a pooling order shall be in the same proportion as the acreage of that tract bears to the total acreage of the unit.

C. All pooling orders entered by the Board pursuant to the provisions of this section shall:

1. Authorize the drilling and operation of a well, including the stimulation of all coal seams in the case of a coalbed methane well when authorized pursuant to clause (iii) of subdivision 2 b of subsection F of § [45.1-361.29](#), subject to the permit provisions contained in Article 3 (§ [45.1-361.27](#) et seq.) of this chapter;
2. Include the time and date when such order expires;
3. Designate the gas or oil owner who is authorized to drill and operate the well; provided, however, that except in the case of coalbed methane gas wells, the designated operators must have the right to conduct operations or have the written consent of owners with the right to conduct operations on at least 25% of the acreage included in the unit;
4. Prescribe the conditions under which gas or oil owners may become participating operators or exercise their rights of election under subdivision 7 of this subsection;
5. Establish the sharing of all reasonable costs, including a reasonable supervision fee, between participating operators so that each participating operator pays the same percentage of such costs as his acreage bears to the total unit acreage;

6. Require that nonleasing gas or oil owners be provided with reasonable access to unit records submitted to the Director or Inspector;

7. Establish a procedure for a gas or oil owner who received notice of the hearing and who does not decide to become a participating operator may elect either to (i) sell or lease his gas or oil ownership to a participating operator, (ii) enter into a voluntary agreement to share in the operation of the well at a rate of payment mutually agreed to by the gas or oil owner and the gas or oil operator authorized to drill the well, or (iii) share in the operation of the well as a nonparticipating operator on a carried basis after the proceeds allocable to his share equal the following:

a. In the case of a leased tract, 300 percent of the share of such costs allocable to his interest; or

b. In the case of an unleased tract, 200 percent of the share of such costs allocable to his interest.

D. Any gas or oil owner whose identity and location remain unknown at the conclusion of a hearing concerning the establishment of a pooling order for which public notice was given shall be deemed to have elected to lease his interest to the gas or oil operator at a rate to be established by the Board. The Board shall cause to be established an escrow account into which the unknown lessor's share of proceeds shall be paid and held for his benefit. Such escrowed proceeds shall be deemed to be unclaimed property and shall be disposed of pursuant to the provisions of the Uniform Disposition of Unclaimed Property Act (§ [55-210.1](#) et seq.). Upon discovery of the identity and location of any unknown owner subject to escrow under the provisions of this subsection and not subject to conflicting claims of ownership, the designated operator shall, within 30 days, file with the Board a petition for disbursement of funds to be considered at the next available hearing. The petition shall include a detailed accounting of all funds deposited in escrow that are subject to the proposed disbursement.

E. Any person who does not make an election under the pooling order shall be deemed to have leased his gas or oil interest to the gas or oil well operator as the pooling order may provide.

F. Should a gas or oil owner be a person under a disability, the applicant for a pooling order may petition the appropriate circuit court to appoint a guardian ad litem

pursuant to the provisions of § [8.01-261](#) for purposes of making the election provided for by this section.

G. Any royalty or overriding royalty reserved in any lease which is deducted from a nonparticipating operator's share of production shall not be subject to charges for operating costs but shall be separately calculated and paid to the royalty owner.

H. The Board shall resolve all disputes arising among gas or oil operators regarding the amount and reasonableness of well operation costs. The Board shall, by regulation, establish allowable types of costs which may be shared in pooled gas or oil operations.

1982, c. 347, § 45.1-302; 1987, c. 452; 1989, c. 529; 1990, c. 92; 1995, c. [269](#); 1996, c. [854](#); 2006, c. [498](#).

§45.1-361.21:1. Coalbed methane gas; ownership.

A conveyance, reservation, or exception of coal shall not be deemed to include coalbed methane gas. Nothing in this section shall affect a coal operator's right to vent coalbed methane gas for safety purposes or release coalbed methane gas in connection with mining operations. The provisions of this section shall not affect any settlement of any dispute, or any judgment or governmental order, as to the ownership or development of coalbed methane gas made or entered prior to the enactment of this provision.

2010, cc. [730](#), [762](#).

§45.1-361.22. Pooling of interests for coalbed methane gas wells; conflicting claims to ownership.

When there are conflicting claims to the ownership of coalbed methane gas, the Board, upon application from any claimant, shall enter an order pooling all interests or estates in the coalbed methane gas drilling unit for the development and operation thereof. In addition to the provisions of § [45.1-361.21](#), the following provisions shall apply:

1. Simultaneously with the filing of such application, the gas or oil owner applying for the order shall provide notice pursuant to the provisions of § [45.1-361.19](#) to each person identified by the applicant as a potential owner of an interest in the coalbed methane gas underlying the tract which is the subject of the hearing.

2. The Board shall cause to be established an escrow account into which the payment for costs or proceeds attributable to the conflicting interests shall be deposited and held for the interest of the claimants.
3. The coalbed methane gas well operator shall deposit into the escrow account any money paid by a person claiming a contested ownership interest as a participating operator's share of costs pursuant to the provisions of § [45.1-361.21](#) and the order of the Board.
4. The coalbed methane gas well operator shall deposit into the escrow account one-eighth of all proceeds attributable to the conflicting interests plus all proceeds in excess of ongoing operational expenses as provided for under § [45.1-361.21](#) and the order of the Board attributable to a participating or nonparticipating operator.
5. The Board shall order payment of principal and accrued interest, less escrow account fees, from the escrow account to conflicting claimants only after (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them; (ii) a determination reached by an arbitrator pursuant to § [45.1-361.22:1](#); or (iii) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein. Upon receipt of an affidavit from conflicting claimants affirming such decision, determination, or agreement, the designated operator shall, within 30 days, file with the Board a petition for disbursement of funds on behalf of the conflicting claimants. The petition shall include a detailed accounting of all funds deposited in escrow that are subject to the proposed disbursement. The amount to be paid to the conflicting claimants shall be determined based on the percentage of ownership interest of the conflicting claimants as shown in the operator's supplemental filing made part of the pooling order that established the escrow account, the operator's records of deposits attributable to those tracts for which funds are being requested, and the records of the escrow account for the coalbed methane gas drilling unit. The petition for disbursement shall be placed on the first available Board docket. Funds shall be disbursed within 30 days after the Board decision and receipt by the Department of all documentation required by the Board. The interests of any cotenants that have not been resolved by the agreement or by judicial decision shall remain in the escrow account.
6. Any person who does not make an election under the pooling order shall be deemed, subject to a final legal determination of ownership, to have leased his gas or

oil interest to the coalbed methane gas well operator as the pooling order may provide.

1990, c. 92; 1999, c. [122](#); 2006, c. [498](#); 2010, c. [442](#).

§45.1-361.22:1. Conflicting claims of ownership; arbitration.

A. The Board shall enter an order requiring that the matter of disputed ownership be submitted to arbitration, and notify the circuit court in the jurisdiction wherein the majority of the subject tract is located, (i) upon written request from all claimants to the ownership of coalbed methane gas related to the subject tract under § [45.1-361.22](#); (ii) upon receipt of an affidavit executed by all such claimants affirming that there is no other known surface owner, gas or oil owner, coal owner, mineral owner, or operator of a gas storage field certificated by the State Corporation Commission having an interest underlying the subject tract; (iii) after a hearing noticed pursuant to subsection B of § [45.1-361.19](#); and (iv) upon a determination by the Department whether sufficient funds are available to pay the estimated costs of the arbitration pursuant to subsection F. Within 30 days of receipt of the notice from the Board, the circuit court shall appoint an attorney from the list maintained by the Department pursuant to subsection C or, at the discretion of the court, such other attorney meeting the qualifications set forth in subsection C. Prior to his appointment as an arbitrator of a particular dispute, the attorney shall certify to the circuit court that he has not derived more than 10 percent of his income during any of the preceding three years from any claimants asserting ownership or rights in the subject tract or any affiliated entities or immediate family members of such claimants. If the attorney cannot provide such certification, he shall notify the circuit court and he will be disqualified from serving as arbitrator for that particular dispute.

B. The Department shall send notice to all claimants if it determines that there are insufficient funds to pay the estimated costs of the arbitration pursuant to subsection F. The claimants may, by unanimous agreement, proceed with the arbitration process, notify the Board of such agreement, and bear the costs to the extent of the insufficiency. If the parties do not agree, the arbitration shall be delayed until such funds are available.

C. To be qualified as an arbitrator, a candidate (i) shall be an attorney licensed in the Commonwealth; (ii) shall have at least 10 years of experience in real estate law, including substantial expertise in mineral title examination; and (iii) shall disclose to the Board whether he has been engaged within the preceding three years by any

person in matters subject to the jurisdiction of the Board or the Department under this chapter. The Department shall solicit applications from attorneys meeting the qualifications set forth above and maintain a list of attorneys qualifying as arbitrators for use by the circuit courts. At least once annually, the Department shall update its list. To maintain qualification, each attorney whose name appears on the list shall update annually his disclosures set forth in clause (iii).

D. The arbitrator shall determine a time and place for the arbitration hearing and cause written notification of such hearing to be served on each surface owner, gas or oil owner, coal owner, mineral owner, or operator of a gas storage field certificated by the State Corporation Commission having an interest underlying the tract that is the subject of the hearing. Parties shall be served personally or by certified mail, return receipt requested, not less than 14 days before the hearing. Appearance at the hearing waives such party's right to challenge notice. Any party to the arbitration has the right to representation before the arbitrator pursuant to § [8.01-581.05](#). In accordance with § [8.01-581.06](#), the arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence; administer oaths; and, upon application by a party to the arbitration, permit the taking of depositions for use as evidence. The arbitrator shall hear and determine the controversy upon the evidence and consistent with applicable law, notwithstanding the failure of a party to appear at the hearing.

E. The arbitrator shall issue his determination as to the ownership in the coalbed methane gas and entitlement to proceeds held in escrow within six months from the order of the Board requiring the matter be submitted to arbitration, unless a longer period is otherwise agreed to by all parties. Such determination shall be in writing and sent to the Board and each party to whom notice is required to be given under subsection D.

F. Upon the issuance of the arbitrator's determination of ownership and subject to the availability of funds, the fees and expenses of the arbitration, but not including fees or costs of counsel engaged by the respective claimants or any other costs of the claimants, shall be paid from the accrued interest on general escrow account funds.

G. An arbitrator's determination, rendered pursuant to subsection E, shall be binding upon the parties and, upon request of any party to the arbitration, may be entered as the judgment of the circuit court responsible for appointing the arbitrator under subsection A.

H. Upon application of any party to the arbitration, a determination rendered pursuant to subsection E may be confirmed, vacated, corrected, or appealed pursuant to the grounds set forth in Chapter 21 (§ [8.01-577](#) et seq.) of Title 8.01.

2010, c. [442](#).

§45.1-361.22:2. Release of funds held in escrow or suspense because of conflicting claims to coalbed methane gas.

A. For a coalbed methane gas well that was force-pooled prior to July 1, 2015, the coalbed methane gas well operator shall, on or before January 1, 2016, apply to the Board for the release of the funds in escrow and give written notice of such application to all conflicting claimants identified in the pooling orders, or to the successors of such claimants where the successors are known to the coalbed methane gas well operator or have identified themselves to the coalbed methane gas well operator or the Board. Such notice shall be in accordance with the applicable provisions of § [45.1-361.19](#) and, if unknown persons or unlocatable conflicting claimants are subject to escrow, such notice shall also be published in a newspaper of general circulation in the county or counties where the drilling unit is located once each week for four successive weeks. The application shall include a detailed accounting in accordance with subdivision 5 of § [45.1-361.22](#). The Board shall order payment of the principal and accrued interest, less escrow account fees, held in escrow, along with all future royalties attributable to the drilling unit, to each gas claimant identified in the pooling order unless, within 45 days of the coalbed methane gas well operator's notice of its application, the coal claimant provides the Board and the coalbed methane gas well operator with evidence of a proceeding or agreement. The Board, pursuant to its authority granted by § [45.1-361.15](#), may extend the time for filing the application and delay the payment of funds for gas title conflicts, the existence of unknown gas claimants, the existence of unlocatable gas claimants, unresolved gas heirship issues, or other reasons beyond the reasonable control of the coalbed methane gas well operator and shall not order payment where the gas claimant fails to provide the Board with information needed under applicable law or regulation to distribute the funds.

B. For a coalbed methane gas well force-pooled on or after July 1, 2015, the Board, in its pooling order, shall direct the coalbed methane gas well operator to pay royalties to the gas claimant unless the coal claimant provides the coalbed methane gas well operator and the Board with evidence of a proceeding or agreement not later than the time and place of the pooling hearing. The coalbed methane gas well operator shall

provide written notice of the hearing to the gas claimants and coal claimants in accordance with § [45.1-361.19](#). However, the Board, pursuant to its authority granted by § [45.1-361.15](#), shall not order the coalbed methane gas well operator to make payment to a gas claimant where there are gas title conflicts, unknown gas claimants, unlocatable gas claimants, unresolved gas heirship issues, or other reasons beyond the reasonable control of the coalbed methane gas well operator or where the gas claimant fails to provide the coalbed methane gas well operator with the information required under applicable law or regulation to pay royalties. In such cases, the coalbed methane gas well operator shall provide each affected gas claimant and the Board with written notice of the same in accordance with the applicable provisions of § [45.1-361.19](#). Where payment is not required to be made due to the gas claimant's failure to provide needed information under applicable law or regulation, the notice shall identify the information that is needed to enable the payment to be made.

C. For a coalbed methane gas well voluntarily pooled at any time, the coalbed methane gas well operator shall pay royalties, including past royalties held, to each gas claimant unless, within 45 days of the coalbed methane gas well operator's provision of written notice to the coal claimant that the operator will be paying royalties to the gas claimants, the coal claimant provides the coalbed methane gas well operator and each gas claimant with evidence of a proceeding or agreement. For units voluntarily pooled before July 1, 2015, the coalbed methane gas well operator shall provide such written notice to the gas claimants and coal claimants on or before January 1, [2016](#). For units voluntarily pooled on or after July 1, 2015, the coalbed methane gas well operator shall provide such written notice to the gas claimants and coal claimants not later than 45 days after production commences. However, the coalbed methane gas well operator shall not be required to make payment to a gas claimant where there are gas title conflicts, unknown gas claimants, unlocatable gas claimants, unresolved gas heirship issues, or other reasons beyond the reasonable control of the coalbed methane gas well operator or where the gas claimant fails to provide the coalbed methane gas well operator with information to process or pay royalties. In such cases, the coalbed methane gas well operator shall provide each affected gas claimant with written notice of the same. Where payment is not required to be made due to a gas claimant's failure to provide needed information, the notice shall identify the information that is needed to enable the payment to be made.

D. Any pending judicial or arbitration proceeding shall be pursued by the coal claimant with diligence and shall not be voluntarily dismissed or nonsuited without

the consent of the gas claimant. No default judgment shall be entered against a gas claimant. Royalties shall be paid as determined by the final order in the proceeding. A prevailing gas claimant shall be entitled to recover from that coal claimant reasonable costs and attorney fees if such person substantially prevails on the merits of the case and the coal claimant's position is not substantially justified.

E. A coalbed methane gas well operator paying funds to a gas claimant in accordance with this section shall have no liability to a coal claimant for the payments made by the coalbed methane gas well operator to a gas claimant.

F. This section shall not operate to extinguish any other right or cause of action or defenses thereto that may exist including, but not limited to, claims for an accounting or a claim under § [8.01-31](#). Nothing in this section shall create, confer, or impose a fiduciary duty.

2015, c. [396](#).

§45.1-361.23. Appeals of the Director's decisions; notices; hearings and orders.

A. With the exception of an aggrieved permit applicant, no person shall have standing to appeal a decision of the Director to the Board concerning a new permit application unless such person has previously filed an objection with the Director pursuant to the provisions of § [45.1-361.35](#).

B. When a person applies for a hearing to appeal a decision of the Director to the Board, the Board shall, at least twenty days prior to the hearing, give notice by certified mail, return receipt requested, to the person making the appeal and, if different, to the gas or operator subject to the appeal.

C. Upon submittal of the petition for appeal of a decision of the Director to the Board, the Director shall forward to the Board (i) the permit application or order and associated documents, (ii) all required notices, and (iii) the written objections, proposals and claims recorded during the informal fact finding hearing.

D. In any appeal involving a permit of a new well which was objected to pursuant to the provisions of § [45.1-361.11](#), § [45.1-361.12](#), or by a gas storage field operator who asserts that the proposed well work will adversely affect the operation of a State Corporation Commission certificated gas storage field, the filing of a petition for appeal shall stay any permit until the case is decided by the Board or the stay is dissolved by a court of record. However, in an appeal by a gas storage field operator, such automatic stay shall not apply to oil, gas or coalbed methane wells completed more than

one hundred feet above the cap rock above the storage stratum. In all other appeals, the Director may order the permit or other decision stayed for good cause shown until the case is decided by the Board or the stay is dissolved by a court of record. An appeal based on an alleged risk of danger to any person not engaged in the oil and gas operations shall be prima facie proof of good cause for a stay.

E. The Board shall conduct all hearings under this section in accordance with the formal litigated issues hearing provisions of the Administrative Process Act (§ [2.2-4020](#) et seq.). However, all persons to whom notice is required to be given pursuant to subsection B of this section shall have standing to be heard at the hearing. The Board shall render its decision on such appeals within thirty days of the hearing's closing date and shall provide notification of its decision to all parties pursuant to the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

1990, c. 92; 1997, c. [759](#).

§45.1-361.24. Enforcement.

The provisions of this article shall be enforced by the Director pursuant to the provisions of Article 3 (§ [45.1-361.27](#) et seq.) of this chapter. In addition, should any person violate or threaten to violate any provision of this article, regulation promulgated thereunder, or order of the Board, the Board may maintain suit to restrain any such violation or threatened violation.

1982, c. 347, § 45.1-306; 1990, c. 92 .

§45.1-361.25. Standing when Director or Board fails to act.

Should the Director or Board fail to take enforcement action within ten days of the Board's receipt of a petition alleging that the petitioner is or will be adversely affected by a violation or threatened violation of any provision of this article, regulation adopted thereunder, or an order of the Board, the petitioner shall have standing to file a complaint in the appropriate circuit court. The Board, in addition to the persons who are violating or threatening to violate any provision of this article, regulation adopted thereunder, or order of the Board, shall be made a party to any such action.

1982, c. 347, § 45.1-307; 1990, c. 92 .

§45.1-361.26. Recording of orders.

The Inspector shall cause a true copy of any order entered by the Board which establishes a drilling unit or pools any interests to be recorded in the office of the clerk of

the circuit court of each jurisdiction wherein any portion of the relevant drilling unit is located. Such orders shall be recorded in the record book in which gas or oil leases are normally recorded. The sole charge for recordation shall be a tax equal to ten dollars plus one dollar per page of the order. The recordation from the time noted thereon by the clerk shall be notice of the order to all persons.

1982, c. 347, § 45.1-308; 1990, c. 92 .

§45.1-361.27. Duties, responsibilities and authority of the Director.

A. The Director shall promulgate and enforce rules, regulations and orders necessary to ensure the safe and efficient development and production of gas and oil resources located in the Commonwealth. Such rules, regulations and orders shall be designed to:

1. Prevent pollution of state waters and require compliance with the Water Quality Standards adopted by the State Water Control Board;
2. Protect against off-site disturbances from gas, oil, or geophysical operations;
3. Ensure the restoration of all sites disturbed by gas, oil, or geophysical operations;
4. Prevent the escape of the Commonwealth's gas and oil resources;
5. Provide for safety in coal and mineral mining and coalbed methane well and related facility operations;
6. Control wastes from gas, oil, or geophysical operations;
7. Provide for the accurate measurement of gas and oil production and delivery to the first point of sale; and
8. Protect the public safety and general welfare.

B. In promulgating rules and regulations, and when issuing orders for the enforcement of the provisions of this article, the Director shall consider the following factors:

1. The protection of the citizens and environment of the Commonwealth from the public safety and environmental risks associated with the development and production of gas or oil;
2. The means of ensuring the safe recovery of coal and other minerals without substantially affecting the right of coal, minerals, gas, oil, or geophysical operators to explore for and produce coal, minerals, gas, or oil; and

3. The protection of safety and health on permitted sites for coalbed methane wells and related facilities.

C. In promulgating rules, regulations and orders, the Director shall be authorized to set and enforce standards governing the following: gas or oil ground-disturbing geophysical exploration; the development, drilling, casing, equipping, operating and plugging of gas or oil production, storage, enhanced recovery, or disposal wells; the development, operation and restoration of site disturbances for wells, gathering pipelines and associated facilities; and gathering pipeline safety.

D. Whenever the Director determines that an emergency exists, he shall issue an emergency order without advance notice or hearing. Such orders shall have the same validity as orders issued with advance notice and hearing, but shall remain in force no longer than thirty days from their effective date. After issuing an emergency order, the Director shall promptly notify the public of the order by publication and hold a public hearing for the purposes of modifying, repealing or making permanent the emergency order. Emergency orders shall prevail as against general regulations or orders when in conflict therewith. Emergency orders shall apply to gas, oil, or geophysical operations and to particular fields, geographical areas, subject areas, subject matter or situations.

E. The Director shall also have the authority to:

1. Issue, condition and revoke permits;
2. Issue notices of violation and orders upon violations of any provision of this chapter or regulation adopted thereunder;
3. Issue closure orders in cases of imminent danger to persons or damage to the environment or upon a history of violations;
4. Require or forfeit bonds or other financial securities;
5. Prescribe the nature of and form for the presentation of any information and documentation required by any provision of this article or regulation adopted thereunder;
6. Maintain suit in the city or county where a violation has occurred or is threatened, or wherever a person who has violated or threatens to violate any provision of this chapter may be found, in order to restrain the actual or threatened violation;

7. At reasonable times and under reasonable circumstances, enter upon any property and take such action as is necessary to administer and enforce the provisions of this chapter; and

8. Inspect and review all properties and records thereof as are necessary to administer and enforce the provisions of this chapter.

1982, c. 347, § 45.1-293; 1987, c. 452; 1989, c. 164; 1990, c. 92; 1997, c. [421](#).

§45.1-361.28. Powers, duties and responsibilities of the Inspector.

A. The Inspector shall administer the laws and regulations and shall have access to all records and properties necessary for this purpose. He shall perform all duties delegated by the Director pursuant to § [45.1-161.5](#) and maintain permanent records of the following:

1. Each application for a gas, oil, or geophysical operation and each permitted gas, oil, or geophysical operation;
2. Meetings, actions and orders of the Board;
3. Petitions for mining coal within 200 feet of or through a well;
4. Requests for special plugging by a coal owner or coal operator; and
5. All other records prepared pursuant to this chapter.

B. The Inspector shall serve as the principal executive of the staff of the Board.

C. The Inspector may take charge of well or corehole, or pipeline emergency operations whenever a well or corehole blowout, release of hydrogen sulfide or other gases, or other serious accident occurs.

1982, c. 347, § 45.1-293; 1987, c. 452; 1989, c. 164; 1990, c. 92 .

§45.1-361.29. Permit required; gas, oil, or geophysical operations; coalbed methane gas wells; environmental assessment.

A. No person shall commence any ground disturbing activity for a well, gathering pipeline, geophysical exploration or associated activity, facilities or structures without first having obtained from the Director a permit to conduct such activity. Every permit application or permit modification application filed with the Director shall be verified by the permit applicant and shall contain all data, maps, plats, plans and other information as required by regulation or the Director.

B. For permits issued on July 1, 1996, or thereafter, new permits issued by the Director shall be issued only for the following activities: geophysical operations, drilling, casing, equipping, stimulating, producing, reworking initially productive zones and plugging a well, or gathering pipeline construction and operation. Applications for new permits to conduct geophysical operations shall be accompanied by an application fee of \$130. Applications for all other new permits shall be accompanied by an application fee of \$260.

C. For permits issued prior to July 1, 1996, prior to commencing any reworking, deepening or plugging of the well, or other activity not previously approved on the permitted site, a permittee shall first obtain a permit modification from the Director. All applications for permit modifications shall be accompanied by a permit modification fee of \$130. For permits issued on July 1, 1996, or thereafter, prior to commencing any new zone completions a permittee shall first obtain a permit modification from the Director.

D. All permits and operations provided for under this section shall conform to the rules, regulations and orders of the Director and the Board. When permit terms or conditions required or provided for under Article 3 (§ [45.1-361.27](#) et seq.) of this chapter are in conflict with any provision of a conservation order issued pursuant to the provisions of Article 2 (§ [45.1-361.13](#) et seq.) of this chapter, the terms of the permit shall control. In this event, the operator shall return to the Board for reconsideration of a conservation order in light of the conflicting permit. Every permittee shall be responsible for all operations, activity or disturbances associated with the permitted site.

E. No permit or permit modification shall be issued by the Director until he has received from the applicant a written certification that (i) all notice requirements of this article have been complied with, together with proof thereof, and (ii) the applicant has the right to conduct the operations as set forth in the application and operations plan.

F. A permit shall be required to drill any coalbed methane gas well or to convert any methane drainage borehole into a coalbed methane gas well. In addition to the other requirements of this section, every permit application for a coalbed methane gas well shall include:

1. The method that the coalbed methane gas well operator will use to stimulate the well.

2. a. A signed consent from the coal operator of each coal seam which is located within 750 horizontal feet of the proposed well location (i) which the applicant proposes to stimulate or (ii) which is within 100 vertical feet above or below a coal bearing stratum which the applicant proposes to stimulate.

b. The consent required by this section may be (i) contained in a lease or other such agreement; (ii) contained in an instrument of title; or (iii) in any case where a coal operator cannot be located or identified and the operator has complied with § [45.1-361.19](#), provided by a pooling order entered pursuant to § [45.1-361.21](#) or [45.1-361.22](#) and provided such order contains a finding that the operator has exercised due diligence in attempting to identify and locate the coal operator. The consent required by this section shall be deemed to be granted for any tract where title to the coal is held by multiple owners if the applicant has obtained consent to stimulate from the co-tenants holding majority interest in the tract and none of the coal co-tenants has leased the tract for coal development. The requirement of signed consent contained in this section shall in no way be considered to impair, abridge or affect any contractual rights or objections arising out of a coalbed methane gas contract or coalbed methane gas lease entered into prior to January 1, 1990, between the applicant and any coal operator, and any extensions or renewals thereto, and the existence of such lease or contractual arrangement and any extensions or renewals thereto shall constitute a waiver of the requirement for the applicant to file an additional signed consent.

3. The unit map, if any, approved by the Board.

G. No permit required by this chapter for activities to be conducted within an area of Tidewater Virginia where drilling is authorized under subsection B of § [62.1-195.1](#) shall be granted until the environmental impact assessment required by § [62.1-195.1](#) has been conducted and the assessment has been reviewed by the Department.

H. The applicant for a permit for a gathering pipeline, oil or gas well, or coal bed methane well shall identify in the permit application any cemetery, as identified on a U.S.G.S. topographic map or located by routine field review, within 100 feet of the permitted activity.

I. The operator of any coalbed methane well drilled within 250 feet of a cemetery shall comply with a written request of any person owning an interest in a private cemetery or the authorized agent of a public cemetery that the operator of such well suspend operations for a period from two hours before to two hours after any burial

service that takes place on the surface area of such cemetery. However, if the well operator or a mine operator determines that suspension of such operations will have an adverse effect on the safety of the well operations or mining operations, the operator shall be under no obligation to comply with the request, and operation of the well shall continue.

1982, c. 347, § 45.1-311; 1985, c. 601; 1987, c. 452; 1988, c. 160, § 45.1-311.1; 1990, cc. 92, 967; 1994, c. [957](#); 1995, c. [269](#); 1996, c. [854](#); 1997, cc. [759](#), [765](#); 1998, c. [229](#); 2003, cc. [542](#), [550](#); 2008, c. [227](#).

§45.1-361.30. Notice of permit applications and permit modification applications required; content.

A. Within one day of the day on which the application for a permit for a gas or oil operation is filed, the applicant shall provide notice of the application to the following persons:

1. All surface owners, coal owners, and mineral owners on the tract to be drilled;
2. Coal operators who have registered operation plans with the Department for activities located on the tract to be drilled;
3. All surface owners on tracts where the surface is to be disturbed;
4. All gas, oil, or royalty owners within one-half of the distance specified in § [45.1-361.17](#) for that type of well, or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established pursuant to the provisions of this chapter;
5. All coal operators who have applied for or obtained a mining or prospecting permit with respect to tracts located within 500 feet of the proposed well location or in the case of a proposed coalbed methane gas well location, within 750 feet thereof;
6. All coal owners or mineral owners on tracts located within 500 feet of the proposed well location or in the case of a proposed coalbed methane gas well location, within 750 feet thereof; and
7. All operators of gas storage fields certificated by the State Corporation Commission as a public utility facility whose certificated area includes the well location, or whose certificated boundary is within 1,250 feet of the proposed well location.

B. Within one day of the day on which the application for a permit modification for a gas or oil operation is filed, the applicant requesting such permit modification shall

provide notice of the application to all persons listed in subsection A of this section who may be directly affected by the proposed activity.

C. Within one day of the day on which the application for a permit for geophysical operations is submitted, the applicant shall provide notice to those persons listed in subdivisions 1, 2, and 3 of subsection A of this section.

D. All notices required to be given pursuant to subsections A, B, and C of this section shall contain a statement of the time within which objections may be made and the name and address of the person to whom objections shall be forwarded. Only those persons entitled to notice under subsections A, B, and C of this section shall have standing to object to the issuance of the proposed permit or permit modification for a gas, oil, or geophysical operation as the use may be. Upon receipt of notice, any person may waive in writing the time and right to object.

E. Within seven days of the day on which the application for a permit is filed, the applicant shall provide notice to (i) the local governing body or chief executive officer of the locality where the well is proposed to be located and (ii) the general public, through publication of a notice in at least one newspaper of general circulation that is widely circulated in the locality where the well is proposed to be located.

F. An applicant shall make a reasonable effort to provide the notices required under subsections A, B, and C. If an applicant is unable to identify or locate any person to whom notice is required, then the notice provided in clause (ii) of subsection E shall be considered sufficient notice to such persons and the date of notification shall be the date of publication.

1982, c. 347, § 45.1-313; 1984, c. 590; 1987, c. 452; 1989, c. 529; 1990, c. 92; 1996, c. [854](#); 2008, c. [534](#).

§45.1-361.31. Bonding and financial security required.

A. To ensure compliance with all laws and regulations pertaining to permitted activities and the furnishing of reports and other information required by the Board or Director, all permit applicants shall give bond with surety acceptable to the Director and payable to the Commonwealth. At the election of the permit applicant, a cash bond may be given. The amount of the bond required shall be sufficient to cover the costs of properly plugging the well and restoring the site, but in no case shall the amount of the bond be less than \$10,000 per well plus \$2,000 per acre of disturbed land, cal-

culated to the nearest tenth of an acre. Bonds shall remain in force until released by the Director.

B. Upon receipt of an application for permits for gas or oil operations and at the request of the permit applicant, the Director may, in lieu of requiring a separate bond for each permit, require a blanket bond. The amount of the blanket bond shall be as follows:

1. For one to fifteen wells, \$25,000.
2. For sixteen to thirty wells, \$50,000.
3. For thirty-one to fifty wells, \$75,000.
4. For fifty-one or more wells, \$100,000.

For purposes of calculating blanket bond amounts, from one-tenth of an acre to five acres of disturbed land for a separately permitted gathering pipeline shall be equivalent to one well. The Director shall promulgate regulations for the release of acreage used to calculate blanket bond amounts for separately permitted gathering pipelines in cases where sites have been stabilized.

C. Any gas or oil operator who elects to post a blanket bond shall pay into the Gas and Oil Plugging and Restoration Fund those fees and assessments required under the provisions of § [45.1-361.32](#).

D. This section's minimum requirements for bonding shall be met by all permitted gas or oil operations by July 1, 1991.

1990, c. 92 .

§45.1-361.32. Gas and Oil Plugging and Restoration Fund.

A. The Gas and Oil Plugging and Restoration Fund is hereby established as a non-lapsing revolving fund to be administered by the Department pursuant to the provisions of this section. The Fund shall consist of all payments made into the Fund by gas or oil operators, all collections of debt for expenditures made from the Fund and all interest payments made into the Fund pursuant to the provisions of this section. Interest earned on the Fund shall be credited to the Fund. The Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. In the event of a discontinuance of the Fund, any amounts remaining in the

Fund shall be returned to all gas or oil operators with blanket bonds in proportion to the number of permits under the blanket bonds of each operator.

B. Pursuant to § [45.1-361.31](#), each gas or oil operator who has posted a blanket bond shall pay into the Fund a fee of fifty dollars per permit held, by July 31, 1990. Each permittee operating under a blanket bond shall annually pay to the Fund an amount equal to fifty dollars multiplied by the number of permits he then holds, such payment to be submitted with the annual report required under § [45.1-361.38](#), until the payments and interest accruing to the Fund totals \$100,000.

C. Disbursements from the Fund shall be used only to supplement bond proceeds in order to pay for the full cost of plugging and restoration in the event of a blanket bond forfeiture.

D. The amount by which the cost of plugging and restoration exceeds the amount of the gas or oil operator's forfeited bond shall constitute a debt of the operator to the Commonwealth. The Director is authorized to collect such debts together with the costs of collection through appropriate legal action. All moneys collected pursuant to this subsection, less the costs of collection, shall be deposited in the Fund.

E. Once the initial balance of the Fund exceeds \$100,000, and thereafter whenever the Director determines that the Fund's balance has fallen below \$25,000 due to uncollectible debts, the Director shall assess a fee of fifty dollars per permit per year on all permittees with blanket bonds until the Fund's balance once again reaches \$100,000.

F. No permit shall be issued to a gas or oil operator until he has fully reimbursed the Commonwealth for any debt incurred pursuant to the provisions of subsection D of this section.

1990, c. 92 .

§45.1-361.33. Expiration of permits.

All permits issued pursuant to this chapter shall expire 24 months from their date of issuance unless the permitted activity has commenced within that time period. An operator may renew the existing permit for an additional 24 months by submitting a written request containing the coal operator's approval and remitting a \$325 renewal fee no later than the expiration date.

1990, c. 92; 1996, c. [854](#); 2003, cc. [542](#), [550](#).

§45.1-361.34. Abandonment or cessation of well or corehole operation; plugging required.

Upon the abandonment or cessation of the operation of any well or corehole, the gas, oil, or geophysical operator shall immediately fill and plug the well or corehole in the manner required by regulations in force at the time of abandonment or the operation's cessation.

1990, c. 92 .

§45.1-361.35. Objections to permits; hearing.

A. Objections to new or modification permits may be filed with the Director by those having standing as set out in § [45.1-361.30](#). Such objections shall be filed within fifteen days of the objecting party's receipt of the notice required by § [45.1-361.30](#). Persons objecting to a permit must state the reasons for their objections.

B. The only objections to permits or permit modifications that may be raised by surface owners are:

1. The operations plan for soil erosion and sediment control is not adequate or not effective;
2. Measures in addition to the requirement for a well's water-protection string are necessary to protect fresh water-bearing strata;
3. The permitted work will constitute a hazard to the safety of any person;
4. Location of the coalbed methane well or coalbed methane well pipeline will unreasonably infringe on the surface owner's use of the surface, provided that a reasonable alternative site is available within the unit, and granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest; and
5. If the surface owner is an interstate park commission, the location of the well or pipeline will unreasonably infringe on the surface owner's use of the surface, provided that a reasonable alternative site is available within the unit, and that granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest.

C. The only objections to permits or permit modifications that may be raised by royalty owners are whether the proposed well work:

1. Directly impinges upon the royalty owner's gas and oil interest; or
2. Threatens to violate the objecting royalty owner's property or statutory rights aside from his contractual rights; and
3. Would not adequately prevent the escape of the Commonwealth's gas and oil resources or provide for the accurate measurement of gas and oil production and delivery to the first point to sale.

D. Objections to permits or permit modifications may be raised by coal owners or operators pursuant to the provisions of §§ [45.1-361.11](#) and [45.1-361.12](#).

E. The only objections to permits or permit modifications that may be raised by mineral owners are those that could be raised by a coal owner under § [45.1-361.11](#) provided the mineral owner makes the objection and affirmatively proves that it does in fact apply with equal force to the mineral in question.

F. The only objections to permits or permit modifications that may be raised by gas storage field operators are those in which the gas storage operator affirmatively proves that the proposed well work will adversely affect the operation of his State Corporation Commission certificated gas storage field; however, nothing in this subsection shall be construed to preclude the owner of nonstorage strata from the drilling of wells for the purpose of producing oil or gas from any stratum above or below the storage stratum.

G. The Director shall have no jurisdiction to hear objections with respect to any matter subject to the jurisdiction of the Board as set out in Article 2 (§ [45.1-361.13](#) et seq.) of this chapter. Such objections shall be referred to the Board in a manner prescribed by the Director.

H. The Director shall fix a time and place for an informal fact-finding hearing concerning such objections. The hearing shall not be scheduled for less than twenty nor more than thirty days after the objection is filed. The Director shall prepare a notice of the hearing, stating all objections and by whom made, and send a copy of such notice by certified mail, return receipt requested, at least ten days prior to the hearing date, to the permit applicant and to every person with standing to object as prescribed by § [45.1-361.30](#).

I. At the hearing, should the parties fail to come to an agreement, the Director shall proceed to decide the objection pursuant to those provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) relating to informal fact-finding procedures.

1982, c. 347, §§ 45.1-315, 45.1-316, 45.1-317; 1987, c. 452; 1989, c. 529; 1990, c. 92; 1996, c. [854](#); 1998, c. [228](#); 2002, c. [277](#).

§45.1-361.36. Appeals of Director's decisions to the Board.

A. Any person with standing under the provisions of § [45.1-361.30](#) who is aggrieved by a decision of the Director may appeal to the Board, subject to the limitations imposed by subsection B of this section, by petition to the Board filed within ten days following the appealed decision.

B. No petition for appeal may raise any matter other than matters raised by the Director or which the petitioner put in issue either by application or by objections, proposals or claims made and specified in writing at the informal fact-finding hearing held under § [45.1-361.35](#) leading to the appealed decision.

1982, c. 347, § 45.1-325; 1984, c. 590; 1990, c. 92 .

§45.1-361.37. Persons required to register; designated agents.

A. Any person who owns a well, drills a well, completes well work, operates any well or gathering pipeline, conducts ground disturbing geophysical explorations, or who transports gas or oil up to and including the first point of sale shall register with the Director and shall provide his name and address and the name, address and official title of the person in charge of his operations in the Commonwealth.

B. Any person registering under subsection A of this section shall designate the name and address of an agent who shall be the attorney-in-fact of the registrant for the purposes hereinafter set forth. The designated agent shall be a resident of the Commonwealth. Notices, orders, other communications and all processes issued pursuant to this chapter may be served upon or otherwise delivered to the designated agent as and for the operator. Any designation of an agent shall remain in force until the Director is notified in writing of a designation termination and the designation of a new agent.

1990, c. 92 .

§45.1-361.38. Report of permitted activities and production required; contents.

A. Each holder of a permit for gas or oil wells or gathering pipelines shall file monthly and annual reports of his activities as prescribed by the Director. These

reports shall be for the purpose of obtaining information regarding the production and sale of gas and oil resources, as well as information concerning the ownership and control of permitted activities. Filing of these reports by a permittee shall be a condition of such permit. Every annual report filed by a permittee shall contain a certification that such permittee has paid all severance taxes levied under the provisions of §§ [58.1-3712](#), [58.1-3713](#), and [58.1-3741](#).

B. At the same time that a permittee files the monthly and annual reports as required by subsection A, the permittee shall send copies of the reports by mail to the commissioner of revenue of the political subdivision where the permitted wells are located.

1990, c. 92; 1992, c. 361; 2013, cc. [305](#), [618](#); 2016, c. [305](#).

§45.1-361.39. Developing a gas or oil well as a water well.

Should any well drilled for gas or oil not produce commercial or paying quantities of either resource, the well may be developed as a water well upon the request of the surface owner of the property on which the well is located. Any development of such a water well shall occur only after notice is given to the Director and his approval has been received. Such development of a water well shall be performed in accordance with applicable state and local requirements. Unless the gas or oil operator and surface owner otherwise agree, the surface owner shall pay the gas or oil operator a reasonable sum for all casing and tubing set and left in the well which would have otherwise been removed upon plugging of the well.

1982, c. 347, § 45.1-350; 1990, c. 92 .

§45.1-361.40. Orphaned Well Fund; orphaned wells.

A. The Orphaned Well Fund, referred to in this section as "the Fund," is hereby established in the state treasury as a special non-lapsing revolving fund to be administered by the Department pursuant to the provisions of this section. The Fund shall consist of such moneys as are appropriated to it by the General Assembly and such surcharges as are collected pursuant to subsection D. Interest earned on the Fund shall remain in the Fund and be credited to it. The Orphaned Well Fund shall be established on the books of the Comptroller and any funds remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. In the event of a discontinuance of the Fund, any amounts remaining in it shall be placed in the Gas and Oil Plugging Restoration Fund. Moneys from the Fund shall be used only for purposes of restoration and

plugging of orphaned wells. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director or his designee.

B. The Director shall conduct a survey to determine the condition and location of orphaned wells in the Commonwealth. He shall establish priorities for the plugging and restoration of the identified orphaned wells. The plugging and restoration of orphan well sites that pose an imminent danger to public safety shall have the highest priority.

C. In performing his duties under this section, the Director shall make every reasonable effort to identify and obtain the permission of a surface owner prior to entering onto the surface owner's land. In all cases, the Director shall as soon as practicable cause to be published in a newspaper of general circulation in the county or city wherein an orphaned well is located a notice of the proposed plugging and restoration work to be conducted on the property.

D. Each operator who applies for a new permit for any activity other than geophysical operations shall pay a \$200 surcharge per permit into the Fund. Such surcharge shall continue until the Director determines all orphaned wells in the Commonwealth are properly plugged and their sites are properly stabilized.

1990, c. 92; 2017, c. [18](#).

§45.1-361.41. Interference by injection wells with ground water supply.

A. Any person who owns or operates an injection well in a manner that proximately causes the contamination or diminution of ground water used for a beneficial use by any person who resides within the lesser of (i) the area of review required by the United States Environmental Protection Agency for the permitting of that injection well, or (ii) a one-half mile radius of the well shall provide the person with a replacement water supply. A replacement water supply shall provide the person or persons with water of equivalent quality and quantity as was provided by ground water prior to the contamination or diminution of the water supply resulting from the operation of the injection well. A replacement water supply shall include the provision of necessary storage and service facilities. "Ground water" shall have the same meaning ascribed to it in § [62.1-255](#). "Beneficial use" shall have the same meaning ascribed to it in § [62.1-10](#).

B. This section shall apply to any injection well, whether operating under a permit from the Director of the Department of Mines, Minerals and Energy issued prior to, on or after July 1, 1992.

1992, c. 324; 1993, c. 276 .

§45.1-361.42. Safety in coalbed methane gas, oil and geophysical operations.

The Director shall inspect permitted coalbed methane well and related facility operations to ensure the safety of persons on permitted sites. When the inspection reveals any hazardous condition that creates an imminent danger, the Director shall issue a closure order pursuant to § [45.1-361.27](#) requiring the area to be cleared or the equipment removed from use, except for (i) work necessary to continue to vent methane from an active underground mine if it can be done safely and (ii) any work necessary to correct or eliminate the imminent danger. The Director shall lift the closure order when he finds that the imminent danger has been corrected or eliminated. When the inspection reveals any other condition that creates a risk to the safety or health of any person on the permitted site, the Director shall notify the Department of Labor and Industry for actions under Title 40.1, as applicable.

1997, c. [421](#).

§45.1-361.43. Operator's right to sample water and quality.

An operator shall have the right to enter upon surface land at reasonable times and in a reasonable manner to obtain samples of water from water wells that are (i) located within 1,320 feet of a proposed or existing gas well and (ii) actually being utilized by the surface owner or occupant for domestic use. If the surface owner or occupant refuses to allow the operator to sample or causes the operator to be prevented from sampling any such water well, the operator shall promptly notify the Department of such refusal or prevention. The Department shall maintain a record of such notifications. In the event of such a refusal or prevention, the surface owner shall not be entitled to the remedies set forth in § [45.1-361.44](#).

1998, c. [227](#); 2009, c. [293](#); 2017, c. [17](#).

§45.1-361.44. Replacement of water supply.

If any water supply of a surface owner who obtains all or part of his supply of water for domestic use from a water well has been materially affected by contamination or partial or complete interruption proximately resulting from a gas well operation within 1,320 feet of the water well, the operator of such gas well shall promptly

provide a replacement water supply which shall be capable of meeting the uses such water supply met prior to the contamination or partial or complete interruption.

1998, c. [227](#); 2009, c. [293](#); 2017, c. [17](#).

The Virginia Health Savings Account Plan

§38.2-5600. Repealed.

Repealed by Acts 2005, cc. [503](#) and [572](#), cl. 2.

§38.2-5601. The Virginia Health Savings Account Plan.

A. The Department of Taxation and the Commission shall amend the Virginia Medical Savings Account Plan prepared pursuant to former § [38.2-5600](#) in order to address the provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, P.L. No. 108-173, permitting eligible individuals to establish health savings accounts pursuant to § 223 of the Internal Revenue Code of 1986, as amended, which amended Plan shall be designated as the Virginia Health Savings Account Plan. The Department of Taxation and the Commission shall present the Virginia Health Savings Account Plan to the chairs of the House Appropriations; Finance; Health, Welfare and Institutions; and Commerce and Labor Committees and the Senate Finance; Education and Health; and Commerce and Labor Committees by January 1, 2006. Thereafter the Department of Taxation and the Commission shall update the Plan annually and provide copies of such updates to the chairs of such committees.

B. The Virginia Health Savings Account Plan shall, consistent with federal law authorizing the establishment and use of health savings accounts, identify measures by private and public entities that will increase the utilization and efficacy of health savings accounts by the Commonwealth's residents, employers, and providers of health care coverage. The Plan shall include recommendations for legislation that would increase the attractiveness of health savings accounts, or eliminate barriers to their use, by providing:

1. Definitions of eligible participants;

2. Criteria for accounts, including, but not limited to, such matters as trustees, maximum amounts, and the rollover of balances in medical savings accounts to health savings accounts;

3. Measures that would encourage public and private employers to offer, as part of a cafeteria menu of insurance plans, high-deductible health plans that would qualify for a health savings account pursuant to § 223 of the Internal Revenue Code of 1986, as amended; and

4. Any other provisions appropriate to maximize the use of health savings accounts within the Commonwealth.

C. The Plan shall include a report by the Commission on the availability of high deductible health plans, as defined in § 223 (c) (2) of the Internal Revenue Code of 1986, as amended, in the Commonwealth.

D. The Plan shall include recommendations by the Department of Taxation for a system of income tax deductions or refundable credits, consistent with federal law and regulation, for (i) employers who voluntarily contribute to their employees' health savings accounts, (ii) health care providers who participate in providing care to health savings account holders at a reduced cost or without compensation, and (iii) eligible individuals, as defined in § 223 (a) of the Internal Revenue Code of 1986, as amended, who qualify under applicable federal or state definitions as members of the working poor.

1995, c. [650](#); 2002, c. [372](#); 2005, cc. [503](#), [572](#).

§38.2-5602. Operation of medical savings accounts.

Medical savings accounts may be established in the Commonwealth, and may be converted to health savings accounts, pursuant to applicable federal law and regulation.

1995, c. [650](#); 2002, c. [372](#); 2005, cc. [503](#), [572](#).

§38.2-5602.1. Operation of health savings accounts; high deductible health plans.

Health savings accounts may be established in the Commonwealth pursuant to applicable federal law and regulation. Unless otherwise prohibited by any provision of this title, any health carrier, as defined in § [38.2-5800](#), authorized to conduct business in the Commonwealth may offer a high deductible health plan that would qualify for and may be offered in conjunction with a health savings account pursuant to § 223 of the Internal Revenue Code of 1986, as amended.

2005, cc. [503](#), [572](#).

§38.2-5603. Repealed.

Repealed by Acts 2005, cc. [503](#) and [572](#), cl. 2.

§38.2-5604. Health savings accounts exempt from claims.

A. As used in this section, "health savings account" means a health savings account or medical savings account authorized under § 220 or 223 of the Internal Revenue Code of 1986, as amended from time to time.

B. Notwithstanding any provision of law to the contrary, the rights of a participant or beneficiary of a health savings account to hold or to receive moneys paid into or out of, the assets of, and the income of the health savings account:

1. Shall be exempt from creditor process;
2. Shall not be liable to attachment, garnishment, or other process; and
3. Shall not be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of the participant or beneficiary of the account.

2010, c. [595](#).

The Virginia Higher Education Opportunity Act of 2011

§23-38.87:10. (Repealed effective October 1, 2016) Short title; purpose.

This chapter may be cited as the "Preparing for the Top Jobs of the 21st Century: The Virginia Higher Education Opportunity Act of 2011," the "Top Jobs Act," or "TJ21." The objective of this chapter is to fuel strong economic growth in the Commonwealth and prepare Virginians for the top job opportunities in the knowledge-driven economy of the 21st century by establishing a long-term commitment, policy, and framework for sustained investment and innovation that will enable the Commonwealth to build upon the strengths of its excellent higher education system and achieve national and international leadership in college degree attainment and personal income, and that will ensure these educational and economic opportunities are accessible and affordable for all capable and committed Virginia students.

In furtherance of this objective, the following purposes shall inform the development and implementation of funding policies, performance criteria, economic opportunity metrics, and recommendations required by this chapter:

1. To ensure an educated workforce in Virginia through a public-private higher education system whose hallmarks are instructional excellence, affordable access, economic impact, institutional diversity and managerial autonomy, cost-efficient operation, technological and pedagogical innovation, and reform-based investment;
2. To take optimal advantage of the demonstrated correlation between higher education and economic growth by investing in a manner that will generate economic growth, job creation, personal income growth, and revenues generated for state and local government in Virginia;
3. To place Virginia among the most highly educated states and countries by conferring approximately 100,000 cumulative additional undergraduate degrees on Virginians between 2011 and 2025, accompanied by a comparable percentage increase in privately conferred Virginia undergraduate degrees over the same period, and to achieve these targets by expanding enrollment of Virginians at public and private higher education institutions in the Commonwealth, improving undergraduate graduation and retention rates in the Virginia higher education system, and increasing degree completion by Virginians with partial credit toward a college degree, including students with ongoing job and family commitments who need access to non-traditional college-level educational opportunities;
4. To enhance personal opportunity and earning power for individual Virginians by increasing college degree attainment in the Commonwealth, especially in high-demand, high-income fields such as science, technology, engineering, mathematics, and health care, and by providing information about the economic value and impact of individual degree programs by institution;
5. To promote university-based research that produces outside investment in Virginia, fuels economic advances, triggers commercialization of new products and processes, fosters the formation of new businesses, leads businesses to bring their facilities and jobs to Virginia, and in other ways helps place the Commonwealth on the leading edge in the knowledge-driven economy;
6. To support the national effort to enhance the security and economic competitiveness of the United States of America, and to secure a leading economic

position for the Commonwealth of Virginia, through increased research and instruction in science, technology, engineering, mathematics, and related fields, which require qualified faculty, appropriate research facilities and equipment, public-private and intergovernmental collaboration, and sustained state support;

7. To preserve and enhance the Virginia higher education system's excellence and cost-efficiency through reform-based investment that promotes innovative instructional models and pathways to degree attainment, including optimal use of physical facilities and instructional resources throughout the year, technology-enhanced instruction, sharing of instructional resources between and among colleges, universities, and other degree-granting entities in the Commonwealth, increased online learning opportunities for nontraditional students, improved rate and pace of degree completion, expanded availability of dual enrollment and advanced placement options and early college commitment programs, expanded community college transfer options leading to bachelor's degree completion, and enhanced college readiness before matriculation, among other reforms;

8. To realize the potential for enhanced benefits from the Restructured Higher Education Financial and Administrative Operations Act of 2005 (§ [23-38.88](#) et seq.), through a sustained commitment to the principles of autonomy, accountability, affordable access, and mutual trust and obligation underlying the restructuring initiative;

9. To establish a higher education funding framework and policy that promotes stable, predictable, equitable, and adequate funding, facilitates effective planning at the institutional and state levels, provides incentives for increased enrollment of Virginia students at public and private nonprofit colleges and universities in the Commonwealth, provides need-based financial aid for low-income and middle-income students and families, relieves the upward pressure on tuition associated with loss of state support due to economic downturns or other causes, and provides financial incentives to promote innovation and enhanced economic opportunity in furtherance of the objective of this chapter; and

10. To recognize that the unique mission and contributions of each institution of higher education in the Commonwealth is consistent with the desire to build upon the strengths of the Commonwealth's excellent system of higher education, to afford these unique missions and contributions appropriate safeguards, and to allow these attributes to inform the development and implementation of funding policies,

performance criteria, economic opportunity metrics, and recommendations in the furtherance of this chapter's objectives.

2011, cc. [828](#), [869](#).

§23-38.87:11. (Repealed effective October 1, 2016) Definitions.

For purposes of this chapter, unless the context clearly requires otherwise:

"College degree" means an undergraduate degree from an accredited two-year or four-year public or private institution of higher education.

"Cost of education" means the operating funds necessary during a fiscal year to provide educational and general services, other than research and public service, to students attending an institution in that fiscal year.

"Council" means the State Council of Higher Education for Virginia.

"Educational and general fees" means fees over and above tuition charged for certain educational and general services.

"Educational and general services" means services associated with instruction, academic support, student services, institutional support, research, public service, and operation and maintenance of physical plant, with adjustments based on particular state policies related to specific institutional conditions, but does not include services associated with programs and administrative services that are required to be self-supporting or are otherwise supported by funds other than general funds, such as food services, university-owned or university-leased dormitories or other living facilities, athletic programs, and other self-supporting programs.

"Enrollment" or "student enrollment" means the number of full-time equivalent students.

"Fiscal year" means the period from July 1 of one calendar year to June 30 of the next calendar year.

"Institution" or "public institution of higher education" means each two-year and four-year public institution of higher education in the Commonwealth and, in the case of the Virginia Community College System, the system as a whole, not each community college.

"Peer institutions" for an institution means those institutions determined by the Council, in consultation with the institution, the Secretary of Education or his designee, the Director of the Department of Planning and Budget or his designee,

and the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance or their designees, to be most similar to the institution and therefore to provide a fair comparison in determining what the appropriate and competitive faculty salaries for that institution should be.

"STEM" means science, technology, engineering, and mathematics.

"Student" means a full-time or part-time undergraduate, graduate, or professional student attending a public institution of higher education and enrolled in a degree program.

"Virginia student" means a student who is eligible for in-state tuition pursuant to § [23-7.4](#).

2011, cc. [828](#), [869](#).

§23-38.87:12. (Repealed effective October 1, 2016) Higher education funding policy.

The funding policy for public institutions of higher education shall be comprised of amounts for each institution from the state general fund, from funds other than the state general fund, or both, for each fiscal year of a biennium for:

1. Basic operations and instruction, as provided in § [23-38.87:13](#);
2. Each Virginia undergraduate student actually enrolled at the institution, as provided in § [23-38.87:14](#);
3. Need-based financial aid, as provided in § [23-38.87:15](#); and
4. Support for targeted financial incentives that encourage and reward progress toward the policy objectives specified in this chapter, as provided in § [23-38.87:16](#).

2011, cc. [828](#), [869](#).

§23-38.87:13. (Repealed effective October 1, 2016) Calculation of state general fund share of an institution's basic operations and instruction funding need; cost of education.

A. Following consultation with each institution and the Higher Education Advisory Committee described in § [23-38.87:20](#), the Council shall calculate each institution's basic operations and instruction funding need as provided in subsection B for each year of the next biennium and shall make that calculation available to the Governor, the General Assembly, and all public institutions of higher education. Each institution's basic operations and instruction funding need, and the Commonwealth's

funding split policy by which 67 percent of an institution's cost of education for Virginia students is funded from the state general fund and 33 percent from funds other than the state general fund, shall be taken into account by the Governor during the preparation of his proposed biennial budget bill recommending the appropriation act for the next biennium and by the General Assembly in enacting that act. Between these biennial recalculations, an institution's appropriated basic operations and instruction funding may be increased or decreased for (i) an increase or decrease in Virginia undergraduate student enrollment as provided in § [23-38.87:14](#), (ii) meeting or not meeting targeted financial incentives listed in § [23-38.87:16](#), and (iii) any other purpose deemed appropriate by the General Assembly.

B. An institution's basic operations and instruction funding need for each fiscal year of the biennium shall be the sum of (i) the institution's cost of education for the total enrollment of students who actually attended that institution during the fiscal year that ended on June 30 of each odd-numbered year, which shall be determined using a cost-based funding policy that consists of a set of formulas for calculating educational cost based on faculty-student ratios by discipline and level, and the educational and general programs of instruction, academic support, student services, institutional support, and operation and maintenance of physical plant, with adjustments to the funding policy based on particular state policies or specific institutional missions or conditions, (ii) the amount required to reach the Commonwealth's faculty salary goal of the 60th percentile of the most recently reported average faculty salaries paid by that institution's peer institutions, and (iii) such other funding for educational and general services as the General Assembly may appropriate.

C. State general funds shall be allocated and appropriated to institutions in a fair and equitable manner such that, to the extent practicable, the percentage of the cost of education for Virginia students enrolled at an institution to be funded from state general funds is the same for each institution. To the extent that the percentages differ among institutions, that fact shall be taken into account as the Governor deems appropriate in his budget bill and by the General Assembly as it deems appropriate in the appropriation act.

2011, cc. [828](#), [869](#).

§23-38.87:14. (Repealed effective October 1, 2016) Per student enrollment-based funding.

A. In order to incentivize Virginia undergraduate student enrollment growth at the Commonwealth's public institutions of higher education in furtherance of the increased degree conferral objectives of this chapter, the Governor shall recommend and the General Assembly shall determine and appropriate to the institutions a per student amount that shall follow each Virginia undergraduate student to the institution in which the student enrolls. Recommendations regarding this Virginia undergraduate student enrollment growth incentive shall be developed and reviewed as provided in subdivision B 1 of § [23-38.87:20](#).

B. The Governor shall consider and recommend as he deems appropriate and the General Assembly shall consider and provide as it deems appropriate additional general fund appropriations to address the unfunded enrollment growth that occurred between the 2005-2006 fiscal year and the enactment of this chapter.

C. In order to assist the General Assembly in determining the per student amount provided for in subsection A and its relation to the per student amount provided to private nonprofit institutions of higher education pursuant to the Tuition Assistance Grant Act (§ [23-38.11](#) et seq.), each private nonprofit institution of higher education eligible to participate in the Tuition Assistance Grant Program shall submit to the Council its Virginia student enrollment projections for that fiscal year and its actual Virginia student enrollment for the prior fiscal year in a manner determined by the Council. The student admissions policies for the private institutions and their specific programs shall remain the sole responsibility of the governing boards of the individual institutions.

2011, cc. [828](#), [869](#).

§23-38.87:15. (Repealed effective October 1, 2016) Need-based financial aid.

Each institution shall include in its six-year plan required by § [23-38.87:17](#) an institutional student financial aid commitment that, in conjunction with general funds appropriated for that purpose, provides assistance to students from both low-income and middle-income families. Each institution's six-year plan required by § [23-38.87:17](#) shall take into account the information and recommendations resulting from the review of federal and state financial aid programs and institutional practices conducted pursuant to subdivisions B 2 and C 1 of § [23-38.87:20](#). The definitions of "low-income family" and "middle-income family" shall be developed and reviewed pursuant to subdivision B 2 of § [23-38.87:20](#).

2011, cc. [828](#), [869](#).

§23-38.87:16. (Repealed effective October 1, 2016) Targeted economic and innovation incentives.

A. The Governor shall consider and may recommend and the General Assembly shall consider and may fund targeted economic and innovation incentives to achieve the purposes of this chapter. Such incentives may include, but are not limited to:

1. Increased enrollment of Virginia students, in addition to the per student funding provided by § [23-38.87:14](#);
2. Increased degree completion for Virginia residents who have partial credit completion for a degree;
3. Increased degree completion in a timely or expedited manner;
4. Improved retention and graduation rates;
5. Increased degree production in the areas of science, technology, engineering, and mathematics and other high-need areas such as the health care-related professions;
6. Increased research, including regional and public-private collaboration;
7. Optimal year-round utilization of resources and other efficiency reforms designed to reduce total institutional cost;
8. Technology-enhanced instruction, including course redesign, online instruction, and resource sharing among institutions;
9. Enhanced community college transfer programs and grants and other enhanced degree path programs; and
10. Other incentives based on the economic opportunity metrics developed pursuant to subdivision B 4 of § [23-38.87:20](#).

Maintenance of effort initiatives shall also be considered for individual institutions with unique missions and demonstrable performance in specific incentive areas.

B. The criteria for measuring whether the incentives in subsection A have been met, and the benefits or consequences for meeting or not meeting such incentives, shall be developed and reviewed as provided in subdivisions B 3 and B 4 of § [23-38.87:20](#).

2011, cc. [828](#), [869](#).

§23-38.87:17. (Repealed effective October 1, 2016) Institutional six-year plans.

A. The governing board of each public institution of higher education shall develop and adopt biennially and amend or affirm annually a six-year plan for the institution

and shall submit that plan to the Council, the General Assembly, the Governor, and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Education and Health, and the Senate Committee on Finance no later than July 1 of each odd-numbered year, and shall submit amendments to or an affirmation of that plan no later than July 1 of each even-numbered year or at any other time permitted by the Governor or General Assembly to the Council, the General Assembly, the Governor, and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Education and Health, and the Senate Committee on Finance. Each such plan and amendment to or affirmation of such plan shall include a report of the institution's active contributions to efforts to stimulate the economic development of the Commonwealth, the area in which the institution is located, and, for those institutions subject to a management agreement set forth in Subchapter 3 (§ [23-38.91](#) et seq.) of Chapter 4.10, the areas that lag behind the Commonwealth in terms of income, employment, and other factors.

B. The Secretary of Finance, Secretary of Education, Director of the Department of Planning and Budget, Executive Director of the Council, Staff Director of the House Committee on Appropriations, and Staff Director of the Senate Committee on Finance, or their designees, shall review each institution's plan or amendments and provide comments to the institution on that plan by September 1 of the relevant year. Each institution shall respond to any such comments by October 1 of that year.

C. Each plan shall be structured in accordance with, and be consistent with, the purposes of this chapter set forth in § [23-38.87:10](#) and the criteria developed pursuant to § [23-38.87:20](#), and shall be in a form and manner prescribed by the Council, in consultation with the Secretary of Finance, Secretary of Education, Director of the Department of Planning and Budget, Executive Director of the Council, Staff Director of the House Committee on Appropriations, and Staff Director of the Senate Committee on Finance, or their designees.

D. Each plan shall address the institution's academic, financial, and enrollment plans, to include the number of Virginia and out-of-state students, for the six-year period and shall include:

1. Financial planning reflecting the institution's anticipated level of general fund, tuition, and other nongeneral fund support for each year of the next biennium. The plan also shall include the institution's anticipated annual tuition and educational

and general fee charges required by (i) degree level and (ii) domiciliary status, as provided in § [23-38.87:18](#), and shall indicate the planned use of any projected increase in general fund, tuition, or other nongeneral fund revenues. The plan shall be based upon any assumptions provided by the Council, following consultation with the Department of Planning and Budget and the staffs of the House Committee on Appropriations and the Senate Committee on Finance, for funding related to state general fund support pursuant to §§ [23-38.87:13](#), [23-38.87:14](#), [23-38.87:15](#), and [23-38.87:16](#), and shall be aligned with the institution's six-year enrollment projections;

2. Plans for providing financial aid to help mitigate the impact of tuition and fee increases on low-income and middle-income students and their families as described in § [23-38.87:15](#), including the projected mix of grants and loans;

3. Degree conferral targets for Virginia undergraduate students;

4. Plans for optimal year-round use of the institution's facilities and instructional resources;

5. Plans for the development of an instructional resource sharing program with other institutions of higher education in the Commonwealth;

6. Plans with regard to any other incentives set forth in § [23-38.87:16](#) or to any other matters the institution deems appropriate; and

7. The identification of (i) new programs or initiatives including quality improvements and (ii) institution-specific funding based on particular state policies or institution-specific programs, or both, as provided in subsection C of § [23-38.87:18](#).

E. In developing such plans, each public institution of higher education shall give consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ [23-38.75](#) et seq.) and shall discuss such potential impacts with the Virginia College Savings Plan. The chief executive officer of the Virginia College Savings Plan shall provide to each institution the Plan's assumptions underlying the contract pricing of the program.

2011, cc. [828](#), [869](#); 2016, c. [149](#).

§23-38.87:18. (Repealed effective October 1, 2016) Tuition and fees.

A. The board of visitors of each of the Commonwealth's public institutions of higher education, or in the case of the Virginia Community College System the State Board for Community Colleges, shall continue to fix, revise from time to time, charge and

collect tuition, fees, rates, rentals, and other charges for the services, goods, or facilities furnished by or on behalf of such institution and may adopt policies regarding any such service rendered or the use, occupancy, or operation of any such facility.

B. Except to the extent included in the institution's six-year plan as provided in subsection C, if the total of an institution's tuition and educational and general fees for a fiscal year for Virginia students exceeds the difference for that fiscal year between (i) the institution's cost of education for all students, as calculated pursuant to clause (i) of subsection B of § [23-38.87:13](#), and (ii) the sum of the tuition and educational and general fees for non-Virginia students, the state general funds appropriated for its basic operations and instruction pursuant to subsection A of § [23-38.87:13](#), and its per student funding provided pursuant to § [23-38.87:14](#), the institution shall forego new state funding at a level above the general funds received by the institution during the 2011-2012 fiscal year, at the discretion of the General Assembly, and shall be obligated to provide increased financial aid to maintain affordability for students from low-income and middle-income families. This limitation shall not apply to any portion of tuition and educational and general fees for Virginia students allocated to student financial aid, to an institution's share of state-mandated salary or fringe benefit increases, to increases with funds other than state general funds for the improvement of faculty salary competitiveness above the level included in the calculation in clause (i) of subsection B of § [23-38.87:13](#), to the institution's share of any of the targeted financial incentives described in § [23-38.87:16](#), to unavoidable cost increases such as operation and maintenance for new facilities and utility rate increases, or to other items directly attributable to an institution's unique mission and contributions.

C. Nothing in subsection B shall prohibit an institution from including in its six-year plan required by § [23-38.87:17](#) (i) new programs or initiatives including quality improvements or (ii) institution-specific funding based on particular state policies or institution-specific programs, or both, that will cause the total of the institution's tuition and educational and general fees for a fiscal year for Virginia students to exceed the difference for that fiscal year between (a) the institution's cost of education for all students, as calculated pursuant to clause (i) of subsection B of § [23-38.87:13](#), and (b) the sum of the tuition and educational and general fees for the institution's non-Virginia students, the state general funds appropriated for its basic operations and instruction pursuant to subsection A of § [23-38.87:13](#), and its per student funding provided pursuant to § [23-38.87:14](#).

2011, cc. [828](#), [869](#).

§23-38.87:19. (Repealed effective October 1, 2016) Creation of STEM public-private partnership; duties and responsibilities.

In order to increase the number of students completing degrees in the high-demand, high-impact fields of science, technology, engineering, and mathematics (STEM), and other high-demand, anticipated-shortage fields such as the health care-related professions, and to help develop and guide the implementation of a comprehensive plan for higher degree attainment in these fields, the Secretaries of Education and Finance, in cooperation with the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health, shall cause to be formed a public-private partnership comprised of private-sector leaders, distinguished representatives from the scientific community (including retired military personnel, government scientists, and researchers), educational experts, relevant state and local government officials, and others as they deem appropriate. The partnership shall advise on, and may collaborate with public and private entities to develop and implement strategies to address, such priority issues as (i) determining the need for additional high-demand degree enrollment, capacity, and resources at the Commonwealth's public and private institutions of higher education; (ii) incentivizing greater coordination, innovation, and private collaboration in kindergarten through secondary school STEM and other high-demand degree initiatives; (iii) determining and refining best practices in STEM instruction and leveraging those best practices to promote STEM education in both the Commonwealth's higher education institutions and its elementary and secondary schools; (iv) enhancing teacher education and professional development in STEM disciplines; (v) strengthening mathematics readiness in secondary schools through earlier diagnosis and remediation of deficiencies; (vi) providing financial incentives to increase STEM enrollment and degree production at the Commonwealth's public and private colleges and universities; (vii) providing assistance to the Commonwealth's public and private colleges and universities in the acquisition and improvement of STEM-related facilities and equipment; (viii) providing STEM incentives in early college and university pathway programs and in the community college transfer grant program; (ix) assessing degree programs using such economic opportunity metrics as marketplace demand, earning potential, employer satisfaction, and other indicators of the historical and projected economic value and impact of degrees to provide useful information on degrees to students as they make career choices and to state policy makers and

university decision makers as they decide how to allocate scarce resources; (x) aligning state higher education efforts with marketplace demands; and (xi) determining such other issues as the partnership deems relevant to increasing the number of students completing college and university degrees in STEM and other high-demand fields.

2011, cc. [828](#), [869](#).

§23-38.87:20. (Repealed effective October 1, 2016) Creation of Higher Education Advisory Committee; duties and responsibilities.

A. The Secretary of Education, in consultation with the Chairs of the House Committee on Appropriations and the Senate Committee on Finance, the Secretary of Finance and the public institutions of higher education in the Commonwealth, shall convene a Higher Education Advisory Committee (Advisory Committee) to provide advice and make recommendations on the matters set forth in subsections B, C and D. The Advisory Committee shall consist of 10 members as follows: a representative of the Office of the Secretary of Education, to be appointed by the Secretary of Education, and who shall serve as chair of the Advisory Committee; a representative of the Office of the Secretary of Finance, to be appointed by the Secretary of Finance; a representative of the Council, to be appointed by the Chairman of the Council; the staff directors of the House Appropriations Committee and the Senate Finance Committee, or their designees; and the presidents or their designees of five public institutions of higher education, including two doctoral institutions, two comprehensive institutions, and one from the Virginia Community College System. The presidents of all of the public institutions of higher education shall select the institutions to be represented on the Advisory Committee, subject to the parameters set forth in this section. The Governor shall also appoint a representative from a private, nonprofit institution of higher education; however, such representative shall not provide advice or make recommendations concerning policies that solely impact public institutions of higher education. Both the Governor and the Advisory Committee may designate other persons to serve on the Advisory Committee, including but not limited to representatives of academic and instructional faculty or fiscal officers from state institutions of higher education.

B. Consistent with the objectives of this chapter identified in § [23-38.87:10](#), the Advisory Committee, in consultation with and with assistance from the staff of the Council and such other assistance it may need, shall develop and review at least

every five years, in consultation with the respective Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health, or their designees, representatives of public institutions of higher education in the Commonwealth, and such other state officials as may be designated by the Governor:

1. The methodology pursuant to subsection A of § [23-38.87:14](#) for determining how a significant increment of state funding shall follow the student to the two-year or four-year institution in which the student enrolls, how the amount of such per student funding for four-year institutions will be made to correspond as nearly as practical to the per student allocation envisioned under the then-existing appropriation for the Tuition Assistance Grant Act (§ [23-38.11](#) et seq.) for students attending private nonprofit higher education institutions in the Commonwealth, how and as of what date an institution's student enrollment shall be calculated, how an increase or decrease in Virginia undergraduate student enrollment above or below the enrollment level used to calculate the institution's funding under § [23-38.87:13](#) shall be reflected in the institution's appropriation pursuant to subsection A of § [23-38.87:14](#), and the standards and process for determining whether an increase or decrease in Virginia undergraduate student enrollment qualifies for funding under § [23-38.87:14](#);
2. Criteria for determining which families qualify as "low-income" and "middle-income" for purposes of § [23-38.87:15](#) and how they relate to federal, state and institutional policies governing the provision of financial assistance to students of such families;
3. Objective performance criteria for measuring the financial incentives set forth in § [23-38.87:16](#), and benefits or consequences for meeting or not meeting the incentives included in an institution's six-year plan pursuant to § [23-38.87:17](#);
4. Economic opportunity metrics, such as marketplace demand, earning potential, and employer satisfaction, and other indicators of the historical and projected economic value of degrees that can be used to assess degree programs in order to provide useful information on the economic impact of degrees to students as they make career choices and to state policy makers and university decision makers as they decide how to allocate scarce resources;
5. The additional authority that should be granted to all public institutions of higher education under the Restructured Higher Education Financial and Administrative

Operations Act (§ [23-38.88](#) et seq.), state goals and objectives each public institution of higher education should be expected to achieve, objective criteria for measuring educational-related performance with regard to those goals and objectives, and the benefits or consequences for meeting or not meeting those goals and objectives, including those set forth in § [2.2-5005](#); and

6. The role of nonpublic institutions in addressing the goals set forth in this chapter and make recommendations regarding such matters.

The Advisory Committee shall submit its recommendations to the Council, which shall review the recommendations and report its recommendations to the Governor and the Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health.

C. Consistent with the purposes of this chapter identified in § [23-38.87:10](#), the Advisory Committee, in consultation with and with assistance from the staff of the Council and such other assistance as it may need, shall review at least every five years, in consultation with the respective Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health, or their designees, representatives of public institutions of higher education in the Commonwealth, and such other state officials as may be designated by the Governor:

1. Federal and state financial aid programs and institutional practices to ensure that the appropriate level of financial assistance is being provided to both low-income and middle-income families, as required by § [23-38.87:15](#), including loan forgiveness programs targeted by purpose in furtherance of the objective of this chapter; and

2. The Restructured Higher Education Financial and Administrative Operations Act (§ [23-38.88](#) et seq.) to identify additional ways to reduce costs and enhance efficiency by increasing managerial autonomy with accountability at the institutional level.

The Advisory Committee shall submit its recommendations to the Council, which shall review the recommendations and report its recommendations to the Governor and the Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health.

D. The Advisory Committee shall periodically assess, based upon the institutions' six-year plans and other relevant factors, the degree to which the Commonwealth's system of higher education is meeting the statewide objectives of economic impact, reform, affordability, and access reflected in this chapter, as well as the strategic

impact of new general fund investments on achieving those objectives. The Advisory Committee shall submit its assessment and recommendations to the Council, which shall review the assessment and recommendations and report its recommendations to the Governor and the Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health.

E. In addition to providing advice and making recommendations on the matters set forth in subsections B, C and D, the Advisory Committee shall perform such other duties and undertake such other responsibilities as requested by the Governor or the General Assembly.

2011, cc. [828](#), [869](#).

§23-38.87:21. (Repealed effective October 1, 2016) Certification by Council.

Upon the completion of the development of the objective criteria for measuring goals and objectives described in subdivision B 5 of § [23-38.87:20](#), and each year thereafter, the Council shall annually assess the degree to which each institution has satisfied any goals or criteria developed by the Higher Education Advisory Committee pursuant to § [23-38.87:20](#), and shall, by no later than October 1 of each fiscal year, provide a certified written report of the results of such annual assessment to the Governor and the Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health. In order to assist the Council in its assessment, each public institution, and each private non-profit institution eligible for and seeking to qualify for state general funds, shall furnish periodic reports and other pertinent information, including student-level data, as may be required by the Council. The reports shall include, but not be limited to, copies of institutional financial aid audit reports and audited financial statements.

2011, cc. [828](#), [869](#).

The Virginia Real Estate Time-Share Act

§55-360. Title.

This chapter shall be known and may be cited as the "Virginia Real Estate Time-Share Act."

1981, c. 462.

§55-361. Repealed.

Repealed by Acts 1985, c. 517.

§55-361.1. Applicability.

A. This chapter shall have exclusive jurisdiction and shall apply to any product offering or disposition made within this Commonwealth after July 1, 1985, in a time-share project located within this Commonwealth. Sections [55-360](#), [55-361.1](#), [55-362](#), [55-362.1](#), [55-363](#), [55-364](#), [55-365.1](#), [55-369](#), [55-370](#), [55-370.1](#), [55-372](#), [55-373](#), [55-375](#), [55-380](#), [55-381](#), [55-382](#), [55-384](#), [55-385](#), [55-389](#), and [55-400](#) of this chapter shall apply to a time-share project within this Commonwealth which was created prior to July 1, 1985.

B. This chapter shall not affect rights or obligations created by preexisting provisions of any time-share instrument which transfers an estate or interest in real property.

C. This chapter shall apply to any product offering or disposition in a time-share project located outside the Commonwealth and offered for sale in the Commonwealth with the exception that Articles 2 (§ [55-366](#) et seq.), 3 (§ [55-374](#) et seq.), and 4 (§ [55-387](#) et seq.) of this chapter shall apply only to the extent permitted by the laws of the situs.

Code 1950, § 55-361; 1981, c. 462; 1983, c. 59; 1985, c. 517; 1986, c. 359; 1989, c. 637; 1991, c. 704; 1994, c. [580](#).

§55-362. Definitions.

As used in this chapter, or in a time-share instrument, unless the context requires a different meaning:

"Additional land" has the meaning ascribed to it in subsection C of § [55-367](#).

"Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

"Alternative purchase" means anything valued in excess of \$100 which is offered to a potential purchaser by the developer during the developer's sales presentation and which is purchased by such potential purchaser for more than \$100, even though the purchaser did not purchase a time-share. An alternative purchase is not a time-share. A membership camping contract as defined in § [59.1-313](#) is not an alternative

purchase. An alternative purchase shall be registered with the Board unless it is otherwise registered as a travel service under the Virginia Travel Club Act (§ [59.1-445](#) et seq.), and shall include, without limitation, vacation packages (howsoever denominated) and exit programs (howsoever denominated).

"Association" means the association organized under the provisions of § [55-368](#).

"Board" means the Common Interest Community Board, an agency within the meaning of the Administrative Process Act (§ [2.2-4000](#) et seq.).

"Board of directors" means an executive and administrative entity, by whatever name denominated, designated in a time-share estate project instrument as the governing body of the time-share estate owners' association.

"Common elements" means the real estate, improvements thereon, and the personality situate within the time-share project that are subject to the time-share program. "Common elements" shall not include the units and the time-shares.

"Consumer documents" means the aggregate of the following documents: the reverter deed, note, and the deed of trust. A consumer document shall be deemed one of the consumer documents.

"Contact information" means any information that can be used to contact an owner, including the owner's name, address, telephone number, email address, or user identity on any electronic networking service.

"Contract," "sales contract," "purchase contract," "contract of purchase" or "contract to purchase" shall be interchangeable throughout this chapter and shall mean any legally binding instrument executed by the developer and a purchaser whereby the developer is obligated to sell and the purchaser is obligated to purchase either a time-share and its incidental benefits or an alternative purchase registered under this chapter.

"Conversion time-share project" means a real estate improvement, which prior to the disposition of any time-share, was wholly or partially occupied by persons as their permanent residence or on a transient pay-as-you-go basis other than those who have contracted for the purchase of a time-share and those who occupy with the consent of such purchasers.

"Cost of ownership" means all of the owner's expenses related to a resale time-share due and payable between the date of a resale transfer contract and the transfer of the resale time-share.

"Deed" means the instrument by which title to a time-share estate is transferred from one person to another person.

"Deed of trust" means the instrument conveying the time-share estate that is given as security for the payment of the note.

"Default" means either a failure to have made any payment in full and on time or a violation of a performance obligation required by a consumer document for a period of no less than 60 days.

"Developer" means any person or group of persons acting in concert who (i) offers to dispose of a time-share or its or their interest in a time-share unit for which there has not been a previous disposition or (ii) applies for registration of the time-share program.

"Developer control period" has the meaning ascribed to it in § [55-369](#).

"Development right" means any right reserved by the developer to create additional units which may be dedicated to the time-share program.

"Dispose" or "disposition" means a transfer of a legal or equitable interest in a time-share, other than a transfer or release of security for a debt.

"Exchange agent" or "exchange company" means a person or persons who exchange or offer to exchange time-shares in an exchange program with other time-shares.

"Exchange program" means any opportunity or procedure for the assignment or exchange of time-shares among owners in other time-share programs as evidenced by a past or present written agreement executed between an exchange company and the developer or the time-share estate association; however, an "exchange program" shall not be either an incidental benefit or an opportunity or procedure whereby a time-share owner can exchange his time-share for another time-share within either the same time-share or another time-share project owned in part by the developer.

"Guest" means a person who is on the project, additional land or development at the request of an owner, developer, association or managing agent, or a person otherwise legally entitled to be thereon. A guest includes, without limitation, family members of owners, time-share exchange participants, merchants, purveyors, vendors and employees thereof, and of the developer and association.

"Incidental benefit" means anything valued in excess of \$100 provided by the developer that is acquired by a purchaser upon acquisition of a time-share and

includes without limitation exchange rights, travel insurance, bonus weeks, upgrade entitlements, travel coupons, referral awards, and golf and tennis packages. An incidental benefit is not a time-share or an exchange program. An incidental benefit shall not be registered with the Board.

"Inherent risks of project activity" mean those dangers or conditions that are an integral part of a project activity, including certain hazards, such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in association or time-share operations. Inherent risks of project activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the project professional or failing to exercise reasonable caution while engaging in the project activity.

"Lead dealer" means a person who sells or otherwise provides to any other person contact information concerning five or more owners to be used for a resale service, but excludes developers, managing entities, or exchange companies to the extent such entities are providing other persons with personal contact information about time-share owners in their own time-share plans or members of their own exchange program.

"Lien holder" means either a person who holds an interest in an encumbrance that is not released of record as to a purchaser or such person's successor in interest who acquires title to the time-share project at foreclosure or by deed in lieu of foreclosure, or other instrument however denominated.

"Managing agent" means a person who undertakes the duties, responsibilities, and obligations of the management of a time-share project.

"Managing entity" means the managing agent or, if there is no managing agent, the time-share owners' association in a time-share estate project and the developer in a time-share use project.

"Material change" means a change in any information or document disclosed in or attached to the public offering statement which renders inaccurate, incomplete or misleading any information or document in such a way as to affect substantially a purchaser's rights or obligations, but shall not include a change (i) in the real estate tax assessment or rate, utility charges or deposits, maintenance fees, association dues,

assessments, special assessments or any recurring time-share expense item provided the change is made known (a) immediately to the prospective purchaser by a written addendum in the public offering statement and (b) to the Board by filing with the developer's annual report copies of the updated changes occurring over the immediately preceding 12 months; (ii) which is an aspect or result of the orderly development of the time-share project in accordance with the time-share instrument; (iii) resulting from new, updated, or amended information contained in the annual report prepared and distributed pursuant to § [55-370.1](#); (iv) correcting spelling, grammar, omissions or other similar errors not affecting the substance of the public offering statement; or (v) occurring in the issuance of an exchange company's updated annual report or disclosure document, provided upon its receipt by the developer, it shall be distributed in lieu of all others in order to satisfy § [55-374](#).

"Note" means the instrument that evidences the debt occasioned by the deferred purchase of a time-share.

"Offering" or "offer" means any act to sell, solicit, induce, or advertise, which originates in this Commonwealth, whether by radio, television, telephone, newspaper, magazine, or mail, whereby a person is given an opportunity to acquire a time-share.

"Participant" means any person, other than a project professional, who engages in a project activity.

"Person" means one or more natural persons, corporations, partnerships, associations, trustees of a trust, limited liability companies, other entities, or any combination thereof capable of holding title to real property.

"Possibility of reverter" means a provision contained in a reverter deed whereby the time-share estate automatically reverts or transfers back to the developer upon satisfaction of the requirements imposed by § [55-376.1](#).

"Product" means each time-share and its incidental benefits and all alternative purchases that are registered with the Board pursuant to this chapter.

"Project" means the same as the term "time-share project. "

"Project activity" means any activity carried out or conducted on a common element, within a time-share unit or elsewhere in the project, additional land or development, that allows owners, their guests, and members of the general public to view, observe, participate or enjoy activities, including swimming pools, spas, sporting venues, and cultural, historical or harvest-your-own activities, other amenities and events, or

natural activities and attractions for recreational, entertainment, educational or social purposes. An activity is a project activity whether or not the participant paid to participate in the activity.

"Project instrument" means any recorded documents, by whatever name denominated, which create the time-share project and program and which may contain restrictions or covenants regulating the use, occupancy, or disposition of time-shares in a project.

"Project professional" means any person who is engaged in the business of providing one or more project activities, whether or not for compensation. For the purposes of this definition, the developer, association, and managing entity shall each be deemed a project professional.

"Public offering statement" means the statement required by § [55-374](#).

"Purchaser" means any person other than a developer or lender who owns or acquires a product, or who otherwise enters into a contract for the purchase of a product.

"Resale cost of ownership" means all the owner's expenses related to a resale time-share due and payable between the date of a resale transfer contract and the transfer of such resale time-share.

"Resale purchase contract" means an agreement negotiated by a reseller by which an owner or a reseller agrees to sell and a subsequent purchaser agrees to buy a resale time-share.

"Resale service" means engaging, directly or indirectly, for compensation, in any of the following either in person or by any medium of communication: (i) selling or offering to sell or list for sale for the owner a resale time-share, (ii) buying or offering to buy a resale time-share for transfer to a subsequent purchaser, (iii) transferring a resale time-share acquired from an owner to a subsequent purchaser or offering to assist in such transfer, (iv) invalidating or offering to invalidate for an owner the title of a resale time-share, or (v) advertising or soliciting to advertise or promote the transfer or invalidation of a resale time-share. Resale service shall not include an individual selling or offering to sell his own time-share unit.

"Resale time-share" means a time-share, wherever located, that has previously been sold to an owner who is a natural person for personal, family, or household use and that is transferred, or is intended to be transferred, through a resale service.

"Resale transfer contract" means an agreement between a reseller and the owner by which the reseller agrees to transfer or assist in the transfer of the owner's resale time-share.

"Reseller" means any person who, directly or indirectly, engages in a resale service.

"Reverter deed" means the deed from developer to a grantee that contains a possibility of reverter.

"Sales person" means a person who sells or offers to sell time-share interests in a time-share program.

"Situs" means the place outside the Commonwealth where a developer's time-share project is located.

"Situs Time-Share Act" means the Act, howsoever denominated, that regulates the offering, disposition, and sale of time-shares applicable to the property outside the Commonwealth where the time-share project is located.

"Subsequent purchaser" means the purchaser or transferee of a resale time-share.

"Time-share" or "timeshare" means either a time-share estate or a time-share use plus its incidental benefits.

"Time-share estate" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, coupled with a freehold estate or an estate for years in a time-share project or a specified portion thereof.

"Time-share estate occupancy expense" has the meaning ascribed to it in § [55-369](#).

"Time-share estate subject to reverter" means a time-share estate (i) entitling the holder thereof to occupy units not more than four weeks in any one year period; and (ii) for which the down payment is not more than 20 percent of the total purchase price of the time-share estate.

"Time-share expense" means (i) expenditures, fees, charges, or liabilities incurred with respect to the operation, maintenance, administration or insuring of the time-shares, units, and common elements comprising the entire time-share project, whether or not incurred for the repair, renovation, upgrade, refurbishing or capital improvements; and (ii) any allocations of reserves.

"Time-share instrument" means any document, however denominated, which creates the time-share project and program, and which may contain restrictions or covenants regulating the use, occupancy, or disposition of time-shares in a project.

"Time-share owner" or "owner" means a person who is an owner or co-owner of a time-share other than as security for an obligation.

"Time-share program" or "program" means any arrangement of time-shares in one or more time-share projects whereby the use, occupancy, or possession of real property has been made subject to either a time-share estate or time-share use in which such use, occupancy, or possession circulates among owners of the time-shares according to a fixed or floating time schedule on a periodic basis occurring over any period of time in excess of five years.

"Time-share project" means all of the real property subject to a time-share program created by the execution of a time-share instrument.

"Time-share unit" or "unit" means the real property or real property improvement in a project which is divided into time-shares and designated for separate occupancy and use.

"Time-share use" means a right to occupy a time-share unit or any of several time-share units during five or more separated time periods over a period of at least five years, including renewal options, not coupled with a freehold estate or an estate for years in a time-share project or a specified portion thereof. "Time-share use" shall not mean a right to use which is subject to a first-come, first-served, space-available basis as might exist in a country club, motel, hotel, health spa, campground, or membership or resort facility.

"Transfer" means a voluntary conveyance of a resale time-share to a person other than the developer, association, or managing entity of the time-share program of which the resale time-share is a part or to a person taking ownership by gift, foreclosure, or deed in lieu of foreclosure.

1981, c. 462; 1985, c. 517; 1986, c. 359; 1991, c. 704; 1994, c. [580](#); 1998, c. [460](#); 2001, c. [543](#); 2004, c. [143](#); 2007, c. [267](#); 2008, cc. [376](#), [851](#), [871](#); 2012, c. [751](#).

§55-362.1. Administrative agency.

This chapter shall be administered by the Common Interest Community Board, which is herein called the "Board."

1985, c. 517; 2008, cc. [851](#), [871](#).

§55-363. Status of time-share estates with respect to real property interests.

A. A document transferring or encumbering a time-share estate shall not be rejected for recordation within this Commonwealth because of the nature or duration of that estate or interest, provided the document complies with all other recordation requirements.

B. Each time-share estate constitutes for purposes of title a separate estate or interest in a unit.

C. For purposes of local real property taxation, each time-share unit, other than a unit operated for time-share use, shall be valued in the same manner as if such unit were owned by a single taxpayer. The total cumulative purchase price paid by the time-share owners for a unit shall not be utilized by the commissioner of revenue or other local assessing officer as a factor in determining the assessed value of such unit. A unit operated as a time-share use, however, may be assessed the same as other income producing and investment property. The commissioner of revenue or other local assessing officer shall list in the land book a time-share unit in the name of the association.

1981, c. 462; 1985, c. 517; 1994, c. [580](#).

§55-364. Applicability of local ordinances, regulations, and building codes.

A zoning, subdivision, or other ordinance or regulation may not impose any requirement upon a time-share project which it would not otherwise impose upon a similar project under a different form of ownership.

1981, c. 462.

§55-364.1. Use of terms.

A developer in its offering or disposition of a time-share may use interchangeably any term recognized in the industry, including without limitation: "time-share," "time-share interest," "interval ownership," "interval ownership interest," "vacation ownership," "vacation ownership interest," and "product." A developer shall not use the term "incidental benefit" or "alternative purchase" except in the proper context.

1994, c. [580](#).

§55-365. Repealed.

Repealed by Acts 1985, c. 517.

§55-365.1. Severability of provisions of time-share instruments.

All provisions of the time-share instruments shall be deemed severable, and any unlawful provision thereof shall be void.

Code 1950, § 55-365; 1981, c. 462; 1985, c. 517.

§55-366. Time-sharing permitted.

A time-share project shall be permitted on any land or improvement thereon lying within the Commonwealth unless prohibited by zoning then in effect or by the express language of any legally enforceable covenant, condition or restriction, however denominated, contained in the governing documents of record for such land, including without limitation, condominium instruments under the Condominium Act (§ [55-79.39](#) et seq.), a time-share instrument under this chapter, declaration under the Virginia Real Estate Cooperative Act (§ [55-424](#) et seq.) or a master deed under the Horizontal Property Act (§ [55-79.1](#) et seq.). This chapter shall not be construed to affect the validity of any provisions of any time-share program or any expansion thereof or time-share instrument recorded or in existence prior to July 1, 1981.

1981, c. 462; 1994, c. [580](#); 1998, c. [460](#).

§55-367. Instruments.

A. In order to create a time-share program for a time-share estate project, the developer shall execute a time-share instrument prepared and executed in accordance with this chapter and record it in the clerk's office where such time-share project is located. The time-share instrument shall contain the following:

1. The name of the time-share project, which name must include or be followed by a qualifying adjective or term outlined in § [55-364.1](#);
2. The name of the locality and the state or situs in which the time-share project is situated;
3. The legal description, street address, or other description sufficient to identify the time-share project;
4. A legally sufficient description of the real estate constituting the time-share project;
5. A statement of the form of time-share program, i.e., whether it is a time-share estate or time-share use;
6. Identification of time periods by letter, name, number or combination thereof;

7. Identification of time-shares and where applicable, the method whereby additional time-shares may be created or withdrawn;
8. The formula, fraction, or percentage of the common expenses and any voting rights assigned to each time-share;
9. Any restrictions on the use, occupancy, enjoyment, alteration, or alienation of time-shares;
10. The ownership interest, if any, in personal property available to time-share owners;
11. The program by which the managing entity, if any, will provide management of the project;
12. The period for which units are designated and committed to the time-share program and the property classification of the units at the expiration of such period;
13. Any provision for amending the time-share instrument;
14. A description of the events, including but not limited to condemnation and damage or destruction, upon which the time-share program may or shall be terminated before the expiration of its full term and the consequences of such termination, including but not limited to the manner in which the time-share project or the proceeds from the disposition thereof shall be held or distributed among owners;
15. A statement of whether or not the developer reserves the right to add to or delete any incidental benefit;
16. A statement of whether or not the developer reserves the right to add to or delete any alternative purchase; and
17. Such other matters as the developer deems appropriate.

B. In order to create a time-share program for a time-share use project, the developer shall either (i) execute and record a time-share instrument as required by subsection A or (ii) execute a time-share instrument that takes the form of and is a part of the contract which contains the information required by subsection A.

C. If the developer explicitly reserves the right to develop additional time-shares, the time-share instrument shall also contain the following:

1. A legally sufficient description of all land which may be added to the time-share project which shall be referred to as "additional land";

2. A statement outlining the order in which portions of the additional land may be subjected to the exercise of each development right, or a statement that no assurances are made in that regard;
3. A statement of the time limit upon which the option to develop shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the specified time limit;
4. A statement of the maximum number of units which may be added to the time-share project, if known, and if not known, a statement to that effect; and
5. A statement of the property classification of the additional land if the developer fails to exercise the development rights as reserved in the time-share instrument.

1981, c. 462; 1985, c. 517; 1994, c. [580](#); 1998, c. [460](#).

§55-368. Time-share instrument for time-share estate project.

In addition to the requirements of § [55-367](#), the time-share instrument for a time-share estate project shall outline or prescribe reasonable arrangements for the management and operation of the time-share estate program and for the maintenance, repair, and furnishing of units comprising it, which shall include, but need not be limited to, provisions for the following:

1. Creation of an association, the members of which shall be the time-share estate owners. The association may be formed pursuant to the Virginia Nonstock Corporation Act (§ [13.1-801](#) et seq.); however, the association shall be formed prior to the time the project and program are registered with the Board. Nothing shall affect the validity of the association, once formed, and the rights applicable to it as granted by this chapter, notwithstanding the time when such association was formed;
2. Payment of costs and expenses of operating the time-share estate program and owning and maintaining the units comprising it;
3. Employment and termination of employment of the managing agent for the project. Any agreement pertaining to the employment of the managing agent and executed during the developer control period shall be voidable by the association at any time after termination of the developer control period for the time-share project, and any provision in such agreement to the contrary is hereby declared to be void;
4. Termination of leases and contracts for goods and services for the time-share estate project, which are entered into during the developer control period. Any such

lease or contract shall become voidable at the option of the association upon termination of the developer control period for the entire time-share project, or sooner if the provisions of such lease or contract so state;

5. Preparation and dissemination to time-share estate owners of the annual report required by § [55-370.1](#);

6. Adoption of standards and rules of conduct for the use, enjoyment, and occupancy of units by the time-share estate owners;

7. Collection of regular assessments, fees or dues, and/or special assessments from time-share estate owners to defray all time-share expenses;

8. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use and enjoyment of the project by time-share estate owners, their guests and other users. The costs associated with securing and maintaining such insurance shall be a time-share expense. Nothing herein shall be construed to obligate the managing entity to secure insurance on the conduct of the time-share estate owners, their guests and other users, or the personal effects or property of such owners, guests, and users;

9. Methods for providing compensation or alternate use periods or monetary compensation to a time-share estate owner if his contracted-for unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation;

10. Procedures for imposing a monetary penalty or suspension of a time-share estate owner's rights and privileges in the time-share estate program or time-share project for failure of such owner to comply with provisions of the time-share instrument or the rules and regulations of the association with respect to the use and enjoyment of the units and the time-share project. Under these procedures a time-share estate owner must be given reasonable notice and reasonable opportunity to be heard and explain the charges against him in person or in writing to the board of directors of the association before a decision to impose discipline is rendered; and

11. Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share estate program and the units comprising it.

1981, c. 462; 1985, c. 517; 1989, c. 637; 1991, c. 704; 1994, c. [580](#); 1998, c. [460](#).

§55-369. Developer control in time-share estate program.

A. The time-share instrument for a time-share estate program shall provide for a period of time, to be called the "developer control period," during which the developer or a managing agent selected by the developer shall manage and control the time-share estate project and the common elements and units, or portions thereof, comprising it. All costs associated with the control, management, and operation of the time-share estate project during the developer control period shall belong to the developer, except for time-share estate occupancy expenses that shall, if required by the developer in the time-share instrument, be allocated only to and paid by time-share estate owners other than the developer. "Time-share estate occupancy expenses" means all costs and expenses incurred in (i) the formation, organization, operation, and administration, including capital contributions thereto, of the association and both its board of directors and its members and (ii) all owners' use and occupancy of the time-share estate project including without limitation its completed and occupied time-share estate units and common elements available for use. Such costs and expenses include but are not limited to maintenance and house-keeping charges; repairs; refurbishing costs; insurance premiums, including the premium for comprehensive general liability insurance required by subdivision 8 of [§ 55-368](#); taxes; properly allocated labor, operational, and overhead costs; general and administrative expenses; managing agent's fee; utility charges and deposits; the cost of periodic repair and replacement of walls and window treatments and furnishings, including furniture and appliances; filing fees and annual registration charges of the State Corporation Commission and the Board; counsel fees and accountant charges; and reserves for any of the foregoing. Nothing shall preclude the developer, during the developer control period and at any time after the lapse of a purchaser's right of cancellation, and without regard to the recordation of the deed, provided the deed has been delivered to the purchaser or the purchaser's agent, from collecting an annual or specially assessed charge from each time-share estate owner for the payment of the time-share estate occupancy expenses by way of a "maintenance fee." However, any such funds received and not spent or any other funds received and allocated to the benefit of the association shall be transferred to the association by the developer at the termination of the developer control period.

B. Except to the extent that the purchase contract or time-share instrument expressly provides otherwise, fee simple title to the common elements shall be transferred to the time-share estate owners' association, free of charge, no later than at such time as the developer (i) transfers to purchasers legal or equitable ownership of at least 90

percent of the time-share estates, excluding any reacquisitions by the developer; (ii) is no longer the beneficiary on deeds of trust secured on at least 20 percent of the time-share estates; or (iii) has completed all of the promised common elements and facilities comprising the time-share estate project, whichever occurs last. The developer may, but shall not be required to, make such transfer when the period has ended for a phase or portion of the time-share estate project. The transfer herein required of the developer shall not exonerate the developer from the responsibility of completion of the promised and incomplete common elements once the transfer occurs. Upon transfer of the time-share project or portion to the association, the developer control period for such project or portion thereof shall terminate.

1981, c. 462; 1985, c. 517; 1989, c. 637; 1991, c. 704; 1993, c. 842; 1994, c. [580](#); 1998, c. [460](#); 2001, c. [543](#); 2008, c. [376](#); 2013, cc. [259](#), [327](#).

§55-370. Time-share estate owners' association control liens.

A. The board of directors of the association shall have the authority to adopt regular annual assessments and to levy periodic special assessments against each of the time-share estate unit owners and to collect the same from such owners according to law, if the purpose in so doing is determined by the board of directors to be in the best interest of the time-share project or time-share program and the proceeds are used to either pay common expenses or fund a reserve. In addition, the board of directors of the association shall have the authority to collect, on behalf of the developer or on its own account, the maintenance fee imposed by the developer pursuant to § [55-369](#). The authority hereby granted and conferred upon the association shall exist notwithstanding any covenants and restrictions of record applicable to the project stated to the contrary and any such covenants and restrictions are hereby declared void.

B. The developer may provide that it not be obligated to pay all or a portion of any assessment, dues, or other charges of the association, however denominated, passed, or adopted, pursuant to subsection A, if such developer so provides, in bold type, in the time-share instrument for the time-share estate project. If no such provision exists, the developer shall be responsible to pay the same assessment, dues, or other charges that a time-share estate owner is obligated to pay for each of its unsold time-shares existing at the end of the fiscal year of the association and no more if the board of directors of the association so determines. In no event shall either a time-

share expense or the dues, assessment, or charges of the association discriminate against the developer.

C. The association shall have a lien on every time-share estate within its project for unpaid and past due regular or special assessments levied against that estate in accordance with the provisions of this chapter and for all unpaid and past due maintenance fees. The exemption created by § [34-4](#) shall not be claimed against the debt or lien of the association created by this section.

The association, in order to perfect the lien given by this subsection, shall file, before the expiration of four years from the time such special or regular assessment or maintenance fee became due and payable, in the clerk's office of the county or city in which the project is situated, a memorandum verified by the oath of any officer of the association or its managing agent and containing the following information:

1. The name and location of the project;
2. The name and address of each owner of the time-share on which the lien exists and a description of the unit in which the time-share is situate;
3. The amount of unpaid and past due special or regular assessments or unpaid and past due maintenance fees applicable to the time-share, together with the date when each became due;
4. The amount of any other charges owing occasioned by the failure of the owner to pay the assessments or maintenance fees, including late charges, interest, postage and handling, attorney fees, recording costs and release fees;
5. The name, address and telephone number of the association's trustee, if known at the time, who will be called upon by the association to foreclose on the lien upon the owner's failure to pay as provided in this subsection; and
6. The date of issuance of the memorandum.

Notwithstanding any other provision of this chapter, or any other provision of law requiring documents to be recorded in the deed books of the clerk's office of any court, from July 1, 1981, all memoranda of liens arising under this subsection shall be recorded in the deed books in such clerk's office. Any such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for time-share estate regular or special assessments or maintenance fees.

It shall be the duty of the clerk in whose office such memorandum shall be filed as provided herein to record and index the same as provided in this subsection, in the names of the persons identified therein as well as in the name of the time-share estates owners' association. The cost of recording such memorandum shall be taxed against the owner of the time-share on which the lien is placed. The filing with the clerk of one memorandum on which is listed two or more delinquent time-share estate unit owners is permitted in order to perfect the lien hereby allowed and the cost of filing in this event shall be the clerk's fee as prescribed in subdivision A 2 of § [17.1-275](#).

D. At any time after perfecting the lien pursuant to this section, the association may sell the time-share estate at public sale, subject to prior liens. For purposes of this section, the association shall have the power both to sell and convey the time-share estate, and shall be deemed the time-share estate owner's statutory agent for the purpose of transferring title to the time-share estate. A nonjudicial foreclosure sale shall be conducted by a trustee and in accordance with the following:

1. The association shall give notice to the time-share estate owner, prior to advertisement, as required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the time-share estate owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the time-share estate. The notice shall further inform the time-share estate owner of the right to bring a court action in the circuit court of the county or city where the time-share project is located to assert the nonexistence of a debt or any other defenses of the time-share estate owner to the sale.

2. After expiration of the 60-day notice period provided in subdivision 1, the association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which the time-share project is located. It shall be the duty of the clerk in whose office such appointment is filed to record and index the same, as provided in this subsection, in the names of the persons identified therein as well as in the name of the association. The association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the time-share estate owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the time-share estate owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the time-share estate. Such conditions are that the time-share estate owner: (i) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (ii) pay all expenses and costs incurred in perfecting and enforcing the lien, including but not limited to advertising costs and reasonable attorney fees.

4. In addition to the advertisement required by subdivision 5, the association shall give written notice of the time, date, and place of any proposed sale in execution of the lien, including the name, address, and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the time-share estate to be sold at his last known address as such owner and address appear in the records of the association, (ii) any lienholder who holds a note against the time-share estate secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the association shall be in a newspaper having a general circulation in the city or county wherein the time-share estate to be sold and the time-share project, or any portion thereof, lies pursuant to the following provisions:

a. The association shall advertise once a week for four successive weeks; however, if the time-share estate and the time-share project or some portion thereof is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of time-share estate being sold is generally

advertised for sale. The advertisement of sale, in addition to such other matters as the association finds appropriate, shall set forth:

(1) A description of the time-share estate to be sold, which description need not be as extensive as that contained in the deed of trust, but shall identify the time-share project by street address, if any, or, if none, shall give the general location of such time-share project with reference to streets, routes, or known landmarks with further identification of the time-share estate to be sold. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the association. It shall set forth the name, address, and telephone number of the representative, agent, or attorney who is authorized to respond to inquiries concerning the sale; or

(2) In lieu of the requirements of subdivision (1), the advertisement shall set forth the date, time, place, and terms of sale and the name of the association; the street address of the time-share estate to be sold, if any, or if none, the general location of the time-share project; and the name, address, and telephone number of the representative, agent, or attorney who is authorized to respond to inquiries and give additional information concerning the time-share estate to be sold, including providing in hard copy or electronic form a description of the time-share estate to be sold by street address, if any, or, if none, by the general location of the time-share project with reference to streets, routes, or known landmarks, and where available, tax map identification. The advertisement under this subdivision (2) shall also include a website address where the information contained in subdivision (1) is displayed for the time-share estate to be sold.

c. In addition to the advertisement required by subdivisions 5 a and 5 b, the association may give such other further and different advertisement as the association finds appropriate.

6. In the event of postponement of the sale, which postponement shall be at the discretion of the association, advertisement of the postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court. Such petition shall be filed within 60 days of the sale or the right to do so shall lapse.

8. In the event of a sale, the association shall have the following powers and duties:

a. The association may sell two or more time-share estates at the sale. Written one-price bids may be made and shall be received by the trustee from the association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the time-share instrument, the association may bid to purchase the time-share estate at a foreclosure sale. The association may own, lease, encumber, exchange, sell, or convey the time-share estate. Whenever the written bid of the association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision 10 and § [64.2-1309](#). The written bid submitted pursuant to this subsection may be prepared by the association, its agent or attorney.

b. The association may require of any bidder at any sale a cash deposit of as much as 33.33 percent of the sale price before his bid is received, which shall be refunded to him if the time-share estate is not sold to him through action of the trustee. The deposit of the successful bidder shall be applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the association in connection with that sale.

c. The association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including reasonable attorney fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the time-share estate owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the time-share estate owner or his assigns, provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the unit owner's equity, without actual notice thereof prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the time-share estate with special warranty of title. The trustee shall not be required to take pos-

session of the time-share estate prior to the sale thereof or to deliver possession of the time-share estate to the purchaser at the sale.

10. If the sale of a time-share estate is made pursuant to this subsection and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within six months from the date of foreclosure, the sale is set aside by the court or an appeal is allowed by the Supreme Court of Virginia, and a decree is therein entered requiring such sale to be set aside.

When payment or satisfaction is made of a debt secured by the lien perfected by this subsection, such lien shall be released in accordance with the provisions of § [55-66.3](#). For the purposes of § [55-66.3](#), any officer of the time-share estate owners' association or its managing agent shall be deemed the duly authorized agent of the lien creditor.

E. The commissioner of accounts to whom an account of sale is returned in connection with the foreclosure of either a lien under subsection C or a purchase money deed of trust taken back by the developer in the sale of a time-share in order to satisfy § [64.2-1309](#) shall be entitled to a fee, not to exceed \$70, on each foreclosure of a lien under subsection C and not to exceed \$125 on each foreclosure of a purchase money deed of trust taken back by the developer.

F. Any time-share owner within the project having executed a contract for the disposition of the time-share, shall be entitled, upon request, to a recordable statement setting forth the amount of unpaid regular or special assessments or maintenance fees currently levied against that time-share. Such request shall be in writing, directed to the president of the time-share estate owners' association, and delivered to the principal office of the association. Failure of the association to furnish or make available such statement within 20 days from the actual receipt of such written request shall extinguish the lien created by subsection C as to the time-share involved. Payment of a fee reflecting the reasonable cost of materials and labor, not to exceed the actual cost thereof, may be required as a prerequisite to the issuance of such a statement.

1981, c. 462; 1985, c. 517; 1989, c. 637; 1991, c. 704; 1993, c. 842; 1994, cc. [432](#), [580](#); 1998, c. [460](#); 2001, c. [543](#); 2006, c. [653](#); 2007, c. [267](#); 2012, c. [406](#); 2013, cc. [259](#), [327](#).

§55-370.01. Time-share owners' association books and records; meetings; use of e-mail.

A. Subject to the provisions of subsection B, all books and records, or copies thereof, kept by or on behalf of the association shall be maintained so that such books and records, or portions thereof, are reasonably available for inspection after written request by a member in good standing or his authorized agent. The association may charge such member or his agent a reasonable fee for copying the requested information. No books or records shall be removed from their location by the examining member or his agent. The right of inspection shall exist without reference to the duration of membership and may be exercised only during reasonable business hours and at a mutually convenient time and location, under the supervision of the custodian, and upon 15 days' written notice.

For purposes of this subsection, the requested books and records shall be considered "reasonably available" if copies thereof are delivered to the requesting member or his agent within seven business days of the date the association receives the written request. However, the requesting member or his agent shall be permitted to inspect the books and records wherever located at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the records. The custodian shall supply copies of the records where requested and upon payment of the copying fee.

The association shall provide members of the association with the location of the books and records, along with the name and address of the custodian, by any reasonable method, which may include posting in a reasonable location at the situs of the time-share project or in the annual report required by § [55-370.1](#).

B. Books and records kept by or on behalf of an association may be withheld from inspection to the extent that they concern:

1. Personnel records;
2. An individual's medical records;
3. Records relating to business transactions that are currently in negotiation;
4. Privileged communications with legal counsel;
5. Complaints against an individual member of the association;
6. Agreements containing confidentiality requirements;
7. Pending litigation;

8. The name, address, phone number, electronic mail address, or other personal information of time-share owners or members of the association, unless such owner or member first approves of the disclosure in writing;
9. Disclosure of information in violation of law; or
10. Meeting minutes or other records of an executive session of the board of directors held in accordance with subsection D.

The association shall be under no obligation to provide requested records to the extent that they are matters of public record or are otherwise readily obtainable from another source.

C. The association shall maintain among its records a complete, up-to-date list of the names and addresses of all current members in good standing who are owners of time-share estates in the time-share project. The association shall not publish such list or provide a copy of it to any time-share owner or to any third party except the board of directors or the developer. However, the association shall mail to those persons listed on the list materials provided by any member in good standing, upon written request of that member, if the purpose of the mailing is to advance legitimate association business. The use of any proxies solicited in this manner must comply with the provisions of the time-share instrument and this chapter. A mailing requested for the purpose of advancing legitimate association business shall occur within 45 days after receipt of a request from a member in good standing. The board of directors of the association shall be responsible for determining the appropriateness of any mailing requested pursuant to this subsection whose decision in this regard shall be final. The association shall be paid in advance for the association's actual costs in performing the mailing, including but not limited to postage, supplies, reasonable labor, and attorney fees.

D. Meetings of the board of directors shall be open to all members of record who are eligible to vote and who are in good standing. Minutes shall be recorded and shall be available as provided in subsection A. The board of directors may convene in closed session to consider personnel matters; consult with legal counsel; discuss and consider contracts, potential or pending litigation, and matters involving violations of the time-share instrument or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests, or other invitees are responsible; or discuss and consider the personal liability of members to the association upon the affirmative vote in open meeting to assemble in closed session. The motion

shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in closed session shall become effective unless the board of directors, following the closed session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

E. Notwithstanding any provisions of the Virginia Nonstock Corporation Act (§ [13.1-801](#) et seq.) to the contrary:

1. The bylaws of the association may prescribe different quorum requirements for meetings of its members;
2. A director of the association may be removed from the office pursuant to any procedure provided in its articles of incorporation and, if none is provided, may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election.

F. Whenever in this chapter communication between the board of directors and a member of the association is required by mail, any electronic means may be used in the alternative, including e-mail, provided such electronic communication is personal and only between such board and such member.

G. Filings with the board may be made by any electronic means providing such board is willing to accept same.

2006, c. [653](#); 2007, c. [267](#).

§55-370.1. Time-share estate owners' association annual report.

A. Commencing with the time-share estate program and within 180 days after the close of each fiscal year thereafter, an annual report shall be prepared and distributed to all time-share estate owners. The annual report required hereby shall be prepared and distributed for each time-share estate project registered with the Board. During the developer control period, the annual report shall be prepared and distributed to all time-share purchasers by the developer or its designated managing entity and thereafter by the association.

B. The annual report shall contain the following:

1. The full legal name of the time-share project and its address;
2. The full legal name of the association;
3. A list of the names and mailing addresses of the members of the association's board of directors and the name of the person who prepared the report;
4. The managing entity's name, address, and contact person, if any, for the project;
5. A statement of whether or not the developer control period has terminated for the time-share estate project;
6. Financial statements of the association audited by an independent certified public accounting firm of the association that contain at least the following:
 - a. A balance sheet as of the end of the fiscal year;
 - b. An income statement as of the end of the fiscal year; and
 - c. A statement of the net changes in the financial position of the association for the fiscal year just ended;
7. A statement of the time-share estates occupancy expenses, the regular assessment, and any special assessments or other charges due for the current year from each time-share estate owner;
8. A copy of the current budget reflecting the anticipated time-share estate occupancy expenses along with:
 - a. A statement as to who prepared the budget;
 - b. A statement of the budgetary assumptions concerning occupancy factors;
 - c. A description of any provision made in the budget for reserves for repairs and replacement;
 - d. A statement of any other reserves;
 - e. The projected financial liability for each time-share estate owner, including a statement of (i) the nature of all charges, assessments, maintenance fees, and other expenses that may be assessed, (ii) the current amounts assessed, and (iii) the method and formula for changing any such assessments; and
 - f. A statement of any services not reflected in the budget that the developer provides, or expenses that it pays, that the association expects may become a time-share

expense at any subsequent time, and the projected time-share expense assessment attributable to each of those services or expenses for the association and for each time-share; and

9. A statement of the location of the books and records of the association along with the name and contact address of the custodian of such books and records.

C. In lieu of the annual report required by subsection A, during the first 12 months of the time-share program, the developer or the association shall prepare a budget that shall contain the information contained in subdivision B 8.

1985, c. 517; 1991, c. 704; 1994, c. [580](#); 1998, c. [460](#); 2014, c. [533](#).

§55-371. Time-share instrument for project.

In addition to the requirements of § [55-367](#), the time-share instrument for a time-share use program shall prescribe and outline reasonable arrangements for the management and operation of the time-share use program and for the maintenance, repair, and furnishing of time-share use units comprising same, which arrangements shall include, but need not be limited to, provisions for the following:

1. Standards and procedures for upkeep, repair and interior furnishing of time-share use units, for the replacements of such furnishings, and for providing maid, cleaning, linen, and similar services to the units during use and occupancy periods;
2. Adoption of standards and rules of conduct governing the use, enjoyment, and occupancy of time-share use units by owners;
3. Payment by the developer of the costs and expenses of operating the time-share use program and owning and maintaining the time-share use units comprising it;
4. Selection of a managing agent to act for and on behalf of the developer should the developer elect not to undertake the duties, responsibilities, and obligations of the management of the time-share use program;
5. Procedures for establishing the rights of time-share use owners to occupancy, use, and enjoyment of time-share use units by prearrangement or under a first-reserved, first-served priority system;
6. Procedures for imposing and collecting regular and/or special assessments, maintenance, or use fees from time-share use owners as necessary to defray all time-share expenses and in providing materials and services to the units, as herein required of the developer;

7. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the occupancy, use, and enjoyment of time-share use units by time-share use owners, their guests, and other users. The costs associated with securing and maintaining such insurance shall be a time-share expense. Nothing herein shall be construed to obligate the developer to secure insurance on the conduct of the time-share use owners, their guests and other users, or the personal effects or property of such owners, guests, and users;

8. Methods for providing compensating or alternate use periods or monetary compensation to a time-share use owner if a time-share use unit cannot be made available for the period to which the owner is entitled by schedule or by a confirmed reservation; and

9. Procedures for imposing a monetary penalty or suspension of a time-share use owner's rights and privileges in the time-share use program or project or termination of the time-share use itself for failure of the time-share use owner to comply with the provisions of the time-share use instrument, the rules and regulations established by the developer with respect to the occupancy, use and enjoyment of the time-share use units, or the failure to pay the charges imposed by the developer against the time-share use owner for providing the materials and services as herein required of the developer. Except in matters where the time-share use owner has failed to pay the charge imposed by the developer for a period of less than sixty days after it has become due and payable, the owner shall be given notice and the opportunity to be heard.

1981, c. 462; 1985, c. 517; 1994, c. [580](#); 1998, c. [460](#).

§55-372. Partition.

No action for partition of a unit may be maintained except as permitted by the time-share instrument, or by subsection C of § [55-373](#).

1981, c. 462.

§55-373. Termination of certain time-shares.

A. This section applies to all time-share estate programs and, when provided by the time-share instrument, to time-share use programs.

B. A time-share project may be terminated in whole by the developer at any time and for any reason if such developer is the sole owner of all time-shares within the time-share project. Such termination shall be accomplished by the developer executing and

recording a termination document where the time-share instrument is recorded. Time-shares subject to this section also may be terminated by written agreement of the time-share owners having at least fifty-one percent of the time-shares, or by such larger percentage as may otherwise be provided in the time-share instrument. The termination agreement shall specify a date upon which it shall become void, unless it is recorded before that date in the clerk's office of the appropriate court where the time-share project is located.

C. If the termination agreement sets forth the material terms of a contract or proposed contract under which an estate or interest in each time-share unit equal to the sum of the time-shares therein is to be sold and designates a trustee to effect the sale, the termination agreement becomes effective upon recordation, and title to that estate or interest vests upon termination in the trustee for the benefit of the time-share owners, to be transferred pursuant to the contract. If the termination agreement does not set forth the material terms of a contract or proposed contract under which an estate or interest in each time-share unit equal to the sum of the time-shares therein is to be sold and designates a trustee to effect the sale, the termination agreement becomes effective upon recordation, and title to an estate or interest in each time-share unit equal to the sum of the time-shares therein vests upon termination in the time-share owners thereof in proportion to their respective interests as provided in subsection F, and liens on the time-shares shall accordingly encumber those interests; and in this instance, any co-owner of that estate or interest may thereafter maintain an action for partition or for allotment or sale in lieu of partition pursuant to the laws of the Commonwealth.

D. Except as otherwise specified in the termination agreement, so long as the former time-share owners or their trustee holds title to the estate or interest equal to the sum of the time-shares, each former time-share owner and his successor in interest have the same rights with respect to the use, enjoyment and occupancy in the former time-share unit that he would have had if termination had not occurred, together with the same liabilities and other obligations imposed by this act or the time-share instrument.

E. After termination of all time-shares in a time-share project and adequate provision for payment of the claims of the creditors for time-share expenses, distribution shall be made, in proportion to their respective interests as provided in subsection F, to the former time-share owners and their successors in interest of (i) the proceeds of

any sale pursuant to this section, (ii) the proceeds of any personalty held for the use and benefit of the former time-share owners, and (iii) any other funds held for the use and benefit of the former time-share owners.

F. The time-share instrument may specify the respective fractional or percentage interest in the estate or interest in each unit equal to the sum of the time-share therein that will be owned by each former time-share owner. Otherwise, not more than 180 days prior to the termination, an appraisal shall be made of the fair market value of each time-share by 1 or more impartial qualified appraisers selected either by the trustee designated in the termination agreement, or by the managing entity if no trustee was so designated. The appraisal shall also state the corresponding fractional or percentage interests calculated in proportion to those values and in accordance with this subsection. A notice stating all of those values and corresponding interests and the return address of the sender shall be sent by certified or registered mail, by the managing entity or the trustee designated in the termination agreements, to all of the time-share owners. The appraisal governs the magnitude of each interest unless (i) at least twenty-five percent of the time-share owners deliver, within sixty days after the date the notices were mailed, written disapprovals to the return address of the sender of the notice, or (ii) the final judgment of a court of competent jurisdiction, entered during or after that period, holds that the appraisal should be set aside. The appraisal and the calculation of interests must be made in accordance with the following:

1. If the termination agreement sets forth the material terms of a contract or proposed contract for the sale of the estate or interests equal to the sum of the time-shares, each time-share conferring a right of occupancy during a limited number of time periods must be appraised as if the time until the date specified for the conveyance of the property had already elapsed. Otherwise, each time-share of that kind must be appraised as if the time until the date specified pursuant to subsection B had already elapsed.

2. The interest of each time-share owner is the value of the time-share he owned divided by the sum of the values of all time-shares in the unit or units to which his time-share applies.

G. Foreclosure or enforcement of a lien or encumbrance against all of the time-shares in a time-share project does not of itself terminate those time-shares.

1981, c. 462; 1985, c. 517; 2006, c. [653](#).

§55-374. Public offering statement.

A. The developer shall prepare and distribute to each prospective purchaser prior to the execution of a contract for the purchase of a time-share, a copy of the current public offering statement about which the time-share relates. The public offering statement shall fully and accurately disclose the material characteristics of the time-share project registered under this chapter and such time-share offered, and shall make known to each prospective purchaser all material circumstances affecting such time-share project. A developer need not make joint disclosures concerning two or more time-share projects owned by the developer or any related entity unless such projects are included in the same time-share program and marketed jointly at any of the time-share projects. The proposed public offering statement shall be filed with the Board, and shall be in a form prescribed by its regulations. The public offering statement may limit the information provided for the specific time-share project to which the developer's registration relates. The public offering statement shall include the following only to the extent a given disclosure is applicable; otherwise no reference shall be required of the developer or contained in the public offering statement:

1. The name and principal address of the developer and the time-share project registered with the Board about which the public offering statement relates, including:
 - a. The name, principal occupation and address of every director, partner, limited liability company manager, or trustee of the developer;
 - b. The name and address of each person owning or controlling an interest of 20 percent or more in each time-share project registered with the Board;
 - c. The particulars of any indictment, conviction, judgment, decree or order of any court or administrative agency against the developer or managing entity for violation of a federal, state, local or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements or any similar or related activity;
 - d. The nature of each unsatisfied judgment, if any, against the developer or the managing entity, the status of each pending suit involving the sale or management of real estate to which the developer, the managing entity, or any general partner, executive officer, director, limited liability company manager, or majority stockholder thereof, is a defending party, and the status of each pending suit, if any, of significance to any time-share project registered with the Board; and

e. The name and address of the developer's agent for service of any notice permitted by this chapter.

2. A general description of the time-share project registered with the Board and the units and common elements promised available to purchasers, including without limitation, the developer's estimated schedule of commencement and completion of all promised and incomplete units and common elements.

3. As to all time-shares offered by the developer:

a. The form of time-share ownership offered in the project registered with the Board;

b. The types, duration, and number of units and time-shares in the project registered with the Board;

c. Identification of units that are subject to the time-share program;

d. The estimated number of units that may become subject to the time-share program;

e. Provisions, if any, that have been made for public utilities in the time-share project including water, electricity, telephone, and sewerage facilities;

f. A statement to the effect of whether or not the developer has reserved the right to add to or delete from the time-share program a time-share project or any incidental benefit or alternative purchase; and

g. If the developer utilizes the possibility of reverter, a statement to that effect referring the purchaser to the reverter deed for an explanation thereof.

4. In a time-share estate program, a copy of the annual report or budget required by § [55-370.1](#), which copy may take the form of an exhibit to the public offering statement. In the case where multiple time-share projects are registered with the Board, the copy or exhibit may be in summary form.

5. In a time-share use program where the developer's net worth is less than \$250,000, a current audited balance sheet and where the developer's net worth exceeds such amount, a statement by such developer that its equity in the time-share program exceeds that amount.

6. Any initial or special fee due from the purchaser at settlement together with a description of the purpose and method of calculating the fee.

7. A description of any liens, defects, or encumbrances affecting the time-share project and in particular the time-share offered to the purchaser.
8. A general description of any financing offered by or available through the developer.
9. A statement that the purchaser has a nonwaivable right of cancellation, referring such purchaser to that portion of the contract in which such right may be found.
10. If the time-share interest in a condominium unit may be conveyed before that unit is certified as substantially complete in accordance with § [55-79.58](#), a statement of the developer's obligation to complete the unit. Such statement shall include the approximate date by which the condominium unit shall be completed, together with the form and amount of the bond filed in accordance with subsection B of § [55-79.58:1](#).
11. Any restraints on alienation of any number or portion of any time-shares.
12. A description of the insurance coverage provided for the benefit of time-share owners.
13. The extent to which financial arrangements, if any, have been provided for completion of any incomplete but promised time-share unit or common element being then offered for sale, including a statement of the developer's obligation to complete the promised units and common elements comprising the time-share project that have not begun, or begun but not yet completed.
14. The extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit.
15. The name and address of the managing entity for the project.
16. Copies of the project instrument and the association's articles of incorporation and bylaws, each of which may be a supplement to the public offering statement.
17. Any services that the developer provides or expense it pays and that it expects may become at any subsequent time a time-share expense of the owners, and the projected time-share expense liability attributable to each of those services or expenses for each time-share.
18. A description of the terms of the deposit escrow requirements, including a statement that deposits may be removed from escrow at the termination of the cancellation period.

19. A description of the facilities, if any, provided by the developer to the association in a time-share estate project for the management of the project.

20. Any other information required by the Board to assure full and fair meaningful disclosure to prospective purchasers.

B. If any prospective purchaser is offered the opportunity to subscribe to or participate in any exchange program, the public offering statement shall include as an exhibit or supplement, the disclosure document prepared by the exchange company in accordance with § [55-374.2](#) and a brief narrative description of the exchange program which shall include the following:

1. A statement of whether membership or participation in the program is voluntary or mandatory;
2. The name and address of the exchange company together with the names of its top three officers and directors;
3. A statement of whether the exchange company or any of its top three officers, directors, or holders of a 10 percent or greater interest in the exchange company has any interest in the developer, managing entity or the time-share project;
4. A statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the developer; and
5. A brief narrative description of the procedure whereby exchanges are conducted.

C. The public offering statement of a conversion time-share project shall also include the following, which may take the form of an exhibit to the public offering statement:

1. A specific statement of the amount of any initial or special fee, if any, due from the purchaser of a time-share on or before settlement of the purchase contract and the basis of such fee occasioned by the fact that the project is a conversion time-share project;
2. Information on the actual expenditures, if available, made on all repairs, maintenance, operation, or upkeep of the building or buildings within the last three years. This information shall be set forth in a tabular manner within the proposed budget of the project. If such building or buildings have not been occupied for a period of three years then the information shall be set forth for the period during which such building or buildings were occupied;

3. A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves occasioned by the fact that the project is a conversion time-share project, or, if no provision is made for such reserves, a statement to that effect; and

4. A statement of the present condition of all structural components and major utility installations in the building, which statement shall include the approximate dates of construction, installations, and major repairs as well as the expected useful life of each such item, together with the estimated cost, in current dollars, of replacing each such component.

D. In the case of a conversion project, the developer shall give at least 90 days' notice to each of the tenants of the building or buildings which the developer intends to submit to the provisions of this chapter. During the first 60 days of such 90-day period, each of these tenants shall have the exclusive right to contract for the purchase of a time-share from the unit he occupies, but only if such unit is to be retained in the conversion project without substantial alteration in its physical layout. Such notice shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the tenants of the developer's intent to create a conversion project. Such notice may also constitute the notice to terminate the tenancy as provided for in § [55-222](#), except that, despite the provisions of § [55-222](#), a tenancy from month to month may only be terminated upon 120 days' notice as set forth herein when such termination is in regard to the creation of a conversion project. If, however, a tenant so notified remains in possession of the unit he occupies after the expiration of the 120-day period with the permission of the developer, in order to then terminate the tenancy, such developer shall give the tenant a further notice as provided in § [55-222](#).

The developer of a conversion project, shall, in addition to the requirements of § [55-391.1](#), include with the application for registration a copy of the notice required by this subsection and a certified statement that such notice which fully complies with the provisions of this subsection shall be, at the time of the registration of the conversion project, mailed or delivered to each of the tenants in the building or buildings for which registration is sought.

E. The developer shall amend the public offering statement to reflect any material change in the time-share program or time-share project. If the developer has reserved in the time-share instrument the right to add to or delete incidental benefits or

alternative purchases, the addition or deletion thereof shall not constitute a material change. Prior to distribution, the developer shall file with the Board the public offering statement amended to reflect any material change.

F. The Board may at any time require a developer to alter or supplement the form or substance of the public offering statement to assure full and fair disclosure to prospective purchasers. A developer may, in its discretion, prepare and distribute a public offering statement for each product offered or one public offering statement for all products offered.

G. In the case of a time-share project located outside the Commonwealth, (i) the developer may amend the public offering statement to reflect any additions or deletions of a time-share project to the existing time-share program registered in the Commonwealth, and (ii) similar disclosure statements required by other situs laws governing time-sharing may be acceptable alternative disclosure statements.

H. The developer shall prepare and distribute to each prospective purchaser prior to the execution of a purchase contract for a registered alternative purchase, a copy of the public offering statement about which such alternative purchase relates. The public offering statement shall fully and accurately disclose the material characteristics of such alternative purchase. The public offering statement for an alternative purchase shall be filed with the Board and shall be in a form prescribed by its regulations, if any.

The public offering statement for an alternative purchase need not contain any information about the time-share project, time-share program or the time-shares offered by the developer which was initially offered to such purchaser by the developer. If the developer so elects, the public offering statement for an alternative purchase is not required to have any exhibits.

I. The public offering statement may be in any format, including a compact disc, provided the prospective buyer has available for review, along with ample time for any questions and answers, a copy of the public offering statement prior to his execution of a contract.

1981, c. 462; 1983, c. 59; 1984, c. 455; 1985, c. 517; 1986, c. 359; 1989, c. 637; 1994, c. [580](#); 1998, c. [460](#); 1999, c. [560](#); 2001, c. [543](#); 2004, c. [143](#); 2006, c. [653](#); 2007, c. [267](#); 2014, cc. [39](#), [716](#).

§55-374.1. Certain advertising practices regulated.

A. Any offering which includes a gift or prize must disclose therein, with the same prominence as such offer:

1. The retail value of each gift or prize;
2. The approximate odds against any given person obtaining each gift or prize if all persons to whom the advertisement is disseminated do what is necessary to qualify for the award of the gift or prize;
3. If the number of gifts or prizes to be awarded is limited, a statement of the number of gifts or prizes to be awarded or in lieu thereof, the nature of such limitation;
4. All rules, terms, requirements, and conditions which must be fulfilled before a prospective purchaser may claim any gift or prize, including whether the prospective purchaser is required to attend a sales presentation in order to receive the gift or prize;
5. The date upon which the offer expires; and
6. A statement to the effect that the offer is being made for the purpose of soliciting the purchase of a time-share, time-share interest, interval ownership, interval ownership interest, vacation ownership, vacation ownership interest or product, as appropriate.

B. Any gift or prize offered in connection with an offering shall be delivered to the prospective purchaser no later than the day the purchaser attends a sales presentation, if required, and if not, on the day the purchaser appears to claim it, whether or not he purchases a time-share. In the event the supply of gifts or prizes is exhausted at the time required for delivery, the developer shall give the prospective purchaser a written, unconditional promise to deliver such gift or prize no later than 30 days from the date required for delivery. If such gift or prize is not obtainable, the developer shall deliver an item of equal or greater value.

C. The offering or sale of any product registered with the Board is exempt from the Virginia Travel Club Act (§ [59.1-445](#) et seq.), the Virginia Condominium Act (§ [55-79.39](#) et seq.), the Virginia Securities Act (§ [13.1-501](#) et seq.), the Virginia Home Solicitation Sales Act (§ [59.1-21.1](#) et seq.), the Subdivided Land Sales Act (§ [55-336](#) et seq.), Chapter 27.2 (§ [55-525.8](#) et seq.) of Title 55, and the Prizes and Gifts Act (§ [59.1-415](#) et seq.).

1983, c. 59; 1984, c. 333; 1985, c. 517; 1991, c. 704; 1994, c. [580](#); 1996, c. [372](#); 1998, c. [460](#); 2006, c. [653](#); 2008, cc. [851](#), [871](#).

§55-374.2. Exchange programs.

A. Any exchange company which offers an exchange program in the Commonwealth shall prepare and register with the Board a disclosure document including, but not limited to, the following:

1. The name and address of the exchange company;
2. The names and addresses of the top three officers, all directors, and, if the exchange company is privately held, all shareholders owning five percent or more interest in the exchange company;
3. Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer or managing agent for any time-share program participating in the exchange program and, if so, the name and location of the time-share project and the nature of the interest;
4. Unless the exchange company is also the developer or an affiliate, a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the sales contract;
5. Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the time-share project with the exchange program;
6. Whether the purchaser's membership or participation, or both, in the exchange program is voluntary or mandatory;
7. A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange company and the procedure by which changes in the terms and conditions of the exchange contract may be made;
8. A complete and accurate description of the procedure to qualify for and effectuate exchanges;
9. A complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the exchange program including, but not limited to, limitations on exchanges based on seasonality, unit size, or levels of occupancy, expressed in boldfaced type, and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied;

10. Whether exchanges are arranged on a space available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

11. Whether and under what circumstances an owner, in dealing with the exchange company, may lose the use of occupancy of his time-share in any properly applied for exchange, without being provided with substitute accommodations by the exchange company;

12. The fees or range of fees for participation by owners in the exchange program, a statement of whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made;

13. The name and address of the site of each time-share property, accommodation or facility participating in the exchange program;

14. The number of units in each property participating in the exchange program which are available for occupancy and which qualify for participation in the exchange program, expressed within the following numerical groupings: [1-5](#), 6-10, [11-20](#), [21-50](#), and 51 and over;

15. The number of owners with respect to each time-share program or other property who are eligible to participate in the exchange program, expressed within the following numerical groupings: [1-100](#), 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine those owners currently eligible to participate in the exchange program;

16. The disposition made by the exchange company of time-shares deposited with the exchange program by owners eligible to participate in the exchange program and not used by the exchange company in effecting exchanges;

17. The following information, which, except as provided in subsection B of this section, shall be independently audited by a certified public accountant or accounting firm in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants and reported for each year no later than July 1 of the succeeding year, beginning no later than July 1, 1985:

a. The number of owners enrolled in the exchange program. Such numbers shall disclose the relationship between the exchange company and owners as being either fee paying or gratuitous in nature;

- b. The number of time-share properties, accommodations or facilities eligible to participate in the exchange program;
- c. The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange company divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;
- d. The number of time-shares for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a time-share during the year in exchange for a time-share in any future year;
- e. The number of exchanges confirmed by the exchange company during the year.

18. A statement in boldfaced type to the effect that the percentage described in subdivision 17 c of this subsection is a summary of the exchange requests entered with the exchange company in the period reported and that the percentage does not indicate a purchaser's or owner's probabilities of being confirmed to any specific choice or range of choices, since availability at individual locations may vary.

B. The information required by subsection A shall be accurate as of a date which is no more than 30 days prior to the date on which the information is delivered to the purchaser, except that the information required by subsection A, subdivisions 2, 12, 13, 14, 15, and 16 shall be accurate as of December 31 of the preceding year if the information is delivered between July 1 and December 31 of any year; information delivered between January 1 and June 30 of any year shall be accurate as of December 31 of the year prior to the preceding year. At no time shall such information be accurate as of a date which is more than eighteen months prior to the date of delivery. All references in this section to the word "year" shall mean calendar year.

C. In the event an exchange company offers an exchange program directly to the purchaser, the exchange company shall deliver to such purchaser, simultaneously with such offering and prior to the execution of any contract between the purchaser and the exchange company, the information set forth in subsection A, above. The requirements of this subsection shall not apply to any renewal of a contract between a purchaser and an exchange company.

D. Each exchange company must include the statement set forth in subdivision 18 of subsection A on all promotional brochures, pamphlets, advertisements, or other

materials disseminated by the exchange company which also contain the percentage of confirmed exchanges described in subdivision 17 c of subsection A.

E. An exchange company shall, on or before July 1 of each year, file with the Board and the association for the time-share program in which the time-shares are offered or disposed, the information required by this section with respect to the preceding year. If the Board determines that any of the information supplied fails to meet the requirements of this section, the Board may undertake enforcement action against the exchange company in accordance with the provisions of Article 6 (§ [55-396](#) et seq.) of this chapter. No developer shall have any liability arising out of the use, delivery or publication by the developer of written information provided to it by the exchange company pursuant to this section. Except for written information provided to the developer by the exchange company, no exchange company shall have any liability with respect to (i) any representation made by the developer relating to the exchange program or exchange company, or (ii) the use, delivery or publication by the developer of any information relating to the exchange program or exchange company. The failure of the exchange company to observe the requirements of this section, or the use by it of any unfair or deceptive act or practice in connection with the operation of the exchange program, shall be a violation of this section.

F. The Board may establish by regulation reasonable fees for registration of the exchange company disclosure document. All fees shall be remitted by the Board to the Treasurer of the Commonwealth, and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § [55-529](#).

1985, c. 517; 1998, c. [460](#); 2008, cc. [851](#), [871](#).

§55-375. Escrow of deposits.

A. Any deposit made in connection with the purchase or reservation of a product shall be held in escrow. All cash deposits shall be held in a separate bank account labeled and designated solely for that purpose.

Such escrow account shall be insured by an instrumentality of the federal government and located in Virginia. All deposits shall be held in escrow until (i) delivered to the developer upon expiration of the purchaser's cancellation period provided the purchaser's right of cancellation has not been exercised, (ii) delivered to the developer because of the purchaser's default under a contract to purchase a time-share, or (iii) refunded to the purchaser. Failure to establish escrow accounts or to

make the deposits as required by this section is prima facie evidence of willful violation of this section.

B. The developer shall disclose in the contract or in the public offering that the deposit may not be held in escrow after expiration of the cancellation period and that such deposit is not protected as an escrow after expiration of the cancellation period. This disclosure shall include a statement of whether or not the developer reserves the option to sell or assign any promissory note given by a purchaser to another entity, whether or not such entity is affiliated with the developer. Both disclosures shall appear in boldfaced type of a minimum size of 10 points.

C. There shall be filed with the Common Interest Community Board a bond, letter of credit, or cash for the purpose of protecting all deposits escrowed pursuant to subsection A, in favor of the time-share purchasers. The bond, letter of credit, or cash shall be in an amount equal to the total of the deposits in escrow at any given time or \$25,000, whichever is greater. Such bond, letter of credit, or cash shall be maintained for so long as the developer offers time-shares in the project. The bond shall be with a surety company authorized to do business in Virginia.

1981, c. 462; 1984, c. 429; 1985, c. 517; 1994, c. [580](#); 1998, c. [460](#); 2006, c. [653](#); 2008, cc. [851](#), [871](#).

§55-376. Purchaser's rights of cancellation.

A. A purchaser shall have the right to cancel the contract until midnight of the seventh calendar day following the execution of such contract. If the seventh calendar day falls on a Sunday or legal holiday, then the right to cancel the contract shall expire on the day immediately following that Sunday or legal holiday. Cancellation is to be without penalty, and all payments made by the purchaser before cancellation must be refunded within forty-five days after receipt of the notice of cancellation.

B. If the purchaser elects to cancel a contract pursuant to subsection A, he shall only do so either (i) by hand-delivering the notice to the developer at its principal office or at the project or (ii) by mailing the notice by certified United States mail, return receipt requested, to the developer or its agent designated in the contract. Any such notice sent by certified mail shall be effective on the date postmarked.

C. If, because of the occurrence of a material change, the public offering statement is amended between the time of contracting to purchase a time-share and the time of settlement, the developer shall provide the amended public offering statement to the

purchaser and the right of cancellation shall renew from the date of delivery of such amended public offering statement. This subsection shall not apply if the public offering statement is amended by the developer because of a change which is not material or to disclose any change which is an aspect or result of the orderly development of the time-share project in accordance with the project instrument.

D. The right to cancel the contract as provided by this section shall not be waivable by the time-share purchaser and any provision in the contract or time-share documents indicating a waiver shall be void.

E. A statement of the purchaser's right of cancellation as set forth in subsections A and B shall appear in the contract above the purchaser's signature line. Such statement shall appear in type no smaller than any other provisions of the contract, and the caption "PURCHASER'S NONWAIVABLE RIGHT TO CANCEL" shall appear immediately preceding it in conspicuous, bold-face type.

1981, c. 462; 1983, c. 147; 1984, c. 572; 1985, c. 517; 1991, c. 704; 1994, c. [580](#); 1998, c. [460](#).

§55-376.1. Possibility of reverter.

A. A possibility of reverter contained in a reverter deed for a time-share estate subject to reverter is valid, enforceable in law and in equity, and shall operate to transfer title to the time-share estate from each grantee therein back to the developer provided the following conditions are satisfied:

1. The reverter deed from the developer contains the possibility of reverter by insertion of the language required by subsection E;
2. A grantee in the reverter deed is in default and has been provided thereafter with at least two written notices to this effect with no less than a 10-calendar day right to cure in each notice;
3. A grantee in the reverter deed has been provided with no less than 30 calendar days within which to cure the default before exercise of the possibility of reverter occurs;
4. At the time of exercise of the possibility of reverter, the developer is the sole holder of the note and the sole beneficiary under the deed of trust;

5. The exercise by the developer of the possibility of reverter is evidenced by an affidavit duly recorded where the reverter deed was recorded which contains the following information:

a. A description of the time-share project and time-share estate and a statement that upon recordation of the affidavit, title to such time-share estate reverts back to the developer;

b. A description and recitation of the reverter deed which contained the possibility of reverter and a reference of when and where such deed was recorded and its recording information;

c. A recitation that the purchaser defaulted in or violated a consumer document and failed to cure such default or violation within a period of no less than 30 calendar days;

d. A description of the note and deed of trust with a recitation that (i) the developer is the sole holder of the note and the sole beneficiary under the deed of trust, (ii) such note is cancelled and declared void, and (iii) such deed of trust is automatically released;

e. A recitation that such purchaser's rights and entitlements in the time-share estate, the time-share project and the time-share program are extinguished effective the date of recordation of the affidavit;

f. The signature of a duly authorized representative of the developer verified under oath as to its truth of the statements contained therein; and

6. A copy of the recorded affidavit described in subdivision A 5 is sent by the developer to each purchaser at his address as maintained by developer or the association, along with the statement from the developer explaining the consequences of such affidavit with emphasis on subparts a, d and e of subdivision A 5.

B. The recordation of the affidavit referred to in subdivision A 5 shall automatically:

1. Transfer title to the time-share estate from each grantee in the reverter deed to the developer without the need of a deed to the developer or consent from such grantee;

2. Declare null and void and act as an automatic release of the deed of trust or mortgage given by such grantee to finance a portion of the purchase price of the time-share estate with no deficiency resulting;

3. Void and act as an automatic release of any debt from such grantee to the developer arising out of the purchase or financing of the time-share estate as evidenced by the note; and

4. Extinguish any ownership or other property right or entitlements such grantee has in and to the time-share estate, the time-share project and the time-share program.

C. The clerk of court shall record such affidavit in the land books where the time-share project is located indexing the purchaser in the grantor indices and the developer in the grantee indices. For indexing purposes only, the purchaser shall be referred to as the grantor and the developer as the grantee. The cost of recording the affidavit shall be limited to the clerk's fee only.

D. In the exercise of the possibility of reverter, the developer shall be liable to the purchaser for his failure to comply with the provisions of this section; however, such failure shall not operate to defeat or diminish the transfer of title to the time-share estate from each grantee in the reverter deed to the developer upon recordation of the affidavit referred to in subdivision A 5. The developer's liability shall be limited to the amount paid by such purchaser towards the purchase price of the time-share estate exclusive of interest and closing costs but without offset for the purchaser's utilization of the time-share program. The court shall award court costs and reasonable attorney's fees to the prevailing party.

E. The reverter deed shall contain the following statement in order to possess the possibility of reverter. The opening phrase shall be in bold face, 10-point type as follows:

Loss of Time-Share Estate. Developer has inserted into this deed a "possibility of reverter." By this concept, should a grantee of this reverter deed default in or violate an obligation imposed by a consumer document for a period of at least 60 days and fail to cure such violation or default within no less than 30 calendar days thereafter, title to the time-share will revert back to the developer upon the developer recording an affidavit to this effect where this reverter deed is recorded. Only the developer can elect to exercise the possibility of reverter. Each grantee in this reverter deed will be sent at least two notices of default or violation within the 30-day period with no less than 10 days to cure in each instance. The notice will be sent to the address of each grantee maintained at the office of the developer or the association. After the cure period has lapsed and the developer records the affidavit, title to the time-share estate will automatically vest in the developer and any note executed by grantee will

be deemed canceled and any recorded deed of trust securing such note shall be automatically released. The possibility of reverter will itself lapse and become null and void at the soonest to occur of the following: (i) the deed of trust is released of record, (ii) a statement that the deed of trust is released of record is executed and recorded by the developer with a date of when the possibility of reverter was or is to lapse, or (iii) when the time-share program terminates pursuant to either the Virginia Real Estate Time-Share Act or the time-share instrument which created such program.

F. The filing of the affidavit referred to in subdivision A 5 shall not result in the requirement of any filing under Chapter 12 (§ [64.2-1200](#) et seq.) of Title 64.2.

G. Any possibility of reverter not otherwise exercised by the developer pursuant to this section shall itself lapse and become null and void at the soonest to occur of the following: (i) the deed of trust is released of record, (ii) a statement that the deed of trust is released of record is executed and recorded by the developer with a date of when the possibility of reverter was or is to lapse, or (iii) when the time-share program terminates pursuant to either this chapter or the time-share instrument.

H. In exercising the possibility of reverter, the developer shall be entitled to retain as liquidated damages all monies paid by the purchaser in conformity with any consumer document.

I. The exercise of the possibility of reverter shall not operate to diminish or eliminate (i) any debt of the purchaser to the time-share association or other third party occasioned by ownership of the time-share estate or participation in the time-share program or (ii) any recorded lien junior in priority to the deed of trust lien referred to in this section.

2004, c. [143](#).

§55-376.2. Recording and delivery of deed.

At such time as the time-share estate purchaser has fulfilled all of his obligations under the contract and is entitled to a deed for his time-share estate, the developer shall file or cause to be filed within 180 days therefrom, with the clerk of the circuit court where the time-share project is located, such deed for recordation. Upon receipt of the recorded deed returned from the clerk's office, the developer shall, within 45 days therefrom, send or cause to be sent the original deed to the time-share estate purchaser.

2006, c. [653](#).

§55-376.3. Liability limited; liability actions prohibited.

A. Except as provided in subsection B, a project professional is not liable for injury to or death of a participant resulting from the inherent risks of project activities, so long as the warning contained in § [55-376.4](#) is posted as required. Except as provided in subsection B, no participant or participant's representative may maintain an action against or recover from a project professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of project activities; provided that in any action for damages against a project professional for a project activity, the project professional shall plead the affirmative defense of assumption of the risk of project activity by the participant.

B. Nothing in subsection A shall prevent or limit the liability of a project professional if the project professional does any one or more of the following:

1. Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;
2. Has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the project activity, or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant; or
3. Intentionally injures the participant.

C. Any limitation on legal liability afforded by this section to a project professional is in addition to any other limitations of legal liability otherwise provided by law.

2007, c. [267](#).

§55-376.4. Warning required.

A. The developer, association, or other project professional shall post and maintain signs that contain the warning notice specified in subsection B. One sign shall be placed in a clearly visible location at the entrance to the project and another at the site of the project activity. The warning notice shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by a project professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract

involves project activities on or off the time-share project or at the site of the project activity, shall contain in clearly readable print the warning notice specified in subsection B.

B. The signs and contracts described in subsection A shall contain the following notice of warning:

"WARNING: Under Virginia law, there is no liability for an injury to or death of a participant in a project activity conducted at this location if such injury or death results from the inherent risks of the project activity. Inherent risks of project activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this project activity."

C. Failure to comply with the requirements concerning warning signs and notices provided in this section shall prevent a project professional from invoking the privileges of immunity provided by this chapter.

2007, c. [267](#).

§55-376.5. Buyer's Acknowledgment.

A. Prior to the execution of a purchase contract, a purchaser shall be given a separate written document, titled "Buyer's Acknowledgment," to be signed by the purchaser and a representative of the developer other than the salesperson for the transaction.

B. The Buyer's Acknowledgment shall contain the following:

1. The name and address of the developer;
2. The name and address of the time-share project;
3. Whether the developer currently offers a resale or rental program or a buy-back program; and
4. The following statement in at least 10-point boldface type: "There is no assurance that a purchaser may resell a time-share for a certain price or on particular terms. By signing below, purchaser acknowledges that this purchase is (i) for personal use and enjoyment and not for commercial or investment purposes and (ii) not being made based upon any representation that the time-share has any future market value or resale potential."

2012, c. [751](#).

§55-377. Repealed.

Repealed by Acts 1985, c. 517.

§55-379. Repealed.

Repealed by Acts 1994, c. [580](#).

§55-380. Resale of time-shares.

A. In the event of any resale of a time-share by a time-share owner, other than the developer, such owner shall obtain from the developer or managing agent in the case of a time-share use program or from the time-share estate owners' association in the case of a time-share estate program and furnish to the purchaser prior to settlement on an executed agreement to purchase the time-share, a certificate of resale which shall include the following:

1. A statement disclosing the effect on the proposed transfer of any right of first refusal or other restraint on transfer of the time-share or any portion thereof;
2. A copy of the time-share instrument;
3. A copy of the current bylaws and rules and regulations of the time-share estate owners' association, if any, and the amendments thereto;
4. A copy of the current annual report prepared pursuant to § [55-370.1](#);
5. A statement setting forth the amount of any expense liability and unpaid time-share expense or special assessment currently due and payable from the selling time-share owner, including the disclosures of any liens against the time-share due to the nonpayment of such fees or charges;
6. A statement of the nature and status of any known and pending suits or judgments against the developer, managing entity, or time-share owners' association with reference to the time-share project; and
7. A copy of a Buyer's Acknowledgment form required by § [55-376.5](#).

B. The developer, managing agent, or such officer of the time-share owners' association as the bylaws may specify, shall furnish the certificate of resale prescribed by subsection A hereof upon the written request of any purchaser within 30 days of the receipt of such request. Payment of the reasonable costs of preparing the certificate may be required as a prerequisite to the issuance of the certificate, but such fee shall not exceed \$50.

C. A time-share owner providing a certificate pursuant to subsection A is not liable to the purchaser for any erroneous information included in the certificate, other than for judgment liens against the time-share being sold.

D. A purchaser is not liable for any unpaid time-share expense liability or fee greater than the amount set forth in the certificate prepared in conformity with subsection A. A time-share owner is not liable to a purchaser for the failure or delay of the provider to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until transfer, whichever occurs first.

E. All rights of redress of a purchaser against a selling time-share owner, the developer, managing agent, or the association for the failure to obtain or receive the statement required by subsection A are conclusively waived upon settlement on the time-share occurring.

F. The responsibilities imposed by this section on the developer, managing agent, time-share estate owners' association, or selling time-share owner shall not be waived.

1981, c. 462; 1985, c. 517; 1989, c. 637; 1994, c. [580](#); 1998, c. [460](#); 2012, c. [751](#).

§55-380.1. Required resale disclosures.

A. In addition to the requirements of § [55-394.1](#), before receiving anything of value for providing or offering to provide a resale service, a reseller shall disclose in writing to the owner of a resale time-share:

1. The name and permanent business address of the reseller;
2. A commencement and transaction date for such resale service;
3. The names and addresses of any affiliates and the primary website address used by the reseller and such affiliates to be used to promote the resale time-share;
4. Whether the reseller's rights are exclusive and, if so, the scope of such rights and length of the exclusivity period;
5. Whether any person, other than the owner, may occupy, rent, exchange, or use the resale time-share during the resale service;
6. The name of any person other than the owner who will receive any rent or other consideration from the use of the resale time-share during the resale service;

7. A description of each resale service to be provided and the fees, costs, or commissions for each;
 8. A description sufficient to identify the resale time-share;
 9. The jurisdiction issuing the license for any services by a licensed real estate broker or salesperson; and
 10. The following in at least 10-point conspicuous type:
 - a. The ratio of (i) the number of resale time-shares listed for sale to the number of resale time-shares actually sold by the reseller for each of the past two calendar years or (ii) the total amount of advance fees collected compared with the total amount of fees and commissions received by the reseller upon sale of resale time-shares for the past two calendar years and followed by this statement: "Do not rely on past performance as an indicator of the likelihood of sale of your time-share."; and
 - b. If the retail service is limited to the placement of advertisements: "There is no guarantee that you will sell your time-share at all or within any period of time by placing this advertisement. Our only obligation to you is to post your advertisement on our website for the agreed length of time and forward all inquiries we receive to you."
- B. A resale transfer contract shall include the following disclosures by the reseller:
1. The disclosures required by subdivisions A 1 through A 7;
 2. A description legally sufficient for the transfer of the resale time-share;
 3. A description of the document by which the owner is to (i) grant rights in the resale time-share to the reseller or any other person, including a power of attorney or similar document, and (ii) transfer the resale time-share to a subsequent purchaser;
 4. Any fees or costs the time-share owner is required to pay or reimburse to the reseller or transfer company to complete the transfer;
 5. The date by which the transfer of the resale time-share from the owner to the reseller, a third person, or a subsequent purchaser will be completed, not to exceed 180 days from the effective date of the resale transfer contract;
 6. If the resale time-share will be transferred to a transferee other than a subsequent purchaser, the contact information of such transferee;
 7. A statement that the reseller will (i) provide the owner written evidence of transfer of the resale time-share to a subsequent purchaser within 30 days of such transfer

and (ii) send notice of the transfer to the association and managing entity of the time-share program for the resale transfer and any exchange company in which the resale time-share was enrolled; and

8. The following in 10-point boldface type:

a. "No later than 180 days from the date of this agreement, we will transfer your time-share to another person. If transfer does not occur within that period, we will pay or reimburse to you the cost of ownership of your time-share for that period. If we breach our agreement, you will continue to be responsible for such cost of ownership."; and

b. "Your time-share may be sold at any price by us without your approval. If sold for a price in excess of our fee, we have no obligation to send you the excess."

C. A resale purchase contract shall require the reseller to obtain the certificate of resale described in subsection A of § [55-380](#) and shall also include the following:

1. A description legally sufficient for transfer of the resale time-share;

2. The name and address of the developer or managing agent for a time-share use project or the association for a time-share estate project;

3. Identification of the party responsible for notifying the developer, managing entity, association, or exchange company, as the case may be, of the transfer of the resale time-share;

4. Identification of the first year in which the subsequent purchaser is entitled to use and occupy the resale time-share; and

5. The following statement in 10-point boldface type: "A certificate of resale is required to be provided to you containing important documents concerning the time-share project for your review. Settlement waives the right to receipt of such information."

2012, c. [751](#).

§55-381. Liens.

A. In the case of time-share estate transfers, unless the purchaser expressly agrees to take subject to or assume a lien prior to transferring a time-share estate other than by deed in lieu of foreclosure, the developer shall either: (i) record or furnish to the purchaser as part of settlement, releases of all liens affecting that time-share estate

or (ii) provide a surety bond or title insurance against the lien, as provided for liens on real estate in this Commonwealth.

B. Unless a time-share owner or his predecessor in title agrees otherwise with the lienor, if a lien other than an underlying mortgage or deed of trust becomes effective against more than one time-share in a time-share project, any time-share owner is entitled to a release of a time-share from the lien upon payment of the amount of the lien attributable to the time-share. The amount of the payment shall be proportionate to the ratio that the time-share owner's liability bears to the liabilities of all time-share owners whose interests are subject to the lien. Upon receipt of payment, the lien-holder shall promptly deliver to the time-share owner a release of the lien covering that time-share. After payment, the managing entity may not assess or have a lien against that time-share for any portion of the expenses incurred in connection with that lien.

1981, c. 462; 1991, c. 704 .

§55-382. Effect of violations on rights of action; attorney's fees; prior determination of Real Estate Board required for certain violations.

A. If a developer or any other person subject to this chapter violates any provision hereof or any provision of the time-share instrument, any person or class of persons adversely affected by the violation has a claim for appropriate relief. The court may also award reasonable attorney's fees to the prevailing party.

B. Prior to the commencement of any action alleging a failure to comply with the provisions of § [55-375](#) or [55-386](#), however, an aggrieved owner shall first seek a determination from the Board as to whether compliance with § [55-375](#) or [55-386](#) has occurred. The Board shall make such determination within 120 days of the request therefore.

1981, c. 462; 1985, c. 517; 1998, c. [460](#); 2008, c. [376](#).

§55-383. Statute of limitations; actions; limitation on rescission rights.

A. Except as otherwise provided in § [55-389](#), a judicial proceeding where the sufficiency of the time-share instrument, the accuracy of the public offering statement, or validity of any contract of purchase is in issue and a rescission of the contract or damages is sought shall be commenced within two years after the date of the contract of purchase, notwithstanding that the purchaser's terms of payments may extend beyond this period of limitation; however, with respect to the enforcement of provisions

in the contract of purchase which require the continued furnishing of services and the reciprocal payments to be made by the purchaser, the period of bringing a judicial proceeding will continue for a period of two years for each breach.

Rescission of the contract shall not be granted by the court unless (i) the inaccuracy of the public offering statement or the insufficiency of the time-share instrument directly and adversely affected the purchaser's right to participate in the time-share program or to own his time-share or (ii) at the time of the contract, the developer has sold more time-shares than there are time-share units that have been completed or bonded to accommodate such sales. Further, if damages are awarded, the amount of the damages shall be limited to actual damages sustained.

B. If a developer has substantially complied in good faith with the provisions of this chapter, a nonmaterial error or omission shall not be actionable. A nonmaterial error or omission shall not be sufficient to permit a purchaser to cancel a contract after the cancellation period provided by § [55-376](#) has expired.

1981, c. 462; 2006, c. [653](#); 2008, c. [376](#).

§55-384. Class actions.

A. No time-share owner can bring an action on behalf of other time-share owners unless he has received the written authorization to represent all other time-share owners within the project.

B. Notwithstanding the provisions of subsection A of this section, the association may bring an action on behalf of the time-share owners with the authorization of the time-share owners within the project upon the two-thirds majority vote of the board of directors, if such action is found to be in the best interest of the association.

C. For purposes of this section, the developer shall not be deemed a time-share owner and his written permission shall not be required.

1981, c. 462; 1989, c. 637 .

§55-385. Financial records.

The person or entity responsible for either making or collecting common expense assessments or maintenance assessments shall keep detailed financial records. All financial and other records shall be made reasonably available at such person's or entity's office for examination by any time-share owner and his authorized agents.

1981, c. 462.

§55-386. Developer's obligation to complete.

A. The developer shall complete all promised and incomplete units and common elements being offered and described in the time-share instrument and the public offering statement. The developer shall be excused for the period or periods of delay in the completion of such promised units and common elements when delayed, hindered, or prevented from doing so by causes beyond the developer's control which shall include: (i) labor disputes not caused by the developer; (ii) riots; (iii) civil commotion or insurrection; (iv) war or warlike operations; (v) governmental restrictions, regulations or control; (vi) inability to obtain any materials or services; (vii) fire or other casualties; (viii) acts of God; or (ix) forces not under the control or supervision of the developer.

B. The developer shall file with the Board a payment and performance bond in the sum equal to 100 percent of the estimated cost of completing all promised and incomplete units and common elements comprising the time-share project described in the time-share instrument and the public offering statement. Such bond shall be conditioned upon the completion of such units and common elements in conformity with the plans and specifications for such improvements. The bond shall be with a surety company authorized to do business in the Commonwealth. The Board may accept cash or an irrevocable letter of credit in lieu of the bond required by this section. The Board shall be the sole determiner of the form, amount, content, obligee and conditions of the letter of credit. Should it become necessary for the Board to call upon the letter of credit in order to assure completion of the improvements, the Board shall have the authority to petition a court of competent jurisdiction to appoint a receiver to administer such completion.

1981, c. 462; 1983, c. 59; 1985, c. 517; 1994, c. [580](#); 1998, c. [460](#).

§55-387. Financing of time-share programs.

In the developer's financing of a time-share program, the developer shall retain financial records of the schedule of payments required to be made and the payments made by it to any person or entity which is the holder of an underlying blanket mortgage, deed of trust, contract of sale, or other lien or encumbrance.

1981, c. 462; 1985, c. 517.

§55-388. Purchaser's rights under developer's foreclosure.

The developer whose project is subject to an underlying blanket lien or encumbrance shall protect a nondefaulting purchaser from foreclosure or cancellation by the lien

holder by securing from such lien holder or placing of record a nondisturbance clause, subordination agreement, or partial release of the lien as to that time-share sold to such purchaser.

1981, c. 462; 1985, c. 517.

§55-389. Protection of lien holder.

Any lien holder of a time-share interest in any time-share program shall have the following rights:

1. The lien holder shall have its lien rights preserved as against any purchaser of a time-share who claims that the time-share instrument is invalid, void or voidable, thirty days after written notice by certified mail or personal delivery has been given by the developer or lien holder to the purchaser. The notice must state that the developer has assigned the receivables to the lien holder and that the purchaser has thirty days within which to object and specify the invalidity or defect contained within such time-share instrument. The notice required by this section may be included in the blanket encumbrance, in the contract, or in any note, deed of trust or mortgage executed by the purchaser in connection with the purchaser's deferred purchase of a time-share.
2. Any purchaser who fails to indicate that the time-share instrument is invalid, void, or voidable as provided in subdivision 1 waives, or is estopped to raise, the same in any subsequent enforcement of the collection of the receivable by the lien holder.

1981, c. 462; 1985, c. 517; 1998, c. [460](#).

§55-390. Registration of time-share program required.

A. A developer may not offer or dispose of any interest in a time-share program unless the time-share project and its program have been properly registered with the Board. A developer may accept a nonbinding reservation together with a deposit if the deposit is placed in an escrow account with an institution having trust powers within this Commonwealth and is refundable at any time at the purchaser's option. In all cases, the reservation must require a subsequent affirmative act by the purchaser via a separate instrument to create a binding obligation. A developer may not dispose of or transfer a time-share while an order revoking or suspending the registration of the time-share program is in effect. In the case of a time-share project located outside this Commonwealth and properly registered in the situs, the Board may accept a substitute application for registration.

B. [Repealed.]

C. The developer shall maintain records of names and addresses of current independent contractors employed by it for time-share sales purposes.

1981, c. 462; 1983, c. 59; 1985, c. 517; 1994, c. [580](#).

§55-391. Repealed.

Repealed by Acts 1985, c. 517.

§55-391.1. Application for registration.

A. The application for registration shall be filed in a form prescribed by the Board's regulations and shall include the following:

1. An irrevocable appointment to the Board to receive service of process in any proceeding arising under this chapter against the developer or the developer's agent if nonresidents of the Commonwealth;
2. The states or jurisdictions in which an application for registration or similar document has been filed and any adverse order, judgment, or decree entered in connection with the time-share project by the regulatory authorities in each jurisdiction or by any court;
3. The applicant's name, address, and the organizational form, including the date, and jurisdiction under which the applicant was organized, and the address of its principal office and each of its sales offices in the Commonwealth;
4. The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions, and the extent and nature of his interest in the applicant or the time-share project as of a specified date within thirty days of the filing of the application;
5. A statement, in a form acceptable to the Board, of the condition of the title to the time-share project including encumbrances as of a specified date within thirty days of the date of application by a title opinion of a licensed attorney not a salaried employee, officer or director of the applicant or owner, or by other evidence of a title acceptable to the Board;
6. A copy of the instruments which will be delivered to a purchaser to evidence his interest in the time-share and copies of the contracts and other agreements which a purchaser will be required to agree or to sign;

7. A copy of any management agreements, employment contracts or other contracts or agreements affecting the use, maintenance or access of all or any part of the time-share project;
8. A statement of the zoning and other governmental regulations affecting the use of the time-share, including the site plans and building permits and their status, any existing tax and existing or proposed special taxes or assessments which affect the time-share;
9. A narrative description of the promotional plan for the disposition of the time-shares;
10. The proposed public offering statement and its exhibits;
11. Any bonds required to be posted pursuant to the provisions of this chapter;
12. The time-share owners' annual report or budget required by § [55-370.1](#) to the extent available;
13. A description of each product the developer seeks to register with the Board; and
14. Any other information which the Board believes necessary to assure full and fair disclosure.

B. The developer shall immediately report to the Board any material changes in the information contained in an application for registration.

C. Nothing shall prevent a developer from registering with the Board a time-share project where construction is yet to begin, or if begun, is not yet complete.

Code 1950, § 55-391; 1981, c. 462; 1985, c. 517; 1994, c. [580](#); 1998, c. [460](#); 2011, c. [605](#).

§55-392. Repealed.

Repealed by Acts 1985, c. 517.

§55-392.1. Filing fee.

The Board may by regulation establish reasonable fees for registration. Until such regulations are adopted by the Board, the fee shall be in an amount equal to \$1 per time-share, except that the initial application fee shall not be less than \$500 nor more than \$1,500, and the fee for any application for registration of additional units shall be not less than \$200. All fees shall be remitted by the Board to the Treasurer

of the Commonwealth, and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § [55-529](#).

Code 1950, § 55-392; 1981, c. 462; 1985, c. 517; 2008, cc. [851](#), [871](#).

§55-393. Repealed.

Repealed by Acts 1985, c. 517.

§55-393.1. Receipt of application; effectiveness of registration.

A. Upon receipt of the application for registration in proper form, the Board, within five business days, shall issue a notice of filing to the applicant. Within twenty days after receipt of the application the Board shall review the application to determine whether the application and supporting documents satisfy the requirements of this chapter and the Board's regulations. Within sixty days from the date of the notice of filing, the Board shall enter an order registering or rejecting the application. If no order of rejection is entered within sixty days from the date of the notice of filing, the time-share project shall be deemed registered unless the applicant has consented in writing to a delay.

B. If the Board determines after review of the application and documents provided by the applicant that the requirements of § [55-391.1](#) have been met, it shall issue an order registering the time-share project and shall designate the form of the public offering statement.

C. If the Board determines that any of the requirements of § [55-391.1](#) have not been met, the Board shall notify the applicant that the application for registration must be corrected in the particulars specified within twenty days. If the requirements are not met within the time allowed, the Board shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall become effective twenty days after issuance. During this twenty-day period the applicant may petition for reconsideration and shall be entitled to a hearing or to correct the particulars specified in the Board's notice. Such order of rejection shall not take effect, in any event, until such time as the hearing, if requested, is given to the applicant.

Code 1950, § 55-393; 1981, c. 462; 1985, c. 517.

§55-394. Repealed.

Repealed by Acts 1985, c. 517.

§55-394.1. Annual report; amendments.

A. The developer shall file a report in the form prescribed by the Board's regulations by June 30 of each year the registration is effective. The developer of any time-share project initially registered with the Board between January and June shall not be required to file an annual report for the year in which it was initially registered. The report shall reflect any material changes in information contained in the original application for registration or in the immediately preceding annual report, whichever is later, and shall be accompanied by the appropriate fee established by the Board's regulations or pursuant to § [55-392.1](#).

B. During the developer control period in a time-share estate program, the developer shall file a copy of the unit owners' association annual report required by § [55-370.1](#) along with the annual report required by this section.

C. The developer shall amend or supplement its registration with the Board to report any material change in the information required by §§ [55-374](#) and [55-391.1](#). Such amendments or supplemental information shall be filed with the Board within 20 business days after the occurrence of the material change.

Code 1950, § 55-394; 1981, c. 462; 1985, c. 517; 1998, c. [460](#); 2006, c. [653](#); 2012, cc. [481](#), [797](#).

§55-394.2. Termination of registration.

A. In a time-share estate program, if the annual report indicates that the developer has transferred title to the time-share owners' association and that no further development rights exist, the Board shall issue an order terminating the registration of time-share projects.

B. The Board shall issue an order terminating the registration of a time-share project upon application by the developer in which the developer states that no further development right of the project is anticipated and that the developer has ceased sales of time-shares at the project.

C. Notwithstanding any other provisions of this chapter, the Board may administratively terminate the registration of a time-share project if:

1. The developer has not filed an annual report in accordance with § [55-394.1](#) for three or more consecutive years; or

2. The developer's registration with the State Corporation Commission, if applicable, has not been active for five or more consecutive years.

2012, cc. [481](#), [797](#).

§55-394.3. Registration required for time-share resellers; exemptions; prohibited practices.

A. A reseller shall not provide or offer to provide any resale service unless he is registered with the Board.

B. The application for registration shall be filed in a form prescribed by the Board's regulations and shall include such information as required by the Board. A reseller shall immediately report to the Board any material changes in the information contained in an application for registration. The Board may by regulation establish reasonable fees for registration under this section. All fees shall be remitted by the Board to the Treasurer of Virginia, and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § [55-529](#).

C. The registration requirements shall not apply to:

1. A person who solely or with affiliates engages in a resale service with respect to an aggregate of no more than 12 resale time-shares per calendar year;

2. A person who owns or acquires more than 12 resale time-shares and who subsequently transfers all such resale time-shares to a single purchaser in a single transaction;

3. The owner, its agents, and employees of a regularly published newspaper, magazine, or other periodical publication of general circulation; broadcast station; website; or billboard, to the extent their activities are limited to solicitation and publication of advertisements and the transmission of responses to the persons who place the advertisements. Any person who would otherwise be exempt from this chapter pursuant to this section shall not be exempt if the person (i) solicits the placement of the advertisement by representing that the advertisement will generate cash, a certain price, or a similar type of representation for the time-share owner's resale time-share, (ii) makes a recommendation as to the sales price for which to advertise the resale time-share, (iii) makes any representations to the person placing the advertisement regarding the success rate for selling resale time-shares advertised with such person, or (iv) makes any misrepresentations as described in this chapter;

4. Sale by a developer or a party acting on its behalf of a resale time-share under a current registration of the time-share program in which the resale time-share is included;

5. Sale by an association, managing entity, or a party acting on its behalf of a resale time-share owned by the association provided the sale is in compliance with subsection C of § [55-380.1](#); or

6. Attorneys, title agents, title companies, or escrow companies providing closing services in connection with the transfer of a resale time-share.

D. No reseller shall:

1. Fail to disclose information in writing concerning the marketing, sale, or transfer of resale time-shares required by this chapter prior to accepting any consideration or with the expectation of receiving consideration from any time-share owner, seller, or buyer.

2. Make false or misleading statements concerning offers to buy or rent; the value, pricing, timing, or availability of resale time-shares; or numbers of sellers, renters, or buyers when engaged in time-share resale activities.

3. Misrepresent the likelihood of selling a resale time-share interest.

4. Misrepresent the method by or source from which the reseller or lead dealer obtained the contact information of any time-share owner.

5. Misrepresent price or value increases or decreases, assessments, special assessments, maintenance fees, or taxes or guaranteeing sales or rentals in order to obtain money or property.

6. Make false or misleading statements concerning the identity of the reseller or any of its affiliates or the time-share resale entity's or any of its affiliate's experience, performance, guarantees, services, fees, or commissions, availability of refunds, length of time in business, or endorsements by or affiliations with developers, management companies, or any other third parties.

7. Misrepresent whether or not the reseller or its affiliates, employees, or agents hold, in any state or jurisdiction, a current real estate sales or broker's license or other government-required license.

8. Misrepresent how funds will be utilized in any time-share resale activity conducted by the reseller.

9. Misrepresent that the reseller or its affiliates, employees, or agents have specialized education, professional affiliations, expertise, licenses, certifications, or other specialized knowledge or qualifications.

10. Make false or misleading statements concerning the conditions under which a time-share owner, seller, or buyer may exchange or occupy the resale time-share interest.
11. Represent that any gift, prize, membership, or other benefit or service will be provided to any time-share owner, seller, or buyer without providing such gift, prize, membership, or other benefit or service in the manner represented.
12. Misrepresent the nature of any resale time-share interest or the related time-share plan.
13. Misrepresent the amount of the proceeds, or fail to pay the proceeds, of any rental or sale of a resale time-share interest as offered by a potential renter or buyer to the time-share owner who made such resale time-share interest available for rental or sale through the reseller.
14. Fail to transfer any resale time-share interests as represented and required by this chapter or to provide written evidence to the time-share owner of the recording or transfer of such time-share owner's resale time-share interest as required by this chapter.
15. Fail to pay any annual assessments, special assessments, personal property or real estate taxes, or other fees relating to an owner's resale time-share interest as represented or required by this chapter.
16. Misrepresent or misuse the intended purpose of a power of attorney or similar document to the detriment of any grantor of such power of attorney.

2012, c. [751](#).

§55-394.4. Recordkeeping by resellers.

A. If contact information has been obtained by a reseller from any source, including a lead dealer, the reseller and lead dealer shall maintain the following records for a period of five years from the last date of contact between the reseller and the owner:

1. The name; home address; work address, if different; telephone number; email address, if any; and a copy of a current government-issued photographic identification (e.g., driver's license, passport, or military identification card) of the lead dealer who provided the contact information;

2. The date, time, and place of the transaction at which the contact information was obtained, along with the amount of consideration paid and a signed receipt from the lead dealer or copy of a cancelled check; and

3. A copy of the contact information obtained in the exact form and media in which received.

B. A reseller shall maintain records for at least five years after each transaction involving resale service including resale transfer agreements and resale purchase agreements.

C. In any civil or criminal action based on a violation of this section, there shall be a presumption that contact information was wrongfully obtained if a reseller or lead dealer fails to produce the records required by this section.

D. Any person who establishes that a reseller or lead dealer wrongfully obtained or wrongfully used contact information with respect to time-share owners or members of an exchange program shall, in addition to any other remedies that may be available in law or equity, be entitled to recover from such reseller or lead dealer an amount equal to \$1,000 for each time-share owner or member about whom contact information was wrongfully obtained or used. The prevailing person in any such action shall also be entitled to recover reasonable attorney fees and costs.

2012, c. [751](#).

§55-394.5. Alternative purchase; registration.

A. The application for registration of an alternative purchase shall be filed in a form prescribed by the Board and shall include the following:

1. A general description of the types of alternative purchases offered;
2. A copy of the terms and conditions applicable to the alternative purchases; and
3. The name, address, and contact information of the developer offering the alternative purchases.

B. Any material change to the standard terms and conditions applicable to an alternative purchase shall be filed with the Board within 30 days of such change being effective. Changes to the length of stay, location, or price shall not require an amendment of the registration, provided the terms and conditions applicable to such alternative purchases are on file with the Board.

C. The provisions of §§ [55-374](#) and [55-375](#) shall not apply to alternative purchases registered under this section.

2014, c. [623](#).

§55-395. Repealed.

Repealed by Acts 1985, c. 517.

§55-396. General powers and duties of Board.

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this chapter. The Board may prescribe forms and procedures for submitting information to the Board.

B. The Board may accept grants in aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this chapter.

C. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the Board's duties.

D. 1. If the Board determines after legal notice and opportunity for hearing that a developer or reseller or an agent of a developer or reseller has:

- a. Made any representation in any document or information filed with the Board which is false or misleading;
- b. Engaged or is engaging in any unlawful act or practice;
- c. Disseminated or caused to be disseminated orally, or in writing, any false or misleading promotional materials in connection with a time-share program;
- d. Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of time-shares in the time-share program;
- e. Failed to perform any stipulation or agreement made to induce the Board to issue an order relating to that time-share program;
- f. Otherwise violated any provision of this chapter or any of the Board's rules and regulations or orders; or
- g. Disposed of any time-share in a project without first complying with the requirements of this chapter, it may issue an order requiring the developer to cease and

desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will carry out the purposes of this chapter.

2. If the Board makes a finding of fact at a hearing that the public interest will be irreparably harmed by delay in issuing an order, as prescribed in subdivision 1 of this subsection, it may issue a temporary cease and desist order. With the issuance of a temporary cease and desist order, the Board, by registered mail or other personal written service, shall give notice of the issuance to the developer or the reseller. Every temporary cease and desist order shall include in its terms:

a. A provision clearly stating the reasons for issuing such cease and desist order, the date of the hearing on its issuance, and the nature and extent of the facts and findings on which the order was based;

b. A provision that a hearing by the Board may be held, after due notice but not more than fifteen days from the date such temporary cease and desist order is effective, to determine whether or not a cease and desist order as called for in the immediately preceding subsection shall be issued;

c. A provision that such temporary cease and desist order may remain in full force for a period of not more than fifteen days from the date of its issuance or the date on which the Board has determined that an order as prescribed in subdivision 1 of this subsection is to be issued, whichever shall occur first; and

d. A provision that a failure to comply with such temporary cease and desist order will be a violation of this chapter. The Board shall not issue more than one temporary cease and desist order with reference to such finding of fact as prescribed in this subsection.

E. The Board may also issue a cease and desist order if the developer has not registered the time-share program as required by this chapter or if a reseller has not registered as required by this chapter.

F. The Board, after notice and hearing, may issue an order revoking the registration of the developer's time-share program or the registration of a reseller upon determination that such developer, reseller, or agent thereof has failed to comply with a cease and desist order issued by the Board affecting the developer's time-share program or the reseller.

G. If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this chapter or any of the Board's rules, regulations

or orders applicable thereto, the Board, without prior administrative proceedings, may bring suit in the circuit court of the city or county in which any portion of the time-share project is located to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

H. Upon request of a time-share owner, the Board shall, in accordance with subsection B of § [55-382](#), issue its determination whether compliance with § [55-375](#) or [55-386](#) has occurred.

1981, c. 462; 1985, c. 517; 1998, c. [460](#); 2008, c. [376](#); 2011, c. [605](#); 2012, c. [751](#).

§55-397. Cancellation of cease and desist order; reinstatement of registration of developer.

A. The Board shall stipulate to the developer or reseller the reason for any cease and desist order, or revocation of registration as outlined in § [55-396](#), by no later than the time such order or revocation is to become effective.

B. Should the developer or reseller satisfy the Board that it has corrected the reasons for the cease and desist order or revocation of registration, then the Board shall promptly cancel such order or reinstate the registration, and thereafter the developer or reseller may continue its offering or disposition of time-shares.

1981, c. 462; 2012, c. [751](#).

§55-398. Board regulation of public offering statement.

The Board may at any time require a developer to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

1981, c. 462.

§55-399. Investigations.

A. The Board may:

1. Make necessary public or private investigations within or outside this Commonwealth to determine whether any person has violated or is about to violate any provision of this chapter or any rule, regulation, or order issued hereunder, or to aid in the enforcement of this chapter in prescribing rules, regulations and forms hereunder;

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Board determines, as to all facts and circumstances concerning the matter to be investigated.

B. For the purpose of any investigation or proceeding under the chapter, the Board may administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Any proceeding or hearing of the Board under this chapter, wherein witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the County of Henrico and such proceeding shall be held before the Board sitting in regular session, but not less frequently than monthly.

D. Upon failure to obey a subpoena or to answer questions propounded by the Board, and upon reasonable notice to all persons affected thereby, the Board may apply to the Circuit Court of the County of Henrico for an order compelling compliance.

E. Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.).

1981, c. 462; 2009, c. [557](#); 2011, c. [605](#).

§55-399.1. Proceedings before the Board.

A. Any proceeding or hearing of the Board under this chapter wherein witnesses are subpoenaed and their attendance required for the taking of evidence or the production of documents to ascertain material evidence, shall take place in the County of Henrico.

B. Except as otherwise provided in this chapter, all hearings under this chapter shall be in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) and shall be conducted by a hearing officer in accordance with § [2.2-4024](#).

1985, c. 517; 2009, c. [557](#).

§55-400. Penalties.

A. Any person who willfully violates any of the provisions of § [55-374](#), [55-374.1](#), [55-374.2](#), [55-375](#), [55-376](#), [55-381](#), [55-385](#), or [55-390](#), or any order issued pursuant to §§ [55-396](#) through [55-399](#) shall be guilty of a Class 5 felony.

Any person who willfully violates any of the provisions of § [55-376.5](#), [55-380.1](#), or [55-394.3](#) or any order issued pursuant to §§ [55-396](#) through [55-399](#) regarding a violation of § [55-376.5](#), [55-380.1](#), or [55-394.3](#) shall be guilty of a Class 1 misdemeanor.

Each violation shall be deemed a separate offense.

B. Any developer, member, agent or affiliate of any developer of time-shares registered pursuant to § [55-393.1](#), or any reseller, who violates any provision of this chapter or regulations promulgated pursuant to this chapter, and who is not criminally prosecuted, may be subject to a monetary penalty. If it has been determined by the Board upon or after a hearing that a respondent has violated this chapter or the Board's rules and regulations, the Board shall proceed to determine the amount of the monetary penalty for such violation, which shall not exceed \$2,000 for each violation. Such penalty may be sued for and recovered in the name of the Commonwealth.

1981, c. 462; 1983, c. 59; 1985, c. 517; 1991, c. 704; 2012, c. [751](#).

The Virginia Travel Club Act

§59.1-445. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Accommodations" means any real property improvement provided by the travel club to its members for lodging purposes, including, without limitation, condominiums, hotels, motels or motor courts.

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Carrier" means any person engaged in the business of transporting persons for hire.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services or his designee.

"Contract" shall be synonymous with "travel services agreement."

"Offer," or "offering" means any act to sell, solicit, induce, advertise, or execute a travel services agreement.

"Purchaser" means any person who enters into an agreement in whole or in part within this Commonwealth with a travel club for travel services.

"Travel club" means a for-profit organization that provides, in return for either an advance fee for membership or an annual charge for membership of more than \$100, the privilege for its members or participants to arrange or obtain future travel services through or from the organization. Travel club shall exclude credit card issuers whose cards are honored at any one time by 100 or more merchants, other than the issuer.

"Travel services" means transportation by carrier; accommodations; rental of motor vehicles; or any other service related to travel. For purposes of this chapter, "travel services" shall not include investments in time shares.

"Travel services agreement" means the agreement executed in whole or in part in this Commonwealth between the travel club and the purchaser of the membership in such club and does not include arrangements or agreements for specific travel transportation, accommodation or other specific services.

1993, c. 760; 1994, c. [482](#).

§59.1-446. Registration; fees.

A. It shall be unlawful for any travel club to offer or cause to be executed in this Commonwealth by the purchaser any travel services agreement unless such travel club at the time of such offering, or execution thereof has been properly registered with the Commissioner. Such registration shall (i) disclose the address, ownership, and nature of business of the travel club and (ii) be accompanied by an annual fee of \$350 per registration and annual renewal.

B. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

1993, c. 760; 1994, c. [482](#).

§59.1-447. Bond or letter of credit required.

A. Every travel club, before entering into a travel services agreement with a purchaser of travel services, shall file and maintain with the Commissioner, in a form and

substance satisfactory to him, a bond with corporate surety from a company authorized to transact business in the Commonwealth, or a letter of credit from a bank insured by the Federal Insurance Deposit Corporation, or cash in the amounts indicated below:

	Amount of Cash, Bond, or Letter of Credit
Number of Contracts	
0 to 1500	\$60,000
1501 to 1750	\$70,000
1751 to 2000	\$80,000
2001 or more	\$100,000

B. The bond or letter of credit required by subsection A of this section shall be in favor of the Commonwealth of Virginia for the benefit of any purchaser who is damaged by any violation of this chapter.

C. The aggregate liability of the bond or letter of credit to all persons for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be canceled or terminated except with the consent of the Commissioner. Bonds may be withdrawn by giving sixty-day advance written notice to the Commissioner, thereby releasing the surety from accruing future liability beyond the effective date of withdrawal. Such withdrawal shall not release the surety or otherwise cancel or terminate any liability existing at the time of the effective date of the withdrawal.

1993, c. 760; 1994, c. [482](#).

§59.1-447.1. Escrow of deposits.

A. Any deposit made in connection with the execution of a travel services agreement shall be held in escrow. All cash deposits shall be held in a separate bank account labeled and designated solely for that purpose.

Such escrow account shall be insured by an instrumentality of the federal government and located in Virginia. All deposits shall be held in escrow until (i) delivered to the travel club upon expiration of the purchaser's cancellation period, provided the purchaser's right of cancellation has not been exercised, or (ii) delivered to the travel club because of purchaser's default under the travel services agreement or (iii) refunded to the purchaser. Failure to establish escrow accounts or to make the

deposits as required by this section is prima facie evidence of willful violation of this section.

B. The travel club shall disclose in the travel services agreement that the deposit may not be held in escrow after expiration of the cancellation period and that such deposit is not protected as an escrow after expiration of the cancellation period. This disclosure shall include a statement of whether or not the travel club reserves the option to sell or assign any promissory note given by a purchaser to another entity, whether or not such entity is affiliated with the travel club. Both disclosures shall appear in boldface type of a minimum size of ten points.

C. There shall be posted a fidelity bond, written so as to protect all deposits escrowed pursuant to subsection A, in favor of all purchasers. The bond shall be in an amount equal to the total of the deposits in escrow at any given time or \$25,000, whichever is greater. Such bond shall be filed with the Commissioner and shall be maintained for so long as the travel club offers travel services in Virginia. The bond shall be with a surety company authorized to do business in Virginia. The travel club may post cash in lieu of the bond.

1994, c. [482](#).

§59.1-448. Travel services agreement; disclosure.

A. The travel services agreement shall contain a written disclosure of all limitations on and terms of the membership and shall be provided to the purchaser at the time the agreement is executed. The disclosure shall clearly and conspicuously include:

1. The name, business address and telephone number of the travel club;
2. The amount due, the date of payment, the purpose of the payment and an itemized statement of the balance due, if any;
3. A detailed description of any other service provided in conjunction with the agreement;
4. The conditions, if any, upon which the travel services agreement or membership in the travel club may be canceled and the rights and obligations of all parties in the event of such cancellation; and
5. A description of all contingencies, limitations or conditions of the agreement.

B. The purchaser may cancel the travel service agreement until midnight of the seventh calendar day after execution of the contract by use of the form prescribed in

subsection C of this section; however, notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the purchaser not to be bound. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox, properly addressed and postage prepaid. If the seventh calendar day falls on a Sunday or legal holiday, then the right to cancel the travel service agreement shall expire on the day immediately following that Sunday or legal holiday.

C. The written disclosure shall include, in addition to the requirements of subsections A and B of this section, the following statement which shall appear immediately above the buyer's signature under the conspicuous caption, "BUYER'S NONWAIVABLE RIGHT TO CANCEL," which caption shall be printed in no less than ten-point, bold-faced type:

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN SEVEN CALENDAR DAYS FROM YOUR EXECUTION OF THIS CONTRACT UNLESS YOU HAVE ALREADY USED THE TRAVEL SERVICES PROVIDED IN CONNECTION WITH THIS TRAVEL SERVICES AGREEMENT. IF YOU HAVE ALREADY USED THE TRAVEL SERVICES PROVIDED IN CONNECTION WITH THIS TRAVEL SERVICES AGREEMENT, YOU MAY STILL CANCEL THIS TRANSACTION WITHIN SEVEN CALENDAR DAYS FROM YOUR EXECUTION HEREOF, BUT YOU ARE NOT ENTITLED TO A REFUND OF ANY PRIOR PAYMENTS MADE FOR THE SPECIFIC TRAVEL SERVICES UTILIZED.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE OR SEND A TELEGRAM TO:

_____ (Name of Seller)

AT

_____ (Address of Seller)

_____ Place of Business

NOT LATER THAN MIDNIGHT OF THE SEVENTH DAY AFTER RECEIPT OF THIS DISCLOSURE

I HEREBY CANCEL THIS TRANSACTION

_____ (Date)

_____ (Purchaser's Signature)

D. Within forty-five days after notice of cancellation is received, the travel club shall refund to the purchaser any payments made by the purchaser pursuant to the travel services agreement. However, the travel club may retain payments made for specific travel services utilized. The refund may be made by crediting the purchaser's credit card account if a credit card was used to make a payment and if the travel club informs the purchaser in writing that the credit card account has been credited.

E. The right of cancellation afforded the purchaser by this chapter is nonwaivable and any provision in any instrument to the contrary shall be null and void.

1993, c. 760; 1994, c. [482](#).

§59.1-448.1. Public offering statement.

A. The travel club shall prepare and distribute to any prospective purchaser, before execution thereby of a travel services agreement, a public offering statement which discloses fully and accurately the characteristics of the travel club and its travel services, the membership offered and shall make known to prospective purchasers all material circumstances affecting the travel club and its travel services. The proposed public offering statement shall be filed with the Commissioner, shall be in a form prescribed by his rules and shall include the following to the extent applicable:

1. The name and principal address of the travel club, including:

a. The name, principal occupation and address of every director, partner, or trustee of the travel club;

b. The name and address of each person owning or controlling an interest of twenty percent or more in the travel club;

c. The particulars of any indictment, conviction, judgment, decree or order of any court or administrative agency against the travel club for violation of a federal, state, local or foreign country law or regulation in connection with activities relating to the rendition of travel services;

d. A statement of any unsatisfied judgments against the travel club, the status of any pending suits involving the rendition of travel services to which the travel club or any general partner, executive officer, director, or majority stockholder thereof is a defending party, and the status of any pending suits of significance to the travel club; and

e. The name and address of the travel club's agent for service of process.

2. A general description of the travel services offered by the travel club which are made available to purchasers.
3. A general description of the travel club and its more significant features including without limitation the duration of membership, the types of membership offered, all fees, costs, and charges imposed on the purchaser thereby, and any provision for its cancellation by the purchaser other than by default.
4. Provisions, if any, that have been made by the travel club for fulfilling the demand of the purchaser for accommodations in lodgings.
5. If the travel club's net worth is less than \$500,000, a copy of the travel club's current audited balance sheet; if such club's net worth exceeds said amount, a statement by such travel club that its equity exceeds \$500,000.
6. Any initial or special fee due from the purchaser for membership in the travel club together with a description of the purpose and method of calculating the fee.
7. A general description of any financing offered by or available through the travel club.
8. A statement that the purchaser has a right to cancel the travel service agreement directing the purchaser to see such travel services agreement for the particulars of such right of cancellation.
9. Any restraints on alienation of the travel club membership by the purchaser.
10. A description of any insurance coverage provided for the benefit of the purchaser.
11. Any services which the travel club provides or expense it pays and which it expects may become at any subsequent time an expense of the purchaser and which is to be paid thereby.
12. A description of the terms of the deposit escrow requirements, including a statement that deposits may be removed from escrow at the termination of the cancellation period.
13. Any other information required by the Commissioner to assure full and fair disclosure to prospective purchasers.
14. A statement, expressed in terms of a percentage, of the number of purchasers who applied for accommodations from the travel club during the preceding year in contrast to the total number of purchasers who actually received such

accommodations for the same preceding year. For purposes of calculation, an application shall be treated as only one application notwithstanding that the purchaser contemporaneously requests accommodations at a number of different real property improvements. Such statement shall be prepared by an independent certified public accounting firm and may take the form of an exhibit to the public offering statement.

B. If any prospective purchaser of a travel club membership is offered the opportunity to subscribe to or participate in any exchange program registered under the Virginia Real Estate Time-Share Act (§ [55-360](#) et seq.), the public offering statement shall include as an exhibit or supplement, the disclosure document prepared by the exchange company in accordance with § [55-374.2](#) and a brief narrative description of the exchange program which shall include the following:

1. A statement of whether membership or participation in the program is voluntary or mandatory;
2. The name and address of the exchange company together with the names of the principal officers and all directors of the exchange company;
3. A statement of whether the exchange company or any of its officers or directors are holders of a ten percent or greater interest in the travel club;
4. A statement of whether the travel club or any of its officers or directors are holders of a ten percent or greater interest in an exchange company;
5. A statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the travel club; and
6. A brief narrative description of the procedure whereby exchanges are conducted.

C. The travel club shall amend the public offering statement to reflect any material change in the travel club membership. The travel club shall file with the Commissioner the public offering statement amended to reflect any material change. The Commissioner may at any time require the travel club to alter or supplement the form or substance of the public offering statement to assure full and fair disclosure to prospective purchasers.

The following events shall not be deemed to be a material change necessitating an amendment to the public offering statement:

1. A change correcting spelling, grammar, omissions, or other similar errors not affecting the substance of the public offering statement;

2. A change in the fees, dues, or assessments of the purchasers or other similar recurring expense items;
3. A change which is an aspect or result of the orderly development, operation, or management of the travel club in accordance with the travel services agreement, including, without limitation, the addition or deletion of accommodations, transportation or other service related to travel;
4. A change resulting from the adoption of a new budget;
5. A change occurring in the issuance of an exchange company's updated annual report or disclosure documents provided upon its receipt by the travel club it shall commence distribution of same in lieu of all others; and
6. A change in the ownership of the travel club, provided the change affects less than an ownership interest of twenty percent.

1994, c. [482](#).

§59.1-449. Prohibited practices by travel club.

It shall be unlawful for any travel club to engage in any or all of the following practices:

1. Offer any other type of promotional inducement where the cost of the package equals or exceeds the cost which would have been incurred without the travel club membership;
2. Misrepresent the type or size of aircraft, vehicle, ship or train; time of departure or arrival; points served; route to be traveled; stops to be made; total trip-time from point of departure to destination; type or size of lodging or other accommodation; availability of lodging or other accommodation; or other services available, reserved or contracted for in connection with any trip, tour or other travel services, unless such misrepresentation resulted from a reasonable belief as to the services available based upon representations made by the person offering such services;
3. Misrepresent the fares and charges for transportation or services in connection therewith, unless the misrepresentation resulted from a reasonable belief as to the fares and charges applicable based upon representations made by the person offering such services;
4. Misrepresent that special priorities for reservations are available when such special considerations are in fact granted to members of the public generally;

5. Sell transportation to any person on a reservation or charter basis for specified space, flight or time or represent that such definite reservation or charter is or will be available or has been arranged, without a binding commitment with a carrier for the furnishing of such definite reservation or charter as represented or sold;
6. Sell or issue tickets or other documents to be exchanged or used for transportation if the tickets or other documents will not be or cannot be legally honored by carriers for transportation;
7. Misrepresent the requirements that must be met by a person in order to qualify for charter or group fare rates, unless such misrepresentation resulted from a reasonable belief as to the requirements applicable based upon representations made by the person offering the charter or group fare;
8. Offer accommodations in lodgings when the travel club has no written evidence of its legal right to possession of such lodgings; or
9. Use in any offering, advertisement, or promotion of any type or description the following terms: "time-share," "vacation ownership," "interval ownership," "time-share benefit" or "incidental benefit."

1993, c. 760; 1994, c. [482](#).

§59.1-450. Regulations.

The Board is authorized to prescribe reasonable regulations in order to implement the provisions of this chapter. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.).

1993, c. 760 .

§59.1-451. Investigations.

A. The Commissioner may, with respect to a travel club or travel services agreements:

1. Make necessary public and private investigations within or without this Commonwealth to determine whether any person has violated, or is about to violate, the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter;
2. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter under investigation; and

3. Administer oaths or affirmations and, upon motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things; the identity and location of persons having knowledge of relevant facts; or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter produced to ascertain material evidence shall take place within the City of Richmond.

C. If any person fails to obey the subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

1993, c. 760 .

§59.1-452. Production of records.

Every travel club, upon written request of the Commissioner, shall make available to the Commissioner its travel-services records for inspection and copying to enable the Commissioner to reasonably determine compliance with this chapter. Every club promoter shall maintain a true copy of each agreement between the travel club and a purchaser, and such agreement shall be maintained for its term plus two years.

1993, c. 760 .

§59.1-453. Exemptions.

This chapter shall not apply to:

1. Any agreement which meets the definition of "contract" under, and is subject to, the provisions of the Virginia Real Estate Time-Share Act (§ [55-360](#) et seq.) or the Virginia Membership Camping Act (§ [59.1-311](#) et seq.); or
2. An "exchange program" as defined by the Virginia Real Estate Time-Share Act (§ [55-360](#) et seq.) and offered by an exchange company registered under the Virginia Real Estate Time-Share Act; or
3. [Expired.]

4. A "product" as defined in the Virginia Real Estate Time-Share Act which is registered in accordance with its provisions.

1993, c. 760; 1994, c. [482](#).

§59.1-454. Violations of chapter; penalty.

Any violation of the provisions of this chapter or any travel services agreement executed therewith shall constitute a prohibited practice pursuant to the provisions of § [59.1-200](#) and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ [59.1-196](#) et seq.).

1993, c. 760 .

Tourism Financing Development Authority Act

§15.2-5516. Short title.

This chapter shall be known and may be cited as the "Tourism Financing Development Authority Act."

2007, c. [864](#).

§15.2-5517. One or more localities may create authority.

The governing body of a locality may by ordinance or resolution, or the governing bodies of two or more localities may by concurrent ordinances or resolutions or by agreement, create a tourism financing development authority for the purpose of supporting tourism infrastructure in localities. The name of the authority shall contain the word "authority." The authority shall be a public body politic and corporate. Any such locality that levies a transient occupancy tax pursuant to § [58.1-3819](#) shall designate any excess over two percent to be used for purposes of the authority except such revenues that are otherwise encumbered by the locality.

2007, c. [864](#).

§15.2-5518. Directors; qualifications; terms; vacancies; compensation and expenses; quorum; records.

A. The authority shall be governed by a board of directors in which all powers of the authority shall be vested and which board shall be composed of seven directors,

appointed by the governing body of the locality. If the authority is created by two or more localities, the members of the board shall be appointed as agreed upon by the localities. The seven directors shall be appointed initially for terms of one, two, three and four years; two being appointed for one-year terms; two being appointed for two-year terms; two being appointed for three-year terms; and one being appointed for a four-year term. Subsequent appointments shall be for terms of four years, except appointments to fill vacancies, which shall be for the unexpired terms. All terms of office shall be deemed to commence upon the date of the initial appointment to the authority and thereafter, in accordance with the provisions of the immediately preceding sentence. If at the end of any term of office of any director a successor thereto has not been appointed, then the director whose term of office has expired shall continue to hold office until his successor is appointed and qualified.

B. Each director shall, upon appointment or reappointment, before entering upon his duties take and subscribe the oath prescribed by § [49-1](#).

C. Four members of the board of directors shall constitute a quorum of the board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the authority shall be leased or disposed of in any manner without a majority vote of the members of the board of directors. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and perform all the duties of the board.

D. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection at all times. It shall keep suitable records of its financial transactions and, unless exempted by § [30-140](#), it shall arrange to have the records audited annually. Copies of each such audit shall be furnished to the governing body of the locality and shall be open to public inspection.

2007, c. [864](#).

§15.2-5519. Powers of authority.

The authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;
2. To adopt and use a corporate seal and to alter the same at its pleasure;
3. To enter into contracts;

4. To acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip, and furnish one or more authority facilities including all real and personal properties that the board of directors of the authority may deem necessary in connection therewith and regardless of whether any such facilities shall then be in existence;

5. To lease to others any or all of its facilities and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, a provision that the lessee thereof shall have options to renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the indebtedness of the authority it may lease or convey any or all of its facilities to the lessee thereof with or without consideration;

6. To sell, exchange, donate, and convey any or all of its facilities or properties whenever its board of directors shall find any such action to be in furtherance of the purposes for which the authority was organized;

7. To employ and pay compensation to such employees and agents, including attorneys and real estate brokers whether engaged by the authority or otherwise, as the board of directors shall deem necessary in carrying on the business of the authority;

8. To exercise all powers expressly given the authority by the governing body of the locality that established the authority and to establish bylaws and make all rules and regulations, not inconsistent with the provisions of this chapter, deemed expedient for the management of the authority's affairs;

9. To accept contributions, grants, and other financial assistance from the United States of America and agencies or instrumentalities thereof, the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance, or repair of the authority facilities; or in order to make loans in furtherance of the purposes of this chapter of such contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements, trust indentures, and other legal instruments as may be necessary, convenient, or desirable and to agree to such terms and conditions as may be imposed;

10. To make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of this chapter including for the purposes of promoting economic development, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans and any security therefor. An authority may also be permitted to forgive loans or other obligations if it is deemed to further economic development. The word "revenues" as used in this subdivision includes contributions, grants, and other financial assistance, as set out in subdivision 9; and

11. To establish a revolving loan fund or loan guarantee program to help carry out its powers and promote establishment of tourism infrastructure.

2007, c. [864](#).

§15.2-5520. Liability of authority.

All expenses incurred in carrying out the provisions of this chapter shall be payable solely from the funds of the authority and no liability or obligation shall be incurred by the authority hereunder beyond the extent to which moneys shall be available to the authority.

2007, c. [864](#).

§15.2-5521. Dissolution of authority; disposition of property.

Whenever the board of directors of the authority by resolution determines that the purposes for which the authority was formed have been substantially complied with, the then members of the board of directors of the authority shall thereupon execute and file for record with the governing body of the locality that created the authority, a resolution declaring such facts. If the governing body of the locality that created the authority is of the opinion that the facts stated in the authority's resolution are true and that the authority should be dissolved, it shall so resolve and the authority shall stand dissolved. Upon such dissolution, the title to all funds and properties owned by the authority at the time of such dissolution shall vest in the locality creating the authority and possession of such funds and properties shall forthwith be delivered to such locality.

2007, c. [864](#).

§15.2-5522. Provisions of chapter controlling over other statutes and charters.

Any provision of this chapter that is found to be in conflict with any other statute or charter shall be controlling and shall supersede such other statute or charter to the extent of such conflict.

2007, c. [864](#); 2015, c. [709](#).

Tuition Assistance Grant Act

§23-38.11. (Repealed effective October 1, 2016) Short title.

This chapter may be cited as the "Tuition Assistance Grant Act."

1972, c. 18; 1975, c. 400; 1980, c. 101.

§23-38.12. (Repealed effective October 1, 2016) Program of tuition assistance established.

There is hereby established, from funds provided by law, a program of tuition assistance in the form of grants, as hereinafter provided, to or on behalf of bona fide residents of Virginia who attend private nonprofit institutions of collegiate education in the Commonwealth whose primary purpose is to provide collegiate, graduate, or professional education and not to provide religious training or theological education. Eligible institutions not admitted to this program before January 1, 2011, shall also (i) be formed, chartered, established, or incorporated within the Commonwealth; (ii) have their principal place of business within the Commonwealth; (iii) conduct their primary educational activity within the Commonwealth; and (iv) be accredited by a nationally recognized regional accrediting agency. Individuals who have failed to meet the federal requirement to register for the Selective Service shall not be eligible to receive these grants. However, a person who has failed to register for the Selective Service shall not be denied a right, privilege, or benefit under this section if: (a) the requirement to so register has terminated or become inapplicable to the person and (b) the person shows by a preponderance of the evidence that the failure to register was not a knowing and willful failure to register. The State Council of Higher Education shall be assisted in enforcing this provision by the private institutions of higher education whose students benefit from this program.

For the purposes of this section, the "principal place of business" of a nonprofit institution of collegiate education means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of

the institution as a whole primarily exercise that function, considering the following factors: (1) the state in which the primary executive and administrative offices of the institution are located; (2) the state in which the principal office of the chief executive officer of the institution is located; (3) the state in which the board of trustees, or similar governing person or persons, of the institution conducts a majority of its meetings; and (4) the state from which the overall operations of the institution are directed.

1972, c. 18; 1973, c. 2; 1975, c. 400; 1980, c. 101; 1981, c. 257; 1985, c. 520; 1998, c. [483](#); 1999, c. [434](#); 2011, cc. [419](#), [421](#).

§23-38.13. (Repealed effective October 1, 2016) State Council of Higher Education designated as administering agency; power to define certain terms.

The State Council of Higher Education is hereby designated as the administering agency for the program established by this chapter, and authorized to promulgate regulations consistent therewith and appropriate to the administration of the program. The administering agency shall have the power to define by regulation such terms as, but not limited to, "full-time," "undergraduate," "graduate," "professional," "successful academic year," "financial aid," "meritorious extenuating circumstances," and "incapacity" as used in this chapter.

1972, c. 18; 1973, c. 2; 1981, c. 257.

§23-38.14. (Repealed effective October 1, 2016) Maximum amount of tuition assistance per student.

The amount of tuition assistance, in the form of a grant pursuant to this chapter, which shall be available annually to a bona fide resident of Virginia attending a qualified private institution, as described in § [23-38.12](#), shall not exceed in amount the annual average appropriation per full-time equivalent student for the previous year from the general fund of the state treasury for operating costs at two- and four-year public institutions of collegiate education in Virginia.

1972, c. 18; 1975, c. 400; 1980, c. 101.

§23-38.15. (Repealed effective October 1, 2016) To whom grants made.

Under this program, grants shall be made to or on behalf of eligible Virginia residents for the academic year for which they enroll and are obligated to pay tuition as full-time undergraduate, graduate, or professional students at a qualified private institution, as described in § [23-38.12](#).

1972, c. 18; 1973, c. 2; 1975, c. 400; 1980, c. 101; 1981, c. 257; 2000, cc. [94](#), [660](#).

§23-38.16. (Repealed effective October 1, 2016) Duration of eligibility; grants to be used only for undergraduate, graduate, or professional work.

Eligibility for tuition assistance under this program shall be limited to a total of four academic years for undergraduate students, pharmacy students, and medical students, and three academic years for graduate students and other professional school students, which years need not be in succession. Tuition grants under this program shall be used only for undergraduate, graduate, or professional collegiate work in educational programs other than those providing religious training or theological education of an indoctrinating nature.

1972, c. 18; 1973, c. 2; 1975, c. 400; 1980, c. 101; 1981, c. 257; 1987, c. 600; 2000, cc. [94](#), [660](#).

§23-38.17. (Repealed effective October 1, 2016) Receipt by student of other financial aid.

Tuition assistance received by a student under this program shall not be reduced by the receipt by such student of other financial aid from any source, provided, however, that in no case shall a student receive a grant pursuant to this chapter which when added to said other financial aid, would enable the student to receive total assistance in excess of the estimated cost to the student of attending the institution in which he is enrolled.

1972, c. 18; 1973, c. 2; 1975, c. 400; 1980, c. 101.

§23-38.17:1. (Repealed effective October 1, 2016) Prompt crediting and expeditious refunding of funds.

Institutions acting as agents for students receiving awards under this program shall promptly credit disbursed funds to student accounts following verification of eligibility by the relevant institution. These institutions shall also expeditiously distribute any refunds due recipients.

1985, c. 359; 2000, cc. [94](#), [660](#).

§23-38.18. (Repealed effective October 1, 2016) Determination of bona fide residence.

For the purposes of determining the eligibility of a student for a tuition assistance grant, domicile shall be determined by the enrolling institution, as provided in § [23-7.4](#), and the State Council of Higher Education's guidelines for domiciliary status

determinations. In addition, in order to ensure consistency and fairness, the State Council of Higher Education shall require all participating institutions to file student specific data, shall monitor the domiciliary status decisions of these institutions, and shall make final decisions on any disputes between the institutions and the grant recipients. The Council shall report to the Governor and the General Assembly, as the Council deems necessary, on issues related to domiciliary status determinations for students receiving tuition assistance grants.

1972, c. 18; 1973, c. 2; 1985, c. 359; 1995, c. [663](#).

§23-38.19. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§23-38.19:1. Repealed.

Repealed by Acts 2014, c. [484](#), cl. 2.

§23-38.19:3. Repealed.

Repealed by Acts 2004, c. [872](#), cl. 8, effective May 4, 2005.

Underground Utility Damage Prevention Act

§56-265.14. Short title.

This chapter may be cited as the "Underground Utility Damage Prevention Act."

1979, c. 291.

§56-265.15. Definitions; calculation of time periods.

A. As used in this chapter:

"Abandoned" means no longer in service and physically disconnected from a portion of the underground utility line that is in use for storage or conveyance of service.

"Commission" means the State Corporation Commission.

"Contract locator" means any person contracted by an operator specifically to determine the approximate horizontal location of the operator's utility lines that may exist within the area specified by a notice served on a notification center.

"Damage" means any impact upon or removal of support from an underground facility as a result of excavation or demolition which according to the operating practices of the operator would necessitate the repair of such facility.

"Demolish" or "demolition" means any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment, or discharge of explosives which could damage underground utility lines.

"Designer" means any licensed professional designated by the project owner who designs government projects, commercial projects, residential projects consisting of 25 or more units, or industrial projects, which projects require the approval of governmental or regulatory authorities having jurisdiction over the project area.

"Emergency" means a sudden or unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

"Excavate" or "excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives and includes, without limitation, grading, trenching, digging, ditching, dredging, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving, or removing any structure or mass of material. "Excavate" or "excavation" shall not include installation of a sign that consists of metal, plastic, or wooden poles placed in the ground by hand or by foot without the use of tools or equipment.

"Extraordinary circumstances" means floods, snow, ice storms, tornadoes, earthquakes, or other natural disasters.

"Hand digging" means any excavation involving nonmechanized tools or equipment. Hand digging includes, but is not limited to, digging with shovels, picks, and manual post hole diggers, vacuum excavation or soft digging.

"Notification center" means an organization whose membership is open to all operators of underground facilities located within the notification center's designated service area, which maintains a data base, provided by its member operators, that includes the geographic areas in which its member operators desire transmissions of notices of proposed excavation, and which has the capability to transmit, within one hour of receipt, notices of proposed excavation to member operators by teletype, telecopy, personal computer, or telephone.

"Notify," "notice" or "notification" means the completed delivery of information to the person to be notified, and the receipt of same by such person in accordance with this chapter. The delivery of information includes, but is not limited to, the use of any electronic or technological means of data transfer.

"Operator" means any person who owns, furnishes or transports materials or services by means of a utility line.

"Person" means any individual, operator, firm, joint venture, partnership, corporation, association, municipality, or other political subdivision, governmental unit, department or agency, and includes any trustee, receiver, assignee, or personal representative thereof.

"Private sewer lateral" means a privately owned, legally authorized utility line that transports wastewater from one or more buildings to a sewer system utility line owned by a sewer system operator.

"Private water lateral" means a privately owned, legally authorized utility line that supplies water from a water system utility line owned by a water system operator to one or more buildings or properties.

"Sewer system" means a system of utility lines used for conveying wastewater, and includes sewer system laterals but does not include private sewer laterals.

"Sewer system lateral" means a lateral utility line located in the public right-of-way or public sewer easement, owned by a sewer system operator, and used to transport wastewater to the operator's main sewer line.

"Sewer system operator" means an operator of a sewer system.

"Soft digging" means any excavation using tools or equipment that utilize air or water pressure as the direct means to break up soil or earth for removal by vacuum excavation.

"Special project notice" means a valid notice to the notification center by an excavator covering a specific, unique or long-term project.

"Utility line" means any item of public or private property which is buried or placed below ground or submerged for use in connection with the storage or conveyance of water, sewage, telecommunications, electric energy, cable television, oil, petroleum products, gas, or other substances, and includes but is not limited to pipes, sewers, combination storm/sanitary sewer systems, conduits, cables, valves, lines, wires,

manholes, attachments, and those portions of poles below ground. The term "sewage" as used herein does not include any gravity storm drainage systems. Except for any publicly owned gravity sewer system within a county which has adopted the urban county executive form of government, the term "utility line" does not include any gravity sewer system or any combination gravity storm/sanitary sewer system within any counties, cities, towns or political subdivisions constructed or replaced prior to January 1, 1995. No excavator shall be held liable for the cost to repair damage to any such systems constructed or replaced prior to January 1, 1995, unless such systems are located in accordance with § [56-265.19](#).

"Water system" means a system of utility lines used for supplying water, and does not include private water laterals.

"Water system operator" means an operator of a water system.

"Willful" means an act done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.

"Working day" means every day, except Saturdays, Sundays, and legal state and national holidays.

B. Unless otherwise specified, all time periods used in this chapter shall be calculated from the time of the original notification to the notification center as provided in § [56-265.17](#). In addition, all time periods exclude Saturdays, Sundays, and legal state and national holidays.

1979, c. 291; 1980, cc. 696, 710; 1992, c. 192; 1994, c. [890](#); 1996, c. [79](#); 2002, c. [841](#); 2010, cc. [205](#), [777](#), [832](#).

§56-265.15:1. Exemptions; routine maintenance.

Nothing in this chapter shall apply to:

1. Any hand digging performed by an owner or occupant of a property.
2. The tilling of soil for agricultural purposes.
3. Any excavation done by a railroad when the excavation is made entirely on the land which the railroad owns and on which the railroad operates, provided there is no encroachment on any operator's rights-of-way or easements.

4. An excavation or demolition during an emergency, as defined in § [56-265.15](#), provided all reasonable precaution has been taken to protect the underground utility lines.

In the case of the state highway systems or streets and roads maintained by political subdivisions, officials of the Department of Transportation or the political subdivision where the use of such highways, roads, streets or other public way is impaired by an unforeseen occurrence shall determine the necessity of repair beginning immediately after the occurrence.

5. Any excavation for routine pavement maintenance, including patch type paving or the milling of pavement surfaces, upon the paved portion of any street, road, or highway of the Commonwealth provided that any such excavation does not exceed a depth of twelve inches (0.3 meter).

6. Any excavation for the purpose of mining pursuant to and in accordance with the requirements of a permit issued by the Department of Mines, Minerals and Energy.

7. Any hand digging performed by an operator to locate the operator's utility lines in response to a notice of excavation from the notification center, provided all reasonable precaution has been taken to protect the underground utility lines.

8. Any installation of a sign that does not involve excavation as defined in § [56-265.15](#).

1994, c. [890](#); 1996, c. [79](#); 2002, c. [841](#); 2010, cc. [777](#), [832](#).

§56-265.16. Repealed.

Repealed by Acts 1989, c. 448, effective July 1, 1990.

§56-265.16:1. Operators to join notification centers; certification.

A. Every operator, including counties, cities and towns, but excluding the Department of Transportation, having the right to bury underground utility lines shall join the notification center for the area.

B. Every notification center shall be certified by the Commission. The Commission shall determine the optimum number of notification centers in the Commonwealth. If the Commission determines that there shall be more than one notification center in the Commonwealth, it shall define the geographic area to be served by each notification center.

C. Any corporation desiring to serve as the notification center for an area of the Commonwealth may apply to the Commission to be certified as the notification center for that area. The Commission shall have authority to grant, amend, or revoke certificates under regulations promulgated relating to certification. An application for certification shall include such information as the Commission may reasonably require addressing the applicant's operational plan for the notification center.

D. Every Commission action regarding the optimum number of notification centers, the geographic area to be served by each notification center, the promulgation of notification center certification regulations, and the grant, amendment, or revocation of notification center certifications shall be made in furtherance of the purpose of preventing or mitigating loss of, or damage to, life, health, property or essential public services resulting from damage to underground utility lines. Any action by the Commission to approve or revoke any notification center certification shall:

1. Ensure protection for the public from the hazards that this chapter is intended to prevent or mitigate;
2. Ensure that all persons served by the notification center receive an acceptable level of performance, which level shall be maintained throughout the period of the notification center's certification; and
3. Require the notification center and its agents to demonstrate financial responsibility for any damages that may result from their violation of any provision of this chapter. Such requirement may be met by purchasing and maintaining liability insurance on such terms and in such amount as the Commission deems appropriate.

E. A notification center shall maintain an excavator-operator information exchange system in accordance with notification center certification regulations promulgated by the Commission. The members of a notification center shall be responsible for developing and implementing a public awareness program to ensure that all parties affected by this chapter shall be aware of their responsibilities. There shall be only one notification center certified for each geographic area defined by the Commission.

1989, c. 448; 1992, c. 192; 1994, c. [890](#); 2001, c. [399](#).

§56-265.17. Notification required prior to excavation or demolition; waiting periods; marking of proposed site.

A. Except as provided in subsection G, no person, including operators, shall make or begin any excavation or demolition without first notifying the notification center for

that area. Notice to the notification center shall be deemed to be notice to each operator who is a member of the notification center. The notification center shall provide the excavator with the identity of utilities that will be notified of the proposed excavation or demolition. Except for counties, cities, and towns, an excavator who willfully fails to notify the notification center of proposed excavation or demolition shall be liable to the operator whose facilities are damaged by that excavator, for three times the cost to repair the damaged property, provided the operator is a member of the notification center. The total amount of punitive damages awarded under this section, as distinguished from actual damages, shall not exceed \$10,000 in any single cause of action.

B. Except in the case of an emergency as defined in § [56-265.15](#), the excavator may commence work under one of the following conditions:

1. After waiting forty-eight hours, beginning 7:00 a.m. the next working day following notice to the notification center;
2. At any time, if the excavator confirms that all applicable operators have either marked their underground utility lines or reported that no lines are present in the vicinity of the excavation or demolition. The confirmation shall be obtained by contacting or receiving information from the notification center's excavator-operator information exchange system; or
3. If informed by the notification center that no operators are to be notified.

If any operator fails to respond to the excavator-operator information exchange system as required by this chapter, the notification center shall renotify any operator of its failure. This renotification shall not constitute an exemption from the duties of the operator set forth in § [56-265.19](#).

C. The excavator shall exercise due care at all times to protect underground utility lines. If, upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility line in the area of the proposed excavation, the excavator shall not begin excavating until three hours after an additional call is made to the notification center for the area. The operator of any unmarked utility line shall respond within three hours of the excavator's call to the notification center.

D. The excavator's notification shall be valid for fifteen working days from 7:00 a.m. on the next working day following notice to the notification center. Three working

days before the end of the fifteen-working-day period, or at any time when line-location markings on the ground become illegible, the excavator intending to excavate shall contact the notification center and request the re-marking of lines. The operator shall re-mark the lines as soon as possible; however, the re-marking of the lines shall be completed within forty-eight hours from 7:00 a.m. on the next working day following the request for the re-mark. Such re-marking shall be valid for an additional fifteen working days from 7:00 a.m. on the next working day following notice to the notification center.

E. In the event a specific location of the excavation cannot be given as required by subdivision 2 of § [56-265.18](#), prior to notifying the notification center pursuant to subsection A of this section, the person proposing to excavate or demolish shall mark the route or boundary of the site of the proposed excavation or demolition by means of white paint, if practical.

F. The extent of the excavator's proposed work shall be a work area that can be excavated within fifteen working days from 7:00 a.m. on the next working day following notice to the notification center. The area covered under each notice shall not exceed one mile.

G. An excavator may request a special project notice from the notification center for the purpose of notifying the operators of the excavator's desire to enter into an agreement for locating and protecting the operator's underground utility lines for a specific, unique or long-term project. An excavator using a special project notice shall have complete control over all activities within the project area. The terms and conditions of such agreements must be agreed upon, in writing, by the excavator and the operator before excavation commences. Such agreement and compliance with the terms of the agreement shall constitute an exemption from the requirements of subsections A, B, C, D and E of this section.

1979, c. 291; 1989, c. 448; 1992, c. 192; 1994, c. [890](#); 2002, c. [841](#).

§56-265.17:1. Notification and procedures for designers.

A. Each designer, who prepares drawings and plans for projects requiring excavation or demolition work, may notify the notification center and provide the center with the information required by § [56-265.18](#) and the designer's professional license number.

B. If a designer notifies the notification center to receive underground utility line information in accordance with § [56-265.17:3](#), the designer shall:

1. Indicate on the construction drawings, the type of underground utility lines, the horizontal location of these lines as provided by the operators, and the names of the operators of these lines;
2. Consider, when designing a project and preparing drawings therefor, the location of existing underground lines so as to minimize damage or interference with the existing facilities;
3. Indicate, on the construction plans or drawings, the designer ticket number and the notification center's toll-free number; and
4. Request only one designer ticket per project through the notification center at no cost.

2002, c. [841](#).

§56-265.17:2. Procedures for project owners.

The project owner shall provide copies of those portions of the drawings that affect the respective operator with underground utility lines in the project area who have responded in accordance with § [56-265.17:3](#).

2002, c. [841](#).

§56-265.17:3. Procedures for operators in response to a designer notice.

An operator, upon notification by a designer in accordance with § [56-265.17:1](#), shall:

1. Respond to the designer's request for underground utility line information within fifteen working days in accordance with subdivisions 2, 3, and 4 of this section;
2. Provide designers with the operator's name, the type of underground utility line, and the approximate horizontal location of the utility line. The foregoing information may be provided to the designer through the means that include, but are not limited to, field locates, maps, surveys, installation records or other means. If the designer requests field locates, the operator shall provide field locates in accordance with the accuracy set forth in subsection A of § [56-265.19](#). Marking shall be done by both paint and flags whenever possible;
3. Provide such information about the location of the utility lines to designers for informational purposes only. Operators will not be liable for any incorrect information provided or for the subsequent use of this information, nor will they be subject

to civil penalties for the accuracy of the information or marks provided. Any concerns about the accuracy of information or marks should be directed to the appropriate operator; and

4. Respond to the operator-excavator information exchange system by no later than 7:00 a.m. on the sixteenth working day following the designer's notice to the notification center.

2002, c. [841](#).

§56-265.18. Notification requirements.

Every notice served by any person on a notification center shall contain the following information:

1. The name of the individual serving such notice.
2. The specific location of the proposed work. In the event a specific description of the location of the excavation cannot be given, the person proposing to excavate or demolish shall comply with subsection E of § [56-265.17](#).
3. The name, address, telephone number, and telefacsimile number if available, of the excavator or demolisher, to whom notification can be given.
4. The excavator's or demolisher's field telephone number, if one is available.
5. The type and extent of the proposed work.
6. The name of the person for whom the proposed work is being performed.

1979, c. 291; 1980, c. 696; 1989, c. 448; 1994, c. [890](#); 2002, c. [841](#).

§56-265.19. Duties of operator; regulations.

A. If a proposed excavation or demolition is planned in such proximity to the underground utility line that the utility line may be destroyed, damaged, dislocated, or disturbed, the operator shall mark the approximate horizontal location of the underground utility line on the ground to within two feet of either side of the underground utility line by means of stakes, paint, flags, or a combination thereof. The operator shall mark the underground utility line and report the marking status to the excavator-operator information exchange system by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, unless the operator is unable to do so due to extraordinary circumstances. If the operator is unable to mark the location within the time allowed under this section due to extraordinary circumstances, the operator shall notify directly the person who

proposes to excavate or demolish and shall, in addition, notify the person of the date and time when the location will be marked. The deferral to mark for extraordinary circumstances shall be no longer than 96 hours from 7:00 a.m. on the next working day following notice to the notification center, unless a longer time is otherwise agreed upon by the operator and excavator. The operator shall also inform the notification center of any deferral.

B. If a proposed excavation or demolition is not planned in such proximity to the operator's underground utility lines that the utility line may be damaged, the operator shall so report to the notification center's excavator-operator information exchange system no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center.

C. An operator shall participate in all preplanning and preconstruction meetings originated by state, county or municipal authorities relating to proposed construction projects which may affect the operator's existing or future utility lines and shall cooperate in implementing decisions reached in such preplanning and preconstruction meetings.

D. Any contract locator acting on behalf of an operator and failing to perform the duties imposed by this chapter shall be subject to the liabilities in § [56-265.25](#) and the civil penalties in § [56-265.32](#).

E. Locators shall be trained in applicable locating industry standards and practices no less stringent than the National Utility Locating Contractors Association's locator training standards and practices. Each locator's training shall be documented. Such documents shall be maintained by the operator or contract locator.

F. The Commission shall be authorized to adopt regulations designating: (i) letters for each operator to be used in conjunction with marking of underground utility lines, and (ii) symbols for marking of underground utility lines, in compliance with subsection B of § [56-265.17:3](#). Such letter designation and marking symbols shall be in accordance with industry standards.

G. For underground utility lines abandoned after July 1, 2002, operators shall make a reasonable attempt to keep records of these abandoned utility lines, excluding service lines connected to a single-family dwelling unit. When an operator has knowledge that the operator's abandoned utility lines may be present within the area of the proposed excavation, the operator shall provide a response to the excavator-operator

information exchange system. Such information regarding abandoned lines shall be for informational purposes only. An operator shall not be liable to any person, or subject to civil penalties, as a result of the operator's providing incorrect information regarding abandoned lines or the subsequent use of such information. The excavator-operator information exchange system may refer any person with concerns about the accuracy of information regarding abandoned lines to the appropriate operator.

H. An operator shall respond to an emergency notice as soon as possible but no later than three hours from the excavator's call to the notification center.

1979, c. 291; 1980, c. 696; 1994, c. [890](#); 1996, c. [79](#); 2002, c. [841](#); 2005, c. [395](#).

§56-265.19:1. Private sewer laterals and sewer system laterals.

A. Notwithstanding any provision of this chapter to the contrary, the protection of sewer system laterals and private sewer laterals shall be implemented as provided in this section. When an excavation is to take place within a public right-of-way or public sewer easement, the sewer system operator shall exercise reasonable care to mark the approximate horizontal location of sewer system laterals within the public right-of-way or public sewer easement as provided in § [56-265.19](#).

B. When (i) an excavation is to take place outside the public right-of-way or public sewer easement, (ii) the excavation involves the installation or maintenance of gas or electric utility lines by trenchless technology, (iii) the potential for a conflict with a sewer lateral exists, and (iv) sewer system laterals are located in the public right-of-way:

1. The sewer system operator shall exercise reasonable care to mark the approximate horizontal location of sewer system laterals by:

a. Marking the location of the sewer system lateral where it meets the edge of the right-of-way or public sewer easement, if known; or

b. If the location described in subdivision B 1 a is unknown, marking the location where the sewer system lateral connects to the sewer system main.

2. When the sewer system laterals have been marked in accordance with subdivision B 1 and the excavator reasonably concludes that a private sewer lateral may be impacted by the planned excavation based upon visual evidence, knowledge of the proposed excavation site, or other information available to the excavator, the excavator shall exercise reasonable care to protect the private sewer lateral. For purposes of this subdivision, reasonable care includes the following actions:

- a. Reviewing information provided by the private sewer lateral owner;
 - b. Meeting with the sewer system operator on-site, if the sewer system operator has additional information to provide about the location of private sewer laterals; or
 - c. Conducting a visual inspection of the proposed excavation site in an effort to determine the probable path of the sewer lateral.
- C. When (i) an excavation is to take place within or outside the public right-of-way or public sewer easement, (ii) the excavation involves the installation or maintenance of gas or electric utility lines by trenchless technology, (iii) the potential for a conflict with a sewer lateral exists, and (iv) private sewer laterals are located in the public right-of-way or easement:
1. The sewer system operator shall assist the excavator by one of the following methods, unless the operator marks private sewer laterals in the manner required for its sewer system laterals under subsection B:
 - a. Provide copies of the best reasonably available records regarding the location of the private sewer laterals by electronic message, mail, facsimile, or other delivery method. If an excavation affects 25 or more private sewer laterals, the sewer system operator's response shall be in accordance with the timelines set forth in [§ 56-265.17:3](#). If the provision of records required by this subsection imposes an unreasonable burden or substantial cost upon a sewer system operator, the excavator and the sewer system operator shall endeavor in good faith to reach an agreement to provide the sewer system operator with additional time to provide the records or any other mutually agreeable accommodation.
 - b. Provide the best reasonably available records on the Internet or another readily accessible electronic system in order that the records may be retrieved by the excavator from a remote location. If the sewer system operator has implemented such a system, then the sewer system operator shall have no further obligations to provide records under subdivision C 1 a.
 - c. If the sewer system operator has no such records, but has additional information to provide about the location of private sewer laterals, then the sewer system operator shall notify the excavator of such information and, upon request, either meet with the excavator on-site or convey such information to the excavator.
 2. When the records have been made available in accordance with subdivision C 1 and the excavator reasonably concludes that a private sewer lateral may be impacted

by the planned excavation based upon visual evidence, knowledge of the proposed excavation site, or other information available to the excavator, the excavator shall exercise reasonable care to protect the private sewer lateral. For purposes of this subdivision, reasonable care includes the following actions:

- a. Reviewing information provided by the sewer system operator;
- b. Reviewing information provided by the private sewer lateral owner;
- c. Meeting with the sewer system operator on-site if the sewer system operator has additional information to provide about the location of private sewer laterals; or
- d. Conducting a visual inspection of the proposed excavation site in an effort to determine the probable path of the sewer lateral.

D. Sewer system operators shall mark utility lines, other than sewer system laterals and private sewer laterals, as provided by other sections of this chapter.

E. Water system operators shall mark water system utility lines as provided by other sections of this chapter, except that a water system operator shall not be responsible for marking private water laterals.

F. Records regarding the location of private sewer laterals provided on the Internet or otherwise made accessible by an electronic system pursuant to subdivision C 1 b shall also be accessible to other public utilities and cable operators or excavators working on their behalf for purposes of compliance with this chapter.

G. In all excavations, the excavator shall exercise reasonable care to protect underground utility lines.

2010, c. [205](#).

§56-265.20. Repealed.

Repealed by Acts 1994, c. [890](#), effective January 1, 1995.

§56-265.20:1. Locating nonmetallic underground utility lines.

Notwithstanding the provisions of § [56-257.1](#), any plastic or other nonmetallic utility lines installed underground on and after July 1, 2002, shall be installed in such a manner as to be locatable by the operator for the purposes of this chapter.

2002, c. [841](#).

§56-265.21. Marking by color.

In marking the approximate location of underground utility lines or proposed excavation if required pursuant to subsection E of § [56-265.17](#) the American Public Works Association color codes shall be used.

1979, c. 291; 1994, c. [890](#); 2002, c. [841](#).

§56-265.22. Duties of notification center upon notification by person intending to excavate; record of notification made by telephone required.

A. The notification center shall, upon receiving notice by a person, notify all member operators whose underground lines are located in the area of the proposed project, excavation or demolition. The notification center shall also indicate the names of those operators being notified to the person providing notice.

B. If the notification required by this chapter is made by telephone, a record of such notification shall be maintained by the operators or notification center notified to document compliance with the requirements of this chapter, and such records shall be maintained in compliance with the applicable statute of limitations.

C. The notification center shall notify excavators, within the time frame allowed by the law to mark underground utility lines, of any responses placed on the excavator-operator information exchange system by a locator. Such notification shall occur by facsimile or other mutually acceptable means of automatically transmitting and receiving this information.

If the excavator cannot provide the notification center with a facsimile number or other mutually acceptable means of automatically transmitting and receiving this information, it shall be the excavator's responsibility to contact the excavator-operator information exchange system after the period allowed by law to mark underground facilities and prior to commencing excavation in order to determine if any responses to the notice have been recorded.

1979, c. 291; 1994, c. [890](#); 2002, c. [841](#).

§56-265.22:1. Meetings between excavators and operators.

A. Any person planning excavation or demolition in such proximity to the underground utility lines that the utility lines may be destroyed, damaged, dislocated, or disturbed may request a meeting with the operator whose underground utility lines are located in the area of the proposed excavation or demolition to discuss the marking of such lines. The project requiring excavation shall be of sufficient complexity to

require a pre-marking meeting. The meeting notice shall include all information required by § [56-265.18](#) and a specific time and location for the meeting.

B. The notification center shall, upon receiving a meeting notice, notify all member operators whose underground utility lines are located in the area of the proposed excavation or demolition. The notification center shall provide to the excavator the names of those operators being notified of the meeting.

C. The operators notified by the notification center shall meet with the excavator by 7:00 a.m. on the third working day following the excavator's meeting notice. If an operator does not agree to the excavator's suggested time and location, the operator shall set up a mutually agreeable time and location to meet no later than 7:00 a.m. on the third working day following the meeting notice.

D. The excavator's meeting notice shall not be the notice to excavate required under § [56-265.17](#). The notice to excavate required under § [56-265.17](#) for the project shall not be submitted to the notification center until after the meeting referenced in subsection A of this section has occurred, or after 7:00 a.m. on the third working day following the meeting notice.

2002, c. [841](#).

§56-265.23. Exemption for roadway maintenance operations by the Virginia Department of Transportation and certain counties, cities, and towns.

Employees of the Virginia Department of Transportation acting within the scope of their employment, and certain employees of those counties, cities, and towns which maintain their streets or roads in accordance with § [33.2-319](#) or § [33.2-366](#) performing street or roadway maintenance operations and acting within the scope of their employment, excavating entirely within the right-of-way of a public road, street or highway of the Commonwealth shall not be required to comply with the provisions of this chapter if reasonable care is taken to protect the utility lines placed in the right-of-way by permit and if they:

1. Excavate within the limits of the original excavation; on the traveled way, shoulders or drainage features of a public road, street, or highway and any excavation does not exceed eighteen inches (0.45 meter) in depth below the grade existing prior to such excavation; or
2. Are replacing previously existing structures in their previous locations.

1979, c. 291; 1994, c. [890](#).

§56-265.24. Duties of excavator.

A. Any person excavating within two feet on either side of the staked or marked location of an operator's underground utility line or demolishing in such proximity to an underground utility line that the utility line may be destroyed, damaged, dislocated or disturbed shall take all reasonable steps necessary to properly protect, support and backfill underground utility lines. For excavations not parallel to an existing underground utility line, such steps shall include, but may not be limited to:

1. Exposing the underground utility line to its extremities by hand digging;
2. Not utilizing mechanized equipment within two feet of the extremities of all exposed utility lines; and
3. Protecting the exposed utility lines from damage.

In addition, for excavations parallel to an existing utility line, such steps shall include, but may not be limited to, hand digging at reasonable distances along the line of excavation. The excavator shall exercise due care at all times to protect underground utility lines when exposing these lines by hand digging.

B. If the markings locating the underground lines become illegible due to time, weather, construction, or any other cause, the person performing the excavation or demolition shall so notify the notification center for the area. Such notification shall constitute an extension under subsection D of § [56-265.17](#).

C. If, upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility line in the area of the proposed excavation, the excavator shall not begin excavating until an additional call is made to the notification center for the area pursuant to subsection B of § [56-265.17](#).

D. In the event of any damage to, or dislocation, or disturbance of any underground utility line including its appurtenances, covering, and coating, in connection with any excavation or demolition, the person responsible for the excavation or demolition operations shall immediately notify the operator of the underground utility line and shall not backfill around the underground utility line until the operator has repaired the damage or has given clearance to backfill. The operator shall either commence repair of the damage or give clearance to backfill within twenty-four hours, and upon his failure to commence or prosecute with diligence such repair or give clearance, the giving of clearance shall be presumed.

E. If the damage, dislocation, or disturbance of the underground utility line creates an emergency, the person responsible for the excavation or demolition shall, in addition to complying with subsection D of this section, take immediate steps reasonably calculated to safeguard life, health and property.

F. With the exception of designers requesting marking of a site, in accordance with § [56-265.17](#), no person, including operators, shall request marking of a site through a notification center unless excavation shall commence within thirty working days from the date of the original notification to the notification center. Except for counties, cities, and towns, any person who willfully fails to comply with this subsection shall be liable to the operator for three times the cost of marking its utility line, not to exceed \$1,000.

G. Any person performing excavation or demolition shall provide to the operator of the underground utility line in the area of excavation or to the appropriate regulatory authority having jurisdiction, the number issued by the notification center for that excavation site in response to the excavator's notice, within one hour of a request for the number issued by the notification center.

H. If an excavator discovers an unmarked line, the excavator shall protect this line pursuant to subsection C of this section. An excavator shall not remove an abandoned line without first receiving authorization to do so by the operator.

1979, c. 291; 1994, c. [890](#); 1996, c. [79](#); 2002, c. [841](#).

§56-265.25. Liability of operator and excavator; penalties.

A.1. If any underground utility line is damaged as a proximate result of a person's failure to comply with any provision of this chapter, that person shall be liable to the operator of the underground utility line for the total cost to repair the damaged facilities as that cost is normally computed by the operator, provided the operator is a member of the notification center covering the area in which the damage to the utility line takes place. The liability of such a person for such damage shall not be limited by reason of this chapter.

2. Any person who willfully fails to notify the notification center of proposed excavation or demolition shall be liable to the operator as provided in subsection A of § [56-265.17](#).

3. If, after receiving proper notice, an operator fails to discharge a duty imposed by any provision of this chapter and an underground utility line of such operator is

damaged, as a proximate result of the operator's failure to discharge such duty, by any person who has complied with all of the provisions of this chapter, such person shall not be so liable.

B. If an underground utility line of an operator is damaged, as the proximate result of the operator's failure to comply with any provision of this chapter, by any person who has complied with the provisions of this chapter, the operator shall be liable to such person for the total cost to repair any damage to the equipment or facilities of such person resulting from such damage to the operator's underground utility line.

C. Except as specifically set forth herein, the provisions of this chapter shall not be construed to either abrogate any rights, duties, or remedies existing under law or create any rights, duties, defenses, or remedies in addition to any rights, duties, or remedies existing under law.

1979, c. 291; 1980, c. 696; 1989, c. 448; 1994, c. [890](#).

§56-265.26. Repealed.

Repealed by Acts 1994, c. [890](#), effective January 1, 1995.

§56-265.26:1. Utility line depth requirement.

Every operator having the right to install underground utility lines shall install such underground utility lines at depths required by accepted industry standards. Such standards shall include, as applicable, standards established by the National Electrical Safety Code, Bellcore Blue Book-Manual of Contractor's Procedures, the Commission's pipeline safety regulations, the Department of Health's waterworks regulations, and the depth standards of the Virginia Cable Telecommunications Association, which shall be established in consultation with the State Corporation Commission no later than July 1, 2002.

2002, c. [841](#).

§56-265.27. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§56-265.28. Sovereign immunity.

Nothing in this chapter shall be construed to abrogate the immunity from suit accruing to the Commonwealth, her political subdivisions, agencies, officers or employees, or the officers or employees of her political subdivisions and agencies, as exists prior to July 1, 1980.

1979, c. 291.

§56-265.29. Other similar laws.

Compliance with the provisions of this chapter shall not exempt any operator or person from the operation of any other applicable laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, unless exempted by such other laws, ordinances, regulations, or rules as a result of such compliance.

1979, c. 291.

§56-265.30. Authority of the State Corporation Commission.

A. The Commission shall enforce the provisions of the Underground Utility Damage Prevention Act as set out in this chapter. The Commission may promulgate any rules or regulations necessary to implement the Commission's authority to enforce this chapter.

B. Nothing in this chapter shall be construed to authorize the Commission to promulgate any rules or regulations pursuant to its authority to enforce this chapter that require any person, other than jurisdictional gas or hazardous liquid operators, to report to the Commission any probable violation of this chapter or any incident involving damage, dislocation or disturbance of any utility line.

1994, c. [890](#); 2001, c. [399](#).

§56-265.31. Commission to establish advisory committee.

A. The Commission shall establish an advisory committee consisting of representatives of the following entities: Commission staff, utility operator, notification center, excavator, municipality, Virginia Department of Transportation, Board for Contractors, and underground line locator. Persons appointed to the advisory committee by the Commission shall have expertise with the operation of the Underground Utility Damage Prevention Act. The advisory committee shall perform duties which may be assigned by the Commission, including the review of reports of violations of the chapter, and make recommendations to the Commission.

B. The members of the advisory committee shall be immune, individually and jointly, from civil liability for any act or omission done or made in performance of their duties while serving as members of such advisory committee, but only in the absence of willful misconduct.

1994, c. [890](#); 1996, c. [79](#).

§56-265.32. Commission to impose civil penalties for certain violations; establishment of Underground Utility Damage Prevention Special Fund.

A. The Commission may, by judgment entered after a hearing on notice duly served on any person not less than 30 days before the date of the hearing, impose a civil penalty not exceeding \$2,500 for each violation, if it is proved that the person violated any of the provisions of this chapter as a result of a failure to exercise reasonable care. Any proceeding or civil penalty undertaken pursuant to this section shall not prevent nor preempt the right of any party to obtain civil damages for personal injury or property damage in private causes of action. This subsection shall not authorize the Commission to impose civil penalties on any county, city, town, or other political subdivision. However, the Commission shall inform the counties, cities, towns, and other political subdivisions of reports of alleged violations involving the locality or political subdivision and, at the request of the locality or political subdivision, suggest corrective action.

B. If the Commission asserts there is recurring noncompliance with any of the provisions of this chapter by a county, city, town, or other political subdivision, the Commission, upon written notice to the chairman of such operator's board or, in the case of a city or town, the mayor of such operator's council, and to such operator's chief executive officer, may require a written response by such person or his designee. Such response shall be made within 30 days of the operator's receipt of written notice from the Commission. The response shall confirm that the operator will comply promptly or explain why it disputes any assertion by the Commission of noncompliance. If the operator is not able to return to compliance promptly, the operator shall describe its plan to achieve compliance in a corrective action plan to be submitted to the Commission no later than 60 days after the receipt of the written notice. Following submittal of a corrective action plan, the Commission may convene a hearing for the purpose of receiving additional evidence, determining whether noncompliance has occurred, and determining further suggested corrective action. The Commission may also convene such a hearing if the operator fails to provide a written response or a corrective action plan as required by this subsection, or provides a response that disputes the Commission's assertions. Nothing in this section shall limit the Commission's powers under this chapter with respect to persons who are not counties, cities, towns, or political subdivisions of the Commonwealth.

C. The Underground Utility Damage Prevention Special Fund (hereinafter referred to as Special Fund) is hereby established as a revolving fund to be used by the Commission for administering the regulatory program authorized by this chapter. The Special Fund shall be composed entirely of funds generated by the enforcement of this

chapter. Excess funds shall be used to support any one or more of the following: (i) public awareness programs established by a notification center pursuant to subsection B of § [56-265.16:1](#); (ii) training and education programs for excavators, operators, line locators, and other persons; and (iii) programs providing incentives for excavators, operators, line locators, and other persons to reduce the number and severity of violations of the Act. The Commission shall determine the appropriate allocation of any excess funds among such programs, and shall establish required elements for any program established under clause (ii) or (iii).

D. All civil penalties collected pursuant to this section shall be deposited into the Underground Utility Damage Prevention Special Fund. Interest earned on the fund shall be credited to the Special Fund. The Special Fund shall be established on the books of the Commission comptroller and any funds remaining in the Underground Utility Damage Prevention Special Fund at the end of the fiscal year shall not revert to the general fund, but shall remain in the Special Fund.

1994, c. [890](#); 2001, c. [351](#); 2002, c. [348](#); 2010, c. [205](#).

Uniform Act on Adoption and Medical Assistance

§63.2-1400. Not Set Out.

Not set out. (2002, c. [747](#) .)

§63.2-1401. Compacts authorized.

The Governor is authorized to develop, participate in the development of, negotiate and enter into one or more interstate compacts on behalf of this Commonwealth with other states to implement one or more of the purposes set forth in this chapter. When so entered into, and for so long as it remains in force, the compact shall have the force and effect of law.

1988, c. 154, § 63.1-238.7; 2002, c. [747](#).

§63.2-1402. Definitions.

For the purposes of this chapter:

"Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

"Residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

1988, c. 154, § 63.1-238.8; 2002, c. [747](#).

§63.2-1403. Contents of compacts.

A. A compact entered into pursuant to the authority conferred by this chapter shall have the following content:

1. A provision making it available for joinder by all states.
2. A provision or provisions for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal.
3. A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who, on the effective date of the withdrawal, are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode.
4. A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the child welfare agency of the state which undertakes to provide the adoption assistance, and further, that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance.
5. Such other provisions as may be appropriate to implement the proper administration of the compact.

B. A compact entered into pursuant to the authority conferred by this chapter may contain the following provisions in addition to those required pursuant to subsection A:

1. Provisions establishing procedures and entitlements to medical, developmental, child care or other social services for the child in accordance with applicable laws,

even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs thereof.

2. Such other provisions as may be appropriate or incidental to the proper administration of the compact.

1988, c. 154, § 63.1-238.9; 2002, c. [747](#).

§63.2-1404. Medical assistance; penalties.

A. A child with special needs resident in this Commonwealth who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this Commonwealth upon the filing in the Department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the Department, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

B. The Department of Medical Assistance Services shall consider the holder of medical assistance identification pursuant to this section as any other holder of a medical assistance identification under the laws of this Commonwealth and shall process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

C. The Department shall provide coverage and benefits not provided by the state plan for medical assistance in the residence state for a child who is in another state and who is covered by an adoption assistance agreement made in Virginia to the extent required by the agreement. However, there shall be no reimbursement for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The Department of Medical Assistance Services shall adopt regulations implementing this subsection. The additional coverages and benefit amounts provided pursuant to this subsection shall be for services for which there is no federal financial contribution or which, if federally aided, are not provided by the residence state. Such regulations shall include procedures to be followed in obtaining prior approvals for services when such approval is required for the assistance.

D. The submission of any claim for payment or reimbursement for services or benefits pursuant to this section or the making of any statement in connection therewith, which claim or statement the maker knows or should know to be false, misleading or fraudulent shall be punishable as perjury and shall also be subject to a fine of not more than \$10,000, or imprisonment for not more than two years, or both.

E. The provisions of this section shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this Commonwealth under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this Commonwealth. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this Commonwealth shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

1988, c. 154, § 63.1-238.10; 2002, c. [747](#).

§63.2-1405. Federal participation.

Consistent with federal law, the Department and the Department of Medical Assistance Services, in connection with the administration of this chapter and any compact pursuant hereto, shall include in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), Titles IV-E and XIX of the Social Security Act, as amended, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the costs. The Departments shall apply for and administer all relevant federal aid in accordance with law.

1988, c. 154, § 63.1-238.11; 2002, c. [747](#).

Uniform Computer Information Transactions Act

§59.1-501.1. Title.

This chapter may be cited as the Uniform Computer Information Transactions Act.

2000, cc. [101](#), [996](#).

§59.1-501.2. Definitions.

(a) As used in this chapter:

- (1) "Access contract" means a contract to obtain by electronic means access to, or information from, an information processing system of another person, or the equivalent of such access.
- (2) "Access material" means any information or material, such as a document, address, or access code, that is necessary to obtain authorized access to information or control or possession of a copy.
- (3) "Aggrieved party" means a party entitled to a remedy for breach of contract.
- (4) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of performance, course of dealing, and usage of trade as provided in this chapter.
- (5) "Attribution procedure" means a procedure to verify that an electronic authentication, display, message, record, or performance is that of a particular person or to detect changes or errors in information. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment.
- (6) "Authenticate" means (i) to sign or (ii) with the intent to sign a record, to execute or adopt an electronic symbol, sound, message, or process referring to, attached to, included in, or logically associated or linked with, that record.
- (7) "Automated transaction" means a transaction in which a contract is formed in whole or part by electronic actions of one or both parties that are not previously reviewed by an individual in the ordinary course.
- (8) "Cancellation" means the ending of a contract by a party because of breach of contract by another party.
- (9) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
- (10) "Computer information" means information in electronic form that is obtained from or through the use of a computer or that is in a form capable of being processed by a computer. The term includes a copy of the information and any documentation or packaging associated with the copy.
- (11) "Computer information transaction" means an agreement or the performance of it to create, modify, transfer, or license computer information or informational rights in computer information. The term includes a support contract under § [59.1-506.12](#).

The term does not include a transaction merely because the parties' agreement provides that their communications about the transaction will be in the form of computer information.

(12) "Computer program" means a set of statements or instructions to be used directly or indirectly in a computer to bring about a certain result. The term does not include separately identifiable informational content.

(13) "Consequential damages" resulting from breach of contract includes (i) any loss resulting from general or particular requirements and needs of which the breaching party at the time of contracting had reason to know and which could not reasonably be prevented, and (ii) any injury to an individual or damage to property other than the subject matter of the transaction proximately resulting from breach of warranty. The term does not include direct damages or incidental damages.

(14) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. A term in an electronic record intended to evoke a response by an electronic agent is conspicuous if it is presented in a form that would enable a reasonably configured electronic agent to take it into account or react to it without review of the record by an individual. With respect to a person, conspicuous terms include (i) a heading in capitals in a size equal to or greater than, or in contrasting type, font, or color to, the surrounding text, (ii) language in the body of a record or display in larger or other contrasting type, font, or color or set off from the surrounding text by symbols or other marks that draw attention to the language, and (iii) a term prominently referenced in an electronic record or display which is readily accessible or reviewable from the record or display. With respect to a person or an electronic agent, conspicuous terms include a term, or reference to a term, that is so placed in a record or display that the person or electronic agent cannot proceed without taking action with respect to the particular term or reference.

(15) "Consumer" means an individual who is a licensee of information or informational rights that the individual at the time of contracting intended to be used primarily for personal, family, or household purposes. The term does not include an individual who is a licensee primarily for professional or commercial purposes, including agriculture, business management, and investment management other than management of the individual's personal or family investments.

(16) "Consumer contract" means a contract between a merchant licensor and a consumer.

(17) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

(18) "Contract fee" means the price, fee, rent, or royalty payable in a contract under this chapter or any part of the amount payable.

(19) "Contractual use term" means an enforceable term that defines or limits the use, disclosure of, or access to licensed information or informational rights, including a term that defines the scope of a license.

(20) "Copy" means the medium on which information is fixed on a temporary or permanent basis and from which it can be perceived, reproduced, used, or communicated, either directly or with the aid of a machine or device.

(21) "Course of dealing" means a sequence of previous conduct between the parties to a particular transaction which establishes a common basis of understanding for interpreting their expressions and other conduct.

(22) "Course of performance" means repeated performances, under a contract that involves repeated occasions for performance, which are accepted or acquiesced in without objection by a party having knowledge of the nature of the performance and an opportunity to object to it.

(23) "Court" includes an arbitration or other dispute-resolution forum if the parties have agreed to use of that forum or its use is required by law.

(24) "Delivery," with respect to a copy, means the voluntary physical or electronic transfer of possession or control.

(25) "Direct damages" means compensation for losses measured by § [59.1-508.8](#) (b) (1) or § [59.1-508.9](#) (a) (1). The term does not include consequential damages or incidental damages.

(26) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(27) "Electronic agent" means a computer program, or electronic or other automated means, used independently to initiate an action, or to respond to electronic messages or performances, on the person's behalf without review or action by an individual at the time of the action or response to the message or performance.

(28) "Electronic message" means a record or display that is stored, generated, or transmitted by electronic means for the purpose of communication to another person or electronic agent.

(29) "Financial accommodation contract" means an agreement under which a person extends a financial accommodation to a licensee and which does not create a security interest governed by Title 8.9A. The agreement may be in any form, including a license or lease.

(30) "Financial services transaction" means an agreement that provides for, or a transaction that is, or entails access to, use, transfer, clearance, settlement, or processing of:

(A) a deposit, loan, funds, or monetary value represented in electronic form and stored or capable of storage by electronic means and retrievable and transferable by electronic means, or other right to payment to or from a person;

(B) an instrument or other item;

(C) a payment order, credit card transaction, debit card transaction, funds transfer, automated clearing house transfer, or similar wholesale or retail transfer of funds;

(D) a letter of credit, document of title, financial asset, investment property, or similar asset held in a fiduciary or agency capacity; or

(E) related identifying, verifying, access-enabling, authorizing, or monitoring information.

(31) "Financier" means a person that provides a financial accommodation to a licensee under a financial accommodation contract and either (i) becomes a licensee for the purpose of transferring or sublicensing the license to the party to which the financial accommodation is provided or (ii) obtains a contractual right under the financial accommodation contract to preclude the licensee's use of the information or informational rights under a license in the event of breach of the financial accommodation contract. The term does not include a person that selects, creates, or supplies the information that is the subject of the license, owns the informational rights in the information, or provides support for, modifications to, or maintenance of the information.

(32) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(33) "Goods" means all things that are movable at the time relevant to the computer information transaction. The term includes the unborn young of animals, growing crops, and other identified things to be severed from realty which are covered by § [8.2-107](#). The term does not include computer information, money, the subject matter of foreign exchange transactions, documents, letters of credit, letter-of-credit rights, instruments, investment property, accounts, chattel paper, deposit accounts, or general intangibles.

(34) "Incidental damages" resulting from breach of contract:

(A) means compensation for any commercially reasonable charges, expenses, or commissions reasonably incurred by an aggrieved party with respect to (i) inspection, receipt, transmission, transportation, care, or custody of identified copies or information that is the subject of the breach; (ii) stopping delivery, shipment, or transmission; (iii) effecting cover or retransfer of copies or information after the breach; (iv) other efforts after the breach to minimize or avoid loss resulting from the breach; and (v) matters otherwise incident to the breach; and

(B) does not include consequential damages or direct damages.

(35) "Information" means data, text, images, sounds, mask works, or computer programs, including collections and compilations of them.

(36) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(37) "Informational content" means information that is intended to be communicated to or perceived by an individual in the ordinary use of the information, or the equivalent of that information.

(38) "Informational rights" include all rights in information created under laws governing patents, copyrights, mask works, trade secrets, trademarks, publicity rights, or any other law that gives a person, independently of contract, a right to control or preclude another person's use of or access to the information on the basis of the rights holder's interest in the information.

(39) "Insurance services transaction" means an agreement between an insurer and an insured that provides for, or a transaction that is or entails access to, use, transfer, clearance, settlement, or processing of:

(A) an insurance policy, contract, or certificate; or

(B) a right to payment under an insurance policy, contract or certificate.

(40) "Knowledge," with respect to a fact, means actual knowledge of the fact.

(41) "License" means a contract that authorizes access to, or use, distribution, performance, modification, or reproduction of, information or informational rights, but expressly limits the access or uses authorized or expressly grants fewer than all rights in the information, whether or not the transferee has title to a licensed copy. The term includes an access contract, a lease of a computer program, and a consignment of a copy. The term does not include a reservation or creation of a security interest to the extent the interest is governed by Title 8.9A.

(42) "Licensee" means a person entitled by agreement to acquire or exercise rights in, or to have access to or use of, computer information under an agreement to which this chapter applies. A licensor is not a licensee with respect to rights reserved to it under the agreement.

(43) "Licensor" means a person obligated by agreement to transfer or create rights in, or to give access to or use of, computer information or informational rights in it under an agreement to which this chapter applies. Between the provider of access and a provider of the informational content to be accessed, the provider of content is the licensor. In an exchange of information or informational rights, each party is a licensor with respect to the information, informational rights, or access it gives.

(44) "Mass-market license" means a standard form used in a mass-market transaction.

(45) "Mass-market transaction" means a transaction that is:

(A) a consumer contract; or

(B) any other transaction with an end-user licensee if:

(i) the transaction is for information or informational rights directed to the general public as a whole, including consumers, under substantially the same terms for the same information;

(ii) the licensee acquires the information or informational rights in a retail transaction under terms consistent with an ordinary transaction in a retail market; and

(iii) the transaction is not (a) a contract for redistribution or for public performance or public display of a copyrighted work; (b) a transaction in which the information is customized or otherwise specially prepared by the licensor for the licensee, other

than minor customization using a capability of the information intended for that purpose; (c) a site license; or (d) an access contract.

(46) "Merchant" means a person:

(A) who deals in information or informational rights of the kind involved in the transaction;

(B) who by the person's occupation holds himself out as having knowledge or skill peculiar to the relevant aspect of the business practices or information involved in the transaction; or

(C) to whom the knowledge or skill peculiar to the practices or information involved in the transaction may be attributed by the person's employment of an agent or broker or other intermediary who by his occupation holds himself out as having the knowledge or skill.

(47) "Nonexclusive license" means a license that does not preclude the licensor from transferring to other licensees the same information, informational rights, or contractual rights within the same scope. The term includes a consignment of a copy.

(48) "Notice" of a fact means knowledge of the fact, receipt of notification of the fact, or reason to know the fact exists.

(49) "Notify" or "give notice" means to take such steps as may be reasonably required to inform the other person in the ordinary course, whether or not the other person actually comes to know of it.

(50) "Party" means a person that engages in a transaction or makes an agreement under this chapter.

(51) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental subdivision, instrumentality, or agency, public corporation, or any other legal or commercial entity.

(52) "Published informational content" means informational content prepared for or made available to recipients generally, or to a class of recipients, in substantially the same form. The term does not include informational content that is (i) customized for a particular recipient by one or more individuals acting as or on behalf of the licensor, using judgment or expertise or (ii) provided in a special relationship of reliance between the provider and the recipient.

(53) "Receipt" means:

(A) with respect to a copy, taking delivery; or

(B) with respect to a notice:

(i) coming to a person's attention; or

(ii) being delivered to and available at a location or system designated by agreement for that purpose or, in the absence of an agreed location or system: (a) being delivered at the person's residence, or the person's place of business through which the contract was made, or at any other place held out by the person as a place for receipt of communications of the kind; or (b) in the case of an electronic notice, coming into existence in an information processing system or at an address in that system in a form capable of being processed by or perceived from a system of that type by a recipient, if the recipient uses, or otherwise has designated or holds out, that place or system for receipt of notices of the kind to be given and the sender does not know that the notice cannot be accessed from that place.

(54) "Receive" means to take receipt.

(55) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(56) "Release" means an agreement by a party not to object to, or exercise any rights or pursue any remedies to limit, the use of information or informational rights which agreement does not require an affirmative act by the party to enable or support the other party's use of the information or informational rights. The term includes a waiver of informational rights.

(57) "Return," with respect to a record containing contractual terms that were rejected, refers only to the computer information and means:

(A) in the case of a licensee that rejects a record regarding a single information product transferred for a single contract fee, a right to reimbursement of the contract fee paid from the person to which it was paid or from another person that offers to reimburse that fee, on (i) submission of proof of purchase and (ii) proper redelivery of the computer information and all copies within a reasonable time after initial delivery of the information to the licensee;

(B) in the case of a licensee that rejects a record regarding an information product provided as part of multiple information products integrated into and transferred as a bundled whole but retaining their separate identity:

1. a right to reimbursement of any portion of the aggregate contract fee identified by the licensor in the initial transaction as charged to the licensee for all bundled information products which was actually paid, on (i) rejection of the record before or during the initial use of the bundled product; (ii) proper redelivery of all computer information products in the bundled whole and all copies of them within a reasonable time after initial delivery of the information to the licensee; and (iii) submission of proof of purchase; or

2. a right to reimbursement of any separate contract fee identified by the licensor in the initial transaction as charged to the licensee for the separate information product to which the rejected record applies, on (i) submission of proof of purchase and (ii) proper redelivery of that computer information product and all copies within a reasonable time after initial delivery of the information to the licensee; or

(C) in the case of a licensor that rejects a record proposed by the licensee, a right to proper redelivery of the computer information and all copies from the licensee, to stop delivery or access to the information by the licensee, and to reimbursement from the licensee of amounts paid by the licensor with respect to the rejected record, on reimbursement to the licensee of contract fees that it paid with respect to the rejected record, subject to recoupment and setoff.

(58) "Scope," with respect to terms of a license, means:

(A) the licensed copies, information, or informational rights involved;

(B) the use or access authorized, prohibited, or controlled;

(C) the geographic area, market, or location; or

(D) the duration of the license.

(59) "Seasonable," with respect to an act, means taken within the time agreed or, if no time is agreed, within a reasonable time.

(60) "Send" means, with any costs provided for and properly addressed or directed as reasonable under the circumstances or as otherwise agreed, to deposit a record in the mail or with a commercially reasonable carrier, to deliver a record for transmission to or re-creation in another location or information processing system, or to take the

steps necessary to initiate transmission to or re-creation of a record in another location or information processing system. In addition, with respect to an electronic message, the message must be in a form capable of being processed by or perceived from a system of the type the recipient uses or otherwise has designated or held out as a place for the receipt of communications of the kind sent. Receipt within the time in which it would have arrived if properly sent, has the effect of a proper sending.

(61) "Standard form" means a record or a group of related records containing terms prepared for repeated use in transactions and so used in a transaction in which there was no negotiated change of terms by individuals except to set the price, quantity, method of payment, selection among standard options, or time or method of delivery.

(62) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(63) "Term," with respect to an agreement, means that portion of the agreement that relates to a particular matter.

(64) "Termination" means the ending of a contract by a party pursuant to a power created by agreement or law otherwise than because of breach of contract.

(65) "Transfer":

(A) with respect to a contractual interest, includes an assignment of the contract, but does not include an agreement merely to perform a contractual obligation or to exercise contractual rights through a delegate or sublicensee; and

(B) with respect to computer information, includes a sale, license, or lease of a copy of the computer information and a license or assignment of informational rights in computer information.

(66) "Usage of trade" means any practice or method of dealing that has such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question.

(b) The following definitions in other titles apply to this chapter:

(1) "Burden of establishing" § [8.1A-201](#).

(2) "Document of title" § [8.1A-201](#).

(3) "Financial asset" § [8.8A-102](#).

- (4) "Funds transfer" § [8.4A-104](#).
- (5) "Identification" to the contract § [8.2-501](#).
- (6) "Instrument" § [8.9A-102](#).
- (7) "Investment property" § [8.9A-102](#).
- (8) "Item" § [8.4-104](#).
- (9) "Letter of credit" § [8.5A-102](#).
- (10) "Payment order" § [8.4A-103](#).
- (11) "Sale" § [8.2-106](#).

2000, cc. [101](#), [996](#); 2001, c. [763](#); 2003, c. [353](#); 2004, c. [794](#).

§59.1-501.3. Scope; exclusions.

(a) This chapter applies to computer information transactions.

(b) Except for subject matter excluded in subsection (d), if a computer information transaction includes subject matter other than computer information or subject matter excluded under subsection (d), the following rules apply:

(1) If a transaction includes computer information and goods, this chapter applies to the part of the transaction involving computer information, informational rights in it, and creation or modification of it. However, if a copy of a computer program is contained in and sold or leased as part of goods, this chapter applies to the copy and the computer program only if:

(A) the goods are a computer or computer peripheral; or

(B) giving the buyer or lessee of the goods access to or use of the program is ordinarily a material purpose of transactions in goods of the type sold or leased.

(2) Subject to subsection (d)(2)(A), if a transaction includes an agreement for creating or for obtaining rights to create computer information and a motion picture, this chapter does not apply to the agreement if the dominant character of the agreement is for creating or obtaining rights to create a motion picture. In all other such agreements, this chapter does not apply to the part of the agreement that involves a motion picture excluded under subsection (d)(2), but does apply to the computer information.

(3) In all other cases, this chapter applies to the entire transaction if the computer information and informational rights, or access to them, is the primary subject matter, but otherwise applies only to the part of the transaction involving computer information, informational rights in it, and creation or modification of it.

(c) To the extent of a conflict between this chapter and Title 8.9A, Title 8.9A governs.

(d) This chapter does not apply to:

(1) a financial services transaction;

(2) an insurance services transaction;

(3) an agreement to create, perform or perform in, include information in, acquire, use, distribute, modify, reproduce, have access to, adapt, make available, transmit, license, or display:

(A) a motion picture or audio or visual programming other than in (i) a mass-market transaction or (ii) a submission of an idea or information or release of informational rights that may result in making a motion picture or a similar information product; or

(B) sound recording, musical work, or phonorecord as defined or used in Title 17 of the United States Code as of July 1, 1999, or an enhanced sound recording, other than in the submission of an idea or information or release of informational rights that may result in the creation of such material or a similar information product.

(4) a compulsory license;

(5) a contract of employment of an individual, other than an individual hired as an independent contractor, unless such independent contractor is a freelancer in the news reporting industry as that term is commonly understood in that industry;

(6) a contract that does not require that information be furnished as computer information or in which under the agreement the form of the information as computer information is otherwise insignificant with respect to the primary subject matter of the part of the transaction pertaining to the information;

(7) unless otherwise agreed in a record between the parties:

(A) telecommunications products or services provided pursuant to federal or state tariffs; or

(B) telecommunications products or services provided pursuant to agreements required or permitted to be filed by the service provider with a federal or state authority regulating these services or under pricing subject to approval by a federal or state regulatory authority; or

(8) subject matter within the scope of Titles 8.3, 8.4, 8.4A, 8.5A, 8.7, or 8.8A.

(e) As used in subsection (d)(2)(B), "enhanced sound recording" means a separately identifiable product or service the dominant character of which consists of recorded sounds but which includes (i) statements or instructions whose purpose is to allow or control the perception, reproduction, or communication of those sounds or (ii) other information so long as recorded sounds constitute the dominant character of the product or service despite the inclusion of the other information.

(f) As used in this section, "motion picture" means:

(1) "motion picture" as defined in Title 17 of the United States Code as of July 1, 1999; or

(2) a separately identifiable product or service the dominant character of which consists of a linear motion picture, but which includes (i) statements or instructions whose purpose is to allow or control the perception, reproduction, or communication of the motion picture or (ii) other information so long as the motion picture constitutes the dominant character of the product or service despite the inclusion of the other information.

(g) As used in this section, "audio or visual programming" means audio or visual programming that is provided by broadcast, satellite, or cable as defined or used in the federal Communications Act of 1934 (47 U.S.C. § 151 et seq.) and related regulations as they existed on July 1, 1999, or by similar methods of delivery.

2000, cc. [101](#), [996](#); 2001, c. [763](#); 2004, c. [794](#); 2011, c. [369](#).

§59.1-501.4. Repealed.

Repealed by Acts 2004, c. [794](#).

§59.1-501.4:1. Consumer protection law governs.

(a) In this section, "consumer protection law" means a consumer protection statute, rule, or regulation, or other state executive or legislative action that has the effect of law and any applicable judicial or administrative decisions interpreting those statutes, rules, regulations or actions.

- (b) Except as otherwise provided in this section, this chapter does not limit, modify or supersede a consumer protection statute, administrative rule, regulation or procedure.
- (c) If a consumer protection law requires a term to be conspicuous, the standard of conspicuousness under the consumer protection law applies. However, a provision in the consumer protection law requiring a term to be conspicuous does not preclude that term from being presented electronically.
- (d) If a consumer protection law requires a writing or a signature, a record or authentication suffices.
- (e) If a consumer protection law addresses assent, consent, or manifestation of assent, the standard of assent, consent, or manifestation of assent under the consumer protection law applies and may be accomplished electronically.
- (f) The applicability of a consumer protection law is determined by that law as it would have applied in the absence of this chapter.

2004, c. [794](#).

§59.1-501.5. Relation to federal law; fundamental public policy; transactions subject to other state law.

- (a) A provision of this chapter that is preempted by federal law is unenforceable to the extent of the preemption.
- (b) If a term of a contract violates a fundamental public policy, the court may refuse to enforce the contract, enforce the remainder of the contract without the impermissible term, or limit the application of the impermissible term so as to avoid a result contrary to public policy, in each case to the extent that the interest in enforcement is clearly outweighed by a public policy against enforcement of the term.
- (c) In a transaction in which a copy of computer information in its final form is made generally available, a term of a contract is unenforceable to the extent that the term prohibits an end-user licensee from engaging in otherwise lawful public discussion relating to the computer information. However, this subsection does not preclude enforcement of a term that establishes or enforces rights under trade secret, trademark, defamation, commercial disparagement, or other laws. This subsection does not alter the applicability of subsection (b) to any term not rendered unenforceable under this subsection.

(d) This chapter does not apply to an intellectual property notice that is based solely on intellectual property rights and is not part of a contract. The effect of such a notice is determined by law other than this chapter.

(e) If a law of the Commonwealth in effect on the effective date of this chapter applies to a transaction governed by this chapter, the following rules apply:

(1) A requirement that a term, waiver, notice, or disclaimer be in a writing is satisfied by a record.

(2) A requirement that a record, writing, or term be signed is satisfied by an authentication.

(3) A requirement that a term be conspicuous, or the like, is satisfied by a term that is conspicuous under this chapter.

(4) A requirement of consent or agreement to a term is satisfied by a manifestation of assent to the term in accordance with this chapter.

2000, cc. [101](#), [996](#); 2001, cc. [762](#), [763](#); 2004, c. [794](#).

§59.1-501.6. Rule of construction.

(a) This chapter must be liberally construed and applied to promote its underlying purposes and policies to:

(1) support and facilitate the realization of the full potential of computer information transactions;

(2) clarify the law governing computer information transactions;

(3) enable expanding commercial practice in computer information transactions by commercial usage and agreement of the parties;

(4) promote uniformity of the law with respect to the subject matter of this chapter among States that enact it; and

(5) permit the continued expansion of commercial practices in the excluded transactions through custom, usage and agreement of the parties.

(b) Except as otherwise provided in § [59.1-501.15](#), the use of mandatory language or the absence of a phrase such as "unless otherwise agreed" in a provision of this chapter does not preclude the parties from varying the effect of the provision by agreement.

(c) The fact that a provision of this chapter imposes a condition for a result does not by itself mean that the absence of that condition yields a different result.

(d) To be enforceable, a term need not be conspicuous, negotiated, or expressly assented or agreed to, unless this chapter expressly so requires.

2000, cc. [101](#), [996](#); 2004, c. [794](#).

§59.1-501.7. Legal recognition of electronic record and authentication; use of electronic agents.

(a) A record or authentication may not be denied legal effect or enforceability solely because it is in electronic form.

(b) This chapter does not require that a record or authentication be generated, stored, sent, received, or otherwise processed by electronic means or in electronic form.

(c) In any transaction, a person may establish requirements regarding the type of authentication or record acceptable to that person.

(d) A person using an electronic agent that he has selected for making an authentication, performance, or agreement, including manifestation of assent, is bound by the operations of the electronic agent, even if no individual was aware of or reviewed the agent's operations or the results of the operations.

2000, cc. [101](#), [996](#).

§59.1-501.8. Proof and effect of authentication.

(a) Authentication may be proven in any manner, including a showing that a party made use of information or access that could have been available only if it engaged in conduct or operations that authenticated the record or term.

(b) Compliance with a commercially reasonable attribution procedure agreed to or adopted by the parties or established by law for authenticating a record authenticates the record as a matter of law.

2000, cc. [101](#), [996](#).

§59.1-501.9. Choice of law.

(a) The parties in their agreement may choose the applicable law. However, the choice is not enforceable in a consumer contract to the extent it would vary a statute, administrative rule, or regulation that may not be varied by agreement under the law of Virginia.

(b) In the absence of an enforceable agreement on choice of law, the contract is governed by the law of Virginia.

2000, cc. [101](#), [996](#); 2001, cc. [762](#), [763](#).

§59.1-501.10. Contractual choice of forum.

(a) The parties in their agreement may choose an exclusive judicial forum unless the choice is unreasonable or unjust.

(b) A judicial forum specified in an agreement is not exclusive unless the agreement expressly so provides and, in a mass-market transaction, expressly and conspicuously so provides.

2000, cc. [101](#), [996](#); 2001, c. [763](#).

§59.1-501.11. Unconscionable contract or term.

(a) If a court as a matter of law finds a contract or a term thereof to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable term, or limit the application of the unconscionable term so as to avoid an unconscionable result.

(b) If a court as a matter of law finds a contract or a term thereof has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from the contract, the court may grant appropriate relief.

(c) If it is claimed or appears to the court that a contract or term thereof may be unconscionable, the parties must be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

2000, cc. [101](#), [996](#).

§59.1-501.12. Manifesting assent.

(a) A person manifests assent to a record or term if the person, acting with knowledge of, or after having an opportunity to review the record or term or a copy of it:

(1) authenticates the record or term with intent to adopt or accept it; or

(2) intentionally engages in conduct or makes statements with reason to know that the other party or its electronic agent may infer from the conduct or statement that the person assents to the record or term.

(b) An electronic agent manifests assent to a record or term if, after having an opportunity to review it, the electronic agent:

(1) authenticates the record or term; or

(2) engages in operations that in the circumstances indicate acceptance of the record or term.

(c) If this chapter or other law requires assent to a specific term, a manifestation of assent must relate specifically to the term.

(d) Conduct or operations manifesting assent may be proved in any manner, including showing that a person or an electronic agent obtained or used the information or informational rights and that a procedure existed by which a person or an electronic agent must have engaged in the conduct or operations in order to do so. Proof of compliance with subsection (a) (2) is sufficient if there is conduct that assents and subsequent conduct that reaffirms assent by electronic means.

(e) The effect of provisions of this section may be modified by an agreement setting out standards applicable to future transactions between the parties.

(f) Providers of online services, network access, and telecommunications services, or the operators of facilities thereof, do not manifest assent to a contractual relationship simply by their provision of these services to other parties, including but not limited to transmission, routing, or providing connections, linking, caching, hosting, information location tools, or storage of materials at the request or initiation of a person other than the service provider.

2000, cc. [101](#), [996](#); 2001, c. [763](#); 2004, c. [794](#).

§59.1-501.13. Repealed.

Repealed by Acts 2004, c. [794](#).

§59.1-501.13:1. Opportunity to review.

(a) A person has an opportunity to review a record or term only if it is made available in a manner that ought to call it to the attention of a reasonable person and permit review.

(b) An electronic agent has an opportunity to review a record or term only if it is made available in a manner that would enable a reasonably configured electronic agent to react to the record or term.

(c) If a record or term is available for review only after a person becomes obligated to pay or begins its performance, the person has an opportunity to review only if he has a right to a return if he rejects the record. However, a right to a return is not required if:

(1) the record proposes a modification of contract or provides particulars of performance under § [59.1-503.5](#); or

(2) the primary performance is other than delivery or acceptance of a copy, the agreement is not a mass-market transaction, and the parties at the time of contracting had reason to know that a record or term would be presented after performance, use, or access to the information began.

(d) The right to a return under this section may arise by law or by agreement.

(e) The effect of this section may be modified by an agreement setting out standards applicable to future transactions between the parties.

2004, c. [794](#).

§59.1-501.14. Repealed.

Repealed by Acts 2004, c. [794](#).

§59.1-501.14:1. Pretransaction disclosures in Internet-type transactions.

This section applies to a licensor that makes its computer information available to a licensee by electronic means from its Internet or similar electronic site. In such a case, the licensor affords an opportunity to review the terms of a standard form license, which opportunity satisfies § [59.1-501.13:1](#) with respect to a licensee that acquires the information from that site, if the licensor:

(1) makes the standard terms of the license readily available for review by the licensee before the information is delivered or the licensee becomes obligated to pay, whichever occurs first, by:

(A) displaying prominently and in close proximity to a description of the computer information, or to instructions or steps for acquiring it, the standard terms or a reference to an electronic location from which they can be readily obtained; or

(B) disclosing the availability of the standard terms in a prominent place on the site from which the computer information is offered and promptly furnishing a copy of the standard terms on request before the transfer of the computer information; and

(2) does not take affirmative acts to prevent printing or storage of the standard terms for archival or review purposes by the licensee.

Failure to provide an opportunity to review under this section does not preclude a person from providing a person an opportunity to review by other means pursuant to § [59.1-501.13:1](#) or law other than this chapter.

2004, c. [794](#).

§59.1-501.15. Variation by agreement; commercial practice.

(a) The effect of any provision of this chapter, including an allocation of risk or imposition of a burden, may be varied by agreement of the parties.

(b) The following rules are not variable by agreement:

(1) Obligations of good faith, diligence, reasonableness, and care imposed by this chapter may not be disclaimed by agreement, but the parties by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(2) The limitations on enforceability imposed by unconscionability under § [59.1-501.11](#) and fundamental public policy under § [59.1-501.5](#) (b) may not be varied by agreement; and

(3) Limitations on enforceability of, or agreement to, a contract, term, or right expressly stated in the sections listed in the following subsections may not be varied by agreement except to the extent provided in each section:

(A) the limitations on agreed choice of law in § [59.1-501.9](#) (a);

(B) the limitations on agreed choice of forum in § [59.1-501.10](#);

(C) the requirements for manifesting assent in § [59.1-501.12](#) and opportunity for review in § [59.1-501.13:1](#);

(D) the limitations on enforceability in § [59.1-502.1](#);

(E) the limitations on a mass-market license in § [59.1-502.9](#);

(F) the consumer defense arising from an electronic error in § [59.1-502.14](#);

(G) the requirements for an enforceable term in §§ [59.1-503.3](#) (b), [59.1-503.7](#) (f), [59.1-504.6](#) (b) and (c), and [59.1-508.4](#) (a);

(H) the requirements of § [59.1-503.4](#) (b) (2);

- (I) the limitations on a financier in §§ [59.1-505.7](#) through [59.1-505.11](#);
 - (J) the restrictions on altering the period of limitations in § [59.1-508.5](#) (a) and (b); and
 - (K) the limitations on self-help repossession in §§ [59.1-508.15](#) (b) and [59.1-508.16](#).
- 2004, c. [794](#).

§59.1-501.16. Supplemental principles; good faith; commercial practice.

(a) Unless displaced by this chapter, principles of law and equity, including the merchant law and the common law of the Commonwealth relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and other validating or invalidating cause, supplement this chapter. Among the laws supplementing and not displaced by this chapter are trade secret laws and unfair competition laws, including application of such laws as they may deal with failure to disclose defects.

(b) Every contract or duty within the scope of this chapter imposes an obligation of good faith in its performance or enforcement.

(c) Any usage of trade in the vocation or trade in which the parties are engaged or of which the parties are or should be aware and any course of dealing or course of performance between the parties are relevant to determining the existence or meaning of an agreement.

2004, c. [794](#).

§59.1-501.17. Decision for court; legal consequences; reasonable time; reason to know.

(a) Whether a term is conspicuous or is unenforceable under §§ [59.1-501.5](#) (a) or (b), [59.1-501.11](#), or § [59.1-502.9](#) (a) and whether an attribution procedure is commercially reasonable or effective under §§ [59.1-501.8](#), [59.1-502.12](#), or § [59.1-502.13](#) are questions to be determined by the court.

(b) Whether an agreement has legal consequences is determined by this chapter.

(c) Whenever this chapter requires any action to be taken within a reasonable time, what is a reasonable time for taking the action depends on the nature, purpose, and circumstances of the action. Any time that is not manifestly unreasonable may be fixed by agreement.

(d) A person has reason to know a fact if the person has knowledge of the fact or, from all the facts and circumstances known to the person without investigation, the person should be aware that the fact exists.

2004, c. [794](#).

§59.1-501.18. Reserved.

Reserved.

§59.1-502.1. Formal requirements.

(a) Except as otherwise provided in this section, a contract requiring payment of a contract fee of \$5,000 or more is not enforceable by way of action or defense unless:

(1) the party against which enforcement is sought authenticated a record sufficient to indicate that a contract has been formed and which reasonably identifies the copy or subject matter to which the contract refers; or

(2) the agreement is a license for an agreed duration of one year or less or which may be terminated at will by the party against which the contract is asserted.

(b) A record is sufficient under subsection (a) even if it omits or incorrectly states a term, but the contract is not enforceable under that subsection beyond the number of copies or subject matter shown in the record.

(c) A contract that does not satisfy the requirements of subsection (a) is nevertheless enforceable under that subsection if:

(1) a performance was tendered or the information was made available by one party and the tender was accepted or the information accessed by the other; or

(2) the party against which enforcement is sought admits in court, by pleading or by testimony or otherwise under oath, facts sufficient to indicate a contract has been made, but the agreement is not enforceable under this paragraph beyond the number of copies or the subject matter admitted.

(d) Between merchants, if, within a reasonable time, a record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, the record satisfies subsection (a) against the party receiving it unless notice of objection to its contents is given in a record within a reasonable time after the confirming record is received.

(e) An agreement that the requirements of this section need not be satisfied as to future transactions is effective if evidenced in a record authenticated by the person against which enforcement is sought.

(f) A transaction within the scope of this chapter is not subject to a statute of frauds contained in another law of this Commonwealth.

2000, cc. [101](#), [996](#).

§59.1-502.2. Formation in general.

(a) A contract may be formed in any manner sufficient to show agreement, including offer and acceptance or conduct of both parties or operations of electronic agents which recognize the existence of a contract.

(b) If the parties so intend, an agreement sufficient to constitute a contract may be found even if the time of its making is undetermined, one or more terms are left open or to be agreed upon, the records of the parties do not otherwise establish a contract, or one party reserves the right to modify terms.

(c) Even if one or more terms are left open or to be agreed upon, a contract does not fail for indefiniteness if the parties intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

(d) In the absence of conduct or performance by both parties to the contrary, a contract is not formed if there is a material disagreement about a material term, including a term concerning scope.

(e) If a term is to be adopted by later agreement and the parties intend not to be bound unless the term is so adopted, a contract is not formed if the parties do not agree to the term. In that case, each party shall deliver to the other party, or with the consent of the other party destroy, all copies of information, access materials, and other materials received or made, and each party is entitled to a return with respect to any contract fee paid for which performance has not been received, has not been accepted, or has been redelivered without any benefit being retained. The parties remain bound by any contractual use term only with respect to information or copies received or made from copies received pursuant to the agreement, but the contractual use term does not apply to information or copies properly received or obtained from another source.

2000, cc. [101](#), [996](#).

§59.1-502.3. Offer and acceptance in general.

Unless otherwise unambiguously indicated by the language or the circumstances:

(1) An offer to make a contract invites acceptance in any manner and by any medium reasonable under the circumstances.

(2) An order or other offer to acquire a copy for prompt or current delivery invites acceptance by either a prompt promise to ship or a prompt or current shipment of a conforming or nonconforming copy. However, a shipment of a nonconforming copy is not an acceptance if the licensor seasonably notifies the licensee that the shipment is offered only as an accommodation to the licensee.

(3) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror that is not notified of acceptance or performance within a reasonable time may treat the offer as having lapsed before acceptance.

(4) If an offer in an electronic message evokes an electronic message accepting the offer, a contract is formed:

(A) when an electronic acceptance is received; or

(B) if the response consists of beginning performance, full performance, or giving access to information, when the performance is received or the access is enabled and necessary access materials are received.

2000, cc. [101](#), [996](#).

§59.1-502.4. Acceptance with varying terms.

(a) In this section, an acceptance materially alters an offer if it contains a term that materially conflicts with or varies a term of the offer or that adds a material term not contained in the offer.

(b) Except as otherwise provided in § [59.1-502.5](#), a definite and seasonable expression of acceptance operates as an acceptance, even if the acceptance contains terms that vary from the terms of the offer, unless the acceptance materially alters the offer.

(c) If an acceptance materially alters the offer, the following rules apply:

(1) A contract is not formed unless (A) a party agrees, such as by manifesting assent, to the other party's offer or acceptance or (B) all the other circumstances, including the conduct of the parties, establish a contract.

(2) If a contract is formed by the conduct of both parties, the terms of the contract are determined under § [59.1-502.10](#).

(d) If an acceptance varies from but does not materially alter the offer, a contract is formed based on the terms of the offer. In addition, the following rules apply:

(1) Terms in the acceptance which conflict with terms in the offer are not part of the contract.

(2) An additional nonmaterial term in the acceptance is a proposal for an additional term. Between merchants, the proposed additional term becomes part of the contract unless the offeror gives notice of objection before, or within a reasonable time after, it receives the proposed terms.

2000, cc. [101](#), [996](#).

§59.1-502.5. Conditional offer or acceptance.

(a) In this section, an offer or acceptance is conditional if it is conditioned on agreement by the other party to all the terms of the offer or acceptance.

(b) Except as otherwise provided in subsection (c), a conditional offer or acceptance precludes formation of a contract unless the other party agrees to its terms, such as by manifesting assent.

(c) If an offer and acceptance are in standard forms and at least one form is conditional, the following rules apply:

(1) Conditional language in a standard term precludes formation of a contract only if the actions of the party proposing the form are consistent with the conditional language, such as by refusing to perform, refusing to permit performance, or refusing to accept the benefits of the agreement, until its proposed terms are accepted.

(2) A party that agrees, such as by manifesting assent, to a conditional offer that is effective under paragraph (1) adopts the terms of the offer under § [59.1-502.8](#) or § [59.1-502.9](#), except a term that conflicts with an expressly agreed term regarding price or quantity.

2000, cc. [101](#), [996](#).

§59.1-502.6. Offer and acceptance; electronic agents.

(a) A contract may be formed by the interaction of electronic agents. If the interaction results in the electronic agents' engaging in operations that under the circumstances indicate acceptance of an offer, a contract is formed, but a court may grant appropriate relief if the operations resulted from fraud, electronic mistake, or the like.

(b) A contract may be formed by the interaction of an electronic agent and an individual acting on the individual's own behalf or for another person. A contract is formed if the individual takes an action or makes a statement that the individual can refuse to take or say and that the individual has reason to know will:

(1) cause the electronic agent to perform, provide benefits, or allow the use or access that is the subject of the contract, or send instructions to do so; or

(2) indicate acceptance, regardless of other expressions or actions by the individual to which the individual has reason to know the electronic agent cannot react.

(c) The terms of a contract formed under subsection (b) are determined under § [59.1-502.8](#) or § [59.1-502.9](#) but do not include a term provided by the individual if the individual had reason to know that the electronic agent could not react to the term.

2000, cc. [101](#), [996](#).

§59.1-502.7. Formation; releases of informational rights.

(a) A release is effective without consideration if it is:

(1) in a record to which the releasing party agrees, such as by manifesting assent, and which identifies the informational rights released; or

(2) enforceable under estoppel, implied license, or other law.

(b) A release continues for the duration of the informational rights released if the release does not specify its duration and does not require affirmative performance after the grant of the release by:

(1) the party granting the release; or

(2) the party receiving the release, except for relatively insignificant acts.

2000, cc. [101](#), [996](#); 2004, c. [794](#).

§59.1-502.8. Adopting terms of records.

Except as otherwise provided in § [59.1-502.9](#), the following rules apply:

(1) A party adopts the terms of a record, including a standard form, as the terms of the contract if the party agrees to the record, such as by manifesting assent.

(2) The terms of a record may be adopted pursuant to paragraph (1) after beginning performance or use if the parties had reason to know that their agreement would be represented in whole or part by a later record to be agreed on and there would not be an opportunity to review the record or a copy of it before performance or use begins.

If the parties fail to agree to the later terms and did not intend to form a contract unless they so agreed, § [59.1-502.2](#) (e) applies.

(3) If a party adopts the terms of a record, the terms become part of the contract without regard to the party's knowledge or understanding of individual terms in the record, except for a term that is unenforceable because it fails to satisfy another requirement of this chapter.

2000, cc. [101](#), [996](#).

§59.1-502.9. Mass-market license.

(a) A party adopts the terms of a mass-market license for purposes of § [59.1-502.8](#) only if the party agrees to the license, such as by manifesting assent, before or during the party's initial performance or use of or access to the information. A term is not part of the license if:

(1) the term is unconscionable or is unenforceable under § [59.1-501.5](#) (a) or (b);

(2) subject to § [59.1-503.1](#), the term conflicts with a term to which the parties to the license have expressly agreed;

(3) under § [59.1-501.13:1](#), the licensee does not have an opportunity to review the term before agreeing to it; or

(4) the term is not available for viewing before and after assent:

(A) in a printed license; or

(B) in electronic form that (i) can be printed or stored for archival and review purposes by the licensee or (ii) is made available by a licensor to a licensee, at no cost to the licensee, in a printed form on the request of a licensee who is unable to print or store the license for archival and review purposes.

(b) If a mass-market license or a copy of the license is not available in a manner permitting an opportunity to review by the licensee before the licensee becomes obligated to pay and the licensee does not agree, such as by manifesting assent, to the license after having an opportunity to review, the licensee is entitled to a return under § [59.1-501.12](#) or § [59.1-501.13:1](#) and, in addition, to:

(1) reimbursement of any reasonable expenses incurred in complying with the licensor's instructions for returning or destroying the computer information or, in the absence of instructions, expenses incurred for return postage or similar reasonable expense in returning the computer information; and

(2) compensation for any reasonable and foreseeable costs of restoring the licensee's information processing system to reverse changes in the system caused by the installation, if:

(A) the installation occurs because information must be installed to enable review of the license; and

(B) the installation alters the system or information in it but does not restore the system or information after removal of the installed information because the licensee rejected the license.

(c) In a mass-market transaction, if the licensor does not have an opportunity to review a record containing proposed terms from the licensee before the licensor delivers or becomes obligated to deliver the information, and if the licensor does not agree, such as by manifesting assent, to those terms after having that opportunity, the licensor is entitled to a return.

2000, cc. [101](#), [996](#); 2001, c. [763](#); 2004, c. [794](#).

§59.1-502.10. Terms of contract formed by conduct.

(a) Except as otherwise provided in subsection (b) and subject to § [59.1-503.1](#), if a contract is formed by conduct of the parties, the terms of the contract are determined by consideration of the terms and conditions to which the parties expressly agreed, course of performance, course of dealing, usage of trade, the nature of the parties' conduct, the records exchanged, the information or informational rights involved, and all other relevant circumstances. If a court cannot determine the terms of the contract from the foregoing factors, the supplementary principles of this chapter apply.

(b) This section does not apply if the parties authenticate a record of the contract or a party agrees, such as by manifesting assent, to the record containing the terms of the other party.

2000, cc. [101](#), [996](#).

§59.1-502.11. Repealed.

Repealed by Acts 2004, c. [794](#).

§59.1-502.12. Efficacy and commercial reasonableness of attribution procedure.

The efficacy, including the commercial reasonableness, of an attribution procedure is determined by the court. In making this determination, the following rules apply:

(1) An attribution procedure established by law is effective for transactions within the coverage of the statute, administrative rule, or regulation.

(2) Except as otherwise provided in paragraph (1), commercial reasonableness and effectiveness is determined in light of the purposes of the procedure and the commercial circumstances at the time the parties agreed to or adopted the procedure.

(3) An attribution procedure may use any security device or method that is commercially reasonable under the circumstances.

2000, cc. [101](#), [996](#); 2001, cc. [762](#), [763](#).

§59.1-502.13. Determining attribution.

(a) An electronic authentication, display, message, record, or performance is attributed to a person if it was the act of the person or its electronic agent, or if the person is bound by it under agency or other law. The party relying on attribution of an electronic authentication, display, message, record, or performance to another person has the burden of establishing attribution.

(b) The act of a person may be shown in any manner, including a showing of the efficacy of an attribution procedure that was agreed to or adopted by the parties or established by law.

(c) The effect of an electronic act attributed to a person under subsection (a) is determined from the context at the time of its creation, execution, or adoption, including the parties' agreement, if any, or otherwise as provided by law.

(d) If an attribution procedure exists to detect errors or changes in an electronic authentication, display, message, record, or performance, and was agreed to or adopted by the parties or established by law, and one party conformed to the procedure but the other party did not, and the nonconforming party would have detected the change or error had that party also conformed, the effect of noncompliance is determined by the agreement but, in the absence of agreement, the conforming party may avoid the effect of the error or change.

2000, cc. [101](#), [996](#).

§59.1-502.14. Electronic error; consumer defenses.

(a) In this section, "electronic error" means an error in an electronic message created by a consumer using an information processing system if a reasonable method to detect and correct or avoid the error was not provided.

(b) In an automated transaction, a consumer is not bound by an electronic message that the consumer did not intend and which was caused by an electronic error, if the consumer:

(1) promptly on learning of the error:

(A) notifies the other party of the error; and

(B) causes delivery to the other party or, pursuant to reasonable instructions received from the other party, delivers to another person or destroys all copies of the information; and

(2) has not used, or received any benefit or value from, the information or caused the information or benefit to be made available to a third party.

(c) If subsection (b) does not apply, the effect of an electronic error is determined by other law.

2000, cc. [101](#), [996](#).

§59.1-502.15. Electronic message; when effective; effect of acknowledgment.

(a) Receipt of an electronic message is effective when properly addressed and received.

(b) Receipt of an electronic acknowledgment of an electronic message establishes that the message was received but by itself does not establish that the content sent corresponds to the content received.

2000, cc. [101](#), [996](#).

§59.1-502.16. Idea or information submission.

(a) The following rules apply to a submission of an idea or information for the creation, development, or enhancement of computer information which is not made pursuant to an existing agreement requiring the submission:

(1) A contract is not formed and is not implied from the mere receipt of an unsolicited submission.

(2) Engaging in a business, trade, or industry that by custom or practice regularly acquires ideas is not in itself an express or implied solicitation of the information.

(3) If the recipient seasonably notifies the person making the submission that the recipient maintains a procedure to receive and review submissions, a contract is formed only if:

(A) the submission is made and accepted pursuant to that procedure; or

(B) the recipient expressly agrees to terms concerning the submission.

(b) An agreement to disclose an idea creates a contract enforceable against the receiving party only if the idea as disclosed is confidential, concrete, and novel to the business, trade, or industry or the party receiving the disclosure otherwise expressly agreed.

2000, cc. [101](#), [996](#).

§59.1-502.17. Reserved.

Reserved.

§59.1-503.1. Parol or extrinsic evidence.

Terms with respect to which confirmatory records of the parties agree or which are otherwise set forth in a record intended by the parties as a final expression of their agreement with respect to terms included therein may not be contradicted by evidence of any previous agreement or of a contemporaneous oral agreement but may be explained or supplemented by:

(1) course of performance, course of dealing, or usage of trade; and

(2) evidence of consistent additional terms, unless the court finds the record to have been intended as a complete and exclusive statement of the terms of the agreement.

2000, cc. [101](#), [996](#).

§59.1-503.2. Practical construction.

(a) The express terms of an agreement and any course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. However, if that construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(b) An applicable usage of trade in the place where any part of performance is to occur must be used in interpreting the agreement as to that part of the performance.

(c) Evidence of a relevant course of performance, course of dealing, or usage of trade offered by one party in a proceeding is not admissible unless and until the party

offering the evidence has given the other party notice that the court finds sufficient to prevent unfair surprise.

(d) The existence and scope of a usage of trade must be proved as facts.

2000, cc. [101](#), [996](#).

§59.1-503.3. Modification and rescission.

(a) An agreement modifying a contract subject to this chapter needs no consideration to be binding.

(b) An authenticated record that precludes modification or rescission except by an authenticated record may not otherwise be modified or rescinded. In a standard form supplied by a merchant to a consumer, a term requiring an authenticated record for modification of the contract is not enforceable unless the consumer manifests assent to the term.

(c) A modification of a contract and the contract as modified must satisfy the requirements of §§ [59.1-502.1](#) (a) and [59.1-503.7](#) (f) if the contract as modified is within those provisions.

(d) An attempt at modification or rescission which does not satisfy subsection (b) or (c) may operate as a waiver if § [59.1-507.2](#) is satisfied.

2000, cc. [101](#), [996](#).

§59.1-503.4. Continuing contractual terms.

(a) Terms of an agreement involving successive performances apply to all performances, even if the terms are not displayed or otherwise brought to the attention of a party with respect to each successive performance, unless the terms are modified in accordance with this chapter or the contract.

(b) If a contract provides that terms may be changed as to future performances by compliance with a described procedure, a change proposed in good faith pursuant to that procedure becomes part of the contract if the procedure:

(1) reasonably notifies the other party of the change; and

(2) in a mass-market transaction, permits the other party to terminate the contract as to future performance if the change alters a material term and the party in good faith determines that the modification is unacceptable.

(c) The parties by agreement may determine the standards for reasonable notice unless the agreed standards are manifestly unreasonable in light of the commercial circumstances.

(d) The enforceability of changes made pursuant to a procedure that does not comply with subsection (b) is determined by the other provisions of this chapter or other law.

2000, cc. [101](#), [996](#).

§59.1-503.5. Terms to be specified.

An agreement that is otherwise sufficiently definite to be a contract is not invalid because it leaves particulars of performance to be specified by one of the parties. If particulars of performance are to be specified by a party, the following rules apply:

(1) Specification must be made in good faith and within limits set by commercial reasonableness.

(2) If a specification materially affects the other party's performance but is not seasonably made, the other party:

(A) is excused for any resulting delay in its performance; and

(B) may perform, suspend performance, or treat the failure to specify as a breach of contract.

2000, cc. [101](#), [996](#).

§59.1-503.6. Performance under open terms.

A performance obligation of a party that cannot be determined from the agreement or from other provisions of this chapter requires the party to perform in a manner and in a time that is reasonable in light of the commercial circumstances existing at the time of agreement.

2000, cc. [101](#), [996](#).

§59.1-503.7. Interpretation and requirements for grant.

(a) A license grants:

(1) the contractual rights that are expressly described; and

(2) a contractual right to use any informational rights within the licensor's control at the time of contracting which are necessary in the ordinary course to exercise the expressly described rights.

(b) If a license expressly limits use of the information or informational rights, use in any other manner is a breach of contract. In all other cases, a license contains an implied limitation that the licensee will not use the information or informational rights otherwise than as described in subsection (a). However, use inconsistent with this implied limitation is not a breach if it is permitted under applicable law in the absence of the implied limitation.

(c) A party is not entitled to any rights in new versions of, or improvements or modifications to, information made by the other party. A licensor's agreement to provide new versions, improvements, or modifications requires that the licensor provide them as developed and made generally commercially available from time to time by the licensor.

(d) Neither party is entitled to receive copies of source code, schematics, master copy, design material, or other information used by the other party in creating, developing, or implementing the information.

(e) Terms concerning scope must be construed under ordinary principles of contract interpretation in light of the informational rights and the commercial context. In addition, the following rules apply:

(1) A grant of "all possible rights and for all media" or "all rights and for all media now known or later developed," or a grant in similar terms, includes all rights then existing or later created by law and all uses, media, and methods of distribution or exhibition, whether then existing or developed in the future and whether or not anticipated at the time of the grant.

(2) A grant of an "exclusive license," or a grant in similar terms, means that:

(A) for the duration of the license, the licensor will not exercise, and will not grant to any other person, rights in the same information or informational rights within the scope of the exclusive grant; and

(B) the licensor affirms that it has not previously granted those rights in a contract in effect when the licensee's rights may be exercised.

(f) The rules in this section may be varied only by a record that is sufficient to indicate that a contract has been made and that is:

(1) authenticated by the party against whom enforcement is sought; or

(2) prepared and delivered by one party and adopted by the other under § [59.1-502.8](#) or § [59.1-502.9](#).

2000, cc. [101](#), [996](#); 2004, c. [794](#).

§59.1-503.8. Repealed.

Repealed by Acts 2004, c. [794](#).

§59.1-503.9. Agreement for performance to party's satisfaction.

(a) Except as otherwise provided in subsection (b), an agreement that provides that the performance of one party is to be to the satisfaction or approval of the other party requires performance sufficient to satisfy a reasonable person in the position of the party that must be satisfied.

(b) Performance must be to the subjective satisfaction of the other party if:

(1) the agreement expressly so provides, such as by stating that approval is in the "sole discretion" of the party, or words of similar import; or

(2) the agreement is for informational content to be evaluated in reference to subjective characteristics such as aesthetics, appeal, suitability to taste, or subjective quality.

2000, cc. [101](#), [996](#).

§59.1-503.10. Licenses to nonprofit libraries, archives or educational institutions.

(a) To the extent that the conduct is not otherwise unlawful or restricted under the Copyright Act, 17 U.S.C. § 101 et seq., or other law, in a standard form contract for the use of a tangible copy of informational content to a licensee that is a nonprofit library or archive or a nonprofit educational institution, the licensee may, without any purpose of direct or indirect commercial advantage:

(1) make the tangible copy available to library or archive users, including but not limited to reserving the copy for a course and lending that copy to users in accordance with ordinary practices of nonprofit libraries or archives;

(2) make a copy of the tangible copy for archival or preservation purposes;

(3) engage in inter-library lending of tangible copies of the copy; and

(4) make classroom and instructional use of the tangible copy.

(b) The provisions of subsection (a) may be varied by a term in a standard form contract only if:

(1) the term varying the provision is conspicuous;

(2) the nonprofit library, archive or educational institution specifically manifests assent to the term pursuant to subsection (c) of § [59.1-501.12](#); and

(3) where the term is not made available to the nonprofit library, archive or educational institution before it orders the tangible copy of the computer information:

(i) the nonprofit library, archive or educational institution knew or had reason to know that terms would follow when it ordered the copy; and

(ii) the nonprofit library, archive or educational institution is given the right to return the copy in the event that it refuses the contract and the right to be reimbursed for any reasonable expenses incurred in complying with the licensor's instructions for returning or destroying the computer information, or in the absence of such instructions, the reimbursement of expenses incurred for return postage or similar reasonable expense in returning the computer information.

(c) Nothing in this section shall be construed to:

(1) alter the burden of proof in an infringement, contract or other action;

(2) authorize making the informational content available on a computer network server or other system for simultaneous access and use by multiple users; or

(3) limit any defense that a term of a contract violates a fundamental public policy pursuant to § [59.1-501.5](#) including any such policy under the federal copyright law.

(d) For purposes of this section, the terms "nonprofit library, archive or educational institution" have the same meaning as used in sections 108, 109 and 110 of the Copyright Act, 17 U.S.C. §§ 108, 109, and 110.

2001, c. [763](#).

§59.1-503.11. Reserved.

Reserved.

§59.1-504.1. Warranty and obligations concerning noninterference and non-infringement.

(a) A licensor of information that is a merchant regularly dealing in information of the kind warrants that the information will be delivered free of the rightful claim of

any third person by way of infringement or misappropriation, but a licensee that furnishes detailed specifications to the licensor and the method required for meeting the specifications holds the licensor harmless against any such claim that arises out of compliance with either the required specification or the required method except for a claim that results from the failure of the licensor to adopt, or notify the licensee of, a noninfringing alternative of which the licensor had reason to know.

(b) A licensor warrants:

(1) for the duration of the license, that no person holds a rightful claim to, or interest in, the information which arose from an act or omission of the licensor, other than a claim by way of infringement or misappropriation, which will interfere with the licensee's enjoyment of its interest; and

(2) as to rights granted exclusively to the licensee, that within the scope of the license:

(A) to the knowledge of the licensor, any licensed patent rights are valid and exclusive to the extent exclusivity and validity are recognized by the law under which the patent rights were created; and

(B) in all other cases, the licensed informational rights are valid and exclusive for the information as a whole to the extent exclusivity and validity are recognized by the law applicable to the licensed rights in a jurisdiction to which the license applies.

(c) The warranties in this section are subject to the following rules:

(1) If the licensed informational rights are subject to a right of privileged use, collective administration, or compulsory licensing, the warranty is not made with respect to those rights.

(2) The obligations under subsections (a) and (b) (2) apply solely to informational rights arising under the laws of the United States or a state, unless the contract expressly provides that the warranty obligations extend to rights under the laws of other countries. Language is sufficient for this purpose if it states, "The licensor warrants exclusivity, noninfringement, in specified countries, worldwide," or words of similar import. In that case, the warranty extends to the specified country or, in the case of a reference to "worldwide" or the like, to all countries within the description, but only to the extent the rights are recognized under a treaty or international convention to which the country and the United States are signatories.

(3) The warranties under subsections (a) and (b) (2) are not made by a license that merely permits use, or covenants not to claim infringement because of the use, of rights under a licensed patent.

(d) Except as otherwise provided in subsection (e), a warranty under this section may be disclaimed or modified only by specific language or by circumstances that give the licensee reason to know that the licensor does not warrant that competing claims do not exist or that the licensor purports to grant only the rights it may have. An obligation to hold harmless under subsection (a) may be disclaimed or modified only by specific language or by circumstances giving the licensor reason to know that the licensee does not provide a hold-harmless obligation to the licensor. In an automated transaction, language is sufficient if it is conspicuous. Otherwise, language in a record is sufficient if it states:

(1) as to the licensor's obligation, "There is no warranty against interference with your enjoyment of the information or against infringement," or words of similar import; or

(2) as to the licensee's obligation, "There is no obligation to hold you harmless from any actions taken in compliance with the specifications or methods furnished to me under this contract," or words of similar import.

(e) Between merchants, a grant of a "quitclaim," or a grant in similar terms, grants the information or informational rights without an implied warranty as to infringement or misappropriation or as to the rights actually possessed or transferred by the licensor.

2000, cc. [101](#), [996](#); 2004, c. [794](#).

§59.1-504.2. Express warranty.

(a) Subject to subsection (c), an express warranty by a licensor is created as follows:

(1) An affirmation of fact or promise made by the licensor to its licensee, including by advertising, which relates to the information and becomes part of the basis of the bargain creates an express warranty that the information to be furnished under the agreement will conform to the affirmation or promise.

(2) Any description of the information which is made part of the basis of the bargain creates an express warranty that the information will conform to the description.

(3) Any sample, model, or demonstration of a final product which is made part of the basis of the bargain creates an express warranty that the performance of the information will reasonably conform to the performance of the sample, model, or demonstration, taking into account differences that would appear to a reasonable person in the position of the licensee between the sample, model, or demonstration and the information as it will be used.

(b) It is not necessary to the creation of an express warranty that the licensor use formal words, such as "warranty" or "guaranty", or state a specific intention to make a warranty. However, an express warranty is not created by:

(1) an affirmation or prediction merely of the value of the information or informational rights;

(2) a display or description of a portion of the information to illustrate the aesthetics, appeal, suitability to taste, subjective quality, or the like of informational content; or

(3) a statement purporting to be merely opinion or commendation of the information or informational rights.

(c) An express warranty or similar express contractual obligation, if any, exists with respect to published informational content covered by this chapter to the same extent that it would exist if the published informational content had been published in a form that placed it outside this chapter. However, if the warranty or similar express contractual obligation is breached, the remedies of the aggrieved party are those under this chapter and the agreement.

2000, cc. [101](#), [996](#).

§59.1-504.3. Implied warranty; merchantability of computer program.

(a) Unless the warranty is disclaimed or modified, a licensor that is a merchant with respect to computer programs of the kind warrants:

(1) to the end user that the computer program is fit for the ordinary purposes for which such computer programs are used;

(2) to the distributor that:

(A) the program is adequately packaged and labeled as the agreement requires; and

(B) in the case of multiple copies, the copies are within the variations permitted by the agreement, of even kind, quality, and quantity within each unit and among all units involved; and

(3) that the program conforms to any promises or affirmations of fact made on the container or label.

(b) Unless disclaimed or modified, other implied warranties with respect to computer programs may arise from course of dealing or usage of trade.

(c) No warranty is created under this section with respect to informational content, but an implied warranty may arise under § [59.1-504.4](#).

2000, cc. [101](#), [996](#).

§59.1-504.4. Implied warranty; informational content.

(a) Unless the warranty is disclaimed or modified, a merchant that, in a special relationship of reliance with a licensee, collects, compiles, processes, provides, or transmits informational content warrants to that licensee that there is no inaccuracy in the informational content caused by the merchant's failure to perform with reasonable care.

(b) A warranty does not arise under subsection (a) with respect to:

(1) subjective characteristics of the informational content, such as the aesthetics, appeal, and suitability to taste;

(2) published informational content; or

(3) a person that acts as a conduit or provides no more than editorial services in collecting, compiling, distributing, processing, providing, or transmitting informational content that under the circumstances can be identified as that of a third person.

(c) The warranty under this section is not subject to the preclusion in § [59.1-501.15](#)

(b) (1) on disclaiming obligations of diligence, reasonableness, or care.

2000, cc. [101](#), [996](#); 2004, c. [794](#).

§59.1-504.5. Implied warranty; licensee's purpose; system integration.

(a) Unless the warranty is disclaimed or modified, if a licensor at the time of contracting has reason to know any particular purpose for which the computer information is required and that the licensee is relying on the licensor's skill or judgment to select, develop, or furnish suitable information, the following rules apply:

(1) Except as otherwise provided in paragraph (2), there is an implied warranty that the information is fit for that purpose.

(2) If from all the circumstances it appears that the licensor was to be paid for the amount of its time or effort regardless of the fitness of the resulting information, the warranty under paragraph (1) is that the information will not fail to achieve the licensee's particular purpose as a result of the licensor's lack of reasonable effort.

(b) There is no warranty under subsection (a) with regard to:

(1) the aesthetics, appeal, suitability to taste, or subjective quality of informational content; or

(2) published informational content, but there may be a warranty with regard to the licensor's selection among published informational content from different providers if the selection is made by an individual acting as or on behalf of the licensor.

(c) If an agreement requires a licensor to provide or select a system consisting of computer programs and goods, and the licensor has reason to know that the licensee is relying on the skill or judgment of the licensor to select the components of the system, there is an implied warranty that the components provided or selected will function together as a system.

(d) The warranty under this section is not subject to the preclusion in § [59.1-501.15](#)

(b) (1) on disclaiming diligence, reasonableness, or care.

2000, cc. [101](#), [996](#); 2004, c. [794](#).

§59.1-504.6. Disclaimer or modification of warranty.

(a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to disclaim or modify an express warranty must be construed wherever reasonable as consistent with each other. Subject to § [59.1-503.1](#) with regard to parol or extrinsic evidence, the disclaimer or modification is inoperative to the extent that such construction is unreasonable.

(b) Except as otherwise provided in subsections (c), (d), and (e), to disclaim or modify an implied warranty or any part of it, but not the warranty in § [59.1-504.1](#), the following rules apply:

(1) Except as otherwise provided in this subsection:

(A) To disclaim or modify the implied warranty arising under § [59.1-504.3](#), language must mention "merchantability" or "quality" or use words of similar import and, if in a record, must be conspicuous.

(B) To disclaim or modify the implied warranty arising under § [59.1-504.4](#), language in a record must mention "accuracy" or use words of similar import.

(2) Language to disclaim or modify the implied warranty arising under § [59.1-504.5](#) must be in a record and be conspicuous. It is sufficient to state, "There is no warranty that this information, our efforts, or the system will fulfill any of your particular purposes or needs," or words of similar import.

(3) Language in a record is sufficient to disclaim all implied warranties if it individually disclaims each implied warranty or, except for the warranty in § [59.1-504.1](#), if it is conspicuous and states, "Except for express warranties stated in this contract, if any, this information, computer program is provided with all faults, and the entire risk as to satisfactory quality, performance, accuracy, and effort is with the user," or words of similar import.

(4) A disclaimer or modification sufficient under Title 8.2 or 8.2A to disclaim or modify an implied warranty of merchantability is sufficient to disclaim or modify the warranties under §§ [59.1-504.3](#) and [59.1-504.4](#). A disclaimer or modification sufficient under Title 8.2 or 8.2A to disclaim or modify an implied warranty of fitness for a particular purpose is sufficient to disclaim or modify the warranties under § [59.1-504.5](#).

(c) Unless the circumstances indicate otherwise, all implied warranties, but not the warranty under § [59.1-504.1](#), are disclaimed by expressions like "as is" or "with all faults" or other language that in common understanding calls the licensee's attention to the disclaimer of warranties and makes plain that there are no implied warranties.

(d) If a licensee before entering into a contract has examined the information or the sample or model as fully as he desired or has refused to examine the information, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed to the licensee.

(e) An implied warranty may also be disclaimed or modified by course of performance, course of dealing, or usage of trade.

(f) If a contract requires ongoing performance or a series of performances by the licensor, language of disclaimer or modification which complies with this section is effective with respect to all performances under the contract.

(g) Remedies for breach of warranty may be limited in accordance with this chapter with respect to liquidation or limitation of damages and contractual modification of remedy.

2000, cc. [101](#), [996](#).

§59.1-504.7. Modification of computer program.

A licensee that modifies a computer program, other than by using a capability of the program intended for that purpose in the ordinary course, does not invalidate any warranty regarding performance of an unmodified copy but does invalidate any warranties, express or implied, regarding performance of the modified copy. A modification occurs if a licensee alters code in, deletes code from, or adds code to the computer program.

2000, cc. [101](#), [996](#).

§59.1-504.8. Cumulation and conflict of warranties.

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention, the following rules apply:

- (1) Exact or technical specifications displace an inconsistent sample or model or general language of description.
- (2) A sample displaces inconsistent general language of description.
- (3) Express warranties displace inconsistent implied warranties other than an implied warranty under § [59.1-504.5](#) (a) .

2000, cc. [101](#), [996](#).

§59.1-504.9. Third-party beneficiaries of warranty.

(a) Except for published informational content, a warranty to a licensee extends to persons for whose benefit the licensor intends to supply the information or informational rights and which rightfully use the information in a transaction or application of a kind in which the licensor intends the information to be used.

(b) A warranty to a consumer extends to each individual consumer in the licensee's immediate family or household if the individual's use would have been reasonably expected by the licensor.

(c) A contractual term that excludes or limits the persons to which a warranty extends is effective except as to individuals described in subsection (b).

(d) A disclaimer or modification of a warranty or remedy which is effective against the licensee is also effective against third persons to which a warranty extends under this section.

2000, cc. [101](#), [996](#).

§59.1-504.10. No implied warranties for free software.

(a) In this section, "free software" means a computer program with respect to which the licensor does not intend to make a profit from the distribution of the copy of the program and does not act generally for commercial gain derived from controlling use of the program or making, modifying, or redistributing copies of the program.

(b) The warranties under §§ [59.1-504.1](#) and [59.1-504.3](#) do not apply to free software.

2004, c. [794](#).

§59.1-504.11. Reserved.

Reserved.

§59.1-505.1. Ownership of informational rights.

(a) If an agreement provides for conveyance of ownership of informational rights in a computer program, ownership passes at the time and place specified by the agreement but does not pass until the program is in existence and identified to the contract. If the agreement does not specify a different time, ownership passes when the program and the informational rights are in existence and identified to the contract.

(b) Transfer of a copy does not transfer ownership of informational rights.

2000, cc. [101](#), [996](#).

§59.1-505.2. Title to copy.

(a) In a license:

(1) title to a copy is determined by the license;

(2) a licensee's right under the license to possession or control of a copy is governed by the license and does not depend solely on title to the copy; and

(3) if a licensor reserves title to a copy, the licensor retains title to that copy and any copies made of it, unless the license grants the licensee a right to make and sell cop-

ies to others, in which case the reservation of title applies only to copies delivered to the licensee by the licensor.

(b) If an agreement provides for transfer of title to a copy, title passes:

(1) at the time and place specified in the agreement; or

(2) if the agreement does not specify a time and place:

(A) with respect to delivery of a copy on a tangible medium, at the time and place the licensor completed its obligations with respect to tender of the copy; or

(B) with respect to electronic delivery of a copy, if a first sale occurs under federal copyright law, at the time and place at which the licensor completed its obligations with respect to tender of the copy.

(c) If the party to which title passes under the contract refuses delivery of the copy or rejects the terms of the agreement, title reverts in the licensor.

2000, cc. [101](#), [996](#).

§59.1-505.3. Transfer of contractual interest.

The following rules apply to a transfer of a contractual interest:

(1) A party's contractual interest may be transferred unless the transfer:

(A) is prohibited by other law; or

(B) except as otherwise provided in paragraph (3), would materially change the duty of the other party, materially increase the burden or risk imposed on the other party, or materially impair the other party's property or its likelihood or expectation of obtaining return performance.

(2) Except as otherwise provided in paragraph (3) and § [59.1-505.8](#) (a) (1) (B), a term prohibiting transfer of a party's contractual interest is enforceable, and a transfer made in violation of that term is a breach of contract and is ineffective to create contractual rights in the transferee against the nontransferring party, except to the extent that:

(A) the contract is a license for incorporation or use of the licensed information or informational rights with information or informational rights from other sources in a combined work for public distribution or public performance and the transfer is of the completed, combined work;

(B) the transfer is of a right to payment arising out of the transferor's due performance of less than its entire obligation and the transfer would be enforceable under paragraph (1) in the absence of the term prohibiting transfer; or

(C) the term is in a mass-market license, the transfer is made along with a computer, and the transfer is a gift or a donation (i) to a public elementary or secondary school, (ii) to a public library, (iii) to an organization exempt from taxation under § 501(c) (3) of the Internal Revenue Code, or (iv) from a consumer to another consumer.

(D) [Repealed.]

(3) A right to damages for breach of the whole contract or a right to payment arising out of the transferor's due performance of its entire obligation may be transferred notwithstanding an agreement otherwise.

(4) A term that prohibits transfer of a contractual interest under a mass-market license by the licensee must be conspicuous.

2000, cc. [101](#), [996](#); 2001, cc. [762](#), [763](#); 2002, c. [403](#).

§59.1-505.4. Effect of transfer of contractual interest.

(a) A transfer of "the contract" or of "all my rights under the contract," or a transfer in similar general terms, is a transfer of all contractual interests under the contract.

Whether the transfer is effective is determined by §§ [59.1-505.3](#) and [59.1-505.8](#) (a)

(1) (B) .

(b) The following rules apply to a transfer of a party's contractual interests:

(1) The transferee is subject to all contractual use terms.

(2) Unless the language or circumstances otherwise indicate, as in a transfer as security, the transfer delegates the duties of the transferor and transfers its rights.

(3) Acceptance of the transfer is a promise by the transferee to perform the delegated duties. The promise is enforceable by the transferor and any other party to the original contract.

(4) The transfer does not relieve the transferor of any duty to perform, or of liability for breach of contract, unless the other party to the original contract agrees that the transfer has that effect.

(c) A party to the original contract, other than the transferor, may treat a transfer that conveys a right or duty of performance without its consent as creating

reasonable grounds for insecurity and, without prejudice to the party's rights against the transferor, may demand assurances from the transferee under § [59.1-507.8](#).

2000, cc. [101](#), [996](#).

§59.1-505.5. Performance by delegate; subcontract.

(a) A party may perform its contractual duties or exercise its contractual rights through a delegate or a subcontract unless:

- (1) the contract prohibits delegation or subcontracting; or
- (2) the other party has a substantial interest in having the original promisor perform or control the performance.

(b) Delegating or subcontracting performance does not relieve the delegating party of a duty to perform or of liability for breach.

(c) An attempted delegation that violates a term prohibiting delegation is not effective.

2000, cc. [101](#), [996](#).

§59.1-505.6. Transfer by licensee.

(a) If all or any part of a licensee's interest in a license is transferred, voluntarily or involuntarily, the transferee does not acquire an interest in information, copies, or the contractual or informational rights of the licensee unless the transfer is effective under § [59.1-505.3](#) or § [59.1-505.8](#) (a) (1) (B) . If the transfer is effective, the transferee takes subject to the terms of the license.

(b) Except as otherwise provided under trade secret law, a transferee acquires no more than the contractual interest or other rights that the transferor was authorized to transfer.

2000, cc. [101](#), [996](#).

§59.1-505.7. Financing if financier does not become licensee.

If a financier does not become a licensee in connection with its financial accommodation contract, the following rules apply:

- (1) The financier does not receive the benefits or burdens of the license.
- (2) The licensee's rights and obligations with respect to the information and informational rights are governed by:
 - (A) the license;

(B) any rights of the licensor under other law; and

(C) to the extent not inconsistent with subparagraphs (A) and (B), any financial accommodation contract between the financier and the licensee, which may add additional conditions to the licensee's right to use the licensed information or informational rights.

2000, cc. [101](#), [996](#).

§59.1-505.8. Finance licenses.

(a) If a financier becomes a licensee in connection with its financial accommodation contract and then transfers its contractual interest under the license, or sublicenses the licensed computer information or informational rights, to a licensee receiving the financial accommodation, the following rules apply:

(1) The transfer or sublicense to the accommodated licensee is not effective unless:

(A) the transfer or sublicense is effective under § [59.1-505.3](#); or

(B) the following conditions are fulfilled:

(i) before the licensor delivered the information or granted the license to the financier, the licensor received notice in a record from the financier giving the name and location of the accommodated licensee and clearly indicating that the license was being obtained in order to transfer the contractual interest or sublicense the licensed information or informational rights to the accommodated licensee;

(ii) the financier became a licensee solely to make the financial accommodation; and

(iii) the accommodated licensee adopts the terms of the license, which terms may be supplemented by the financial accommodation contract, to the extent the terms of the financial accommodation contract are not inconsistent with the license and any rights of the licensor under other law.

(2) A financier that makes a transfer that is effective under paragraph (1) (B) may make only the single transfer or sublicense contemplated by the notice unless the licensor consents to a later transfer.

(b) If a financier makes an effective transfer of its contractual interest in a license, or an effective sublicense of the licensed information or informational rights, to an accommodated licensee, the following rules apply:

(1) The accommodated licensee's rights and obligations are governed by:

(A) the license;

(B) any rights of the licensor under other law; and

(C) to the extent not inconsistent with subparagraphs (A) and (B), the financial accommodation contract, which may impose additional conditions to the licensee's right to use the licensed information or informational rights.

(2) The financier does not make warranties to the accommodated licensee other than the warranty under § [59.1-504.1](#) (b) (1) and any express warranties in the financial accommodation contract.

2000, cc. [101](#), [996](#).

§59.1-505.9. Financing arrangements; obligations irrevocable.

Unless the accommodated licensee is a consumer, a term in a financial accommodation contract providing that the accommodated licensee's obligations to the financier are irrevocable and independent is enforceable. The obligations become irrevocable and independent upon the licensee's acceptance of the license or the financier's giving of value, whichever occurs first.

2000, cc. [101](#), [996](#).

§59.1-505.10. Financing arrangements; remedies or enforcement.

(a) Except as otherwise provided in subsection (b), on material breach of a financial accommodation contract by the accommodated licensee, the following rules apply:

(1) The financier may cancel the financial accommodation contract.

(2) Subject to paragraphs (3) and (4), the financier may pursue its remedies against the accommodated licensee under the financial accommodation contract.

(3) If the financier became a licensee and made a transfer or sublicense that was effective under § [59.1-505.8](#), it may exercise the remedies of a licensor for breach, including the rights of an aggrieved party under § [59.1-508.15](#), subject to the limitations of § [59.1-508.16](#).

(4) If the financier did not become a licensee or did not make a transfer that was effective under § [59.1-505.8](#), it may enforce a contractual right contained in the financial accommodation contract to preclude the licensee's further use of the information. However, the following rules apply:

(A) The financier has no right to take possession of copies, use the information or informational rights, or transfer any contractual interest in the license.

(B) If the accommodated licensee agreed to transfer possession of copies to the financier in the event of material breach of the financial accommodation contract, the financier may enforce that contractual right only if permitted to do so under subsection (b) (1) and § [59.1-505.3](#).

(b) The following additional limitations apply to a financier's remedies under subsection (a):

(1) A financier described in subsection (a) (3) which is entitled under the financial accommodation contract to take possession or prevent use of information, copies, or related materials may do so only if the licensor consents or if doing so would not result in a material adverse change of the duty of the licensor, materially increase the burden or risk imposed on the licensor, disclose or threaten to disclose trade secrets or confidential material of the licensor, or materially impair the licensor's likelihood or expectation of obtaining return performance.

(2) The financier may not otherwise exercise control over, have access to, or sell, transfer, or otherwise use the information or copies without the consent of the licensor unless the financier or transferee is subject to the terms of the license and:

(A) the licensee owns the licensed copy, the license does not preclude transfer of the licensee's contractual rights, and the transfer complies with federal copyright law for the owner of a copy to make the transfer; or

(B) the license is transferable by its express terms and the financier fulfills any conditions to, or complies with any restrictions on, transfer.

(3) The financier's remedies under the financial accommodation contract are subject to the licensor's rights and the terms of the license.

2000, cc. [101](#), [996](#).

§59.1-505.11. Financing arrangements; effect on licensor's rights.

(a) The creation of a financier's interest does not place any obligations on or alter the rights of a licensor.

(b) A financier's interest does not attach to any intellectual property rights of the licensor unless the licensor expressly consents to such attachment in a license or another record.

2000, cc. [101](#), [996](#).

§59.1-505.12. Reserved.

Reserved.

§59.1-506.1. Performance of contract in general.

(a) A party shall perform in a manner that conforms to the contract.

(b) If an uncured material breach of contract by one party precedes the aggrieved party's performance, the aggrieved party need not perform except with respect to contractual use terms, but the contractual use terms do not apply to information or copies properly received or obtained from another source. In addition, the following rules apply:

(1) The aggrieved party may refuse a performance that is a material breach as to that performance or a performance that may be refused under § [59.1-507.4](#) (b) .

(2) The aggrieved party may cancel the contract only if the breach is a material breach of the whole contract or the agreement so provides.

(c) Except as otherwise provided in subsection (b), tender of performance by a party entitles the party to acceptance of that performance. In addition, the following rules apply:

(1) A tender of performance occurs when the party, with manifest present ability and willingness to perform, offers to complete the performance.

(2) If a performance by the other party is due at the time of the tendered performance, tender of the other party's performance is a condition to the tendering party's obligation to complete the tendered performance.

(3) A party shall pay or render the consideration required by the agreement for a performance it accepts. A party that accepts a performance has the burden of establishing a breach of contract with respect to the accepted performance.

(d) Except as otherwise provided in §§ [59.1-506.3](#) and [59.1-506.4](#), in the case of a performance with respect to a copy, this section is subject to §§ [59.1-506.6](#) through [59.1-506.10](#) and [59.1-507.4](#) through [59.1-507.7](#).

2000, cc. [101](#), [996](#).

§59.1-506.2. Licensor's obligations to enable use.

(a) In this section, "enable use" means to grant a contractual right or permission with respect to information or informational rights and to complete the acts, if any, required under the agreement to make the information available to the licensee.

(b) A licensor shall enable use by the licensee pursuant to the contract. The following rules apply to enabling use:

(1) If nothing other than the grant of a contractual right or permission is required to enable use, the licensor enables use when the contract becomes enforceable.

(2) If the agreement requires delivery of a copy, enabling use occurs when the copy is tendered to the licensee.

(3) If the agreement requires delivery of a copy and steps authorizing the licensee's use, enabling use occurs when the last of those acts occurs.

(4) In an access contract, enabling use requires tendering all access material necessary to enable the agreed access.

(5) If the agreement requires a transfer of ownership of informational rights and a filing or recording is allowed by law to establish priority of the transferred ownership, on request by the licensee, the licensor shall execute and tender a record appropriate for that purpose.

2000, cc. [101](#), [996](#).

§59.1-506.3. Submissions of information to satisfaction of party.

If an agreement requires that submitted information be to the satisfaction of the recipient, the following rules apply:

(1) Sections [59.1-506.6](#) through [59.1-506.10](#) and [59.1-507.4](#) through [59.1-507.7](#) do not apply to the submission.

(2) If the information is not satisfactory to the recipient and the parties engage in efforts to correct the deficiencies in a manner and over a time consistent with the ordinary standards of the business, trade, or industry, neither the efforts nor the passage of time required for the efforts is an acceptance or a refusal of the submission.

(3) Except as otherwise provided in paragraph (4), neither refusal nor acceptance occurs unless the recipient expressly refuses or accepts the submitted information, but the recipient may not use the submitted information before acceptance.

(4) Silence and a failure to act in reference to a submission beyond a commercially reasonable time to respond entitle the submitting party to demand, in a record delivered to the recipient, a decision on the submission. If the recipient fails to respond within a reasonable time after receipt of the demand, the submission is deemed to have been refused.

2000, cc. [101](#), [996](#).

§59.1-506.4. Immediately completed performance.

If a performance involves delivery of information or services which, because of their nature, may provide a licensee, immediately on performance or delivery, with substantially all the benefit of the performance or with other significant benefit that cannot be returned, the following rules apply:

(1) Sections [59.1-506.7](#) through [59.1-506.10](#) and [59.1-507.4](#) through [59.1-507.7](#) do not apply.

(2) The rights of the parties are determined under § [59.1-506.1](#) and the ordinary standards of the business, trade, or industry.

(3) Before tender of the performance, a party entitled to receive the tender may inspect the media, labels, or packaging but may not view the information or otherwise receive the performance before completing any performance of its own that is then due.

2000, cc. [101](#), [996](#).

§59.1-506.5. Electronic regulation of performance.

(a) In this section, "automatic restraint" means a program, code, device, or similar electronic or physical limitation the intended purpose of which is to prevent use of information contrary to the contract or applicable law.

(b) A party entitled to enforce a limitation on use of information may include an automatic restraint in the information or a copy of it and use that restraint if:

(1) a term of the agreement authorizes use of the restraint;

(2) the restraint prevents a use that is inconsistent with the agreement;

(3) the restraint prevents use after expiration of the stated duration of the contract or a stated number of uses; or

(4) the restraint prevents use after the contract terminates, other than on expiration of a stated duration or number of uses, and the licensor gives reasonable notice to the licensee before further use is prevented.

(c) This section does not authorize an automatic restraint that affirmatively prevents or makes impracticable a licensee's access to its own information or information of a third party, other than the licensor, if that information is in the possession of the licensee or a third party.

(d) A party that includes or uses an automatic restraint consistent with subsection (b) or (c) is not liable for any loss caused by the use of the restraint.

(e) This section does not preclude electronic replacement or disabling of an earlier copy of information by the licensor in connection with delivery of a new copy or version under an agreement to replace or disable the earlier copy by electronic means with an upgrade or other new information.

(f) This section does not authorize use of an automatic restraint to enforce remedies because of breach of contract or for cancellation for breach. If a right to cancel for breach of contract and a right to exercise restraint under subdivision (b) (4) exist simultaneously, affirmative acts constituting electronic self-help must be taken pursuant to § [59.1-508.16](#), including its prohibition on mass-market transactions, instead of this section. Affirmative acts under this subsection do not include (i) use of a program, code, device, or similar electronic or physical limitation that operates automatically without regard to breach or (ii) a refusal to prevent the operation of a restraint authorized by this section or to reverse its effect.

2000, cc. [101](#), [996](#); 2001, c. [763](#).

§59.1-506.6. Copy; delivery; tender of delivery.

(a) Delivery of a copy must be at the location designated by agreement. In the absence of a designation, the following rules apply:

(1) The place for delivery of a copy on a tangible medium is the tendering party's place of business or, if it has none, its residence. However, if the parties know at the time of contracting that the copy is located in some other place, that place is the place for delivery.

(2) The place for electronic delivery of a copy is an information processing system designated or used by the licensor.

(3) Documents of title may be delivered through customary banking channels.

(b) Tender of delivery of a copy requires the tendering party to put and hold a conforming copy at the other party's disposition and give the other party any notice reasonably necessary to enable it to obtain access to, control, or possession of the copy. Tender must be at a reasonable hour and, if applicable, requires tender of access material and other documents required by the agreement. The party receiving tender shall furnish facilities reasonably suited to receive tender. In addition, the following rules apply:

(1) If the contract requires delivery of a copy held by a third person without being moved, the tendering party shall tender access material or documents required by the agreement.

(2) If the tendering party is required or authorized to send a copy to the other party and the contract does not require the tendering party to deliver the copy at a particular destination, the following rules apply:

(A) In tendering delivery of a copy on a tangible medium, the tendering party shall put the copy in the possession of a carrier and make a contract for its transportation that is reasonable in light of the nature of the information and other circumstances, with expenses of transportation to be borne by the receiving party.

(B) In tendering electronic delivery of a copy, the tendering party shall initiate or cause to have initiated a transmission that is reasonable in light of the nature of the information and other circumstances, with expenses of transmission to be borne by the receiving party.

(3) If the tendering party is required to deliver a copy at a particular destination, the tendering party shall make a copy available at that destination and bear the expenses of transportation or transmission.

2000, cc. [101](#), [996](#).

§59.1-506.7. Copy; performance related to delivery; payment.

(a) If performance requires delivery of a copy, the following rules apply:

(1) The party required to deliver need not complete a tendered delivery until the receiving party tenders any performance then due.

(2) Tender of delivery is a condition of the other party's duty to accept the copy and entitles the tendering party to acceptance of the copy.

(b) If payment is due on delivery of a copy, the following rules apply:

- (1) Tender of delivery is a condition of the receiving party's duty to pay and entitles the tendering party to payment according to the contract.
- (2) All copies required by the contract must be tendered in a single delivery, and payment is due only on tender.
- (c) If the circumstances give either party the right to make or demand delivery in lots, the contract fee, if it can be apportioned, may be demanded for each lot.
- (d) If payment is due and demanded on delivery of a copy or on delivery of a document of title, the right of the party receiving tender to retain or dispose of the copy or document, as against the tendering party, is conditioned on making the payment due.

2000, cc. [101](#), [996](#).

§59.1-506.8. Copy; right to inspect; payment before inspection.

(a) Except as otherwise provided in §§ [59.1-506.3](#) and [59.1-506.4](#), if performance requires delivery of a copy, the following rules apply:

- (1) Except as otherwise provided in this section, the party receiving the copy has a right before payment or acceptance to inspect the copy at a reasonable place and time and in a reasonable manner to determine conformance to the contract.
- (2) The party making the inspection shall bear the expenses of inspection.
- (3) A place or method of inspection or an acceptance standard fixed by the parties is presumed to be exclusive. However, the fixing of a place, method, or standard does not postpone identification to the contract or shift the place for delivery, passage of title, or risk of loss. If compliance with the place or method becomes impossible, inspection must be made as provided in this section unless the place or method fixed by the parties was an indispensable condition the failure of which voids the contract.
- (4) A party's right to inspect is subject to existing obligations of confidentiality.
- (b) If a right to inspect exists under subsection (a) but the agreement is inconsistent with an opportunity to inspect before payment, the party does not have a right to inspect before payment.
- (c) If a contract requires payment before inspection of a copy, nonconformity in the tender does not excuse the party receiving the tender from making payment unless:

(1) the nonconformity appears without inspection and would justify refusal under § [59.1-507.4](#); or

(2) despite tender of the required documents, the circumstances would justify an injunction against honor of a letter of credit under Title 8.5A.

(d) Payment made under circumstances described in subsection (b) or (c) is not an acceptance of the copy and does not impair a party's right to inspect or preclude any of the party's remedies.

2000, cc. [101](#), [996](#).

§59.1-506.9. Copy; when acceptance occurs.

(a) Acceptance of a copy occurs when the party to which the copy is tendered:

(1) signifies, or acts with respect to the copy in a manner that signifies, that the tender was conforming or that the party will take or retain the copy despite the non-conformity;

(2) does not make an effective refusal;

(3) commingles the copy or the information in a manner that makes compliance with the party's duties after refusal impossible;

(4) obtains a substantial benefit from the copy and cannot return that benefit; or

(5) acts in a manner inconsistent with the licensor's ownership, but the act is an acceptance only if the licensor elects to treat it as an acceptance and ratifies the act to the extent it was within contractual use terms.

(b) Except in cases governed by subsection (a) (3) or (4), if there is a right to inspect under § [59.1-506.8](#) or the agreement, acceptance of a copy occurs only after the party has had a reasonable opportunity to inspect the copy.

(c) If an agreement requires delivery in stages involving separate portions that taken together comprise the whole of the information, acceptance of any stage is conditional until acceptance of the whole.

2000, cc. [101](#), [996](#).

§59.1-506.10. Copy; effect of acceptance; burden of establishing; notice of claims.

(a) A party accepting a copy shall pay or render the consideration required by the agreement for the copy it accepts. Acceptance of a copy precludes refusal and, if made

with knowledge of a nonconformity in a tender, may not be revoked because of the nonconformity unless acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance by itself does not impair any other remedy for nonconformity.

(b) A party accepting a copy has the burden of establishing a breach of contract with respect to the copy.

(c) If a copy has been accepted, the accepting party shall:

(1) except with respect to claims of a type described in § [59.1-508.5](#) (d) (1), within a reasonable time after it discovers or should have discovered a breach of contract, notify the other party of the breach or be barred from any remedy for the breach; and

(2) if the claim is for breach of a warranty regarding noninfringement and the accepting party is sued by a third party because of the breach, notify the warrantor within a reasonable time after receiving notice of the litigation or be precluded from any remedy for the liability established by the litigation.

2000, cc. [101](#), [996](#).

§59.1-506.11. Access contracts.

(a) If an access contract provides for access over a period of time, the following rules apply:

(1) The licensee's rights of access are to the information as modified and made commercially available by the licensor from time to time during that period.

(2) A change in the content of the information is a breach of contract only if the change conflicts with an express term of the agreement.

(3) Unless it is subject to a contractual use term, information obtained by the licensee is free of any use restriction other than a restriction resulting from the informational rights of another person or other law.

(4) Access must be available:

(A) at times and in a manner conforming to the express terms of the agreement; and

(B) to the extent not expressly stated in the agreement, at times and in a manner reasonable for the particular type of contract in light of the ordinary standards of the business, trade, or industry.

(b) In an access contract that gives the licensee a right of access at times substantially of its own choosing during agreed periods, an occasional failure to have access available during those times is not a breach of contract if it is:

(1) consistent with ordinary standards of the business, trade, or industry for the particular type of contract; or

(2) caused by:

(A) scheduled downtime;

(B) reasonable needs for maintenance;

(C) reasonable periods of failure of equipment, computer programs, or communications; or

(D) events reasonably beyond the licensor's control, and the licensor exercises such commercially reasonable efforts as the circumstances require.

2000, cc. [101](#), [996](#).

§59.1-506.12. Correction and support contracts.

(a) If a person agrees to provide services regarding the correction of performance problems in computer information, other than an agreement to cure its own existing breach of contract, the following rules apply:

(1) If the services are provided by a licensor of the information as part of a limited remedy, the licensor undertakes that its performance will provide the licensee with information that conforms to the agreement to which the limited remedy applies.

(2) In all other cases, the person:

(A) shall perform at a time and place and in a manner consistent with the express terms of the agreement and, to the extent not stated in the express terms, at a time and place and in a manner that is reasonable in light of ordinary standards of the business, trade, or industry; and

(B) does not undertake that its services will correct performance problems unless the agreement expressly so provides.

(b) Unless required to do so by an express or implied warranty, a licensor is not required to provide instruction or other support for the licensee's use of information or access. A person that agrees to provide support shall make the support available in a manner and with a quality consistent with express terms of the support agreement

and, to the extent not stated in the express terms, at a time and place and in a manner that is reasonable in light of ordinary standards of the business, trade, or industry.

2000, cc. [101](#), [996](#).

§59.1-506.13. Contracts involving publishers, dealers, and end users.

(a) In this section:

(1) "Dealer" means a merchant licensee that receives information directly or indirectly from a licensor for sale or license to end users.

(2) "End user" means a licensee that acquires a copy of the information from a dealer by delivery on a tangible medium for the licensee's own use and not for sale, license, transmission to third persons, or public display or performance for a fee.

(3) "Publisher" means a licensor, other than a dealer, that offers a license to an end user with respect to information distributed by a dealer to the end user.

(b) In a contract between a dealer and an end user, if the end user's right to use the information or informational rights is subject to a license by the publisher and there was no opportunity to review the license before the end user became obligated to pay the dealer, the following rules apply:

(1) The contract between the end user and the dealer is conditioned on the end user's agreement to the publisher's license.

(2) If the end user does not agree, such as by manifesting assent, to the terms of the publisher's license, the end user has a right to a return from the dealer. A right under this paragraph is a return for purposes of §§ [59.1-501.12](#), [59.1-502.8](#), and [59.1-502.9](#).

(3) The dealer is not bound by the terms, and does not receive the benefits, of an agreement between the publisher and the end user unless the dealer and end user adopt those terms as part of the agreement.

(c) If an agreement provides for distribution of copies on a tangible medium or in packaging provided by the publisher or an authorized third party, a dealer may distribute those copies and documentation only:

(1) in the form as received; and

(2) subject to the terms of any license that the publisher provides to the dealer to be furnished to end users.

(d) A dealer that enters into an agreement with an end user is a licensor with respect to the end user under this chapter.

2000, cc. [101](#), [996](#).

§59.1-506.14. Risk of loss of copy.

(a) Except as otherwise provided in this section, the risk of loss as to a copy that is to be delivered to a licensee, including a copy delivered by electronic means, passes to the licensee upon its receipt of the copy.

(b) If an agreement requires or authorizes a licensor to send a copy on a tangible medium by carrier, the following rules apply:

(1) If the agreement does not require the licensor to deliver the copy at a particular destination, the risk of loss passes to the licensee when the copy is duly delivered to the carrier, even if the shipment is under reservation.

(2) If the agreement requires the licensor to deliver the copy at a particular destination and the copy is duly tendered there in the possession of the carrier, the risk of loss passes to the licensee when the copy is tendered at that destination.

(3) If a tender of delivery of a copy or a shipping document fails to conform to the contract, the risk of loss remains with the licensor until cure or acceptance.

(c) If a copy is held by a third party to be delivered or reproduced without being moved or a copy is to be delivered by making access available to a third party resource containing a copy, the risk of loss passes to the licensee upon:

(1) the licensee's receipt of a negotiable document of title or other access materials covering the copy;

(2) acknowledgment by the third party to the licensee of the licensee's right to possession of or access to the copy; or

(3) the licensee's receipt of a record directing the third party, pursuant to an agreement between the licensor and the third party, to make delivery or authorizing the third party to allow access.

2000, cc. [101](#), [996](#).

§59.1-506.15. Excuse by failure of presupposed conditions.

(a) Unless a party has assumed a different obligation, delay in performance by a party, or nonperformance in whole or part by a party, other than of an obligation to

make payments or to conform to contractual use terms, is not a breach of contract if the delay or nonperformance is of a performance that has been made impracticable by:

- (1) the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made; or
 - (2) compliance in good faith with any foreign or domestic statute, governmental rule, regulation, or order, whether or not it later proves to be invalid.
- (b) A party claiming excuse under subsection (a) shall seasonably notify the other party that there will be delay or nonperformance.
- (c) If an excuse affects only a part of a party's capacity to perform an obligation for delivery of copies, the party claiming excuse shall allocate performance among its customers in any manner that is fair and reasonable and notify the other party of the estimated quota to be made available. In making the allocation, the party claiming excuse may include the requirements of regular customers not then under contract and its own requirements.
- (d) A party that receives notice pursuant to subsection (b) of a material or indefinite delay in delivery of copies or of an allocation under subsection (c), by notice in a record, may:
- (1) terminate and thereby discharge any executory portion of the contract; or
 - (2) modify the contract by agreeing to take the available allocation in substitution.
- (e) If, after receipt of notice under subsection (b), a party does not modify the contract within a reasonable time not exceeding thirty days, the contract lapses with respect to any performance affected.

2000, cc. [101](#), [996](#).

§59.1-506.16. Termination; survival of obligations.

- (a) Except as otherwise provided in subsection (b), on termination all obligations that are still executory on both sides are discharged.
- (b) The following survive termination:
- (1) a right based on previous breach or performance of the contract;
 - (2) an obligation of confidentiality, nondisclosure, or noncompetition to the extent enforceable under other law;

- (3) a contractual use term applicable to any licensed copy or information received from the other party, or copies made of it, which are not returned or returnable to the other party;
- (4) an obligation to deliver, or dispose of information, materials, documentation, copies, records, or the like to the other party, an obligation to destroy copies, or a right to obtain information from an escrow agent;
- (5) a choice of law or forum;
- (6) an obligation to arbitrate or otherwise resolve disputes by alternative dispute resolution procedures;
- (7) a term limiting the time for commencing an action or for giving notice;
- (8) an indemnity term or a right related to a claim of a type described in § [59.1-508.5](#)
- (d) (1);
- (9) a limitation of remedy or modification or disclaimer of warranty;
- (10) an obligation to provide an accounting and make any payment due under the accounting; and
- (11) any term that the agreement provides will survive.

2000, cc. [101](#), [996](#).

§59.1-506.17. Notice of termination.

- (a) Except as otherwise provided in subsection (b), a party may not terminate a contract except on the happening of an agreed event, such as the expiration of the stated duration, unless the party gives reasonable notice of termination to the other party.
- (b) An access contract may be terminated without giving notice. However, except on the happening of an agreed event, termination requires giving reasonable notice to the licensee if the access contract pertains to information owned and provided by the licensee to the licensor.
- (c) A term dispensing with a notice required under this section is invalid if its operation would be unconscionable. However, a term specifying standards for giving notice is enforceable if the standards are not manifestly unreasonable.

2000, cc. [101](#), [996](#).

§59.1-506.18. Termination; enforcement.

(a) On termination of a license, a party in possession or control of information, copies, or other materials that are the property of the other party, or are subject to a contractual obligation to be delivered to that party on termination, shall use commercially reasonable efforts to deliver or hold them for disposal on instructions of that party. If any materials are jointly owned, the party in possession or control shall make them available to the joint owners.

(b) Termination of a license ends all rights under the license for the licensee to use or access the licensed information, informational rights, or copies. Continued use of the licensed copies or exercise of terminated rights is a breach of contract unless authorized by a term that survives termination.

(c) Each party may enforce its rights under subsections (a) and (b) by acting pursuant to § [59.1-506.5](#) or by judicial process, including obtaining an order that the party or an officer of the court take the following actions with respect to any licensed information, documentation, copies, or other materials to be delivered:

(1) deliver or take possession of them;

(2) without removal, render unusable or eliminate the capability to exercise contractual rights in or use of them;

(3) destroy or prevent access to them; and

(4) require that the party or any other person in possession or control of them make them available to the other party at a place designated by that party which is reasonably convenient to both parties.

(d) In an appropriate case, a court of competent jurisdiction may grant injunctive relief to enforce the parties' rights under this section.

2000, cc. [101](#), [996](#).

§59.1-506.19. Reserved.

Reserved.

§59.1-507.1. Breach of contract; material breach.

(a) Whether a party is in breach of contract is determined by the agreement or, in the absence of agreement, this chapter. A breach occurs if a party without legal excuse fails to perform an obligation in a timely manner, repudiates a contract, or exceeds a contractual use term, or otherwise is not in compliance with an obligation placed on it by this chapter or the agreement. A breach, whether or not material, entitles the

aggrieved party to its remedies. Whether a breach of a contractual use term is an infringement or a misappropriation is determined by applicable informational property rights law.

(b) A breach of contract is material if:

(1) the contract so provides;

(2) the breach is a substantial failure to perform a term that is an essential element of the agreement; or

(3) the circumstances, including the language of the agreement, the reasonable expectations of the parties, the standards and practices of the business, trade, or industry, and the character of the breach, indicate that:

(A) the breach caused or is likely to cause substantial harm to the aggrieved party; or

(B) the breach substantially deprived or is likely substantially to deprive the aggrieved party of a significant benefit it reasonably expected under the contract.

(c) The cumulative effect of nonmaterial breaches may be material.

2000, cc. [101](#), [996](#).

§59.1-507.2. Waiver of remedy for breach of contract.

(a) A claim or right arising out of a breach of contract may be discharged in whole or part without consideration by a waiver in a record to which the party making the waiver agrees after breach, such as by manifesting assent, or which the party making the waiver authenticates and delivers to the other party.

(b) A party that accepts a performance with knowledge that the performance constitutes a breach of contract and, within a reasonable time after acceptance, does not notify the other party of the breach waives all remedies for the breach, unless acceptance was made on the reasonable assumption that the breach would be cured and it has not been seasonably cured. However, a party that seasonably notifies the other party of a reservation of rights does not waive the rights reserved.

(c) A party that refuses a performance and fails to identify a particular defect that is ascertainable by reasonable inspection waives the right to rely on that defect to justify refusal only if:

(1) the other party could have cured the defect if it were identified seasonably; or

(2) between merchants, the other party after refusal made a request in a record for a full and final statement of all defects on which the refusing party relied.

(d) Waiver of a remedy for breach of contract in one performance does not waive any remedy for the same or a similar breach in future performances unless the party making the waiver expressly so states.

(e) A waiver may not be retracted as to the performance to which the waiver applies.

(f) Except for a waiver in accordance with subsection (a) or a waiver supported by consideration, a waiver affecting an executory portion of a contract may be retracted by seasonable notice received by the other party that strict performance will be required in the future, unless the retraction would be unjust in view of a material change of position in reliance on the waiver by that party.

2000, cc. [101](#), [996](#).

§59.1-507.3. Cure of breach of contract.

(a) A party in breach of contract may cure the breach at its own expense if:

(1) the time for performance has not expired and the party in breach seasonably notifies the aggrieved party of its intent to cure and, within the time for performance, makes a conforming performance;

(2) the party in breach had reasonable grounds to believe the performance would be acceptable with or without monetary allowance, seasonably notifies the aggrieved party of its intent to cure, and provides a conforming performance within a further reasonable time after performance was due; or

(3) in a case not governed by paragraph (1) or (2), the party in breach seasonably notifies the aggrieved party of its intent to cure and promptly provides a conforming performance before cancellation by the aggrieved party.

(b) In a license other than in a mass-market transaction, if the agreement required a single delivery of a copy and the party receiving tender of delivery was required to accept a nonconforming copy because the nonconformity was not a material breach of contract, the party in breach shall promptly and in good faith make an effort to cure if:

(1) the party in breach receives seasonable notice of the specific nonconformity and a demand for cure of it; and

(2) the cost of the effort to cure does not disproportionately exceed the direct damages caused by the nonconformity to the aggrieved party.

(c) A party may not cancel a contract or refuse a performance because of a breach of contract that has been seasonably cured under subsection (a). However, notice of intent to cure does not preclude refusal or cancellation for the uncured breach.

2000, cc. [101](#), [996](#).

§59.1-507.4. Copy; refusal of defective tender.

(a) Subject to subsection (b) and § [59.1-507.5](#), tender of a copy that is a material breach of contract permits the party to which tender is made to:

(1) refuse the tender;

(2) accept the tender; or

(3) accept any commercially reasonable units and refuse the rest.

(b) In a mass-market transaction that calls for only a single tender of a copy, a licensee may refuse the tender if the tender does not conform to the contract.

(c) Refusal of a tender is ineffective unless:

(1) it is made before acceptance;

(2) it is made within a reasonable time after tender or completion of any permitted effort to cure; and

(3) the refusing party seasonably notifies the tendering party of the refusal.

(d) Except in a case governed by subsection (b), a party that rightfully refuses tender of a copy may cancel the contract only if the tender was a material breach of the whole contract or the agreement so provides.

2000, cc. [101](#), [996](#).

§59.1-507.5. Copy; contract with previous vested grant of rights.

If an agreement grants a right in or permission to use informational rights which precedes or is otherwise independent of the delivery of a copy, the following rules apply:

(1) A party may refuse a tender of a copy which is a material breach as to that copy, but refusal of that tender does not cancel the contract.

(2) In a case governed by paragraph (1), the tendering party may cure the breach by seasonably providing a conforming copy before the breach becomes material as to the whole contract.

(3) A breach that is material with respect to a copy allows cancellation of the contract only if the breach cannot be seasonably cured and is a material breach of the whole contract.

2000, cc. [101](#), [996](#).

§59.1-507.6. Copy; duties upon rightful refusal.

(a) Except as otherwise provided in this section, after rightful refusal or revocation of acceptance of a copy, the following rules apply:

(1) If the refusing party rightfully cancels the contract, § [59.1-508.2](#) applies and all contractual use terms continue.

(2) If the contract is not canceled, the parties remain bound by all contractual obligations.

(b) On rightful refusal or revocation of acceptance of a copy, the following rules apply to the extent consistent with § [59.1-508.2](#):

(1) Any use, sale, display, performance, or transfer of the copy or information it contains, or any failure to comply with a contractual use term, is a breach of contract. The licensee shall pay the licensor the reasonable value of any use. However, use for a limited time within contractual use terms is not a breach, and is not an acceptance under § [59.1-506.9](#) (a) (5), if it:

(A) occurs after the tendering party is seasonably notified of refusal;

(B) is not for distribution and is solely part of measures reasonable under the circumstances to avoid or reduce loss; and

(C) is not contrary to instructions concerning disposition of the copy received from the party in breach.

(2) A party that refuses a copy shall:

(A) deliver the copy and all copies made of it, all access materials, and documentation pertaining to the refused information to the tendering party or hold them with reasonable care for a reasonable time for disposal at that party's instructions; and

(B) follow reasonable instructions of the tendering party for returning or delivering copies, access material, and documentation, but instructions are not reasonable if the tendering party does not arrange for payment of or reimbursement for reasonable expenses of complying with the instructions.

(3) If the tendering party does not give instructions within a reasonable time after being notified of refusal, the refusing party, in a reasonable manner to reduce or avoid loss, may store the copies, access material, and documentation for the tendering party's account or ship them to the tendering party and is entitled to reimbursement for reasonable costs of storage and shipment.

(4) Both parties remain bound by all contractual use terms that would have been enforceable had the performance not been refused.

(5) In complying with this section, the refusing party shall act in good faith. Conduct in good faith under this section is not acceptance or conversion and may not be a ground for an action for damages under the contract.

2000, cc. [101](#), [996](#).

§59.1-507.7. Copy; revocation of acceptance.

(a) A party that accepts a nonconforming tender of a copy may revoke acceptance only if the nonconformity is a material breach of contract and the party accepted it:

(1) on the reasonable assumption that the nonconformity would be cured, and the nonconformity was not seasonably cured;

(2) during a continuing effort by the party in breach at adjustment and cure, and the breach was not seasonably cured; or

(3) without discovery of the nonconformity, if acceptance was reasonably induced either by the other party's assurances or by the difficulty of discovery before acceptance.

(b) Revocation of acceptance is not effective until the revoking party notifies the other party of the revocation.

(c) Revocation of acceptance of a copy is precluded if:

(1) it does not occur within a reasonable time after the party attempting to revoke discovers or should have discovered the grounds for it;

(2) it occurs after a substantial change in condition not caused by defects in the information, such as after the party commingles the information in a manner that makes its return impossible; or

(3) the party attempting to revoke received a substantial benefit or value from the information, and the benefit or value cannot be returned.

(d) A party that rightfully revokes has the same duties and is under the same restrictions as if the party had refused tender of the copy.

2000, cc. [101](#), [996](#).

§59.1-507.8. Adequate assurance of performance.

(a) A contract imposes an obligation on each party not to impair the other's expectation of receiving due performance. If reasonable grounds for insecurity arise with respect to the performance of either party, the aggrieved party may:

(1) demand in a record adequate assurance of due performance; and

(2) until that assurance is received, if commercially reasonable, suspend any performance, other than with respect to contractual use terms, for which the agreed return performance has not been received.

(b) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered is determined according to commercial standards.

(c) Acceptance of any improper delivery or payment does not impair an aggrieved party's right to demand adequate assurance of future performance.

(d) After receipt of a justified demand under subsection (a), failure, within a reasonable time not exceeding thirty days, to provide assurance of due performance which is adequate under the circumstances of the particular case is a repudiation of the contract under § [59.1-507.9](#).

2000, cc. [101](#), [996](#).

§59.1-507.9. Anticipatory repudiation.

(a) If a party to a contract repudiates a performance not yet due and the loss of performance will substantially impair the value of the contract to the other party, the aggrieved party may:

(1) await performance by the repudiating party for a commercially reasonable time or resort to any remedy for breach of contract, even if it has urged the repudiating party

to retract the repudiation or has notified the repudiating party that it would await its performance; and

(2) in either case, suspend its own performance or proceed in accordance with § [59.1-508.12](#) or § [59.1-508.13](#), as applicable.

(b) Repudiation includes language that one party will not or cannot make a performance still due under the contract or voluntary, affirmative conduct that reasonably appears to the other party to make a future performance impossible.

2000, cc. [101](#), [996](#).

§59.1-507.10. Retraction of anticipatory repudiation.

(a) A repudiating party may retract its repudiation until its next performance is due unless the aggrieved party, after the repudiation, has canceled the contract, materially changed its position, or otherwise indicated that it considers the repudiation final.

(b) A retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform the contract. However, a retraction must contain any assurance justifiably demanded under § [59.1-507.8](#).

(c) Retraction restores a repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay caused by the repudiation.

2000, cc. [101](#), [996](#).

§59.1-507.11. Reserved.

Reserved.

§59.1-508.1. Remedies in general.

(a) The remedies provided in this chapter are cumulative, but a party may not recover more than once for the same loss.

(b) Except as otherwise provided in §§ [59.1-508.3](#) and [59.1-508.4](#), if a party is in breach of contract, whether or not the breach is material, the aggrieved party has the remedies provided in the agreement or this chapter, but the aggrieved party shall continue to comply with any contractual use terms with respect to information or copies received from the other party, but the contractual use terms do not apply to information or copies properly received or obtained from another source.

(c) Rescission or a claim for rescission of the contract, or refusal of the information, does not preclude and is not inconsistent with a claim for damages or other remedy.

2000, cc. [101](#), [996](#).

§59.1-508.2. Cancellation.

(a) An aggrieved party may cancel a contract if there is a material breach that has not been cured or waived or the agreement allows cancellation for the breach.

(b) Cancellation is not effective until the canceling party gives notice of cancellation to the party in breach, unless a delay required to notify the party would cause or threaten material harm or loss to the aggrieved party. The notification may be in any form reasonable under the circumstances. However, in an access contract, a party may cancel rights of access without notice.

(c) On cancellation, the following rules apply:

(1) If a party is in possession or control of licensed information, documentation, materials, or copies of licensed information, the following rules apply:

(A) A party that has rightfully refused a copy shall comply with § [59.1-507.6](#) (b) as to the refused copy.

(B) A party in breach of contract which would be subject to an obligation to deliver under § [59.1-506.18](#), shall deliver all information, documentation, materials, and copies to the other party or hold them with reasonable care for a reasonable time for disposal at that party's instructions. The party in breach of contract shall follow any reasonable instructions received from the other party.

(C) Except as otherwise provided in subparagraphs (A) and (B), the party shall comply with § [59.1-506.18](#).

(2) All obligations that are executory on both sides at the time of cancellation are discharged, but the following survive:

(A) any right based on previous breach or performance; and

(B) the rights, duties, and remedies described in § [59.1-506.16](#) (b).

(3) Cancellation of a license by the licensor ends any contractual right of the licensee to use the information, informational rights, copies, or other materials.

(4) Cancellation of a license by the licensee ends any contractual right to use the information, informational rights, copies, or other materials, but the licensee may use the information for a limited time after the license has been canceled if the use:

(A) is within contractual use terms;

(B) is not for distribution and is solely part of measures reasonable under the circumstances to avoid or reduce loss; and

(C) is not contrary to instructions received from the party in breach concerning disposition of them.

(5) The licensee shall pay the licensor the reasonable value of any use after cancellation permitted under paragraph (4).

(6) The obligations under this subsection apply to all information, informational rights, documentation, materials, and copies received by the party and any copies made therefrom.

(d) A term providing that a contract may not be canceled precludes cancellation but does not limit other remedies.

(e) Unless a contrary intention clearly appears, an expression such as "cancellation," "rescission," or the like may not be construed as a renunciation or discharge of a claim in damages for an antecedent breach.

2000, cc. [101](#), [996](#).

§59.1-508.3. Contractual modification of remedy.

(a) Except as otherwise provided in this section and in § [59.1-508.4](#):

(1) an agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter or a party's other remedies under this chapter, such as by precluding a party's right to cancel for breach of contract, limiting remedies to returning or delivering copies and repayment of the contract fee, or limiting remedies to repair or replacement of the nonconforming copies; and

(2) resort to a contractual remedy is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(b) Subject to subsection (c), if performance of an exclusive or limited remedy causes the remedy to fail of its essential purpose, the aggrieved party may pursue other remedies under this chapter.

(c) Failure or unconscionability of an agreed exclusive or limited remedy makes a term disclaiming or limiting consequential or incidental damages unenforceable unless the agreement expressly makes the disclaimer or limitation independent of the agreed remedy.

(d) Consequential damages and incidental damages may be excluded or limited by agreement unless the exclusion or limitation is unconscionable. Exclusion or limitation of consequential damages for personal injury in a consumer contract for a computer program that is subject to this chapter and is contained in consumer goods is prima facie unconscionable, but exclusion or limitation of damages for a commercial loss is not unconscionable.

2000, cc. [101](#), [996](#).

§59.1-508.4. Liquidation of damages.

(a) Damages for breach of contract by either party may be liquidated by agreement in an amount that is reasonable in light of:

- (1) the loss anticipated at the time of contracting;
- (2) the actual loss; or
- (3) the actual or anticipated difficulties of proving loss in the event of breach.

(b) If a term liquidating damages is unenforceable under this subsection, the aggrieved party may pursue the remedies provided in this chapter, except as limited by other terms of the contract.

(c) If a party justifiably withholds delivery of copies because of the other party's breach of contract, the party in breach is entitled to restitution for any amount by which the sum of the payments it made for the copies exceeds the amount of the liquidated damages payable to the aggrieved party in accordance with subsection (a). The right to restitution is subject to offset to the extent that the aggrieved party establishes:

- (1) a right to recover damages other than under subsection (a); and
- (2) the amount or value of any benefits received by the party in breach, directly or indirectly, by reason of the contract.

(d) A term that does not liquidate damages, but that limits damages available to the aggrieved party, must be evaluated under § [59.1-508.3](#).

2000, cc. [101](#), [996](#).

§59.1-508.5. Limitation of actions.

(a) Except as otherwise provided in subsection (b), an action for breach of contract must be commenced within the later of four years after the right of action accrues or

one year after the breach was or should have been discovered, but not later than five years after the right of action accrues.

(b) If the original agreement of the parties alters the period of limitations, the following rules apply:

(1) The parties may reduce the period of limitation to not less than one year after the right of action accrues but may not extend it.

(2) In a consumer contract, the period of limitation may not be reduced.

(c) Except as otherwise provided in subsection (d), a right of action accrues when the act or omission constituting a breach of contract occurs, even if the aggrieved party did not know of the breach. A right of action for breach of warranty accrues when tender of delivery of a copy pursuant to § [59.1-506.6](#), or access to the information, occurs. However, if the warranty expressly extends to future performance of the information or a copy, the right of action accrues when the performance fails to conform to the warranty, but not later than the date the warranty expires.

(d) In the following cases, a right of action accrues on the later of the date the act or omission constituting the breach of contract occurred or the date on which it was or should have been discovered by the aggrieved party, but not earlier than the date for delivery of a copy if the claim relates to information in the copy:

(1) a breach of warranty against third-party claims for:

(A) infringement or misappropriation; or

(B) libel, slander, or the like;

(2) a breach of contract involving a party's disclosure or misuse of confidential information; or

(3) a failure to provide an indemnity or to perform another obligation to protect or defend against a third-party claim.

(e) If an action commenced within the period of limitation is so concluded as to leave available a remedy by another action for the same breach of contract, the other action may be commenced after expiration of the period of limitation if the action is commenced within six months after conclusion of the first action, unless the action was concluded as a result of voluntary discontinuance or dismissal for failure or neglect to prosecute.

(f) This section does not alter the law on tolling of the statute of limitations and does not apply to a right of action that accrued before the effective date of this chapter.

2000, cc. [101](#), [996](#).

§59.1-508.6. Remedies for fraud.

Remedies for material misrepresentation or fraud include all remedies available under this chapter for nonfraudulent breach of contract.

2000, cc. [101](#), [996](#).

§59.1-508.7. Measurement of damages in general.

(a) Except as otherwise provided in the contract, an aggrieved party may not recover compensation for that part of a loss which could have been avoided by taking measures reasonable under the circumstances to avoid or reduce loss. The burden of establishing a failure of the aggrieved party to take measures reasonable under the circumstances is on the party in breach of contract.

(b) A party may not recover:

(1) consequential damages for losses resulting from the content of published informational content unless the agreement expressly so provides; or

(2) damages that are speculative.

(c) The remedy for breach of contract for disclosure or misuse of information that is a trade secret or in which the aggrieved party has a right of confidentiality includes as consequential damages compensation for the benefit obtained as a result of the breach.

(d) For purposes of this chapter, market value is determined as of the date of breach of contract and the place for performance.

(e) Damages or expenses that relate to events after the date of entry of judgment must be reduced to their present value as of that date. In this subsection, "present value" means the amount, as of a date certain, of one or more sums payable in the future or the value of one or more performances due in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties in their agreement unless that rate was manifestly unreasonable when the agreement was entered into. Otherwise, the discount is determined by a commercially reas-

onable rate that takes into account the circumstances of each case when the agreement was entered into.

2000, cc. [101](#), [996](#).

§59.1-508.8. Licensor's damages.

(a) In this section, "substitute transaction" means a transaction by the licensor which would not have been possible except for the licensee's breach and which transaction is for the same information or informational rights with the same contractual use terms as the transaction to which the licensee's breach applies.

(b) Except as otherwise provided in § [59.1-508.7](#), a breach of contract by a licensee entitles the licensor to recover the following compensation for losses resulting in the ordinary course from the breach, less expenses avoided as a result of the breach, to the extent not otherwise accounted for under this subsection:

(1) damages measured in any combination of the following ways but not to exceed the contract fee and the market value of other consideration required under the contract for the performance that was the subject of the breach:

(A) the amount of accrued and unpaid contract fees and the market value of other consideration earned but not received for:

(i) any performance accepted by the licensee; and

(ii) any performance to which § [59.1-506.4](#) applies;

(B) for performances not governed by subparagraph (A), if the licensee repudiated or wrongfully refused the performance or the licensor rightfully canceled and the breach makes possible a substitute transaction, the amount of loss as determined by contract fees and the market value of other consideration required under the contract for the performance less:

(i) the contract fees and market value of other consideration received from an actual and commercially reasonable substitute transaction entered into by the licensor in good faith and without unreasonable delay; or

(ii) the market value of a commercially reasonable hypothetical substitute transaction;

(C) for performances not governed by subparagraph (A), if the breach does not make possible a substitute transaction, lost profit, including reasonable overhead, that the

licensor would have realized on acceptance and full payment for performance that was not delivered to the licensee because of the licensee's breach; or

(D) damages calculated in any reasonable manner; and

(2) consequential and incidental damages.

2000, cc. [101](#), [996](#).

§59.1-508.9. Licensee's damages.

(a) Subject to subsection (b) and except as otherwise provided in § [59.1-508.7](#), a breach of contract by a licensor entitles the licensee to recover the following compensation for losses resulting in the ordinary course from the breach or, if appropriate, as to the whole contract, less expenses avoided as a result of the breach to the extent not otherwise accounted for under this section:

(1) damages measured in any combination of the following ways, but not to exceed the market value of the performance that was the subject of the breach plus restitution of any amounts paid for performance not received and not accounted for within the indicated recovery:

(A) with respect to performance that has been accepted and the acceptance not rightfully revoked, the value of the performance required less the value of the performance accepted as of the time and place of acceptance;

(B) with respect to performance that has not been rendered or that was rightfully refused or acceptance of which was rightfully revoked:

(i) the amount of any payments made and the value of other consideration given to the licensor with respect to that performance and not previously returned to the licensee;

(ii) the market value of the performance less the contract fee for that performance; or

(iii) the cost of a commercially reasonable substitute transaction less the contract fee under the breached contract, if the substitute transaction was entered into by the licensee in good faith and without unreasonable delay for substantially similar information with the same contractual use terms; or

(C) damages calculated in any reasonable manner; and

(2) incidental and consequential damages.

(b) The amount of damages must be reduced by any unpaid contract fees for performance by the licensor which has been accepted by the licensee and as to which the acceptance has not been rightfully revoked.

2000, cc. [101](#), [996](#).

§59.1-508.10. Recoupment.

(a) Except as otherwise provided in subsection (b), an aggrieved party, upon notifying the party in breach of contract of its intention to do so, may deduct all or any part of the damages resulting from the breach from any payments still due under the same contract.

(b) If a breach of contract is not material with reference to the particular performance, an aggrieved party may exercise its rights under subsection (a) only if the agreement does not require further affirmative performance by the other party and the amount of damages deducted can be readily liquidated under the agreement.

2000, cc. [101](#), [996](#).

§59.1-508.11. Specific performance.

(a) Specific performance may be ordered:

(1) if the agreement provides for that remedy, other than an obligation for the payment of money;

(2) if the contract was not for personal services and the agreed performance is unique; or

(3) in other proper circumstances.

(b) An order for specific performance may contain any conditions considered just and must provide adequate safeguards consistent with the contract to protect the confidentiality of information, information, and informational rights of both parties.

2000, cc. [101](#), [996](#).

§59.1-508.12. Completing performance.

(a) On breach of contract by a licensee, the licensor may:

(1) identify to the contract any conforming copy not already identified if, at the time the licensor learned of the breach, the copy was in its possession;

(2) in the exercise of reasonable commercial judgment for purposes of avoiding loss and effective realization on effort or investment, complete the information and

identify it to the contract, cease work on it, relicense or dispose of it, or proceed in any other commercially reasonable manner; and

(3) pursue any remedy for breach that has not been waived.

(b) On breach by a licensee, both parties remain bound by all contractual use terms, but the contractual use terms do not apply to information or copies properly received or obtained from another source.

2000, cc. [101](#), [996](#).

§59.1-508.13. Continuing use.

On breach of contract by a licensor, the following rules apply:

(1) A licensee that has not canceled the contract may continue to use the information and informational rights under the contract. If the licensee continues to use the information or informational rights, the licensee is bound by all terms of the contract, including contractual use terms, obligations not to compete, and obligations to pay contract fees.

(2) The licensee may pursue any remedy for breach which has not been waived.

(3) The licensor's rights remain in effect but are subject to the licensee's remedy for breach, including any right of recoupment or setoff.

2000, cc. [101](#), [996](#).

§59.1-508.14. Discontinuing access.

On material breach of an access contract or if the agreement so provides, a party may discontinue all contractual rights of access of the party in breach and direct any person that is assisting the performance of the contract to discontinue its performance.

2000, cc. [101](#), [996](#).

§59.1-508.15. Right to possession and to prevent use.

(a) On cancellation of a license, the licensor has the right:

(1) to possession of all copies of the licensed information in the possession or control of the licensee and any other materials pertaining to that information which by contract are to be returned or delivered by the licensee to the licensor; and

(2) to prevent the continued exercise of contractual and informational rights in the licensed information under the license.

(b) Except as otherwise provided in § [59.1-508.14](#), a licensor may exercise his rights under subsection (a) without judicial process only if this can be done:

(1) without a breach of the peace;

(2) without a foreseeable risk of personal injury or significant physical damage to information or property other than the licensed information; and

(3) in accordance with § [59.1-508.16](#).

(c) In a judicial proceeding, the court may enjoin a licensee in breach of contract from continued use of the information and informational rights and may order the licensor or a judicial officer to take the steps described in § [59.1-506.18](#).

(d) A party has a right to an expedited judicial hearing on a request for prejudgment relief to enforce or protect its rights under this section.

(e) The right to possession under this section is not available to the extent that the information, before breach of the license and in the ordinary course of performance under the license, was so altered or commingled that the information is no longer identifiable or separable.

(f) A licensee that provides information to a licensor subject to contractual use terms has the rights and is subject to the limitations of a licensor under this section with respect to the information he provides.

2000, cc. [101](#), [996](#).

§59.1-508.16. Limitations on electronic self-help.

(a) In this section,

(1) "electronic self-help" means the use of electronic means to exercise a licensor's rights under § [59.1-508.15](#) (b); and

(2) "wrongful use of electronic self-help" means use of electronic self-help other than in compliance with this section.

(b) On cancellation of a license, electronic self-help is not permitted, except as provided in this section. Notwithstanding any provision to the contrary, electronic self-help is prohibited in mass-market transactions.

(c) If the parties agree to permit electronic self-help, a licensee shall separately manifest assent to a term authorizing use of electronic self-help. In accordance with subsection (c) of § [59.1-501.12](#), a general assent to a license containing a term

authorizing use of electronic self-help is not sufficient to manifest assent to the use of electronic self-help. The term must:

- (1) provide for notice of exercise as provided in subsection (d);
 - (2) state the name of the person designated by the licensee to which notice of exercise must be given and the manner in which notice must be given and place to which notice must be sent to that person; and
 - (3) provide a simple procedure for the licensee to change the designated person or place.
- (d) Before resorting to electronic self-help authorized by a term of the license, the licensor shall give notice in a record to the person designated by the licensee stating:
- (1) that the licensor intends to resort to electronic self-help as a remedy on or after forty-five days following receipt by the licensee of the notice;
 - (2) the nature of the claimed breach that entitles the licensor to resort to self-help; and
 - (3) the name, title, and address, including direct telephone number, facsimile number, or e-mail address, to which the licensee may communicate concerning the claimed breach.
- (e) A licensee may recover direct and incidental damages caused by wrongful use of electronic self-help. The licensee may also recover consequential damages for wrongful use of electronic self-help, whether or not those damages are excluded by the terms of the license, if:
- (1) within the period specified in subsection (d) (1), the licensee gives notice to the licensor's designated person describing in good faith the general nature and magnitude of damages;
 - (2) the licensor has reason to know the damages of the type described in subsection (f) may result from the wrongful use of electronic self-help; or
 - (3) the licensor does not provide the notice required in subsection (d).
- (f) Even if the licensor complies with subsections (c) and (d), electronic self-help may not be used if the licensor has reason to know that its use will result in substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third persons not involved in the dispute.

(g) A court of competent jurisdiction of the Commonwealth shall give prompt consideration to a petition for injunctive relief and may enjoin, temporarily or permanently, the licensor from exercising electronic self-help even if authorized by a license term or enjoin the licensee from misappropriation or misuse of computer information, as may be appropriate, upon consideration of the following:

(1) harm of the kinds stated in subsection (f), or the threat thereof, whether or not the licensor has reason to know of those circumstances;

(2) irreparable harm or threat of irreparable harm to the licensee or licensor;

(3) that the party seeking the relief is more likely than not to succeed under his claim when it is finally adjudicated;

(4) that all of the conditions to entitle a person to the relief under the laws of the Commonwealth have been fulfilled; and

(5) that the party that may be adversely affected is adequately protected against loss, including a loss because of misappropriation or misuse of computer information, that he may suffer because the relief is granted under this chapter.

(h) Before breach of contract, rights or obligations under this section may not be waived or varied by an agreement, but the parties may prohibit use of electronic self-help, and the parties, in the term referred to in subsection (c), may specify additional provisions more favorable to the licensee.

(i) This section does not apply if the licensor obtains physical possession of a copy without a breach of the peace and without the use of electronic self-help; in which case, a lawfully obtained copy may be erased or disabled by electronic means.

2000, cc. [101](#), [996](#); 2001, c. [763](#).

§59.1-508.17. Reserved.

Reserved.

§59.1-509.1. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§59.1-509.2. Previous rights and transactions.

Contracts that are enforceable and rights of action that accrue before the effective date of this chapter are governed by the law then in effect unless the parties agree to be governed by this chapter.

2000, cc. [101](#), [996](#).

Uniform Electronic Transactions Act

§59.1-479. Title.

This chapter may be cited as the "Uniform Electronic Transactions Act."

2000, c. [995](#).

§59.1-480. Definitions.

As used in this chapter:

- (1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.
- (2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.
- (3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.
- (4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.
- (5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.
- (7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- (8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(9) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(10) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public body, public corporation, or any other legal or commercial entity.

(12) "Public body" shall have the same meaning as defined in § [2.2-3701](#) and shall also include locally elected constitutional officers, and anyone performing the duties of locally elected constitutional officers.

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or an Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(16) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

2000, c. [995](#); 2005, c. [417](#).

§59.1-481. Scope.

(a) Except as otherwise provided in subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts; and

(2) Title 8.1A except § [8.1A-306](#), Title 8.3A, Title 8.4, Title 8.4A, Title 8.5A, Title 8.7, Title 8.8A, Title 8.9A, Title 8.10, and Title 8.11.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection (b) to the extent it is governed by law other than those specified in subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

2000, c. [995](#); 2001, c. [86](#); 2003, c. [353](#); 2011, c. [369](#).

§59.1-482. Prospective application.

This chapter applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this chapter.

2000, c. [995](#).

§59.1-483. Use of electronic records and electronic signatures; variation by agreement.

(a) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. Except for a separate and optional agreement the primary purpose of which is to authorize a transaction to be conducted by electronic means, an agreement to conduct a transaction electronically may not be contained in a standard form contract unless that term is conspicuously displayed and separately consented to. An agreement to conduct a transaction electronically may not be inferred solely from the fact that a party has used electronic means to pay an account or register a purchase warranty. This subsection may not be varied by agreement.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this chapter, the effect of any of the provisions of this chapter may be varied by agreement. The presence in this chapter of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

2000, c. [995](#).

§59.1-484. Construction and application.

This chapter shall be construed and applied to:

- (1) Facilitate electronic transactions consistent with other applicable law;
- (2) Be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and
- (3) Effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

2000, c. [995](#).

§59.1-485. Legal recognition of electronic records, electronic signatures, and electronic contracts.

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, or provides for certain consequences in the absence of a signature, an electronic signature satisfies the law.

2000, c. [995](#).

§59.1-486. Provision of information in writing; presentation of records.

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the

sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this chapter requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated, or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) The record shall be posted or displayed in the manner specified in the other law.

(2) Except as otherwise provided in subsection (d) (2), the record shall be sent, communicated, or transmitted by the method specified in the other law.

(3) The record shall contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, except:

(1) To the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) A requirement under a law other than this chapter to send, communicate, or transmit a record by United States mail, may be varied by agreement to the extent permitted by the other law.

(e) Notwithstanding subsections (b) and (d), a governmental agency may by regulation alter requirements governing (i) the method of posting or display, (ii) the manner of communication or transmittal, including First Class or other United States mail requirements, or (iii) formatting requirements, with respect to the matters over which that agency has jurisdiction and with respect to transactions that the parties have agreed to conduct by electronic means.

2000, c. [995](#).

§59.1-487. Attribution and effect of electronic record and electronic signature.

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a

showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

2000, c. [995](#).

§59.1-488. Effect of change or error.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) Has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither paragraph (1) nor paragraph (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Paragraphs (2) and (3) may not be varied by agreement.

2000, c. [995](#).

§59.1-489. Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

2000, c. [995](#).

§59.1-490. Retention of electronic record.

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) Accurately reflects the information set forth in the record at the time and after it was first generated in its final form as an electronic record or otherwise; and

(2) Remains accessible for later reference.

(b) A requirement to retain a record in accordance with subsection (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subsection (a) by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a).

(f) A record retained as an electronic record in accordance with subsection A satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this chapter specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a public body of the Commonwealth from specifying additional requirements for the retention of a record subject to such public body's jurisdiction.

2000, c. [995](#).

§59.1-491. Admissibility of evidence.

(a) In any proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

(b) In determining the evidentiary weight to be given a particular electronic signature, the trier of fact shall consider whether the electronic signature is: (i) unique to the signer, (ii) capable of verification, (iii) under the signer's sole control, (iv) linked to the record in such a manner that it can be determined if any data contained in the record was changed subsequent to the electronic signature being affixed to the record, and (v) created by a method appropriately reliable for the purpose for which the electronic signature was used. The trier of fact may consider any other relevant and probative evidence affecting the authenticity and/or validity of the electronic signature.

2000, c. [995](#).

§59.1-492. Automated transactions.

In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to the contract.

2000, c. [995](#).

§59.1-493. Time and place of sending and receipt.

(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) Is in a form capable of being processed by that system; and

(3) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) It is in a form capable of being processed by that system.

(c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subsection (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subsection (a), or purportedly received under subsection (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

2000, c. [995](#).

§59.1-494. Transferable records.

(a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under Title 8.3A or a document under Title 8.7 if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in subdivisions (4), (5), and (6), unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the transferable record was issued; or

(B) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in § [8.1A-201](#) (21), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under Titles 8.1A through 8.11, including, if the applicable statutory requirements under §§ [8.3A-302](#) (a), [8.7-501](#), or § [8.9A-330](#) are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under Titles 8.1A through 8.11.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

2000, c. [995](#); 2001, c. [86](#); 2003, c. [353](#).

§59.1-495. Creation and retention of electronic records and conversion of written records by public bodies of the Commonwealth.

Upon providing protection to preserve security and confidentiality, every public body of the Commonwealth may create and retain electronic records and convert written records to electronic records.

2000, c. [995](#).

§59.1-496. Acceptance and distribution of electronic records by public bodies; electronic filing of information permitted.

(a) Except as otherwise provided in subsection (f) of § [59.1-490](#), and upon providing protection to preserve security and confidentiality, public bodies of the Commonwealth may (i) accept the electronic filing of any information required or

permitted to be filed with such public body and (ii) prescribe the methods of executing, recording, reproducing, and certifying electronically filed information pursuant to subsection (b). Unless otherwise provided for in the Code of Virginia, electronic filing in the courts of this Commonwealth shall be governed by the Rules adopted by the Supreme Court of Virginia.

(b) To the extent that public bodies of the Commonwealth use electronic records and electronic signatures and accept electronic filings under subsection (a), the following rules apply:

(1) Public bodies of the Commonwealth may specify the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(2) Public bodies of the Commonwealth may specify the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(3) Public bodies of the Commonwealth may specify control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(4) Public bodies of the Commonwealth may establish other criteria to ensure the authenticity and validity of electronic signatures.

(c) Except as otherwise provided in § [59.1-490](#) (f), this chapter does not require public bodies of the Commonwealth to use or permit the use of electronic records or signatures.

2000, c. [995](#).

§59.1-497. Interoperability.

A public body of the Commonwealth which adopts standards pursuant to § [59.1-496](#) and the Secretary of Technology may encourage and promote consistency and interoperability with similar requirements adopted by other public bodies of the Commonwealth, other states and the federal government and nongovernmental persons interacting with public bodies of the Commonwealth. If appropriate, those standards may specify differing levels of standards from which public bodies of the Commonwealth may choose in implementing the most appropriate standard for a particular application.

2000, c. [995](#).

§59.1-498. Reserved.

Reserved.

Uniform Enforcement of Foreign Judgments Act

§8.01-465.1. Application of chapter.

As used in this chapter "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

1988, c. 539.

§8.01-465.2. Filing and status of foreign judgments.

A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this Commonwealth may be filed in the office of the clerk of any circuit court of any city or county of this Commonwealth upon payment of the fee prescribed in subdivision A 17 of § [17.1-275](#). The clerk shall treat the foreign judgment in the same manner as a judgment of the circuit court of any city or county of this Commonwealth. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a circuit court of any city or county of this Commonwealth and may be enforced or satisfied in like manner.

1988, c. 539; 1990, c. 738 .

§8.01-465.3. Notice of filing.

At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor.

Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in the Commonwealth. In addition, the judgment creditor

may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

1988, c. 539.

§8.01-465.4. Stay of enforcement.

If the judgment debtor shows the circuit court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

If the judgment debtor shows the circuit court any ground upon which enforcement of a judgment of any court of this Commonwealth would be stayed, including the ground that an appeal from the foreign judgment is pending or will be taken, or that the time for taking such an appeal has not expired, the court shall stay enforcement of the foreign judgment for an appropriate period until all available appeals are concluded or the time for taking all appeals has expired, upon requiring the same security for satisfaction of the judgment which is required in this Commonwealth, subject to the provisions of subsections J and K of § [8.01-676.1](#).

1988, c. 539; 2000, c. [100](#).

§8.01-465.5. Optional procedure.

The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this chapter remains unimpaired.

1988, c. 539.

Uniform Foreign-Money Claims Act

§8.01-465.14. Definitions.

As used in this chapter:

"Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

"Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

"Conversion date" means the banking day next preceding the date on which money, in accordance with this chapter, is (i) paid to a claimant in an action or distribution proceeding; (ii) paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or (iii) used to recoup, set off, or counterclaim in different moneys in an action or distribution proceeding.

"Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims are asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.

"Foreign money" means money other than money of the United States of America.

"Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.

"Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

"Money of the claim" means the money determined as proper pursuant to § [8.01-465.17](#).

"Person" means an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

"Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.

"Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding two days.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

1991, c. 24 .

§8.01-465.15. Scope.

This chapter applies only to a foreign-money claim in an action or distribution proceeding and applies to foreign-money issues even if other law under the conflict-of-laws rules of the Commonwealth applies to other issues in the action or distribution proceeding.

1991, c. 24 .

§8.01-465.16. Variation by agreement.

The effect of this chapter may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

1991, c. 24 .

§8.01-465.17. Determining money of the claim.

The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment. If the parties to a transaction have not otherwise agreed, the proper money of the claim is the money (i) regularly used between the parties as a matter of usage or course of dealing; (ii) used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or (iii) in which the loss was ultimately felt or will be incurred by the party claimant.

1991, c. 24 .

§8.01-465.18. Determining amount of the money of certain contract claims.

A. If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

B. If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding thirty days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

C. A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a special amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

1991, c. 24 .

§8.01-465.19. Asserting and defending foreign-money claim.

A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

An opposing party may allege and shall prove that all or part of a claim is in a different money than that asserted by the claimant. A person may assert a defense, setoff, recoupment, or counterclaim in any money without regard to the money of other claims.

The determination of the proper money of the claim is a question of law.

1991, c. 24 .

§8.01-465.20. Judgments and awards on foreign-money claims; times of money conversion; form of judgment.

A. A judgment or award on a foreign-money claim must be stated in an amount of the money of the claim. However, assessed costs must be entered in United States dollars. A judgment in substantially the following form complies with this subsection: [IT IS ADJUDGED AND ORDERED, that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate -- see § [8.01-465.22](#)) percent a year or, at the

option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.]

B. A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

C. A judgment or award made in an action or distribution proceeding on both a defense, setoff, recoupment, or counterclaim and the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and shall specify the rates of exchange used.

D. If a contract claim is of the type covered by § [8.01-465.18](#) A or B, the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

E. A judgment shall be docketed and indexed in foreign money in the same manner, and has the same effect as a lien, as other judgments. It may be discharged by payment.

1991, c. 24 .

§8.01-465.21. Conversions of foreign money in distribution proceeding.

The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

1991, c. 24 .

§8.01-465.22. Prejudgment and judgment interest.

With respect to a foreign-money claim, recovery of prejudgment or preaward interest and the rate of interest to be applied in the action or distribution proceeding are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of the Commonwealth.

However, the court or arbitrator shall increase or decrease the amount of pre-judgment or preaward interest otherwise payable in a judgment or award in foreign money to the extent required by the law of the Commonwealth.

A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of the Commonwealth.

1991, c. 24 .

§8.01-465.23. Enforcement of foreign judgments.

If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is enforceable in the Commonwealth, the enforcing judgment must be entered as provided in § [8.01-465.20](#), whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

A foreign judgment may be filed in accordance with Chapter 17.1 (§ [8.01-465.1](#) et seq.) or Chapter 17.2 (§ [8.01-465.13:1](#) et seq.).

A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in the Commonwealth.

A judgment entered on a foreign-money claim only in United States dollars in another state shall be enforced in United States dollars only.

1991, c. 24; 2014, c. [462](#).

§8.01-465.24. Determining United States dollar value of foreign-money claims for limited purposes.

For the limited purpose of facilitating the enforcement of provisional remedies in an action, (i) the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, (ii) the amount of United States dollars at issue for assessing costs, or (iii) the amount of United States dollars involved for a surety bond or other court-required undertaking shall be ascertained by a party seeking the process, costs, bond or other undertaking as follows:

1. The amount of the foreign money claimed shall be computed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of (i) a request or application for the issuance of process or for the determination of costs, or (ii) an application for a bond or other court-required undertaking.

2. An affidavit or certificate executed in good faith by the party's counsel or a bank officer shall be filed with each request or application, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

1991, c. 24 .

§8.01-465.25. Effect of substitution of currency by issuing authority.

If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money. If such substitution occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

1991, c. 24 .

Uniform Interstate Family Support Act

§20-88.32. Definitions.

In this chapter:

"Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

"Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.

"Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

"Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

"Employer" means the source of any income as defined in § [63.2-1900](#).

"Foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

1. That has been declared under the law of the United States to be a foreign reciprocating country;
2. That has established a reciprocal arrangement for child support with the Commonwealth as provided in § [20-88.50](#);
3. That has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this chapter; or
4. In which the Convention is in force with respect to the United States.

"Foreign support order" means a support order of a foreign tribunal.

"Foreign tribunal" means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention.

"Home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

"Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of the Commonwealth.

"Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, to withhold support from the obligor's income as defined in § [63.2-1900](#).

"Initiating tribunal" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

"Issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

"Issuing state" means the state in which a tribunal issues a support order or a judgment determining parentage of a child.

"Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

"Law" includes decisional and statutory law and rules and regulations having the force of law.

"Obligee" means (i) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued, (ii) a foreign country, state, or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support, (iii) an individual seeking a judgment determining parentage of the individual's child, or (iv) a person that is a creditor in a proceeding under Article 13 (§ [20-88.83](#) et seq.).

"Obligor" means an individual, or the estate of a decedent that (i) owes or is alleged to owe a duty of support, (ii) is alleged but has not been adjudicated to be a parent of a child, (iii) is liable under a support order, or (iv) is a debtor in a proceeding under Article 13 (§ [20-88.83](#) et seq.).

"Outside the Commonwealth" means a location in another state, political subdivision of a state, or a country other than the United States, whether or not the country is a foreign country.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Register" means to file in a tribunal of the Commonwealth a support order or judgment determining parentage of a child issued in another state or a foreign country.

"Registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered.

"Responding state" means a state or a foreign country in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country.

"Responding tribunal" means the authorized tribunal in a responding state or foreign country.

"Spousal-support order" means a support order for a spouse or former spouse of the obligor.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe.

"Support enforcement agency" means a public official, governmental entity, or private agency authorized to (i) seek enforcement of support orders or laws relating to the duty of support, (ii) seek establishment or modification of child support, (iii) request determination of parentage of a child, (iv) attempt to locate obligors or their assets, or (v) request determination of the controlling child support order. A support enforcement agency of the Commonwealth is not authorized to establish or enforce a support order for spousal support only.

"Support order" means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance

provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney's fees, and other relief.

"Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child; however, the support enforcement agency of the Commonwealth has no authority to establish or enforce a support order for spousal support only.

1994, c. [673](#); 1995, c. [484](#); 1996, cc. [882](#), [925](#); 1997, cc. [797](#), [897](#); 1998, c. [727](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.32:1. Uniformity of application and construction.

In applying and construing this Uniform Interstate Family Support Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

2015, c. [727](#).

§20-88.33. Tribunals of the Commonwealth and support enforcement agency.

A. The juvenile and domestic relations district courts, circuit courts, and the Department of Social Services are the tribunals of the Commonwealth.

B. The Department of Social Services is the support enforcement agency of the Commonwealth.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.34. Remedies cumulative.

A. Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.

B. This chapter does not provide the exclusive method of establishing or enforcing a support order under the law of the Commonwealth or grant a tribunal of the Commonwealth jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this chapter.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.34:1. Application of chapter to resident of foreign country and foreign support proceeding.

A. A tribunal of the Commonwealth shall apply Articles 1 through 9 (§ [20-88.32](#) et seq.) and, as applicable, Article 13 (§ [20-88.83](#) et seq.) to a support proceeding involving a foreign support order, a foreign tribunal, or an obligee, obligor, or child residing in a foreign country.

B. A tribunal of the Commonwealth that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of Articles 1 through 9 (§ [20-88.32](#) et seq.).

C. Article 13 (§ [20-88.83](#) et seq.) applies only to a support proceeding under the Convention. In such a proceeding, if a provision of Article 13 is inconsistent with Articles 1 through 9 (§ [20-88.32](#) et seq.), Article 13 controls.

2015, c. [727](#).

§20-88.35. Bases for jurisdiction over nonresident.

In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of the Commonwealth may exercise personal jurisdiction over a non-resident individual or the individual's guardian or conservator if:

1. The individual is personally served with process within the Commonwealth;
2. The individual submits to the jurisdiction of the Commonwealth by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
3. The individual resided with the child in the Commonwealth;
4. The individual resided in the Commonwealth and paid prenatal expenses or provided support for the child;
5. The child resides in the Commonwealth as a result of the acts or directives of the individual;
6. The individual engaged in sexual intercourse in the Commonwealth and the child may have been conceived by the act of intercourse;
7. The individual asserted parentage of a child in the Virginia Birth Father Registry maintained in the Commonwealth by the Department of Social Services;
8. The exercise of personal jurisdiction is authorized under subdivision A 8 of § [8.01-328.1](#); or

9. There is any other basis consistent with the constitutions of the Commonwealth and the United States for the exercise of personal jurisdiction.

The bases of personal jurisdiction set forth in this section or any other law of the Commonwealth may not be used to acquire personal jurisdiction for a tribunal of the Commonwealth to modify a child support order issued by a tribunal of another state unless the requirements of § [20-88.76](#) or [20-88.77:3](#) are met.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#); 2017, c. [200](#).

§20-88.36. Duration of personal jurisdiction.

Personal jurisdiction acquired by a tribunal of the Commonwealth in a proceeding under this chapter or other law of the Commonwealth relating to a support order continues as long as a tribunal of the Commonwealth has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by §§ [20-88.39](#), [20-88.40](#) and [20-88.43:2](#).

1994, c. [673](#); 1995, c. [484](#); 2005, c. [754](#).

§20-88.37. Initiating and responding tribunal of the Commonwealth.

Under this chapter, a tribunal of the Commonwealth may serve as an initiating tribunal to forward proceedings to a tribunal of another state and as a responding tribunal for proceedings initiated in another state or a foreign country.

1994, c. [673](#); 2015, c. [727](#).

§20-88.38. Simultaneous proceedings in another state.

A. A tribunal of the Commonwealth may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or foreign country only if:

1. The petition or comparable pleading in the Commonwealth is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;
2. The contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and
3. If relevant, the Commonwealth is the home state of the child.

B. A tribunal of the Commonwealth may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or foreign country if:

1. The petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in the Commonwealth for filing a responsive pleading challenging the exercise of jurisdiction by the Commonwealth;
2. The contesting party timely challenges the exercise of jurisdiction in the Commonwealth; and
3. If relevant, the other state or foreign country is the home state of the child.

1994, c. [673](#); 2015, c. [727](#).

§20-88.39. Continuing, exclusive jurisdiction to modify child support order.

A. A tribunal of the Commonwealth that has issued a child support order consistent with the law of the Commonwealth has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order, and:

1. At the time of the filing of a request for modification, the Commonwealth is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
2. Even if the Commonwealth is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record that the tribunal of the Commonwealth may continue to exercise its jurisdiction to modify its order.

B. A tribunal of the Commonwealth that has issued a child support order consistent with the law of the Commonwealth may not exercise continuing, exclusive jurisdiction to modify the order if:

1. All of the parties who are individuals file consent in a record with the tribunal of the Commonwealth that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or who is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or
2. Its order is not the controlling order.

C. If a tribunal of another state has issued a child support order pursuant to this chapter or a law substantially similar to this chapter that modifies a child support

order of a tribunal of the Commonwealth, tribunals of the Commonwealth shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

D. A tribunal of the Commonwealth that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

E. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

F. The support enforcement agency of the Commonwealth is not authorized to establish or enforce a support order for spousal support only.

1994, c. [673](#); 1996, cc. [882](#), [925](#); 1997, cc. [797](#), [897](#); 2005, c. [754](#).

§20-88.40. Continuing jurisdiction to enforce child support order.

A. A tribunal of the Commonwealth that has issued a child support order consistent with the law of the Commonwealth may serve as an initiating tribunal to request a tribunal of another state to enforce:

1. The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to this chapter; or

2. A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

B. A tribunal of the Commonwealth having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.41. Determination of controlling child support order.

A. If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and shall be so recognized.

B. If a proceeding is brought under this chapter, and two or more child support orders have been issued by tribunals of the Commonwealth or another state or foreign country with regard to the same obligor and same child, a tribunal of the Commonwealth having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

1. If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls.

2. If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, (i) an order issued by a tribunal in the current home state of the child controls, or (ii) if an order has not been issued in the current home state of the child, the order most recently issued controls.

3. If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, a tribunal of the Commonwealth shall issue a child support order, which controls.

C. If two or more child support orders have been issued for the same obligor and same child, upon request of a party who is an individual or a support enforcement agency, a tribunal of the Commonwealth having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection B. The request may be filed with a registration for enforcement or registration for modification pursuant to Articles 8 (§ [20-88.66](#) et seq.) and 9 (§ [20-88.74](#) et seq.) or may be filed as a separate proceeding.

D. A request to determine which is the controlling order shall be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

E. The tribunal that issued the controlling order under subsection A, B or C has continuing jurisdiction to the extent provided in § [20-88.39](#) or [20-88.40](#).

F. A tribunal of the Commonwealth that determines by order which is the controlling order under subdivision B 1 or B 2 or under subsection C or that issues a new controlling order under subdivision B 3 shall state in that order:

1. The basis upon which the tribunal made its determination;

2. The amount of prospective support, if any; and

3. The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by § [20-88.43](#).

G. Within 30 days after issuance of an order determining which is the controlling order, the party obtaining that order shall file a certified copy of it in each tribunal that had issued or registered an earlier order of child support. A party or support

enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure arises. The failure to file does not affect the validity or enforceability of the controlling order.

H. An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section shall be recognized in proceedings under this chapter.

1994, c. [673](#); 1997, cc. [797](#), [897](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.42. Child support orders for two or more obligees.

In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state or a foreign country, a tribunal of the Commonwealth shall enforce those orders in the same manner as if the orders had been issued by a tribunal of the Commonwealth.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.43. Credit for payments.

A tribunal of the Commonwealth shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this or another state or a foreign country.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.43:1. Application to nonresident subject to personal jurisdiction.

A tribunal of the Commonwealth exercising personal jurisdiction over a nonresident in a proceeding under this chapter, under other law of the Commonwealth relating to a support order, or recognizing a foreign support order may receive evidence from outside the Commonwealth pursuant to § [20-88.59](#), communicate with a tribunal of another state outside the Commonwealth pursuant to § [20-88.60](#) and obtain discovery through a tribunal outside the Commonwealth pursuant to § [20-88.61](#). In all other respects, Articles 5 through 9 (§ [20-88.44](#) et seq.) do not apply and the tribunal shall apply the procedural and substantive law of the Commonwealth.

2005, c. [754](#); 2015, c. [727](#).

§20-88.43:2. Continuing, exclusive jurisdiction to modify spousal support order.

A. A court of the Commonwealth issuing a spousal support order consistent with the law of the Commonwealth has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

B. A court of the Commonwealth may not modify a spousal support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

C. A court of the Commonwealth that has continuing, exclusive jurisdiction over a spousal support order may serve as:

1. An initiating court to request a tribunal of another state to enforce the spousal support order issued in the Commonwealth; or

2. A responding court to enforce or modify its own spousal support order.

2005, c. [754](#); 2015, c. [727](#).

§20-88.44. Proceedings under this chapter.

A. Except as otherwise provided in this chapter, this article applies to all proceedings under this chapter.

B. An individual or a support enforcement agency may initiate a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or foreign country that has or can obtain personal jurisdiction over the respondent.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.45. Action by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

1994, c. [673](#).

§20-88.46. Application of law of the Commonwealth.

Except as otherwise provided in this chapter, a responding tribunal of the Commonwealth shall apply the procedural and substantive law generally applicable to similar proceedings originating in the Commonwealth and may exercise all powers and provide all remedies available in those proceedings.

A responding tribunal of the Commonwealth shall determine the duty of support and the amount payable in accordance with the law and support guidelines of the Commonwealth.

1994, c. [673](#); 2005, c. [754](#).

§20-88.47. Duties of initiating tribunal.

A. Upon the filing of a petition authorized by this chapter, an initiating tribunal of the Commonwealth shall forward the petition and its accompanying documents (i) to the responding tribunal or appropriate support enforcement agency in the responding state or, (ii) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

B. If requested by the responding tribunal, a tribunal of the Commonwealth shall issue a certificate or other documents and make findings required by the law of the responding state. If the responding tribunal is in a foreign country, upon request the tribunal of the Commonwealth shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

1994, c. [673](#); 1997, cc. [797](#), [897](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.48. Duties and powers of responding tribunal.

A. When a responding tribunal of the Commonwealth receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection B of § [20-88.44](#), it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed. An order for spousal support only shall be forwarded to the appropriate juvenile and domestic relations court.

B. A responding tribunal of the Commonwealth, to the extent not prohibited by other law, may do one or more of the following:

1. Establish or enforce a support order, modify a child support order, determine the controlling child support order, or determine parentage of a child;
2. Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
3. Order income withholding;

4. Determine the amount of any arrearages, and specify a method of payment;
5. Enforce orders by civil or criminal contempt, or both;
6. Set aside property for satisfaction of the support order;
7. Place liens and order execution on the obligor's property;
8. Order an obligor to keep the tribunal informed of the obligor's current residential address, electronic mail address, telephone number, employer, address of employment, and telephone number at the place of employment;
9. Issue a capias for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the capias in any local and state computer systems for criminal warrants;
10. Order the obligor to seek appropriate employment by specified methods;
11. Award reasonable attorney's fees and other fees and costs; and
12. Grant any other available remedy.

C. A responding tribunal of the Commonwealth shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

D. A responding tribunal of the Commonwealth may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

E. If a responding tribunal of the Commonwealth issues an order under this chapter, the tribunal shall promptly send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

F. If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of the Commonwealth shall convert the amount stated in the foreign currency to the equivalent amount in U.S. dollars under the applicable official or market exchange rate as publicly reported.

1994, c. [673](#); 1996, cc. [882](#), [925](#); 1997, cc. [797](#), [897](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.49. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this Commonwealth, it shall forward the pleading and accompanying documents to an

appropriate tribunal in this Commonwealth or another state, and notify the petitioner where and when the pleading was sent.

1994, c. [673](#); 1997, cc. [797](#), [897](#).

§20-88.50. Duties of support enforcement agency.

A. A support enforcement agency of the Commonwealth, upon request, shall provide services to a petitioner in a proceeding under this chapter.

B. In a proceeding under this chapter, a support enforcement agency of the Commonwealth that is providing services to the petitioner shall:

1. Take all steps necessary to enable an appropriate tribunal of the Commonwealth, another state, or a foreign country to obtain jurisdiction over the respondent;
2. Request an appropriate tribunal to set a date, time, and place for a hearing;
3. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
4. Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;
5. Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and
6. Notify the petitioner if jurisdiction over the respondent cannot be obtained.

C. A support enforcement agency of the Commonwealth that requests registration of a child support order in the Commonwealth for enforcement or for modification shall make reasonable efforts to ensure that:

1. The order to be registered is the controlling order; or
2. If two or more child support orders exist and the identity of the controlling order has not been determined, a request for such a determination is made in a tribunal having jurisdiction to do so.

D. A support enforcement agency of the Commonwealth that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts

in U.S. dollars under the applicable official or market exchange rate as publicly reported.

E. A support enforcement agency of the Commonwealth shall issue or request a tribunal of the Commonwealth to issue a child support order and an income-withholding order that redirects payment of current support, arrears, and interest to a support enforcement agency of the Commonwealth if requested to do so by a support enforcement agency of another state pursuant to § [20-88.62](#).

F. This chapter does not create a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

1994, c. [673](#); 1997, cc. [797](#), [897](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.51. Duty of Secretary of Health and Human Resources.

A. If the Secretary of Health and Human Resources determines that the support enforcement agency is neglecting or refusing to provide services to an individual, he may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

B. The Secretary of Health and Human Resources may determine that a foreign country has established a reciprocal arrangement for child support with the Commonwealth and take appropriate action for notification of the determination.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.52. Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

1994, c. [673](#).

§20-88.53. Duties of state information agency.

A. The Department of Social Services is the state information agency under this chapter.

B. The state information agency shall:

1. Compile and maintain a current list, including addresses, of the tribunals in the Commonwealth that have jurisdiction under this chapter and any support enforcement agencies in the Commonwealth and transmit a copy to the state information agency of every other state;

2. Maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;
3. Forward to the appropriate tribunal in the county or city in the Commonwealth in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from another state or a foreign country; and
4. Obtain information concerning the location of the obligor and the obligor's property within the Commonwealth not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.54. Pleadings and accompanying documents.

A. In a proceeding under this chapter, a petitioner seeking to establish a support order, to determine parentage of a child, or to register and modify a support order of a tribunal of another state or a foreign country shall file a petition. Unless otherwise ordered under § [20-88.55](#), the petition or accompanying documents shall provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition shall be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

B. The petition shall specify the relief sought. The petition and accompanying documents shall conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.55. Nondisclosure of information in exceptional circumstances.

Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying

information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

1994, c. [673](#).

§20-88.56. Costs and fees.

A. The petitioner may not be required to pay a filing fee or other costs.

B. If an obligee prevails, a responding tribunal of the Commonwealth may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

C. The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under Articles 8 (§ [20-88.66](#) et seq.) and 9 (§ [20-88.74](#) et seq.), a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.57. Limited immunity of petitioner.

A. Participation by a petitioner in a proceeding under this chapter before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

B. A petitioner is not amenable to service of civil process while physically present in the Commonwealth to participate in a proceeding under this chapter.

C. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in the Commonwealth to participate in the proceeding.

1994, c. [673](#); 2005, c. [754](#).

§20-88.58. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

1994, c. [673](#).

§20-88.59. Special rules of evidence and procedure.

A. The physical presence of a nonresident party who is an individual in a tribunal of the Commonwealth is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage of a child.

B. An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them that would not be excluded under the hearsay rule if given in person is admissible in evidence if given under penalty of perjury by a party or witness residing outside the Commonwealth.

C. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

D. Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

E. Documentary evidence transmitted from outside the Commonwealth to a tribunal of the Commonwealth by telephone, telecopier, or other electronic means that does not provide an original record may not be excluded from evidence upon an objection based on the means of transmission.

F. In a proceeding under this chapter, a tribunal of the Commonwealth shall permit a party or witness residing outside the Commonwealth to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of the Commonwealth shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

G. If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

H. A privilege against disclosure of communication between spouses does not apply in a proceeding under this chapter.

I. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

J. A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.60. Communications between tribunals.

A tribunal of the Commonwealth may communicate with a tribunal outside the Commonwealth in a record, or by telephone, electronic mail, or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal; and the status of a proceeding. A tribunal of the Commonwealth may furnish similar information by similar means to a tribunal outside the Commonwealth.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.61. Assistance with discovery.

A tribunal of the Commonwealth may (i) request a tribunal outside the Commonwealth to assist in obtaining discovery and (ii) upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside the Commonwealth.

1994, c. [673](#); 2015, c. [727](#).

§20-88.62. Receipt and disbursement of payments.

A. A support enforcement agency or tribunal of the Commonwealth shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The support enforcement agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

B. If neither the obligor, nor the obligee who is an individual, nor the child resides in the Commonwealth, upon request from the support enforcement agency of the

Commonwealth or another state, the support enforcement agency of the Commonwealth or a tribunal of the Commonwealth shall:

1. Order that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and
 2. Issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.
- C. The support enforcement agency of the Commonwealth receiving redirected payments from another state pursuant to a law similar to subsection B shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.63. Establishment of support order.

A. If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of the Commonwealth with personal jurisdiction over the parties may issue a support order if (i) the individual seeking the order resides outside the Commonwealth or (ii) the support enforcement agency seeking the order is located outside the Commonwealth.

B. The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

1. A presumed father of the child;
2. Petitioning to have his paternity adjudicated;
3. Identified as the father of the child through genetic testing;
4. An alleged father who has declined to submit to genetic testing;
5. Shown by clear and convincing evidence to be the father of the child;
6. An acknowledged father as provided by applicable state law;
7. The mother of the child; or
8. An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

C. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to § [20-88.48](#).

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.63:1. Proceeding to determine parentage.

A tribunal of the Commonwealth authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this chapter or a law or procedure substantially similar to this chapter.

2015, c. [727](#).

§20-88.64. Employer's receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person or entity defined as the obligor's employer as defined in § [63.2-1900](#) under the income-withholding law of the Commonwealth without first filing a petition or comparable pleading or registering the order with a tribunal of the Commonwealth.

1994, c. [673](#); 1997, cc. [797](#), [897](#); 1998, c. [727](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.64:1. Employer's compliance with income-withholding order of another state.

A. Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor. The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of the Commonwealth.

B. Except as provided in subsection C and § [20-88.64:2](#), the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order, as applicable, that specify:

1. The duration and amount of periodic payments of current child support, stated as a sum certain;
2. The individual or support enforcement agency designated to receive payments and the address to which the payments are to be forwarded;
3. Medical support, whether in the form of periodic cash payments, stated as a sum certain or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employer;

4. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and
5. The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

C. An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

1. The employer's fee for processing an income-withholding order;
2. The maximum amount permitted to be withheld from the obligor's income; and
3. The times within which the employer shall implement the withholding order and forward the child support payment.

1997, cc. [797](#), [897](#); 2005, c. [754](#).

§20-88.64:2. Compliance with two or more income-withholding orders.

If an obligor's employer receives two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish priorities for withholding and allocating income withheld for two or more child support obligees.

1997, cc. [797](#), [897](#); 2005, c. [754](#).

§20-88.64:3. Immunity from civil liability.

An employer that complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding child support from the obligor's income.

1997, cc. [797](#), [897](#); 2015, c. [727](#).

§20-88.64:4. Penalties for noncompliance.

An employer that willfully fails to comply with an income-withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of the Commonwealth.

1997, cc. [797](#), [897](#); 2015, c. [727](#).

§20-88.64:5. Contest by obligor.

A. An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in the Commonwealth by registering the order in a tribunal of the Commonwealth and filing a contest to that order as provided in this chapter or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of the Commonwealth.

B. The obligor shall give notice of the contest to (i) a support enforcement agency providing services to the obligee, (ii) each employer that has directly received an income-withholding order relating to the obligor, and (iii) the support enforcement agency designated to receive payments in the income-withholding order.

1997, cc. [797](#), [897](#); 2005, c. [754](#).

§20-88.65. Administrative enforcement of orders.

A. A party or support enforcement agency seeking to enforce a foreign support order, or a support order or an income-withholding order, or both, issued in another state, may send the documents required for registering the order to a support enforcement agency of the Commonwealth.

B. Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of the Commonwealth to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.66. Registration of order for enforcement.

A foreign support order, or a support order or an income-withholding order issued in another state, may be registered in the Commonwealth for enforcement.

1994, c. [673](#); 2015, c. [727](#).

§20-88.67. Procedure to register order for enforcement.

A. Except as provided in § [20-88.88](#), a foreign support order or a support order or income-withholding order of another state may be registered in the Commonwealth by sending the following records to the appropriate tribunal in the Commonwealth:

1. A letter of transmittal to the tribunal requesting registration and enforcement;

2. Two copies, including one certified copy, of the order to be registered, including any modification of the order;
3. A sworn statement by the party requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;
4. The name of the obligor and, if known, (i) the obligor's address and social security number, (ii) the name and address of the obligor's employer and any other source of income of the obligor, and (iii) a description and the location of property of the obligor in the Commonwealth not exempt from execution; and
5. Except as otherwise provided in § [20-88.55](#), the name and address of the obligee and, if applicable, the support enforcement agency to whom support payments are to be remitted.

B. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

C. A petition or comparable pleading seeking a remedy that shall be affirmatively sought under other law of the Commonwealth may be filed at the same time as the request for registration or later. The pleading shall specify the grounds for the remedy sought.

D. If two or more orders are in effect, the individual or support enforcement agency requesting registration shall:

1. Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;
2. Specify the order alleged to be the controlling order, if any; and
3. Specify the amount of consolidated arrears, if any.

E. A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The individual or support enforcement agency requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

1994, c. [673](#); 1995, c. [484](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.68. Effect of registration for enforcement.

- A. A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of the Commonwealth.
- B. A registered support order issued in another state or in a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of the Commonwealth.
- C. Except as otherwise provided in this chapter, a tribunal of the Commonwealth shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

1994, c. [673](#); 2015, c. [727](#).

§20-88.69. Choice of law; statute of limitations.

- A. Except as otherwise provided in subsection D, the law of the issuing state or foreign country governs (i) the nature, extent, amount, and duration of current payments under a registered support order; (ii) the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and (iii) the existence and satisfaction of other obligations under the support order.
- B. In a proceeding for arrears under a registered support order, the statute of limitations of the Commonwealth or of the issuing state or foreign country, whichever is longer, applies.
- C. A responding tribunal of the Commonwealth shall apply the procedures and remedies of the Commonwealth to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in the Commonwealth.
- D. After a tribunal of the Commonwealth or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of the Commonwealth shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.70. Notice of registration of order; contest of validity or enforcement.

- A. When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of the Commonwealth shall

notify the nonregistering party. The notice shall be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

B. A notice shall inform the nonregistering party:

1. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of the Commonwealth;
2. That a hearing to contest the validity or enforcement of the registered order shall be requested within 20 days after the notice unless the registered order is under [§ 20-88.89](#);
3. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and
4. Of the amount of any alleged arrearages.

C. If the registering party asserts that two or more orders are in effect, a notice shall also:

1. Identify the two or more orders and the order alleged by the party to be the controlling order and the consolidated arrears, if any;
2. Notify the nonregistering party of the right to a determination of which is the controlling order;
3. State that the procedures provided in subsection B apply to the determination of which is the controlling order; and
4. State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

D. Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to the income-withholding for support law of the Commonwealth.

1994, c. [673](#); 1997, cc. [797](#), [897](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.71. Procedure to contest validity or enforcement of registered support order.

A. A nonregistering party seeking to contest the validity or enforcement of a registered support order in the Commonwealth shall request a hearing within the time required by § [20-88.70](#). The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to § [20-88.72](#).

B. If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

C. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

1994, c. [673](#); 1997, cc. [797](#), [897](#); 2015, c. [727](#).

§20-88.72. Contest of registration or enforcement.

A. A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

1. The issuing tribunal lacked personal jurisdiction over the contesting party;
2. The order was obtained by fraud;
3. The order has been vacated, suspended, or modified by a later order;
4. The issuing tribunal has stayed the order pending appeal;
5. There is a defense under the law of the Commonwealth to the remedy sought;
6. Full or partial payment has been made;
7. The statute of limitations under § [20-88.69](#) precludes enforcement of some or all of the alleged arrearages; or
8. The alleged controlling order is not the controlling order.

B. If a party presents evidence establishing a full or partial defense under subsection A, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of the Commonwealth.

C. If the contesting party does not establish a defense under subsection A to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.73. Confirmed order.

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the support order with respect to any matter that could have been asserted at the time of registration.

1994, c. [673](#); 2015, c. [727](#).

§20-88.74. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this Commonwealth in the same manner as provided in Article 8 (§ [20-88.66](#) et seq.) if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

1994, c. [673](#); 1997, c. [69](#).

§20-88.75. Effect of registration for modification.

A tribunal of the Commonwealth may enforce a child support order of another state, registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of the Commonwealth, but the registered support order may be modified only if the requirements of § [20-88.76](#) or [20-88.77:1](#) have been met.

1994, c. [673](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.76. Modification of child support order of another state.

A. If § [20-88.77:1](#) does not apply, upon petition a tribunal of the Commonwealth may modify a child support order, issued in another state, that is registered in the Commonwealth if, after notice and hearing, the tribunal finds that:

1. The following requirements are met:

a. Neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;

b. A petitioner who is a nonresident of the Commonwealth seeks modification; and

c. The respondent is subject to the personal jurisdiction of the tribunal of the Commonwealth; or

2. The Commonwealth is the residence of the child or a party who is an individual is subject to the personal jurisdiction of the tribunal of the Commonwealth and all of the individual parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of the Commonwealth to modify the support order and assume continuing, exclusive jurisdiction.

B. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of the Commonwealth and the order may be enforced and satisfied in the same manner.

C. A tribunal of the Commonwealth may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and shall be so recognized under § [20-88.41](#) establishes the aspects of the support order which are nonmodifiable.

D. In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of the Commonwealth.

E. On issuance of an order by a tribunal of the Commonwealth modifying a child support order issued in another state, the tribunal of the Commonwealth becomes the tribunal having continuing, exclusive jurisdiction.

F. Notwithstanding subsections A through E and § [20-88.35](#), a tribunal of the Commonwealth retains jurisdiction to modify an order issued by a tribunal of the Commonwealth if one party resides in another state and the other party resides outside the United States.

1994, c. [673](#); 1997, cc. [797](#), [897](#); 2005, c. [754](#); 2015, c. [727](#).

§20-88.77. Recognition of order modified in another state.

If a child support order issued by a tribunal of the Commonwealth is modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of the Commonwealth:

1. May enforce its order that was modified only as to arrears and interest accruing before the modification;
2. May provide appropriate relief for violations of its order that occurred before the effective date of the modification; and
3. Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

1994, c. [673](#); 1997, cc. [797](#), [897](#); 2005, c. [754](#).

§20-88.77:1. Jurisdiction to modify support order of another state when individual parties reside in this Commonwealth.

A. If all of the parties who are individuals reside in this Commonwealth and the child does not reside in the issuing state, a tribunal of this Commonwealth has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

B. A tribunal of this Commonwealth exercising jurisdiction as provided in this section shall apply the provisions of Articles 1 (§ [20-88.32](#) et seq.) and 2 (§ [20-88.35](#) et seq.), this article and the procedural and substantive law of this Commonwealth to the enforcement or modification. Articles 3 through 5 (§ [20-88.37](#) et seq.) and Articles 7 (§ [20-88.64](#) et seq.) and 8 (§ [20-88.66](#) et seq.) do not apply.

1997, cc. [797](#), [897](#).

§20-88.77:2. Notice to issuing tribunal of modification.

Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

1997, cc. [797](#), [897](#).

§20-88.77:3. Jurisdiction to modify child support order of foreign country.

A. Except as provided in § [20-88.93](#), if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of the Commonwealth may assume jurisdiction, for good cause shown as ordered, to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child support order otherwise required of the individual pursuant to § [20-88.76](#) has been given or whether the individual seeking modification is a resident of the Commonwealth or of the foreign country.

B. An order issued by a tribunal of the Commonwealth modifying a foreign child support order pursuant to this section is the controlling order.

2005, c. [754](#); 2015, c. [727](#).

§20-88.77:4. Procedure to register child support order of foreign country for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the Convention may register that order in the Commonwealth under Article 8 (§ [20-88.66](#) et seq.) if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or at another time. The petition must specify the grounds for modification.

2015, c. [727](#).

§20-88.78. Repealed.

Repealed by Acts 2015, c. [727](#), cl. 2, effective April 15, 2015.

§20-88.79. Grounds for rendition.

A. For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

B. The Governor of this Commonwealth may:

1. Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this Commonwealth with having failed to provide for the support of an obligee; or

2. On the demand by the governor of another state, surrender an individual found in this Commonwealth who is charged criminally in another state with having failed to provide for the support of an obligee.

C. A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and had not fled therefrom.

1994, c. [673](#).

§20-88.80. Conditions of rendition.

A. Before making a demand that the governor of another state surrender an individual charged criminally in the Commonwealth with having failed to provide for the support of an obligee, the Governor of the Commonwealth may require a prosecutor of the Commonwealth to demonstrate that at least 60 days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

B. If, under this chapter or a law substantially similar to this chapter, the governor of another state makes a demand that the Governor of the Commonwealth surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the Governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the Governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

C. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the Governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the Governor may decline to honor the demand if the individual is complying with the support order.

1994, c. [673](#); 2005, c. [754](#).

§20-88.81. Repealed.

Repealed by Acts 2015, c. [727](#), cl. 2, effective April 15, 2015.

Uniform Military and Overseas Voters

Act

§24.2-451. Short title.

This chapter may be cited as the Uniform Military and Overseas Voters Act.

2012, c. [353](#).

§24.2-452. Definitions.

As used in this chapter, unless the context requires a different meaning:

1. "Covered voter" means:

- a. A uniformed-service voter or an overseas voter who is registered to vote in this state;
- b. A uniformed-service voter defined in subdivision 9 a whose voting residence is in this state and who otherwise satisfies this state's voter eligibility requirements, including subdivision 2 of § [24.2-700](#);
- c. An overseas voter who, before leaving the United States, was last eligible to vote in this state and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements;
- d. An overseas voter who, before leaving the United States, would have been last eligible to vote in this state had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements; or
- e. An overseas voter who was born outside the United States, is not described in subdivision c or d, and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements, if:
 - (1) The last place where a parent or legal guardian of the voter was, or under this chapter would have been, eligible to vote before leaving the United States is within this state; and
 - (2) The voter has not previously registered to vote in any other state.

2. "Dependent" means an individual recognized as a dependent by a uniformed service.

3. "Federal postcard application" means the application prescribed under § 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301(b)(2).
4. "Federal write-in absentee ballot" means the ballot described in § 103 of the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20303, that may be used in all elections in which the voter is eligible to vote as provided in § [24.2-702.1](#).
5. "Military-overseas ballot" means:
 - a. A federal write-in absentee ballot;
 - b. A ballot specifically prepared or distributed for use by a covered voter in accordance with this title; or
 - c. A ballot cast by a covered voter in accordance with this title.
6. "Overseas voter" means a United States citizen who is outside the United States.
7. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
8. "Uniformed service" means:
 - a. Active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States;
 - b. The Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or
 - c. The Virginia National Guard.
9. "Uniformed-service voter" means an individual who is qualified to vote and is:
 - a. A member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty;
 - b. A member of the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States;
 - c. A member on activated status of the National Guard; or
 - d. A spouse or dependent of a member referred to in this definition.

10. "United States," used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

2012, c. [353](#); 2015, c. [313](#).

§24.2-453. Restriction of ballot eligibility.

To be eligible to vote in state and local elections, the application of an overseas voter who has given up his place of abode in Virginia must show that the applicant is employed overseas or the spouse or dependent of a person employed overseas.

2012, c. [353](#).

§24.2-454. Elections covered.

The voting procedures in this chapter apply to:

1. A general, special, or primary election for federal office;
2. A general, special, or primary election for statewide or state legislative office or state referendum measure; and
3. A general, special, or primary election for local constitutional or government office or local referendum measure conducted under Chapter 6 (§ [24.2-600](#) et seq.) for which absentee voting is available for other voters.

2012, c. [353](#).

§24.2-455. Role of Commissioner of Elections.

- A. The Commissioner of Elections is the state official responsible for implementing this chapter and Virginia's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301 et seq.
- B. The Commissioner shall make available to covered voters information regarding voter registration procedures for covered voters and procedures for casting military-overseas ballots. The Commissioner may delegate the responsibility under this subsection only to the state office designated in compliance with § 102(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20302(b)(1).
- C. The Commissioner shall coordinate with local electoral boards to establish an appropriate system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information under this chapter.

- D. The Commissioner shall:

1. Develop standardized absentee-voting materials, including privacy and transmission envelopes, authentication materials, and voting instructions to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this state; and

2. To the extent reasonably possible, coordinate with other states to carry out this subsection.

E. The Commissioner shall prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot. The declaration must be based on the declaration prescribed to accompany a federal write-in absentee ballot, as modified to be consistent with this chapter. The Commissioner shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required.

2012, c. [353](#); 2013, c. [542](#).

§24.2-456. Overseas voter's registration address.

In registering to vote, an overseas voter who is eligible to vote in this state shall use and must be assigned to the voting precinct of the address of the last place of residence of the voter in this state or, in the case of a voter described by subdivision 1 e of § [24.2-452](#), the address of the last place of residence in this state of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter must be assigned an address for voting purposes.

2012, c. [353](#).

§24.2-457. Methods of registering to vote.

A. To apply to register to vote, in addition to any other approved method, a covered voter may use a federal postcard application.

B. A covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the applicable deadline for registration. If the declaration is received after that date, it must be treated as an application to register to vote for subsequent elections.

C. The electoral board shall ensure that the system described in subsection C of § [24.2-455](#) is capable of accepting both a federal postcard application and any other approved registration application sent to the appropriate election official. The voter may use the system or any other approved method to register to vote.

2012, c. [353](#).

§24.2-458. Methods of applying for military-overseas ballot.

A. A covered voter who is registered to vote in this state may apply for a military-overseas ballot using either the regular absentee ballot application in use in the voter's jurisdiction under Chapter 7 (§ [24.2-700](#) et seq.) or the federal postcard application.

B. A covered voter who is not registered to vote in this state may use a federal postcard application to apply simultaneously to register to vote under § [24.2-457](#) and for a military-overseas ballot.

C. The electoral board shall ensure that the system described in subsection C of § [24.2-455](#) is capable of accepting the submission of both a federal postcard application and any other approved military-overseas ballot application sent to the appropriate election official. The voter may use the system or any other approved method to apply for a military-overseas ballot.

D. A covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot.

E. To receive the benefits of this chapter, a covered voter must inform the appropriate election official that the voter is a covered voter. Methods of informing the appropriate election official that a voter is a covered voter include:

1. The use of a federal postcard application or federal write-in absentee ballot;
2. The use of an overseas address on an approved voter registration application or ballot application; and
3. The inclusion on an approved voter registration application or ballot application of other information sufficient to identify the voter as a covered voter.

F. This chapter does not preclude a covered voter from voting under Chapter 7 (§ [24.2-700](#) et seq.).

2012, c. [353](#).

§24.2-459. Timeliness and scope of application for military-overseas ballot.

An application for a military-overseas ballot is timely if received by the seventh day before the election or the last day for other voters in this state to apply for an absentee ballot for that election. An application for a military-overseas ballot for a primary election, whether or not timely, is effective as an application for a military-overseas ballot for the general election.

2012, c. [353](#).

§24.2-460. Transmission of unvoted ballots.

A. For an election described in § [24.2-454](#) for which this state has not received a waiver pursuant to § 579 of the Military and Overseas Voter Empowerment Act, 52 U.S.C. § 20302(g)(2), not later than 45 days before the election, the election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit a ballot and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application.

B. A covered voter may request that a ballot and balloting materials be sent to the voter as authorized in § [24.2-706](#).

C. If a ballot application from a covered voter arrives after the jurisdiction begins transmitting ballots and balloting materials to voters, the official charged with distributing a ballot and balloting materials shall transmit them to the voter not later than three business days after the application arrives.

2012, c. [353](#).

§24.2-461. Federal write-in absentee ballot.

A covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in § [24.2-454](#).

2012, c. [353](#).

§24.2-462. Receipt of voted ballot.

A valid military-overseas ballot must be counted if it is delivered to the address that the appropriate state or local election office has specified by the close of the polls on the date of the election except as provided in § [24.2-709](#).

2012, c. [353](#).

§24.2-463. Declaration.

A military-overseas ballot must include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or this state.

2012, c. [353](#).

§24.2-464. Confirmation of receipt of application and voted ballot.

The Commissioner, in coordination with local election officials, shall implement a free-access system by which a covered voter may determine whether:

1. The voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted; and
2. The voter's military-overseas ballot has been received and the current status of the ballot.

2012, c. [353](#); 2013, c. [542](#).

§24.2-465. Publication of election notice.

At least 100 days before a regularly scheduled election and as soon as practicable before an election not regularly scheduled, the Department of Elections shall make election information available for each jurisdiction, to be used in conjunction with a federal write-in absentee ballot. The election notice must contain a list of all of the ballot measures and federal, state, and local offices that as of that date are expected to be on the ballot on the date of the election. The notice also must contain, or enable access to, specific instructions for how a voter is to indicate on the federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot measure to be contested. Specific instructions may include a website address or a telephone number.

2012, c. [353](#); 2015, c. [313](#).

§24.2-466. Sending and updating notices.

A. A covered voter may request and upon such request the Department of Elections shall provide a copy of an election notice without cost to the voter. The Department of Elections shall send the notice to the voter using the method requested and to the address provided by the voter.

B. As soon as ballot styles are verified pursuant to § [24.2-612](#) and not later than the date ballots are required to be transmitted to voters under §§ [24.2-460](#) and [24.2-612](#), the Department of Elections shall update the notice with the certified candidates for

each office and ballot measure questions and make the updated notice publicly available.

C. A local election jurisdiction that maintains a website shall make the election notice prepared under § [24.2-465](#) and updated versions of the election notice regularly available on the website.

2012, c. [353](#); 2015, c. [313](#).

§24.2-467. Prohibition of nonsubstantive requirements.

A. If a voter's mistake or omission in the completion of a document under this chapter does not prevent determining whether a covered voter is eligible to vote, the mistake or omission does not invalidate the document. Failure to satisfy a non-substantive requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted under this chapter. In a federal write-in absentee ballot authorized by this chapter, if the intention of the voter is discernible under this state's uniform definition of what constitutes a vote, an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party must be accepted as a valid vote.

B. Notarization is not required for the execution of a document under this chapter. An authentication, other than the declaration specified in § [24.2-463](#) or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under this chapter. The declaration and any information in the declaration may be compared with information on file to ascertain the validity of the document.

2012, c. [353](#).

§24.2-468. Equitable relief.

A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, this chapter on application by:

1. A covered voter alleging a grievance under this chapter; or
2. An election official in this state.

2012, c. [353](#).

§24.2-469. Uniformity of application and constructions.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

2012, c. [353](#).

§24.2-470. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede § 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that act, 15 U.S.C. § 7003 (b).

2012, c. [353](#).

Uniform Trade Secrets Act

§59.1-336. Short title and definitions.

As used in this chapter, which may be cited as the Uniform Trade Secrets Act, unless the context requires otherwise:

"Improper means" includes theft, bribery, misrepresentation, use of a computer or computer network without authority, breach of a duty or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

"Misappropriation" means:

1. Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. Disclosure or use of a trade secret of another without express or implied consent by a person who
 - a. Used improper means to acquire knowledge of the trade secret; or
 - b. At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was
 - (1) Derived from or through a person who had utilized improper means to acquire it;
 - (2) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use;

(3) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(4) Acquired by accident or mistake.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

"Trade secret" means information, including but not limited to, a formula, pattern, compilation, program, device, method, technique, or process, that:

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
2. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

1986, c. 210; 2009, cc. [321](#), [376](#).

§59.1-337. Injunctive relief.

A. Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

B. In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

C. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

1986, c. 210.

§59.1-338. Damages.

A. Except where the user of a misappropriated trade secret has made a material and prejudicial change in his position prior to having either knowledge or reason to know of the misappropriation and the court determines that a monetary recovery would be

inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. If a complainant is unable to prove a greater amount of damages by other methods of measurement, the damages caused by misappropriation can be measured exclusively by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

B. If willful and malicious misappropriation exists, the court may award punitive damages in an amount not exceeding twice any award made under subsection A of this section, or \$350,000 whichever amount is less.

1986, c. 210; 1990, c. 344 .

§59.1-338.1. Attorneys' fees.

If the court determines that (i) a claim of misappropriation is made in bad faith, or (ii) willful and malicious misappropriation exists, the court may award reasonable attorneys' fees to the prevailing party.

1990, c. 344 .

§59.1-339. Preservation of secrecy.

In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include:

1. Granting protective orders in connection with discovery proceedings;
2. Holding in-camera hearings;
3. Sealing the records of the action; and
4. Ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

1986, c. 210.

§59.1-340. Statute of limitations.

An action for misappropriation shall be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

1986, c. 210.

§59.1-341. Effect on other law.

A. Except as provided in subsection B of this section, this chapter displaces conflicting tort, restitutionary, and other law of this Commonwealth providing civil remedies for misappropriation of a trade secret.

B. This chapter does not affect:

1. Contractual remedies whether or not based upon misappropriation of a trade secret; or
2. Other civil remedies that are not based upon misappropriation of a trade secret; or
3. Criminal remedies, whether or not based upon misappropriation of a trade secret.

1986, c. 210.

§59.1-342. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§59.1-343. Time of taking effect.

This chapter shall become effective on July 1, 1986, and shall not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the chapter also shall not apply to misappropriation that occurs after the effective date.

1986, c. 210.

Utility Consumer Services Cooperatives and Utility Aggregation Cooperatives

§56-231.15. Definitions.

The following terms, whenever used or referred to in this article, shall have the following meanings, unless a different meaning clearly appears from the context:

"Acquire" means and includes construct, or acquire by purchase, lease, devise, gift or the exercise of the power of eminent domain, or by other mode of acquisition.

"Affiliate" means a separate affiliated or subsidiary corporation or other separate legal entity.

"Board" means the board of directors of a cooperative formed under or subject to this article.

"Commission" means the State Corporation Commission of Virginia.

"Cooperative" means a utility consumer services cooperative formed under or subject to this article or a distribution cooperative formed under the former Distribution Cooperatives Act (§ [56-209](#) et seq.).

"Energy" means and includes any and all forms of energy no matter how or where generated or produced.

"Federal agency" means and includes the United States of America, the President of the United States of America, the Tennessee Valley Authority, the Federal Administrator of the Rural Utility Service, the Southeastern Power Administration, the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Federal Communications Commission and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.

"HVACR" means heating, ventilation, air conditioning and refrigeration.

"Improve" means and includes construct, reconstruct, replace, extend, enlarge, alter, better or repair.

"Law" means any act or statute, general, special or local, of this Commonwealth.

"Member" means and includes each natural person signing the articles of incorporation of a cooperative and each person admitted to membership therein pursuant to law or its bylaws.

"Municipality" means any city or incorporated town of the Commonwealth.

"Obligations" means and includes bonds, interim certificates or receipts, notes, debentures, and all other evidences of indebtedness either issued by, or the payment of which is assumed or contractually undertaken by, a cooperative.

"Patronage capital" includes all amounts received by a cooperative from sales of electric power or electric distribution services, or both, to members in excess of the cooperative's cost of furnishing electric power or distribution services, or both, to members and such other margins as determined by the board of directors.

"Person" means and includes natural persons, firms, associations, cooperatives, corporations, limited liability companies, business trusts, partnerships, limited liability partnerships and bodies politic.

"Propane or fuel oil equipment" means equipment and related systems to store or use propane or fuel oil products.

"Regulated utility services" means utility services that are subject to regulation as to rates or service by the Commission.

"System" means and includes any plant, works, system, facilities, equipment or properties, or any part or parts thereof, together with all appurtenances thereto, used or useful in connection with the generation, production, transmission or distribution of energy or in connection with other utility services.

"Traditional cooperative activity" means any business, service or activity in which cooperatives in Virginia have traditionally engaged and that is incidental to and substantially related to the electric utility business conducted by a cooperative on or before July 1, 1999, provided that traditional cooperative activity does not include any program to (i) buy or maintain an inventory of HVACR equipment or household appliances; (ii) install or service any such equipment or household appliances for customers, unless such service is not provided by the cooperative but by a third party individual, firm or corporation licensed to perform such service; (iii) sell HVACR equipment or household appliances to customers metered and billed on residential rates; (iv) sell HVACR equipment to customers other than those metered and billed on residential rates except where such sale is an incidental part of providing other energy services or providing other traditional cooperative activities; (v) sell or distribute propane or fuel oil; sell, install or service propane or fuel oil equipment; or maintain or buy an inventory of propane or fuel oil equipment for resale; or (vi) serve as a coordinator of nonelectric energy services or provide engineering consulting services except when such energy or engineering services are an incidental part of a marketing effort to provide other energy or engineering services or as a part of providing services that are other traditional cooperative activities.

"Utility services" means any products, services and equipment related to energy, telecommunications, water and sewerage.

1999, c. [874](#); 2000, cc. [944](#), [964](#), [989](#), [999](#).

§56-231.16. Organization; purpose.

A. Any number of natural persons not less than five may, by executing, filing and recording articles of incorporation as hereinafter set forth, form a cooperative, either with or without capital stock, not organized for pecuniary profit, for the principal purpose of making energy, energy services, and other utility services available at the lowest cost consistent with sound economy and prudent management of the business of such cooperative and such other purposes as its membership shall approve: (i) provided, however, that within its certificated service territory, no such cooperative shall, prior to July 1, 2000, undertake or initiate any new program (a) to buy or maintain an inventory of HVACR equipment or household appliances, (b) to install or service any such equipment or household appliances for customers, unless such service is not provided by the cooperative but by a third party individual, firm or corporation licensed to perform such service, (c) to sell HVACR equipment or household appliances to customers metered and billed on residential rates, (d) to sell HVACR equipment to customers other than those metered and billed on residential rates except where such sale is an incidental part of providing other energy services or providing traditional cooperative activities, (e) to sell or distribute propane or fuel oil; sell, install or service propane or fuel oil equipment; or maintain or buy an inventory of propane or fuel oil equipment for resale, or (f) to serve as a coordinator of nonelectric energy services or provide engineering consulting services except when such energy or engineering services are an incidental part of a marketing effort to provide other energy or engineering services or as a part of providing services that are traditional cooperative activities; (ii) provided further, that notwithstanding clause (i), such cooperative may engage within its certificated service territory in any of the activities enumerated in clause (i) that (a) have received State Corporation Commission approval prior to February 1, 1998, (b) such cooperative is ordered or required to undertake by any jurisdictional court or regulatory authority, (c) were lawfully undertaken prior to February 1, 1998, (d) are specifically permitted by statute, or (e) are undertaken by any other regulated public service company or its unregulated affiliate within such cooperative's certificated service territory; and (iii) also provided that such cooperative or its affiliate may not undertake such activities as are prohibited by clause (i) within the certificated service territory of another public service company unless such activities are undertaken by such public service company or its unregulated affiliate within such cooperative's certificated service territory. In addition, such cooperative may establish one or more subsidiaries to engage in any other business activities not prohibited by law; notwithstanding the foregoing, no such

subsidiary may engage in any business activities that the cooperatives are prohibited from engaging in under this section. For purposes of determining whether a cooperative is formed not for pecuniary profit, the establishment of one or more affiliates thereof on a for-profit basis shall not disqualify such entity from being formed as a cooperative pursuant to this article.

B. Nothing in this article shall be construed to authorize a cooperative formed pursuant to this article, or any affiliate thereof, to engage, on a not-for-profit basis, within either the cooperative's certificated service territory or in the certificated service territory of another public service company, in the sale of products, the provision of services, or other business activity, except for regulated electric utility services, unregulated sales of electric power to its members within its certificated service territory, and traditional cooperative activities. However, if such products or services are not currently provided by any person other than a cooperative formed under or subject to this chapter or its affiliate and the Commission determines that no such other person is likely, within a reasonable time, to effectively provide such products and services in such territory, an affiliate of a cooperative may provide such products or services on a not-for-profit basis. The Commission shall also permit an affiliate of a cooperative formed under or subject to this chapter to provide such products or services on a not-for-profit basis upon a finding that the affiliate will not receive the benefit of any federal income tax exemption that is not available to persons other than cooperatives and will not receive the benefit of any federally guaranteed or subsidized financing that is not available to persons other than cooperatives; and provided further that nothing in this subsection shall prohibit the continued operation of any business activities of any not-for-profit cooperative or affiliate formed, operating, and actively providing products or services to customers on or before July 1, 1999.

1999, c. [874](#); 2000, cc. [964](#), [989](#).

§56-231.17. Articles of incorporation.

A. The articles of incorporation mentioned in § [56-231.16](#) shall be entitled and endorsed "Articles of Incorporation of the Electric Cooperative" or "Articles of Incorporation of the Utility Consumer Services Cooperative" (the blank space being filled in with the distinguishing part of the name of the cooperative) and shall state:

1. The name of the cooperative, which name need not contain the word "corporation" or "incorporated" but shall be such as to distinguish it from any other cooperative.
2. To the extent it conducts regulated electric distribution operations, a reasonable designation of the territory in which such operations are principally to be conducted.
3. The location of its principal office and post office address thereof.
4. The maximum number of directors, which shall be not less than five.
5. The names and post office addresses of the directors who are to manage the affairs of the cooperative for the first year of its existence, or until their successors are chosen.
6. The period, if any, limited for the duration of the cooperative.
7. The terms and conditions upon which persons shall be admitted to membership in the cooperative, and in the case of a cooperative incorporating with capital stock, a statement of the maximum and minimum amount of the capital stock of the cooperative and its division into shares.
8. In the case of a cooperative incorporating on or after July 1, 1999, the registered office and registered agent of the cooperative.

B. The articles of incorporation may also contain any provision not inconsistent with law or the provisions of Chapters 9 (§ [13.1-601](#) et seq.) and 10 (§ [13.1-801](#) et seq.) of Title 13.1 which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the cooperative; and any provision as to the plan of financial organization, or relating to the internal regulation or government of the cooperative, its directors and members; provided, however, that subsections D through G of § [13.1-620](#) and subdivision 1 of § [13.1-825](#) shall not apply to any affiliate or subsidiary of a cooperative.

1999, c. [874](#).

§56-231.18. Name of other corporations not to include term "electric cooperative" or "utility consumer services cooperative".

The words "electric cooperative" or "utility consumer services cooperative" shall not be used in the corporate name of corporations other than (i) those subject to the provisions of this chapter, (ii) nonstock corporations of which cooperatives are members, and (iii) corporations, all of the stock of which is owned by cooperatives.

1999, c. [874](#); 2000, cc. [944](#), [999](#).

§56-231.19. Filing articles of incorporation; effect thereof; other provisions of law applicable.

The natural persons executing the articles of incorporation shall be residents of the territory in which the principal operations of the cooperative are to be conducted who intend to use utility services to be furnished by the cooperative. The articles of incorporation shall be subscribed by at least five such persons and acknowledged by them before an officer authorized by the law of this Commonwealth to take and certify acknowledgments of deeds and conveyances. When so acknowledged the articles shall be filed in accordance with the provisions of Article 3 (§ [13.1-618](#) et seq.) of Chapter 9 or Article 3 (§ [13.1-818](#) et seq.) of Chapter 10 of Title 13.1. When so filed the articles of incorporation, or certified copies thereof, shall be received in all the courts of this Commonwealth and elsewhere as prima facie evidence of the facts contained therein, and of the due incorporation of such cooperative. All of the provisions of the Virginia Stock Corporation Act (§ [13.1-601](#) et seq.), and the Virginia Nonstock Corporation Act (§ [13.1-801](#) et seq.), insofar as not inconsistent with this article are hereby made applicable to such stock and nonstock cooperatives, respectively; provided, however, that subsections D through G of § [13.1-620](#) and subdivision 1 of § [13.1-825](#) shall not apply to any affiliate or subsidiary of a cooperative. When the charter is filed in the office of the State Corporation Commission, the proposed cooperative described therein, under its designated name, shall be and constitute a body corporate, and, with respect to its providing regulated utility services, with all of the applicable powers provided for in § [56-49](#). A cooperative formed prior to July 1, 1999, need not have a registered office or registered agent. A stock or nonstock cooperative formed thereafter shall comply with § [13.1-634](#) or § [13.1-833](#), respectively.

1999, c. [874](#).

§56-231.20. Repealed.

Repealed by Acts 2000, cc. [944](#), [999](#).

§56-231.21. Dissolution and termination of cooperatives.

A stock or nonstock cooperative may be dissolved in the manner prescribed by Article 16 (§ [13.1-742](#) et seq.) of Chapter 9 or Article 13 (§ [13.1-902](#) et seq.) of Chapter 10 of Title 13.1, respectively.

1999, c. [874](#).

§56-231.22. Charter amendments.

A cooperative may amend its articles of incorporation to change its corporate name, to increase or reduce the number of its directors or change any other provision therein; however, no cooperative shall amend its articles of incorporation to embody therein any purpose, power or provision which would not be authorized if original articles including such additional or changed purpose, power or provision were offered for filing at the time articles under this section are offered. Such amendment may be accomplished in the method prescribed in Chapters 9 (§ [13.1-601](#) et seq.) and 10 (§ [13.1-801](#) et seq.) of Title 13.1.

1999, c. [874](#).

§56-231.23. General powers granted.

Each cooperative formed under this article shall have power to do any and all lawful acts or things including, but not limited to the power:

1. To produce, generate, gather, store, transport, transmit, distribute, buy and sell energy and energy-related products.
2. To sue and be sued.
3. To have a seal and alter the same at pleasure.
4. To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay therefor in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.
5. To render service and to acquire, own, operate, maintain and improve a system or systems.
6. To accept gifts or grants of money or of property, real or personal, from any person, municipality or federal agency and to accept voluntary or uncompensated services.
7. To sell, lease, mortgage or otherwise encumber or dispose of all or any parts of its property, as hereinafter provided.
8. To contract debts, borrow money and to issue or assume the payment of bonds, and other obligations.
9. To fix, maintain and collect reasonable fees, rents, tolls and other charges for service rendered.

10. To exercise, with respect to its providing regulated utility service, all the powers set forth in § [56-49](#), including the power of eminent domain as prescribed for other public service corporations by general law.

11. To assist its members and nonmember customers, by loans or otherwise, in the acquisition by them of such installation and wiring, and the obtaining of such machinery, equipment and appliances, as will enable them to secure the greatest benefit from the use of utility services supplied by the cooperative.

12. To issue nonassessable nonvoting common and preferred capital stock or similar securities and pay dividends thereon.

13. To become a member or stockholder in one or more other cooperatives or corporations created to engage in any business not prohibited by law, including, but not limited to, other types of public service company business.

14. To perform any and all of the foregoing acts and do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person, federal agency or municipality.

1999, c. [874](#); 2000, cc. [944](#), [999](#).

§56-231.24. Power to dispose of property.

No cooperative may sell, lease or dispose of all or substantially all of its property (other than property which, in the judgment of the board, is neither necessary nor useful in operating and maintaining the cooperative's system and which in any one year shall not exceed fifty percent in value of the value of all the property of the cooperative, or merchandise), unless authorized to do so by the votes of at least a two-thirds majority of its members; however, a cooperative (i) may mortgage, finance (including, without limitation, pursuant to a sale and leaseback or lease and lease-back transaction), or otherwise encumber its assets by a vote of at least two-thirds of its board of directors; (ii) may sell or transfer its assets to another cooperative upon the vote of a majority of its members at any regular or special meeting if the notice of such meeting contains a copy of the terms of the proposed sale or transfer; (iii) may sell or transfer distribution system facilities to a city or town at any time following the annexation of additional territory pursuant to § [56-265.4:2](#) by a vote of at least two-thirds of its board of directors; or (iv) may sell, lease or dispose of its property to an affiliate pursuant to a plan approved by the Commission in accordance

with subsection B of § [56-590](#) by a vote of at least two-thirds of the members of the Board.

1999, c. [874](#); 2000, cc. [944](#), [999](#).

§56-231.25. Power to issue obligations.

A cooperative shall have power and is hereby authorized, from time to time, to issue its obligations for any corporate purpose. Such obligations may be authorized by resolution of the board, and may bear such date or dates, mature at such time or times, bear such interest, be payable at such times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, as such resolution may provide. Such obligations may be sold in such manner and upon such terms as the board may determine. Pending the preparation or execution of definitive bonds, or obligations, interim receipts or certificates of temporary bonds may be delivered to the purchaser of such obligations.

1999, c. [874](#); 2000, cc. [944](#), [999](#).

§56-231.26. Covenants in connection with obligations.

In connection with the issuance of any obligations a cooperative may make covenants or agreements and do any and all acts or things that a corporation can make or do under the laws of this Commonwealth.

1999, c. [874](#).

§56-231.27. Power to purchase its own obligations.

A cooperative may purchase any obligation issued by it.

1999, c. [874](#); 2000, cc. [944](#), [999](#).

§56-231.28. Board of directors of cooperatives.

Each cooperative shall have a board of directors of five or more members, which board shall constitute the governing body of the cooperative. Only members and the officers, directors or employees of any member shall be eligible for election to the board of directors. The directors, other than those named in the articles of incorporation, shall be elected annually by the members entitled to vote, unless the bylaws provide that, in lieu of electing the whole number of directors annually, the directors shall be divided into two, three or four classes at the first or any subsequent annual meeting. If the bylaws so provide, each class shall be as nearly equal in

number as possible, with the term of office of one class to expire every year. If the number of classes changes, then the board of directors shall have authority to determine how directors will be allocated among the new number of classes, provided that no director's term will exceed, without reelection, a number of years equal to the number of classes of directors. The board of directors shall have authority to fix the compensation of directors. The directors shall elect annually from their own number a president of the board or a chairman of the board; and one or more vice-presidents of the board, vice-chairmen of the board or both. They may also elect or appoint annually (i) a president of the cooperative, (ii) one or more vice-presidents of the cooperative, (iii) a secretary, (iv) a treasurer, and (v) such other officers as the board deems necessary. No person shall hold any office unless that person is a director or employee of the cooperative. The offices of secretary and treasurer may be held by the same person.

1999, c. [874](#); 2000, cc. [944](#), [999](#).

§56-231.29. Powers of board of directors.

The board of directors of a cooperative shall have power to do all things necessary or incidental in conducting the business of the cooperative, including, but not limited to the power:

1. If authorized by the articles of incorporation, or by resolution of its members having voting power, to adopt and amend bylaws for the management and regulation of the affairs of the cooperative, subject, however, to the right of the members to alter or repeal such bylaws. The bylaws of a cooperative may make provisions, not inconsistent with law or its articles of incorporation, regulating the admission, suspension or expulsion of members; the transfer of membership, the fees and dues of members and the termination of membership on nonpayment of dues or otherwise; the number, times and manner of choosing, qualifications, terms of office, official designations, powers, duties and compensation of its officers and directors; defining a vacancy in the board or in any office and the manner of filling it; the number of members, not less than 2.5 percent of the total number of members, to constitute a quorum at meetings; the date of the annual meeting and the giving of notice thereof and the holding of special meetings and the giving of notice thereof; the terms and conditions upon which the cooperative is to render service to its members; the disposition of the revenues and receipts of the cooperative; and regular and special meetings of the board and the giving of notice thereof.

2. To appoint agents and employees and to fix their compensation and the compensation of the officers of the cooperative.
3. To execute all instruments.
4. To make its own rules and regulations as to its procedure.

1999, c. [874](#).

§56-231.30. Rights and liabilities of members.

A. A cooperative may have one or more classes of members. If the cooperative has more than one class of members, the designation of each class and the qualifications and rights of the members of each class shall be set forth in the bylaws of the cooperative.

B. A cooperative shall issue to its members certificates of membership and each member shall be entitled to only one vote at the meetings of the members of the cooperative. The liability of each member shall be limited to the unpaid portion of his membership fee or subscription to capital stock, and any unpaid bills for utility services or other services, commodities or merchandise purchased from the cooperative, provided that nothing in this section shall be construed to limit the exposure of any unrefunded patronage capital to the lawful creditors of a cooperative. The equity of members of a nonstock cooperative shall be set by the board in accordance with cooperative principles. A cooperative shall be operated on a not-for-profit basis, with the exception of for-profit affiliates, for the mutual benefit of the members. The bylaws of a cooperative or its contract with the members shall contain such provisions relative to the disposition of margins as may be necessary and appropriate to establish and maintain its nonprofit and cooperative character.

1999, c. [874](#); 2000, cc. [944](#), [964](#), [989](#), [999](#).

§56-231.31. Payment of certain patronage capital to spouse or next of kin of deceased person.

When there is held by any cooperative any patronage capital to the credit of a deceased person, in an amount not exceeding \$10,000, upon whose estate there shall have been no qualification, it shall be lawful for such electric cooperative, after 120 days from the death of such person, to pay such balance to his or her spouse, and if none, to his or her next of kin, whose receipt therefor shall be a full discharge and acquittance to such electric cooperative to all persons whomsoever on account of such patronage capital.

1999, c. [874](#).

§56-231.31:1. Donation of certain patronage capital to the cooperative.

Notwithstanding any other provision of law, when there is held by any cooperative any retired patronage capital to the credit of (i) a deceased person who has no spouse or next of kin identified in the records of the cooperative or (ii) a member or former member who has terminated service and who does not have a current address on file with the cooperative, then the bylaws or member agreements of the cooperative may provide that such credits shall be deemed to have been transferred as a gift to the cooperative and shall thereafter be the property of the cooperative; however, after July 1, 1999, such credits may be deemed gifts to the cooperative only if the cooperative publishes notice of such credit in its regular member publication and a publication of general circulation, and such credit is not claimed by such member, former member or next of kin within 120 days of such publication or such longer period as set out in the bylaws or member agreements of the cooperative. If there is no such provision in the cooperative's bylaws or member agreement, or if there is no publication, then any unclaimed credit shall be treated in accordance with the Uniform Disposition of Unclaimed Property Act (§ [55-210.1](#) et seq.). This section shall apply only to cooperatives organized under or governed by this article for the purpose of providing regulated electric utilities service on a mutual, not-for-profit basis, with a board democratically elected by its member consumers.

1999, cc. [939](#), [940](#).

§56-231.32. Service to members.

No person shall become or remain a member unless such person shall use utility services supplied by such cooperative and shall have complied with the terms and conditions in respect to membership contained in the bylaws of such cooperative.

However, nothing in this article shall prevent a cooperative from engaging in other lawful activities or enterprises. Should the cooperative acquire any utility facilities already dedicated or devoted to the public use it may, for the purpose of continuing existing service and avoiding hardship, continue to serve the persons served directly from such facilities at the time of such acquisition without requiring that such persons become members. Such nonmember utility service customers shall have the right to become members upon nondiscriminatory terms. The charges for regulated utility services to such nonmembers shall be on a cost basis similar to the charges to members.

1999, c. [874](#).

§56-231.33. Adequate service; rates.

Regulated utility services offered by a cooperative shall be reasonably adequate, subject to the regulations of the Commission, as provided in § [56-231.34](#). The charge made by any such cooperative for any regulated utility service rendered or to be rendered, either directly or in connection therewith, shall be nondiscriminatory, reasonable and just, and every discriminatory, unjust or unreasonable charge for such regulated utility service is prohibited and declared unlawful. Reasonable and just charges for service within the meaning of this section shall be such charges as shall produce sufficient revenue to pay all legal and other necessary expenses incident to the operation of the system, and shall include but not be limited to maintenance cost, operating charges, interest charges on bonds or other obligations, to recover such stranded costs and transition costs as may be authorized in this title, to provide for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as reasonable reserves and funds for making replacements and also for the payment of any taxes that may be assessed against such cooperative or its property, it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such cooperative property in a sound physical and financial condition to render adequate and efficient service and additional amounts that must be realized by the cooperative to meet the requirement of any rate covenant with respect to coverage of principal of and interest on its debt contained in any indenture, mortgage, or other contract with holders of its debt, provided that any such indenture, mortgage or other contract must have been approved by the Commission pursuant to Chapter 3 (§ [56-55](#) et seq.) of this title. Any rate for regulated utility services that is too low to meet the foregoing requirements shall be unlawful.

1999, c. [874](#); 2000, cc. [944](#), [999](#).

§56-231.34. Regulation by Commission.

The regulated utility services of a cooperative shall be subject to the jurisdiction of the Commission in the same manner and to the same extent as are regulated utility services provided by other persons under the laws of this Commonwealth. All other business activities of a cooperative and its affiliates shall be subject to the jurisdiction of the Commission to the extent provided by § [56-231.34:1](#) and any other applicable laws of the Commonwealth.

1999, c. [874](#).

§56-231.34:1. Separation of regulated and unregulated businesses.

A. No cooperative that engages in a regulated utility service shall conduct any unregulated business activity, other than traditional cooperative activities, except in or through one or more affiliates of such cooperative, provided that a cooperative that provides regulated utility services shall have the right to offer and make unregulated sales of electric power to its members within its certificated service territory. No such affiliates, formed to engage in any business that is not a regulated utility service, shall engage in regulated utility services.

B. The Commission shall promulgate rules and regulations, governing the conduct of the cooperatives, to promote effective and fair competition between (i) affiliates of cooperatives that are engaged in business activities which are not regulated utility services and (ii) other persons engaged in the same or similar businesses. The rules and regulations shall be effective by July 1, 2000, and shall include provisions:

1. Prohibiting cost-shifting or cross-subsidies between a cooperative and its affiliates;
2. Prohibiting anticompetitive behavior or self-dealing between a cooperative and its affiliates;
3. Prohibiting a cooperative from engaging in discriminatory behavior towards non-affiliated entities; and
4. Establishing codes of conduct detailing permissible relations between a cooperative and its affiliates. In establishing such codes, the Commission shall consider, among other things, whether and, if so, under what circumstances and conditions (i) a cooperative may provide its affiliates with customer lists or other customer information, sales leads, procurement advice, joint promotions, and access to billing or mailing systems unless such information or services are made available to third parties under the same terms and conditions, (ii) the cooperative's name, logos or trademarks may be used in promotional, advertising or sales activities conducted by its affiliates, and (iii) the cooperative's vehicles, equipment, office space and employees may be used by its affiliates.

C. Nothing in this article shall be deemed to abrogate or modify the Commission's authority under Chapter 4 (§ [56-76](#) et seq.) of this title.

1999, c. [874](#); 2000, cc. [944](#), [999](#).

§56-231.34:2. Right of action; violation of rules or regulations.

A. Any person who suffers loss as the proximate result of a violation by a cooperative or its affiliate of any rule or regulation adopted by the Commission pursuant to § [56-231.34:1](#) shall be entitled to initiate an action to recover actual damages or \$500, whichever is greater, and to obtain injunctive relief. Any action pursuant to this section shall be commenced within two years after its accrual.

B. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person may also be awarded reasonable attorney's fees and court costs.

C. In any case arising under this section, no liability shall be imposed upon any cooperative or its affiliate which shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of any rule or regulation adopted by the Commission pursuant to § [56-231.34:1](#) was an act or practice over which the same had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subsection B to any person aggrieved as a result of an unintentional violation.

1999, c. [874](#).

§56-231.35. Charter fees, etc.

The general laws relating to fees and other charges in connection with issuing charters, amendments thereto and dissolutions of corporations organized on a mutual basis or without capital stock shall apply to cooperatives organized under the provisions of this article.

1999, c. [874](#).

§56-231.36. Construction of article; conflicting laws.

This article is to be liberally construed and the enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things, and any provisions of other laws in conflict with the provisions of this article shall not apply to cooperatives operating hereunder. Any object, purpose, power, manner, method or thing which is not specifically prohibited is permitted.

1999, c. [874](#).

§56-231.37. How article cited.

This article may be cited as the "Utility Consumer Services Cooperatives Act."

1999, c. [874](#).

§56-231.38. Definitions.

As used in this article:

"Affiliate" means a separate affiliated or subsidiary corporation or other separate legal entity.

"Board" means any board of directors of a cooperative formed under or which becomes subject to this article.

"Commission" means the State Corporation Commission of Virginia.

"Cooperative" means a power supply cooperative formed under the former Power Supply Cooperatives Act (§ [56-231.1](#) et seq.) or a utility aggregation cooperative formed under this article or which becomes subject to this article.

"Energy" means and includes all energy, regardless of how or where it is generated or produced.

"HVACR" means heating, ventilation, air conditioning and refrigeration.

"Member" means any person that holds any class of membership in a cooperative.

"Obligations" means all evidences of indebtedness issued by or the payment of which is assumed by a cooperative.

"Patronage capital" includes all amounts received by a cooperative from the sale of electric power to members in excess of the cooperative's cost of furnishing electric power to members and such other margins as determined by the Board.

"Person" means and includes natural persons, firms, associations, cooperatives, corporations, limited liability companies, business trusts, partnerships, limited liability partnerships and bodies politic.

"Propane or fuel oil equipment" means equipment and related systems to store or use propane or fuel oil products.

"Regulated utility services" means utility services that are subject to regulation as to rates or service by the Commission.

"System" means any plant, works, facility, or property used or useful in connection with the purchase, generation, sale or transmission of energy, utility products and services, or both.

"Traditional cooperative activity" means any business, service or activity in which cooperatives in Virginia have traditionally engaged and that is incidental to and substantially related to the electric utility business conducted by a cooperative on or before July 1, 1999; provided, however, that traditional cooperative activity does not include any program to (i) buy or maintain an inventory of HVACR equipment or household appliances; (ii) install or service any such equipment or household appliances for customers, unless such service is not provided by the cooperative but by a third party individual, firm or corporation licensed to perform such service; (iii) sell HVACR equipment or household appliances to customers metered and billed on residential rates; (iv) sell HVACR equipment to customers other than those metered and billed on residential rates except where such sale is an incidental part of providing other energy services or providing other traditional cooperative activities; (v) sell or distribute propane or fuel oil; sell, install or service propane or fuel oil equipment; or maintain or buy an inventory of propane or fuel oil equipment for resale; or (vi) serve as a coordinator of nonelectric energy services or provide engineering consulting services except when such energy or engineering services are an incidental part of a marketing effort to provide other energy or engineering services or as a part of providing services that are other traditional cooperative activities.

"Utility services" means any products, services, and equipment related to energy, telecommunications, water and sewerage.

1999, c. [874](#); 2000, cc. [944](#), [964](#), [989](#), [999](#).

§56-231.39. Organization and purpose.

A. Subject to § [56-231.50:1](#), any utility consumer service cooperative or utility aggregation cooperative may form a cooperative in accordance with this article, either stock or nonstock, not for pecuniary profit, with the exception of for-profit affiliates, for the purpose of purchasing, generating or transmitting energy products and services for sale or resale, operating or participating in an independent system operator, regional transmission entity, regional power exchange, or both, and any other lawful purpose, consistent with sound business principles and prudent management practices; (i) provided, however, that within the certificated service territory of any member distribution cooperative that existed as of January 1, 1999, no such cooperative

shall, prior to July 1, 2000, undertake or initiate any new program (a) to buy or maintain an inventory of HVACR equipment or household appliances, (b) to install or service any such equipment or household appliances for customers, unless such service is not provided by the cooperative but by a third party individual, firm or corporation licensed to perform such service, (c) to sell HVACR equipment or household appliances to customers who are metered and billed on residential rates, (d) to sell HVACR equipment to customers other than those metered and billed on residential rates except where such sale is an incidental part of providing other energy services or providing traditional cooperative activities, (e) to sell or distribute propane or fuel oil; sell, install or service propane or fuel oil equipment; or maintain or buy an inventory of propane or fuel oil equipment for resale, or (f) to serve as a coordinator of nonelectric energy services or provide engineering consulting services except when such energy or engineering services are an incidental part of a marketing effort to provide other energy or engineering services or as a part of providing services that are traditional cooperative activities; (ii) provided further, that notwithstanding clause (i), such cooperative may, within the certificated service territory of a specific distribution cooperative that existed as of January 1, 1999, and then only to the extent that such specific distribution cooperative could lawfully do so, engage in any of the activities enumerated in clause (i) that (a) have received State Corporation Commission approval prior to February 1, 1998, (b) such cooperative is ordered or required to undertake by any jurisdictional court or regulatory authority, (c) were lawfully undertaken prior to February 1, 1998, (d) are specifically permitted by statute, or (e) are undertaken by any other regulated public service company or its unregulated affiliate within such distribution cooperative's certificated service territory; and (iii) also provided that such cooperative or its affiliate may not undertake such activities as are prohibited by clause (i) within the certificated service territory of another public service company unless such activities are undertaken by such public service company or its unregulated affiliate within the certificated service territory of a specific distribution cooperative existing as of January 1, 1999, and the certificated service territories of the public service company and the specific distribution cooperative overlap. In addition, such cooperative may establish one or more subsidiaries to engage in any other business activities not prohibited by law. Notwithstanding the foregoing, no such subsidiary may engage in any business activities that the cooperatives are prohibited from engaging in under this section. For purposes of determining whether a cooperative is formed not for pecuniary profit, the establishment of

one or more affiliates thereof on a for-profit basis shall not disqualify such entity from being formed as a cooperative pursuant to this article.

B. Nothing in this article shall be construed to authorize a cooperative formed pursuant to this article, or any affiliate thereof, to engage, within any political subdivision of the Commonwealth on a not-for-profit basis, in the sale of products, the provision of services, or other business activity, except for electric power services and traditional cooperative activities. However, if such business activities are not currently provided by any person other than a cooperative formed under or subject to this chapter or its affiliate and the Commission determines that no such other person is likely, within a reasonable time, to effectively provide such products and services in such political subdivision, an affiliate of a cooperative may provide such products or services on a not-for-profit basis. The Commission shall also permit an affiliate of a cooperative formed under or subject to this chapter to provide such products or services on a not-for-profit basis upon a finding that the affiliate will not receive the benefit of any federal income tax exemption that is not available to persons other than cooperatives and will not receive the benefit of any federally guaranteed or subsidized financing that is not available to persons other than cooperatives; and provided further, that nothing in this subsection shall prohibit the continued operation of any business activities of any not-for-profit cooperative or affiliate formed, operating, and actively providing products or services to customers on or before July 1, 1999.

1999, c. [874](#); 2000, cc. [964](#), [989](#).

§56-231.40. Names.

The words "electric cooperative" or "utility aggregation cooperative" shall not be used in the corporate name of any corporation other than those subject to this chapter, or their wholly owned subsidiaries.

1999, c. [874](#); 2000, cc. [944](#), [999](#).

§56-231.41. Articles of incorporation.

A. The articles of incorporation shall be entitled "Articles of Incorporation of Cooperative" (the blank space being filled in with the distinguishing part of the name of the cooperative) and shall state:

1. The name of the cooperative, which name need not contain the word "corporation" or "incorporated," but shall be such as to distinguish it from any other cooperative;

2. The location and post office address of its principal office and its registered agent;
3. The number of directors;
4. The names and post office addresses of the directors who are to manage the affairs of the cooperative for the first year of its existence, or until their successors are chosen;
5. The duration of the cooperative if its duration is to be limited; and
6. In the case of a cooperative incorporating with capital stock, a statement of the maximum and minimum amount of the capital stock of the cooperative, and its division into shares.

B. The articles of incorporation may also contain any provision not inconsistent with law or the provisions of Title 13.1, which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the cooperative; and any provision as to the plan of financial organization, or relating to the internal regulation or the government of the cooperative, its directors and members; provided, however, that subsections D through G of § [13.1-620](#) and subdivision 1 of § [13.1-825](#) shall not apply to any affiliate or subsidiary of a cooperative.

1999, c. [874](#).

§56-231.42. Bylaws.

The original bylaws of a cooperative shall be adopted by the members of such cooperative. Thereafter, such cooperative's board shall adopt, amend, or repeal the bylaws unless otherwise provided in the articles of incorporation or bylaws, subject to the rights of the members to alter or repeal such bylaws. The bylaws shall set forth the rights and duties of directors, officers and members and other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this article, the cooperative's articles of incorporation or other applicable law. The bylaws shall contain provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain the cooperative's nonprofit character.

1999, c. [874](#).

§56-231.43. Powers.

A. Each cooperative formed under this article shall have power to do any and all lawful acts or things, including, but not limited to the power:

1. To purchase, sell, generate, store, transport or transmit energy, energy services, products and equipment.
 2. To sue and be sued.
 3. To have a seal and alter the same at pleasure.
 4. To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.
 5. To render service and to acquire, own, operate, maintain and improve a system or systems.
 6. To accept gifts or grants of money or of property, real or personal, and to accept voluntary and uncompensated services.
 7. To sell, lease, mortgage or otherwise encumber or dispose of all or any parts of its property.
 8. To contract debts, borrow money and to issue or assume the payment of bonds and other obligations.
 9. To fix, maintain and collect reasonable fees, rents, tolls and other charges for service rendered.
 10. To exercise, with respect to its construction of regulated transmission facilities as a power supply cooperative, all the powers set forth in § [56-49](#), including the power of eminent domain as prescribed for other public service corporations by general law.
 11. To assist its members, by loans or otherwise, in the acquisition by them of energy and electrical, technological and other equipment related to the business of the cooperative.
 12. To issue nonassessable nonvoting common and preferred capital stock or similar securities and pay dividends thereon.
 13. To perform any and all of the foregoing acts through or by means of its own officers, agents and employees, or by contract.
- B. A cooperative shall have the power and is authorized, from time to time, to issue its obligations for any corporate purpose.

1. The obligations may be authorized by resolution of the board, and may bear any date or dates, mature at any time or times, bear any interest, be payable at any times, be in any denominations, be in any form, either coupon or registered, carry any registration privileges, be executed in any manner, be payable in any medium of payment, at any place or places, and be subject to any terms of redemption, as provided by the resolution.

2. These obligations may be sold in the manner and upon the terms as the board may determine. Pending the preparation or execution of definitive bonds or obligations, interim receipts or certificates of temporary bonds may be delivered to the purchaser of such obligations.

C. A cooperative may purchase any of its own obligations.

D. The Virginia Securities Act (§ [13.1-501](#) et seq.) shall not apply to membership certificates issued by a cooperative or its cooperative affiliates, or subsidiaries organized prior to January 1, 1999.

1999, c. [874](#); 2000, cc. [944](#), [999](#).

§56-231.44. Board of directors.

A. Each cooperative shall have a board of directors consisting of at least five directors, which shall constitute the governing body of such cooperative. The board, other than those named in the articles of incorporation, shall be elected annually by the members. The bylaws may provide in lieu of electing the whole number of directors annually, that the directors may be divided into classes and that the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he or she is elected and until his or her successor is elected except in cases of ex officio directors.

The directors shall be elected by the members of the cooperative. At a minimum, there shall be at least one director elected from the membership, officers, directors or employees of each member of the cooperative that is itself a cooperative subject to any article of this chapter. Additional directors may be elected from the membership, from the members, officers, directors or employees of any member of the cooperative, or from employees of the cooperative. The board of directors shall have the authority to fix the compensation of the directors.

B. The board of directors of a cooperative shall have the power to do all things necessary or incidental in conducting the business of such cooperative, including, but not limited to the power:

1. To adopt and amend bylaws for the management and regulation of the affairs of such cooperative unless otherwise provided in the articles of incorporation or bylaws, subject to the rights of the members to alter or repeal such bylaws. The bylaws of a cooperative may make provisions not inconsistent with law or its articles of incorporation, regulating:

- a. The admission, suspension or expulsion of members;
- b. The transfer or classification of membership;
- c. The fees and dues of members and the termination of membership on nonpayment of dues;
- d. The number, times and manner of choosing or electing, qualifications, terms of office, official designations, powers, duties and compensation of its directors and officers;
- e. The filling of a vacancy in the board or in any office;
- f. The number of board members or member-delegates constituting a quorum at meetings;
- g. The date of the annual meeting and the giving of notice thereof and the holding of special meetings and the giving of notice thereof;
- h. The terms and conditions upon which such cooperative is to render service to its members;
- i. The disposition of capital contributions; and
- j. The establishment of classes of membership, the qualifications therefor and the rights and obligations thereof.

2. To appoint agents and employees and to fix their compensation and the compensation of the officers of the cooperative.

3. To execute all instruments.

4. To make its own rules and regulations as to its procedure.

1999, c. [874](#); 2000, cc. [944](#), [999](#).

§56-231.45. Officers.

The officers of a cooperative shall consist of a president, vice-president, secretary and treasurer who shall be elected annually by the board and such other officers as may be designated by the board of directors. No person shall hold any offices unless that person is a director or employee of the cooperative. The offices of secretary and treasurer may be held by the same person. Any officer may be removed from office and a successor elected or appointed in accordance with such cooperative's bylaws.

1999, c. [874](#).

§56-231.46. Members.

A. A cooperative may have one or more classes of members. If the cooperative has more than one class of members, the designation of each class and the qualifications and rights of the members of each class shall be set forth in the bylaws of the cooperative.

B. Such cooperative shall issue to its members nontransferable certificates of membership. Members shall be entitled to vote in accordance with the articles of incorporation or, if the articles of incorporation so provide, the bylaws. The liability of each member shall be limited to the unpaid portion of its membership fee or subscription to capital stock and its contractual obligations to the cooperative. The equity of members of a nonstock cooperative shall be in proportion to the patronage capital paid such cooperative.

C. No person shall become or remain a member unless it has complied with the terms and conditions of membership contained in the bylaws of the cooperative.

1999, c. [874](#).

§56-231.47. Adoption of article.

Any cooperative of this Commonwealth engaged in the purchase, sale, generation or transmission of electric energy products or services for sale or resale may come under the provisions of this article by filing with the Commission a certificate of adoption in the manner provided by subsection (b) of § [13.1-334](#) and relinquishing all rights and powers granted by its former charter.

1999, c. [874](#).

§56-231.48. Applicability of other laws.

All of the provisions of the Virginia Stock Corporation Act, Chapter 9 (§ [13.1-601](#) et seq.) of Title 13.1, and the Virginia Nonstock Corporation Act (§ [13.1-801](#) et seq.),

insofar as not inconsistent with this article, are hereby made applicable to stock and nonstock cooperatives, respectively, when the articles of incorporation are filed in the office of the Commission; provided, however, that subsections D through G of § [13.1-620](#) and subdivision 1 of § [13.1-825](#) shall not apply to any affiliate or subsidiary of a cooperative. A cooperative must have a registered office and a registered agent, pursuant to § [13.1-634](#) or § [13.1-833](#), as appropriate.

1999, c. [874](#).

§56-231.49. Restructuring costs.

To the extent authorized in this title, a cooperative may recover its costs related to the restructuring of the electric utility industry, including stranded costs and transition costs, from its members through its rates and charges.

1999, c. [874](#).

§56-231.50. Regulation by State Corporation Commission.

The regulated utility services and operations of any cooperative organized under this article shall be subject to the jurisdiction of the Commission in the same manner and to the same extent as are all other providers of such regulated utility services under the laws of this Commonwealth; but with regard to sales of energy at wholesale, no cooperative shall be subject to the provisions of §§ [56-234](#) through [56-245](#), [56-247](#) and [56-249](#) through [56-249.6](#). With regard to business activities which are not regulated utility services, no cooperative shall be subject to the provisions of §§ [56-234](#) through [56-245](#) and [56-249](#) through [56-249.6](#). All other business activities of a cooperative and its affiliates shall be subject to the jurisdiction of the Commission to the extent provided by § [56-231.50:1](#) and any other applicable laws of this Commonwealth.

1999, c. [874](#).

§56-231.50:1. Separation of regulated and unregulated businesses.

A. No cooperative that engages in a regulated utility service shall conduct any unregulated business activity, other than traditional cooperative activities, except in or through one or more affiliates of such cooperative. No such affiliates, formed to engage in any business that is not a regulated utility service, shall engage in regulated utility services.

B. The Commission shall promulgate rules and regulations to promote effective and fair competition between (i) affiliates of cooperatives that are engaged in business

activities which are not regulated utility services and (ii) other persons engaged in the same or similar businesses. The rules and regulations shall be effective by July 1, 2000, and shall include provisions:

1. Prohibiting cost-shifting or cross-subsidies between a cooperative and its affiliates;
2. Prohibiting anticompetitive behavior or self-dealing between a cooperative and its affiliates;
3. Prohibiting a cooperative from engaging in discriminatory behavior towards non-affiliated entities; and
4. Establishing codes of conduct detailing permissible relations between a cooperative and its affiliates. In establishing such codes, the Commission shall consider, among other things, whether and, if so, under what circumstances and conditions (i) a cooperative may provide its affiliates with customer lists or other customer information, sales leads, procurement advice, joint promotions, and access to billing or mailing systems unless such information or services are made available to third parties under the same terms and conditions, (ii) the cooperative's name, logos or trademarks may be used in promotional, advertising or sales activities conducted by its affiliates, and (iii) the cooperative's vehicles, equipment, office space and employees may be used by its affiliates.

C. Nothing in this article shall be deemed to abrogate or modify the Commission's authority under Chapter 4 (§ [56-76](#) et seq.) of this title.

1999, c. [874](#); 2000, cc. [944](#), [999](#).

§56-231.50:2. Right of action; violation of rules or regulations.

A. Any person who suffers loss as the proximate result of a violation by a cooperative or its affiliate of any rule or regulation adopted by the Commission pursuant to § [56-231.50:1](#) shall be entitled to initiate an action to recover actual damages or \$500, whichever is greater, and to obtain injunctive relief. Any action pursuant to this section shall be commenced within two years after its accrual.

B. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person may also be awarded reasonable attorney's fees and court costs.

C. In any case arising under this section, no liability shall be imposed upon any cooperative or its affiliate which shows by a preponderance of the evidence that (i)

the act or practice alleged to be in violation of any rule or regulation adopted by the Commission pursuant to § [56-231.50:1](#) was an act or practice over which the same had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subsection B to any person aggrieved as a result of an unintentional violation.

1999, c. [874](#).

§56-231.51. Construction of article and conflicting laws.

This article is to be liberally construed and the enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things, and any provisions of other laws in conflict with the provisions of this article shall not apply to cooperatives operating hereunder. Any object, purpose, power, manner, method or thing which is not specifically prohibited is permitted.

1999, c. [874](#).

§56-231.52. Citation to article.

This article may be cited as the "Utility Aggregation Cooperatives Act."

1999, c. [874](#).

Utility Facilities Act

§56-265.1. Definitions.

In this chapter the following terms shall have the following meanings:

(a) "Company" means a corporation, a limited liability company, an individual, a partnership, an association, a joint-stock company, a business trust, a cooperative, or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or a county, unless such municipal corporation or county has obtained a certificate pursuant to § [56-265.4:4](#).

(b) "Public utility" means any company which owns or operates facilities within the Commonwealth of Virginia for the generation, transmission or distribution of electric

energy for sale, for the production, storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas or geothermal resources for sale for heat, light or power, or for the furnishing of telephone service, sewerage facilities or water; however, the term "public utility" shall not include any of the following:

(1) Except as otherwise provided in § [56-265.3:1](#), any company furnishing sewerage facilities, geothermal resources or water to less than 50 customers. Any company furnishing water or sewer services to 10 or more customers and excluded by this subdivision from the definition of "public utility" for purposes of this chapter nevertheless shall not abandon the water or sewer services unless and until approval is granted by the Commission or all the customers receiving such services agree to accept ownership of the company.

(2) Any company generating and distributing electric energy exclusively for its own consumption.

(3) Any company (A) which furnishes electric service together with heating and cooling services, generated at a central plant installed on the premises to be served, to the tenants of a building or buildings located on a single tract of land undivided by any publicly maintained highway, street or road at the time of installation of the central plant, and (B) which does not charge separately or by meter for electric energy used by any tenant except as part of a rental charge. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall, within 30 days following the issuance of a building permit, notify the State Corporation Commission in writing of the ownership, capacity and location of such central plant, and it shall be subject, with regard to the quality of electric service furnished, to the provisions of Chapters 10 (§ [56-232](#) et seq.) and [17](#) (§ [56-509](#) et seq.) of this title and regulations thereunder and be deemed a public utility for such purposes, if such company furnishes such service to 100 or more lessees.

(4) Any company, or affiliate thereof, making a first or direct sale, or ancillary transmission or delivery service, of natural or manufactured gas to fewer than 35 commercial or industrial customers, which are not themselves "public utilities" as defined in this chapter, or to certain public schools as indicated in this subdivision, for use solely by such purchasing customers at facilities which are not located in a territory for which a certificate to provide gas service has been issued by the Commission under this chapter and which, at the time of the Commission's receipt of the notice

provided under § [56-265.4:5](#), are not located within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, provided that such company shall comply with the provisions of § [56-265.4:5](#). Direct sales or ancillary transmission or delivery services of natural gas to public schools in the following localities may be made without regard to the number of schools involved and shall not count against the "fewer than 35" requirement in this subdivision: the Counties of Dickenson, Wise, Russell, and Buchanan, and the City of Norton.

(5) Any company which is not a public service corporation and which provides compressed natural gas service at retail for the public.

(6) Any company selling landfill gas from a solid waste management facility permitted by the Department of Environmental Quality to a public utility certificated by the Commission to provide gas distribution service to the public in the area in which the solid waste management facility is located. If such company submits to the public utility a written offer for sale of such gas and the public utility does not agree within 60 days to purchase such gas on mutually satisfactory terms, then the company may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been liquefied. The provisions of this subdivision shall not apply to the City of Lynchburg or Fairfax County.

(7) Any authority created pursuant to the Virginia Water and Waste Authorities Act (§ [15.2-5100](#) et seq.) making a sale or ancillary transmission or delivery service of landfill gas to a commercial or industrial customer from a solid waste management facility permitted by the Department of Environmental Quality and operated by that same authority, if such an authority limits off-premises sale, transmission or delivery service of landfill gas to no more than one purchaser. The authority may contract with other persons for the construction and operation of facilities necessary or convenient to the sale, transmission or delivery of landfill gas, and no such person shall be deemed a public utility solely by reason of its construction or operation of such facilities. If the purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility, the public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the use of landfill gas. No such tariff shall impose on the purchaser of the landfill gas terms less favorable than similarly situated customers

with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover the cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or both, that is derived from a solid waste management facility permitted by the Department of Environmental Quality and sold or delivered from any such facility to not more than three commercial or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as authorized by this section. If a purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility or within an area in which a municipal corporation provides gas distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such company shall submit to such public utility or municipal corporation a written offer for sale of that gas prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility or municipal corporation does not agree within 60 days following the date of the offer to purchase such landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover any cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(9) A company that is not organized as a public service company pursuant to subsection D of § [13.1-620](#) and that sells and delivers propane air only to one or more public utilities. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall be subject to the Commission's jurisdiction relating to gas pipeline safety and enforcement.

(10) A farm or aggregation of farms that owns and operates facilities within the Commonwealth for the generation of electric energy from waste-to-energy technology. As used in this subdivision, (i) "farm" means any person that obtains at least 51 percent of its annual gross income from agricultural operations and produces the agricultural

waste used as feedstock for the waste-to-energy technology, (ii) "agricultural waste" means biomass waste materials capable of decomposition that are produced from the raising of plants and animals during agricultural operations, including animal manures, bedding, plant stalks, hulls, and vegetable matter, and (iii) "waste-to-energy technology" means any technology, including but not limited to a methane digester, that converts agricultural waste into gas, steam, or heat that is used to generate electricity on-site.

(11) A company, other than an entity organized as a public service company, that provides non-utility gas service as provided in § [56-265.4:6](#).

(c) "Commission" means the State Corporation Commission.

(d) "Geothermal resources" means those resources as defined in § [45.1-179.2](#).

1950, p. 599; 1954, c. 354; 1970, c. 265; 1981, c. 506; 1988, c. 440; 1990, c. 488; 1991, c. 263; 1992, c. 476; 1994, cc. [652](#), [852](#); 1995, c. [643](#); 1997, cc. [105](#), [148](#); 1999, c. [768](#); 2000, cc. [528](#), [543](#); 2002, cc. [479](#), [489](#); 2004, cc. [748](#), [1028](#); 2005, c. [22](#); 2006, c. [411](#); 2007, c. [813](#); 2009, cc. [746](#), [794](#).

§56-265.2. Certificate of convenience and necessity required for acquisition, etc., of new facilities.

A.1. Subject to the provisions of subdivision 2, it shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service, except ordinary extensions or improvements in the usual course of business, without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege. Any certificate required by this section shall be issued by the Commission only after opportunity for a hearing and after due notice to interested parties. The certificate for overhead electrical transmission lines of 138 kilovolts or more shall be issued by the Commission only after compliance with the provisions of § [56-46.1](#).

2. For construction of any transmission line of 138 kilovolts and associated facilities, a public utility shall either (i) obtain a certificate pursuant to subdivision 1 or (ii) obtain approval pursuant to the requirements of (a) § [15.2-2232](#) and (b) any applicable local zoning ordinances by the locality or localities in which the transmission line will be located. Issuance by the Commission of a certificate pursuant to subdivision 1 approving construction of a 138 kilovolt transmission line and any associated facilities shall be deemed to satisfy the requirements of § [15.2-2232](#) and all

local zoning ordinances with respect to the transmission line and its associated facilities. For purposes of this subdivision, "associated facilities" include any station, substation, transition station, and switchyard facilities to be constructed outside of any county operating under the county executive form of government that is located in Planning District 8 in association with a 138 kilovolt transmission line.

B. In exercising its authority under this section, the Commission, notwithstanding the provisions of § [56-265.4](#), may permit the construction and operation of electrical generating facilities, which shall not be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10 (§ [56-232](#) et seq.), upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth; (ii) will have no material adverse effect upon reliability of electric service provided by any such regulated public utility; and (iii) are not otherwise contrary to the public interest. In review of its petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § [56-46.1](#). Facilities authorized by a certificate issued pursuant to this subsection may be exempted by the Commission from the provisions of Chapter 10 (§ [56-232](#) et seq.).

C. A map showing the location of any proposed ordinary extension or improvement outside of the territory in which the public utility is lawfully authorized to operate shall be filed with the Commission, and prior notice of such ordinary extension shall be given to the public utility or other entity authorized to provide the same utility service within said territory. Ordinary extensions outside the service territory of a public utility shall be undertaken only for use in providing its public utility service and shall be constructed and operated so as not to interfere with the service or facilities of any public utility or other entity authorized to provide utility service within any other territory. If, upon objection of the affected utility or entity filed within 30 days of the aforesaid notice and after investigation and opportunity for a hearing the Commission finds an ordinary extension would not comply with this section, it may alter or amend the plan for such activity or prohibit its construction.

D. Whenever a certificate is required under this section for a pipeline for the transmission or distribution of natural or manufactured gas, the Commission may issue such a certificate only after compliance with the provisions of § [56-265.2:1](#). As used in this section and § [56-265.2:1](#), "pipeline for the transmission or distribution of manufactured or natural gas" shall include the pipeline and any related facilities incidental or necessary to the operation of the pipeline.

E. This section shall be subject to the requirements of § [56-265.3](#), if any, and nothing herein shall be construed to supersede § [56-265.3](#).

1950, p. 599; 1985, c. 282; 1995, cc. [311](#), [514](#); 1998, c. [92](#); 2012, cc. [54](#), [284](#); 2017, c. [728](#).

§56-265.2:1. Approval by Commission required for construction of certain gas pipelines and related facilities; notice and hearing.

A. Whenever a certificate is required pursuant to § [56-265.2](#) for the construction of a pipeline for the transmission or distribution of manufactured or natural gas, the Commission shall consider the effect of the pipeline on the environment, public safety, and economic development in the Commonwealth, and may establish such reasonably practical conditions as may be necessary to minimize any adverse environmental or public safety impact. In such proceedings, the Commission shall receive and consider all reports by state agencies concerned with environmental protection; and, if requested by any county or municipality in which the pipeline is proposed to be constructed, local comprehensive plans that have been adopted pursuant to Article 3 (§ [15.2-2223](#) et seq.) of Chapter 22 of Title 15.2.

B. The Commission shall not approve construction of any such pipeline unless the public utility has provided 30 days' advance public notice of the proposed pipeline by (i) publishing a notice in a newspaper or newspapers of general circulation in each of the counties and municipalities through which the pipeline is proposed to be constructed, (ii) providing written notice to the governing body of each such county and municipality, (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed pipeline, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality, and (iv) filing a copy of any plans, specifications, or maps of the proposed pipeline with the Commission, which plans, specifications, or maps

shall be made available for public inspection at the Commission's business office, during normal business hours. Any notice required by this subsection shall include a written description of the proposed route the line is to follow, a map or sketch of the route, and information regarding the time period during which persons may request a public hearing under subsection C of this section.

C. If, within 45 days after publication and mailing of the notices required in subsection B of this section, any interested party requests a public hearing, the Commission shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as may be designated by the Commission. If written requests therefor are received from 20 or more interested parties, the Commission shall hold at least one hearing in the area that would be affected by construction of the pipeline, for the purpose of receiving public comment on the proposal. If any hearing is to be held in the area affected, the Commission shall direct that a copy of the transcripts of any previous hearings held in the case be made available for public inspection at a convenient location in the area for a reasonable time before such local hearing.

D. For the purposes of this section, "interested parties" means the governing bodies of any counties or municipalities through which the pipeline is to be constructed, and persons residing or owning property within one-half mile of such pipeline. For the purposes of this section, "environment" or "environmental" shall be deemed to include in meaning "historic."

E. If a significantly different route is determined more desirable after the giving of the notice required in subsection B of this section, the Commission shall cause notice of the new route or routes to be published and mailed in accordance with subsection B of this section. The Commission shall thereafter comply with the provisions of this section to the full extent necessary to give interested parties in the newly affected areas the same protection afforded interested parties affected by the route described in the original notice.

F. Approval of a pipeline pursuant to this section shall be deemed to satisfy and supersede the requirements of § [15.2-2232](#) and local zoning ordinances with respect to such pipeline and related facilities; however, the Commission shall not approve the construction of a natural gas compressor station in an area zoned exclusively for residential use unless the public utility provides certification from the local governing body that the natural gas compressor station is consistent with the zoning ordinance.

The certification required by this subsection shall be deemed to have been waived unless the local governing body informs the Commission and the public utility of the natural gas compressor station's compliance or noncompliance within 45 days of the public utility's written request.

1995, c. [311](#); 2001, c. [758](#); 2014, cc. [467](#), [507](#).

§56-265.3. Certificate to furnish public utility service; allotment of territory transfers, leases or amendments.

A. No public utility shall begin to furnish public utility service within the Commonwealth without first having obtained from the Commission a certificate of public convenience and necessity authorizing it to furnish such service. Any company engaged in furnishing a public utility service in this Commonwealth as of July 1, 1950, shall, upon filing maps with the Commission within ninety days from such date, showing the territory now being served by it, be entitled to receive a certificate of convenience and necessity authorizing it to begin to furnish such public utility service in such territory. Also, any company that is granted authority under the Public Utilities Securities Act, Chapter 3 (§ [56-55](#) et seq.) of this title to issue securities for the purpose of constructing or extending facilities described in the application for such authority, shall, if the application was filed with the State Corporation Commission before February 1, 1950, have the same right to a certificate of convenience and necessity that it would have had if the facilities had been in operation and serving the public on February 1, 1950. Any company which was engaged in furnishing a public utility service in this Commonwealth as of July 1, 1950, and which is now so engaged in providing the same kind of service, and which could have filed maps with the Commission in accordance with the requirements of this section but failed to do so, may file such maps not later than January 1, 1974, showing the territory now being served by it, and be entitled to receive a certificate of convenience and necessity authorizing it to continue to furnish the same kind of public utility service in such areas to the same extent as if it had filed maps as of July 1, 1950.

B. On initial application by any company, the Commission, after formal or informal hearing upon such notice to the public as the Commission may prescribe, may, by issuance of a certificate of convenience and necessity, allot territory for development of public utility service by the applicant if the Commission finds such action in the public interest.

C. If the initial application provides for the furnishing of water or sewerage service within any political subdivision in which there has been created an authority for either or both of such purposes pursuant to Chapter 51 (§ [15.2-5100](#) et seq.) of Title 15.2, the Commission shall not hold any hearing on such application or issue any certificate for the allotment of territory unless the application shall first have been approved by the governing body of the political subdivision in which the territory is located. In any area where a water company was in existence and furnishing water prior to the formation of an authority to provide water, the Commission may hold a hearing on an application and issue a certificate to the water company for that territory which was served prior to the creation of the authority whether or not the governing body of the political subdivision has approved the application. In any area where a sewer company was in existence and furnishing sewer services prior to the formation of an authority to provide sewer services, the Commission may hold a hearing on an application and issue a certificate to the sewer company for that territory which was served prior to the creation of the authority whether or not the governing body of the political subdivision has approved the application.

D. If the Commission finds it to be in the public interest, upon the application of a holder of a water or sewer certificate, such certificate may be transferred, leased or amended after such reasonable notice to the public and opportunity to be heard as the Commission by order may prescribe. The Commission may authorize the transfer, lease, or amendment of the certificate subject to such restrictions as the Commission finds will promote the public interest.

E. The Commission is authorized to promulgate any rules necessary to implement this section.

1950, c. 599; 1968, c. 720; 1973, c. 397; 1986, c. 521; 1988, c. 233.

§56-265.3:1. Certificates to furnish water and sewer service.

A. Any company proposing to construct facilities after January 1, 1995, ultimately intended to make water or sewer service available to more than fifty residential building lots shall, prior to construction or financial commitments therefor, organize a public service corporation and seek certificates of public convenience and necessity pursuant to §§ [56-265.2](#) and [56-265.3](#). The application for such certificates shall include (i) a comprehensive business plan detailing the technical, managerial and financial resources to be devoted to operation of the water or sewer service; (ii) except in the case of a company seeking a certificate to operate a sewer service only, proof of

receipt of, or application for, a permit for the facilities pursuant to Virginia Department of Health requirements under Article 2 (§ [32.1-167](#) et seq.) of Chapter 6 of Title 32.1; and (iii) such other information as is now or hereafter deemed appropriate by the Commission, including proof of the issuance of a bond or the deposit of funds in escrow as may be required by the Department of Health pursuant to § [32.1-174.1](#).

B. Certificates of public convenience and necessity shall not be granted by the Commission unless, in addition to the findings required by §§ [56-265.2](#) and [56-265.3](#), it also finds that the comprehensive business plan presented in the application reasonably assures that system performance requirements for providing water supply can be met over the long term and at reasonable costs. The Commission may issue such certification with any conditions or restrictions as public interest may require.

C. Water or sewer companies existing on or before January 1, 1995 which extend their service at any time following the effective date of this section shall not be required to comply with the requirements thereof.

D. If any applicant under this section so requests, the Commission shall not disclose the contents of the comprehensive business plan except as necessary to perform its duties.

1994, c. [852](#).

§56-265.4. Certificate to operate in territory of another certificate holder.

Except as provided in § [56-265.4:4](#), no certificate shall be granted to an applicant proposing to operate in the territory of any holder of a certificate unless and until it shall be proved to the satisfaction of the Commission that the service rendered by such certificate holder in such territory is inadequate to the requirements of the public necessity and convenience; and if the Commission shall be of opinion that the service rendered by such certificate holder in such territory is in any respect inadequate to the requirements of the public necessity and convenience, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy before any certificate shall be granted to an applicant proposing to operate in such territory. For the purposes of this section, the transportation of natural gas by pipeline, without providing service to end users within the territory, shall not be considered operating in the territory of another certificate holder.

1950, p. 600; 1984, c. 382; 2014, cc. [467](#), [507](#).

§56-265.4:1. Furnishing of electric public utility service or provision of facilities therefor by municipal corporations and other governmental bodies.

If any municipal corporation or other governmental body, having legal authority by charter or other law, shall desire to supply electric public utility service, or construct, enlarge or acquire, by lease or otherwise, any electric utility facilities, outside its political boundaries, it shall have power to enter into agreements in that regard with affected public utilities which shall be binding in accordance with their terms and for the period therein provided; but no contract entered into under this section shall limit the power of the Commission to fix rates and to otherwise regulate a public utility. No such service by a municipal corporation or other governmental body shall be provided, or facilities constructed, enlarged or acquired, in territory allotted to any public utility by the Commission except in territory served by such municipal corporation or other governmental body on June 26, 1964, unless the affected public utility shall consent by such an agreement or the Commission shall grant a certificate therefor upon application by the municipal corporation or other governmental body pursuant to § [56-265.4](#), authority for which certification is hereby granted. Provided, however, this limitation on the extension of public utility service by any municipal corporation or governmental body outside its political boundaries shall not be applicable to cities or towns extending their service in accordance with the provisions of § [56-265.4:2](#). No public utility shall extend its electric public utility service, or construct, enlarge or acquire, by lease or otherwise, any electric utility facilities, in territory served exclusively by a municipal corporation or other governmental body on June 26, 1964, unless such municipal corporation or other governmental body shall consent by such an agreement. In case of question as to the scope of the territory served by a municipal corporation or other governmental body on June 26, 1964, the Commission may, and on application by either such public utility or such municipal corporation or other governmental body shall, decide such question and allot such territory accordingly, between such public utility and such municipal corporation or other governmental body, in which event any expansion of service outside the territory so allotted shall be subject to the applicable provisions of this chapter, provided, however, that nothing contained herein shall prevent any municipal corporation from constructing or maintaining facilities in county areas for the purpose of generating or purchasing electricity to be transmitted into the service area of such municipal corporation.

1964, c. 228; 1978, c. 325.

§56-265.4:2. Extension of service by cities and towns into annexed areas.

A. Any city or town in the Commonwealth which provides electric utility service for the use of its residents may, at any time following annexation of additional territory to such city or town, acquire the distribution system facilities of the electric utility serving the annexed area in the manner provided by Title 25.1. As used in this section (i) the term "distribution system facilities" shall be deemed to include all facilities necessary to distribute electric utility service to any annexed area but shall not include substations of the public utility whose facilities are being acquired, and (ii) the terms "city" and "town" shall not include a shire, a borough or any other subdivision of a city or town. This section shall not apply to the addition of territory to a city or town by consolidation, merger, or through any other procedure that results in an effective combination with another governmental entity.

B. Upon completion of the eminent domain proceedings or upon the negotiation of a settlement between the city or town and the electric utility, the State Corporation Commission shall amend the certificate of convenience and necessity of the public utility whose distribution system facilities have been acquired to reflect the change in its territory.

1978, c. 325; 1987, c. 337; 1995, c. [36](#).

§56-265.4:3. Repealed.

Repealed by Acts 2011, cc. [738](#) and [740](#), cl. 2.

§56-265.4:4. Certificate to operate as a telephone utility.

A. The Commission may grant certificates to competing telephone companies, or any county, city or town that operates an electric distribution system, for interexchange service where it finds that such action is justified by public interest, and is in accordance with such terms, conditions, limitations, and restrictions as may be prescribed by the Commission for competitive telecommunications services. A certificate to provide interexchange services shall not authorize the holder to provide local exchange services. The Commission may grant a certificate to a carrier, or any county, city or town that operates an electric distribution system, to furnish local exchange services as provided in subsection B.

B. 1. After notice to all local exchange carriers certificated in the Commonwealth and other interested parties and following an opportunity for hearing, the Commission may grant certificates to any telephone company, or any county, city or town that operates an electric distribution system, proposing to furnish local exchange

telephone service in the Commonwealth. In determining whether to grant a certificate under this subsection, the Commission may require that the applicant show that it possesses sufficient technical, financial, and managerial resources. Before granting any such certificate, the Commission shall: (i) consider whether such action reasonably protects the affordability of basic local exchange telephone service, as such service is defined by the Commission, and reasonably assures the continuation of quality local exchange telephone service; and (ii) find that such action will not unreasonably prejudice or disadvantage any class of telephone company customers or telephone service providers, including the new entrant and any incumbent local exchange telephone company, and is in the public interest. Except as provided in subsection A of § [15.2-2160](#), all local exchange certificates granted by the Commission after July 1, 2002, shall be to provide service in any territory in the Commonwealth unless the applicant specifically requests a different certificated service territory. The Commission shall amend the certificated service territory of each local exchange carrier that was previously certificated to provide service in only part of the Commonwealth to permit such carrier's provision of local exchange service throughout the Commonwealth beginning on September 1, 2002, unless that local exchange carrier notifies the Commission prior to September 1, 2002, that it elects to retain its existing certificated service territory. A local exchange carrier shall only be considered an incumbent in any certificated service territory in which it was considered an incumbent prior to July 1, 2002, except that the Commission may make changes to a local exchange carrier's incumbent certificated service territory at the request of those incumbent local exchange carriers that are directly involved in a proposed change in the certificated service territory.

2. A Commission order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a new entrant shall be entered no more than 180 days from the filing of the application, except that the Commission, upon notice to all parties in interest, may extend that period in additional 30-day increments not to exceed an additional 90 days in all.

3. The Commission shall (i) promote and seek to assure the provision of competitive services to all classes of customers throughout all geographic areas of the Commonwealth by a variety of service providers; (ii) require equity in the treatment of the certificated local exchange telephone companies so as to encourage competition based on service, quality, and price differences between alternative providers; (iii)

consider the impact on competition of any government-imposed restrictions limiting the markets to be served or the services offered by any provider; (iv) determine the form of rate regulation, if any, for the local exchange services to be provided by the applicant and, upon application, the form of rate regulation for the comparable services of the incumbent local exchange telephone company provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure that there is no cross-subsidization of the applicant's competitive local exchange telephone services by any other of its services over which it has a monopoly, whether or not those services are telephone services. The Commission shall also adopt safeguards to ensure that the prices charged and the revenue received by a county, city or town for providing telecommunications services shall not be cross-subsidized from other revenues of the county, city or town or affiliated entities, except (i) in areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as authorized pursuant to subdivision 5.

4. The Commission shall discharge the responsibilities of state commissions as set forth in the federal Telecommunications Act of 1996 (P.L. 104-104) (the Act) and applicable law and regulations, including, but not limited to, the arbitration of interconnection agreements between local exchange carriers; however, the Commission may exercise its discretion to defer selected issues under the Act. If the Commission incurs additional costs in arbitrating such agreements or resolving related legal actions or disputes that cannot be recovered through the maximum levy authorized pursuant to § [58.1-2660](#), that levy shall be increased above the levy authorized by that section to the extent necessary to recover such additional costs.

5. Upon the Commission's granting of a certificate to a county, city or town under this section, such county, city, or town (i) shall be subject to regulation by the Commission for intrastate telecommunications services, (ii) shall have the same duties and obligations as other certificated providers of telecommunications services, (iii) shall separately account for the revenues, expenses, property, and source of investment dollars associated with the provision of such services, and (iv) to ensure that there is no unreasonable advantage gained from a government agency's taxing authority and control of government-owned land, shall charge an amount for such services that (a) does not include any subsidies, unless approved by the Commission, and (b) takes into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs incurred by for-profit providers. Each certificated county, city, or town that provides telecommunications services

regulated by the Commission shall file an annual report with the Commission demonstrating that the requirements of clauses (iii) and (iv) have been met. The Commission may approve a subsidy under this section if deemed to be in the public interest and provided that such subsidy does not result in a price for the service lower than the price for the same service charged by the incumbent provider in the area.

6. A locality that has obtained a certificate pursuant to this section shall (i) comply with all applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any franchise fees and other state and local fees (including permit fees and pole rental fees), and right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider of telecommunications services, (iv) prepare and publish annually financial statements in accordance with generally accepted accounting principles showing the results of operations of its provision of telecommunications services, and (v) maintain records demonstrating compliance with the provisions of this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

7. Each locality that has obtained a certificate pursuant to this section shall provide nondiscriminatory access to for-profit providers of telecommunications services on a first-come, first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the locality unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.

8. The prices charged and the revenue received by a locality for providing telecommunications services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as permitted by the provisions of subdivision 5. The provisions of this subdivision shall not apply to Internet access, broadband, information, and data transmission services provided by any locality providing telecommunications services on March 1, 2002, except for an authority created pursuant to the BVU Authority Act (§ [15.2-7200](#) et seq.).

9. The Commission shall promulgate rules necessary to implement this section. In no event, however, shall the rules necessary to implement clauses (iii) and (iv) of subdivision 5, clauses (ii) through (v) of subdivision 6, and subdivision 8 impose any obligations on a locality that has obtained a certificate pursuant to this section, but is not yet providing telecommunications services regulated by the Commission.

10. Public records of a locality that has obtained a certificate pursuant to this section, which records contain confidential proprietary information or trade secrets pertaining to the provision of telecommunications service, shall be exempt from disclosure under the Freedom of Information Act (§ [2.2-3700](#) et seq.). As used in this subdivision, a public record contains confidential proprietary information or trade secrets if its acquisition by a competing provider of telecommunications services would provide the competing provider with a competitive benefit. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ [15.2-7200](#) et seq.).

C. Article 5.1 (§ [56-484.7:1](#) et seq.) of Chapter 15 shall not apply to a county, city, or town that has obtained a certificate pursuant to this section.

D. Any county, city, or town that has obtained a certificate pursuant to this section may construct, own, maintain, and operate a fiber optic or communications infrastructure to provide consumers with Internet services, data transmission services, and any other communications service that its infrastructure is capable of delivering; provided, however, nothing in this subsection shall authorize the provision of cable television services or other multi-channel video programming service. Furthermore, nothing in this subsection shall alter the authority of the Commission.

E. Any county, city, or town that has obtained a certificate pursuant to this section and that had installed a cable television headend prior to December 31, 2002, is authorized to own and operate a cable television system or other multi-channel video programming service and shall be exempt from the provisions of §§ [15.2-2108.4](#) through [15.2-2108.8](#). Nothing in this subsection shall authorize the Commission to regulate cable television service.

1984, c. 382; 1995, cc. [22](#), [35](#), [187](#); 2001, c. [75](#); 2002, cc. [479](#), [489](#); 2003, cc. [677](#), [711](#), [720](#); 2005, c. [258](#); 2006, cc. [73](#), [76](#); 2009, c. [330](#); 2016, cc. [724](#), [725](#).

§56-265.4:5. Furnishing gas service to commercial and industrial customers in an area not certificated for public utility gas service.

A. Any company desiring to make an exempt sale, transmission or service under subdivision (b) (4) of § [56-265.1](#) shall notify the Commission of its plans for furnishing such gas service. The Commission shall make a determination of whether the customers' facilities are located within a territory for which a certificate has been granted, or, as of the time of the Commission's receipt of the notice provided hereunder, within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, and shall prohibit the furnishing of gas service to any facility so located. The Commission shall provide notice of such plans to furnish gas service to all public utilities providing gas service in the Commonwealth. Within sixty days of such notice, any public utility so notified may make application to the Commission to provide such service. If an application is filed, the Commission shall determine, after a public hearing, which company shall furnish the gas service.

B. In the event a gas utility is issued a certificate to serve the area where customers to whom service is being provided pursuant to this section are located, the gas utility shall have the right, subject to existing contracts regarding gas service to such customers and to the gas utility's effective transportation tariff, to acquire any facilities installed to serve such customers, at a price to be mutually agreed upon, or if not so agreed, at a price to be determined by the Commission.

1990, c. 488; 1992, c. 476 .

§56-265.4:6. Furnishing non-utility gas service.

A. In this section the following terms shall have the following meanings:

"Affiliated interest" shall have the same meaning as set forth in § [56-76](#) and shall be applied in this statute to non-utility gas service providers.

"Commercial customer" means any person that purchases non-utility gas service for its own consumption at one or more metering points or nonmetered points of delivery located in the Commonwealth and who if served by a natural gas utility would be classified as a nonresidential customer under the applicable natural gas utility's tariff.

"Municipally-owned gas service" means the sale and distribution of natural gas by a municipal corporation that has the authority to provide natural gas distribution service through the provisions of its charter.

"Natural gas line" means a distribution or transmission pipeline owned and operated by the natural gas utility and subject to the jurisdiction of the Commission but excluding such lines that serve only a single residence or retail establishment.

"Natural gas utility" or "utility" means an investor-owned public service company engaged in the business of furnishing natural gas service to the public and which is regulated as to rates and service pursuant to this title.

"Non-utility gas service" means the sale and distribution of propane, propane-air mixtures, or other natural or manufactured gas to two or more customers by way of underground or aboveground distribution lines by a person other than a natural gas utility or an affiliated interest of a natural gas utility, master meter operator, or any person operating in compliance with § [56-1.2](#).

"Non-utility gas service provider" means a person, other than a natural gas utility, providing non-utility gas service.

"Person" means any individual, corporation, partnership, association, company, business trust, joint venture or other private legal entity.

"Pipeline safety standards" means all gas pipeline safety requirements established pursuant to § [56-257.2](#).

"Residential customer" means any person that purchases non-utility gas service for its own consumption at one or more metering points or nonmetered points of delivery located in the Commonwealth and who if served by a natural gas utility would be classified as a residential customer under the applicable natural gas utility's tariff.

B. A person, individually or together with its affiliated interests, other than the natural gas utility that holds the certificate to provide natural gas service in a particular territory or one of its affiliated interests, shall apply to the Commission for and obtain approval prior to providing non-utility gas service to:

1. Two or more residential or commercial customers located one-half mile or less from any existing underground natural gas line operated by a utility under the jurisdiction of the Commission;
2. More than 10 residential or two commercial customers located more than one-half mile but within one mile or less from any existing underground natural gas line operated by a utility under the jurisdiction of the Commission;

3. More than 20 residential or five commercial customers located more than one mile but within three miles or less from any existing underground natural gas line operated by a utility under the jurisdiction of the Commission; or
4. More than 50 residential or 10 commercial customers located more than three miles but no more than five miles from an existing underground natural gas line operated by a utility under the jurisdiction of the Commission.

Approval of any application to provide non-utility gas service pursuant to this section shall be granted by the Commission only after opportunity for a hearing and after due notice to the natural gas utility that holds the certificate to provide service in the defined geographic area proposed to be served. The Commission shall approve an application to provide non-utility gas service upon finding that: (i) the natural gas utility that holds the certificate to provide natural gas service in the defined geographic area proposed to be served is not currently offering service to the area desired for non-utility gas service and is unable to extend natural gas utility service to the requested area within a reasonable period of time; and (ii) the provision of non-utility gas service in the defined geographic area proposed to be served, and to the estimated number of customers defined in the application, is in the public interest.

Any order approving an application to provide non-utility gas service pursuant to this section shall define the geographic area to be covered and the maximum number of customers to whom the non-utility gas service provider can provide service before having to apply to the Commission for a revised order. The order approving an application to provide non-utility gas service shall also provide for compliance with all pipeline safety standards; however, nothing in the order shall authorize the Commission to exercise jurisdiction over the rates, charges, or services being offered in conjunction with non-utility gas service by a non-utility gas service provider. Further, except as provided in this section, approval of an application to provide non-utility gas service shall not infringe upon or diminish the rights of the natural gas utility that holds the certificate to provide natural gas service in the specified area.

Any fully constructed and operational non-utility gas service system as of April 8, 2009, shall be exempt from the requirements of this subsection.

C. A non-utility gas service provider shall comply with the provisions of subsection B if any proposed new customers (i) are located in or are adjacent to a residential subdivision, commercial or mixed-use development, currently being provided non-utility gas service by that non-utility gas service provider and (ii) the number of such new

customers, when added to the number of then existing customers of such non-utility gas service provider, individually or together with its affiliated interests, located in the adjacent residential subdivision, commercial or mixed-use development, would exceed the threshold number of customers for any of the geographical areas described in subsection B.

D. In any instance in which customers proposed to be served by a non-utility gas service provider, individually or together with its affiliated interests, are in the same residential subdivision, commercial or mixed-use development, or any phase thereof, and that residential subdivision, commercial or mixed use development, including all parts and phases thereof, straddles any of the distance thresholds set forth in subsection B, then all of the customers in all parts and phases of such residential subdivision, commercial or mixed-use development shall be deemed to be within the distance from the underground natural gas line operated by a utility under the jurisdiction of the Commission applicable to the customer located in such residential subdivision, commercial or mixed-use development that is located closest to such underground natural gas line operated by a utility under the jurisdiction of the Commission.

E. The distance threshold set forth in subsection B shall be measured in a linear manner and shall be based upon the underground natural gas lines operated by a utility under the jurisdiction of the Commission that are in existence at the time the non-utility gas service provider applies for Commission approval pursuant to subsection B, if applicable, or at the time the non-utility gas service provider applies for the initial local government approval necessary to construct its distribution lines required to serve the proposed new customers, whichever is earlier.

F. All non-utility gas service providers shall provide notice to the Commission of any and all non-utility gas service that is subject to pipeline safety standards and is being provided to two or more customers in the Commonwealth and shall provide notice of the construction of new non-utility gas service to the Commission no later than 30 days prior to commencing construction of such system. Any non-utility gas service provider that is required to provide such notice shall be subject to the jurisdiction of the Commission for the purpose of ensuring compliance with the pipeline safety standards and subject to any penalties that may be applicable under § [56-257.2](#). Upon request of the Commission, the non-utility gas service provider shall provide,

within 30 days of such request, documentation to show compliance with the requirements of the pipeline safety standards.

G. Any municipal corporation that provides municipally-owned gas service to residential or commercial customers located within an area where a natural gas utility holds a certificate to provide service, must have written authorization from that certificate holder to provide such service which authorization shall not be unreasonably withheld. The written authorization shall define the geographic area to be served by the municipally-owned gas service provider. If authorization is withheld, the natural gas utility shall provide a written justification for the decision to the municipally-owned gas service provider. Any decision to withhold authorization shall be subject to review by the Commission upon petition by a customer seeking natural gas service. Any natural gas utility that provides written permission to a municipal corporation to provide municipally-owned gas service within a territory where it holds a certificate shall provide a written copy of the authorization to the Commission.

Notwithstanding the foregoing, a municipally-owned gas service provider shall not be required to obtain consent to i) provide natural gas service to facilities or property owned in whole or in part by the municipal corporation, or ii) install lines that serve only a single residential customer.

A municipally-owned gas service provider which fails to comply with this subsection shall be subject to relief in a court having competent jurisdiction. Nothing herein shall authorize the Commission to impose penalties or fines on any municipal corporation.

Any fully constructed and operational municipally-owned gas service system in place as of April 8, 2009, shall be exempt from the requirements of this subsection.

H. The Commission is authorized to promulgate any rules consistent with and necessary to implement this section other than subsection G.

I. The provision of non-utility gas service without complying with subsection B shall be punishable by a penalty of up to \$500 per day to be imposed and collected by the Commission, in addition to any injunctive or other non-monetary penalties provided by law.

2009, c. [794](#).

§56-265.5. Effective date of certificates.

Certificates issued under the provisions of this chapter shall be effective from the date of issuance unless a different date be specified therein and shall remain in effect until terminated as herein provided.

1950, p. 600.

§56-265.6. Penalties for misrepresentations, violations of law, regulations or terms of certificates.

The Commission may, by its order duly entered after hearing, held after due notice to the holder of any such certificate and an opportunity to such holder to be heard, at which hearing it shall be proved that such holder has willfully made a misrepresentation of a material fact in obtaining such certificate or has willfully violated or refused to observe the laws of this State touching such certificate or any of the terms of the certificate, or any of the Commission's proper orders, rules or regulations, impose a penalty not exceeding \$1,000, which may be collected by the process of the Commission as provided by law; or the Commission may suspend, revoke, alter or amend any such certificate for any of the causes set forth above. But no such certificate shall be revoked, altered or amended (except upon application of the holder thereof) unless the holder thereof shall wilfully fail to comply, within a reasonable time to be fixed by the Commission, with the lawful order of the Commission or with the lawful rule or regulation of the Commission, or with the term, condition or limitation of such certificate, found by the Commission to have been violated by such holder. No such certificate shall be suspended, revoked, altered or amended for any cause not stated in this section.

Proceedings looking to the imposition of any penalty provided for in this section may be commenced upon the complaint of any person or upon the Commission's own initiative.

1950, p. 600.

§56-265.7. Appeal from order of revocations, etc.

From any order of the Commission suspending, revoking, altering or amending any certificate, the holder thereof shall have the right of appeal to the Supreme Court of Virginia, as a matter of right, as in other cases of appeals from the Commission.

1950, p. 601.

§56-265.8. Proceedings before Commission on or before July 1, 1950.

The provisions of this chapter shall not apply to or in any way affect any proceeding before the State Corporation Commission on or before July 1, 1950, and shall not confer on said Commission any jurisdiction not now vested in it with respect to any such proceeding.

1950, p. 601.

§56-265.8:1. Inspection and approval of certain installations not regulated pursuant to this chapter.

The owner or operator of any facility for the generation of electrical energy not subject to regulation under the Utilities Facilities Act but designed to generate electrical energy for the use by persons other than the owner or operator shall at his expense have the facility designed and inspected by a professional engineer licensed to work in the State of Virginia. Said engineer shall certify that the installation meets the standards of the National Electrical Code and the National Safety Code and that there is adequate equipment for standby purposes. The provisions of this section shall apply only to generation facilities used as a primary source of power and not to emergency supply systems. The provisions hereof shall not apply to municipally owned and operated facilities.

1970, c. 363.

§56-265.9. Title of chapter.

This chapter may be cited as the Utility Facilities Act.

1950, p. 601.

Utility Transfers Act

§56-88. Definitions.

In this chapter the following terms shall have the following meanings:

"Acquire" or "acquisition" includes any purchase or other acquisition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation or otherwise.

"Company" means a corporation, a partnership, an association, a joint-stock company, a business trust or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or county.

"Dispose of" or "disposition" includes any sale or other disposition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation or otherwise.

"Public utility" means any company which owns or operates facilities within the Commonwealth for the generation, transmission or distribution of electric energy for sale; for the production, transmission or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas for sale for heat, light or power, but excluding any company described in subdivision (b)(8) or (b)(10) of § [56-265.1](#); or for the furnishing of sewerage facilities or water.

"Utility assets" means the facilities in place of any public utility or municipality for the production, transmission or distribution of electric energy or natural or manufactured gas, or for the furnishing of sewerage facilities or water.

"Utility security" means any note, draft, debenture, bond, share of stock, certificate, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, receiver's or trustee's certificate or any other instrument or interest commonly known as a security which is issued, assumed or guaranteed by any public utility or any company which would be a public utility if the facilities owned or operated by it were within the Commonwealth, or any company substantially engaged in the ownership of any of the aforesaid securities or in supplying management or advice to any of the aforesaid companies; or any certificate of deposit for, voting trust certificate for, certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, assumption of liability on, or warrant or right to subscribe to or purchase or acquire, any of the aforesaid securities.

1940, p. 425; Michie Code 1942, § 3774l; 1992, c. 376; 2000, cc. [528](#), [543](#); 2009, c. [746](#).

§56-88.1. Acquisition or disposition of control of a public utility.

A. No person, whether acting alone or in concert with others, shall, directly or indirectly, acquire or dispose of control of:

1. A public utility within the meaning of this chapter, or all of the assets thereof, without the prior approval of the Commission. Any person proposing an acquisition or disposition for which Commission approval is required by this section shall seek such approval pursuant to the procedure of § [56-90](#); or

2. A telephone company, or all of the assets thereof, without the prior approval of the Commission. In determining whether to grant approval, the Commission shall

consider only the financial, managerial, and technical resources to render local exchange telecommunications services of the person acquiring control of or all of the assets of the telephone company.

The Commission shall, after the filing of a completed application, approve or disapprove the requested acquisition or disposition within 60 days. The 60-day period may be extended by Commission order for a period not to exceed an additional 120 days. The application shall be deemed approved if the Commission fails to act within 60 days or any extended period ordered by the Commission.

B. Any such acquisition or disposition of control without prior approval shall be voidable by the Commission. In addition, the Commission is authorized to revoke any certificate of public convenience and necessity it has issued, order compliance with this chapter, or take such other action as may be appropriate within the authority of the Commission.

C. For purposes of this section, "control" means (i) the acquisition of 25 percent or more of the voting stock or (ii) the actual exercise of any substantial influence over the policies and actions of any public utility or telephone company.

D. This section shall not apply to any company engaged in the business of generating electricity whose rates and services are not regulated by the State Corporation Commission.

1992, c. 376; 2011, cc. [738](#), [740](#).

§56-89. Acquisition or disposition of utility assets or utility securities.

It shall be unlawful for any public utility, directly or indirectly, to acquire or dispose of any utility assets situated within the Commonwealth or any utility securities of any other company unless such acquisition or disposition shall have been authorized by the Commission. If and when so authorized by the Commission, any public utility may acquire or dispose of any such utility assets or utility securities; but no such authorization by the Commission shall confer upon any county or municipality authority, other than that otherwise conferred by law, to acquire or to dispose of any utility assets or utility securities.

1940, p. 426; Michie Code 1942, § 3774m.

§56-90. Procedure for authority to acquire or dispose of utility assets or securities.

Application for authority to acquire or dispose of utility assets or utility securities under § [56-89](#) shall be by petition to the Commission. The petition may be joint or several. It shall be signed and verified by the president or any vice-president and the secretary or any assistant secretary of the petitioner. The petition shall clearly summarize the object in view, the proposed procedure and the terms and conditions thereof. Upon the filing of the petition, if the Commission shall deem a hearing necessary, the Commission shall assign the matter for prompt hearing. If and when the Commission, with or without hearing, shall be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition, the Commission shall make such order in the premises as it may deem proper and the circumstances require, and thereupon it shall be lawful to do the things provided for in such order, subject, however, to the exception contained in § [56-89](#) as to counties and municipalities.

1940, p. 426; Michie Code 1942, § 3774o.

§56-90.1. Sale of utility assets or undivided fractional interest therein; taxation.

If the Commission shall have granted a petition filed pursuant to § [56-90](#) in which a public utility has applied for authority to sell utility assets or associated properties situated within the Commonwealth, or an undivided fractional interest therein, to (i) an association of one or more electric cooperatives or electric membership corporations that are wholesale customers of the electric public utility, (ii) an association of one or more cities or incorporated towns that are wholesale customers of the electric utility, (iii) any combination of such associations, or (iv) another public utility then, notwithstanding any other provisions of law:

(1) A waiver made by any such electric public utility, association of cooperatives, cities or towns of any right it may have to compel partition, whether pursuant to the provisions of Article 9 (§ [8.01-81](#) et seq.) of Chapter 3 of Title 8.01, or otherwise, shall be effective and enforceable against (i) such public utility, association of cooperatives, cities or towns, and their successors and assigns, and (ii) all creditors of such public utility, association of cooperatives, cities and towns, their successors and assigns, who have notice of record of such waiver, so long as the waiver shall be limited so as not to exceed ninety-nine years;

(2) No state recording tax shall be payable upon the admission to record of any deed, deed of trust, mortgage, bill of sale, contract, agreement or other writing supplemental to any such instrument which conveys or reconveys such utility assets or

properties, or an undivided fractional interest therein or secures any bonds or other obligations of such association of cooperatives, cities or towns or combination thereof; provided, however, that any local recording taxes shall be payable as though the state recording taxes had been collected;

(3) No state franchise tax or local license tax shall be payable on the proceeds of any such sale of utility assets or properties, or an undivided fractional interest therein; and

(4) Unless otherwise expressly agreed by the joint owners the joint ownership of such utility assets or properties as approved by the Commission shall not constitute a partnership or joint venture among the owners.

1979, c. 238; 1980, c. 703.

§56-91. Violations of chapter.

Any company violating any provision of § [56-89](#) shall upon conviction be fined not more than \$1,000.

1940, p. 426; Michie Code 1942, § 3774n.

§56-92. Short title.

This chapter may be cited as the Utility Transfers Act.

1940, p. 426; Michie Code 1942, § 3774q.

Virginia Aircraft Sales and Use Tax

§58.1-1500. Title.

This chapter shall be known and may be cited as the "Virginia Aircraft Sales and Use Tax Act."

Code 1950, § 58-685.27; 1974, c. 431; 1984, c. 675.

§58.1-1501. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Aircraft" means any contrivance used or designed for untethered navigation or flight in the air by one or more persons at an altitude greater than twenty-four inches above the ground. Such term shall not include parachutes.

"Dealer" means any person owning five or more aircraft during the calendar year who the Commissioner finds is in the regular business of selling aircraft.

"Gross receipts" means the charges made or voluntary contributions received for the hourly rental and maintenance of an aircraft, all other charges for the use of an aircraft and, unless separately stated on the invoice, all charges for services of pilots or instructors in such aircraft. The term shall also include any amount by which the price estimated under § [58.1-1503](#) exceeds the charge actually made.

"Retail sale" means a sale to a consumer or to any person for any purpose other than for resale. The term shall include any transaction the Commissioner, upon investigation, finds to be in lieu of a sale. Sales for resale must be made in strict compliance with any rules and regulations promulgated pursuant to this chapter.

"Sale" means any transfer of ownership or possession of an aircraft by exchange or barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever. The term shall also include a transaction whereby possession is transferred but title is retained by the seller as security. The term shall not include a transfer of ownership or possession (i) made to secure payment of an obligation, (ii) incidental to repossession under a lien and under which ownership is transferred to the reposessor, his nominee or a trustee, pending ultimate disposition or sale of the collateral, (iii) as part of the sale of all or substantially all the assets of any business, or (iv) to trustees of a revocable inter vivos trust, when the owners of the aircraft and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust following the death of the grantor, when no consideration has passed between the grantor and the beneficiaries in either case.

"Sale price" means the total price paid for an aircraft and all attachments thereon and accessories thereto, exclusive of any federal manufacturer's excise tax, without any allowance or deduction for trade-ins or unpaid liens or encumbrances.

"Scheduled air service" means any scheduled service provided by an air carrier or foreign air carrier operating pursuant to authority issued by the U.S. Department of Transportation and under Federal Aviation Regulations, Parts 121, 129 or 135.

Code 1950, §§ 58-685.28, 58-685.30; 1974, c. 431; 1975, c. 424; 1977, c. 396; 1984, c. 675; 1995, c. [204](#); 2000, c. [602](#).

§58.1-1502. Tax levied.

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the retail sale of every aircraft sold in the Commonwealth and upon the use in the Commonwealth of any aircraft required to be licensed by the Department of Aviation pursuant to § [5.1-5](#). The amount of the tax to be collected shall be determined by the application of the following rate against the sale price or gross receipts:

1. Two percent of the sale price of each aircraft sold in the Commonwealth.
2. Two percent of the sale price of each aircraft not sold in the Commonwealth but required to be licensed for use in the Commonwealth. However, if the aircraft is licensed in the Commonwealth six months or more after its acquisition, the tax shall be two percent of the market value of such aircraft at the time it is licensed or two percent of the purchase price thereof, whichever is lower.
3. Two percent of the monthly gross receipts from the lease, charter or other use of any aircraft licensed for commercial use pursuant to § [5.1-5](#) B and held for sale by a dealer who has elected to be taxed under this paragraph as provided in § [58.1-1507](#).

A transaction taxed under subdivision 1 shall not be taxed under subdivision 2, nor shall the same transaction be taxed more than once under either subdivision.

An aircraft subject to the tax under subdivision 3 shall be subject to the tax under subdivision 1 or 2 immediately upon the revocation of the commercial use license for such aircraft.

Code 1950, §§ 58-685.29, 58-685.30, 58-685.32; 1974, c. 431; 1975, c. 424; 1977, c. 396; 1980, cc. 109, 367; 1984, cc. 370, 675.

§58.1-1503. Basis of tax; estimate of tax; penalty for misrepresentation.

A. The Tax Commissioner shall levy and collect the tax for the use or sale of an aircraft pursuant to subdivisions 1 and 2 of § [58.1-1502](#) upon the basis of the sale price of such aircraft.

Any person who sells an aircraft in the Commonwealth shall supply the buyer with an invoice, signed by the seller or his representative, which shall state the sale price of the aircraft. The buyer shall present such invoice to the Tax Commissioner with his return and payment of the tax.

B. The Tax Commissioner shall levy and collect the tax on an aircraft licensed for commercial use and held by a dealer who has elected to be taxed under subdivision 3

of § [58.1-1502](#) on the basis of the gross receipts arising from all transactions involving the rental or use of such aircraft during the preceding calendar month. The dealer shall submit a return to the Commissioner on a form prescribed by him, showing the gross receipts from such transactions at the time that the dealer remits his tax payment.

C. In any case where (i) the invoice is not available, (ii) the Tax Commissioner has reason to believe that an invoice or return does not reflect the true sales price or gross receipts, or (iii) the aircraft was purchased more than six months prior to its use or storage in this Commonwealth, the Commissioner may assess the tax in accordance with such publications or other data as are customarily employed in ascertaining the maximum sale price of aircraft. Where the Commissioner finds that a charge for the rental or use of aircraft has been lower than the fair market value of such rental or use, the Commissioner may estimate a fair price in accordance with the cost of the aircraft, the cost of maintenance, the normal rental value as shown in similar transactions, or other relevant data.

Any person who knowingly misrepresents the value of an aircraft or the amount of tax due to the Commissioner or on any return or invoice shall be guilty of a Class 1 misdemeanor.

Code 1950, §§ 58-685.30, 58-685.33; 1974, c. 431; 1975, c. 424; 1977, c. 396; 1984, c. 675.

§58.1-1504. Credit against tax.

A credit shall be granted against the tax imposed by this chapter with respect to a person's use in this Commonwealth of an aircraft purchased by him in another state, or assembled by him from component parts on which Virginia retail sales or use tax was paid. The amount of the credit shall be equal to the tax paid by him to another state by reason of the imposition of a similar tax on his purchase or use of the property or the amount of Virginia retail sales and use tax paid on the component parts of such assembled aircraft. The amount of the credit shall not exceed the tax imposed by this chapter.

Code 1950, § 58-685.37; 1974, c. 431; 1984, cc. 547, 675.

§58.1-1505. Exemptions.

A. Any aircraft sold to or used by (i) the United States or any of the governmental agencies thereof, (ii) the Commonwealth of Virginia or any political subdivision

thereof, (iii) any air carrier operating in intrastate, interstate or foreign commerce providing scheduled air service as defined in § [58.1-1501](#), (iv) any nonprofit charitable organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and that is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air transportation services using an emergency medical services vehicle for low-income medical patients in the Commonwealth, or (v) an organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and that is organized for the primary purpose of distributing food, clothing, medicines and other necessities of life to, and providing shelter for, needy persons in the United States and throughout the world shall be exempt from the tax imposed by this chapter.

B. Aircraft that are (i) considered Warbirds, manufactured and intended for military use, excluding those manufactured after 1954, and (ii) used only for (a) exhibit or display to the general public and otherwise used for educational purposes (including such flights as are necessary for testing, maintaining, or preparing such aircraft for safe operation), or (b) airshow and flight demonstrations (including such flights necessary for testing, maintaining, or preparing such aircraft for safe operation), but not including any aircraft used for commercial purposes, including transportation and other services for a fee, shall be exempt from the tax imposed by this chapter.

C. Beginning July 1, 2011, and ending December 31, 2014, any aircraft purchased or used by a qualified company shall be exempt from the tax imposed by this chapter. For purposes of this subsection, a qualified company shall be an aviation-related company, limited liability company, partnership, or a combination of such entities that have a common ownership interest through a parent, as a direct or indirect subsidiary of a parent, or as affiliated brother-sister entities that (i) is headquartered in the Commonwealth, (ii) between January 1, 2010, and December 31, 2014, makes a new capital investment of at least \$4 million in aviation-related real estate and real estate improvements in the Commonwealth on publicly-owned, public-use airports, (iii) between January 1, 2010, and December 31, 2014, creates in the Commonwealth at least 50 new jobs that pay at least one and a half times the prevailing average wage in the locality in which the jobs are located, (iv) owns or uses aircraft that are used primarily for intrastate, interstate, or foreign commerce, and (v) has entered into a memorandum of understanding with the Virginia Economic Development Partnership, after consultation with the Virginia Department of Aviation, on or before December 31, 2014, that at a minimum provides the details for determining the

amount of capital investment made and the number of new jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations should those goals not be achieved, and any conditions under which repayment by the qualifying person claiming the exemption may be required.

D. Any aircraft sold in the Commonwealth as evidenced by Federal Aviation Administration Bill of Sale AC Form 8050-2 and registered outside of the Commonwealth as evidenced by Federal Aviation Administration Aircraft Registration AC Form 8050-1 shall be exempt from the sales tax imposed by this chapter, so long as the aircraft is removed from the Commonwealth within 60 days of the date of purchase on the Bill of Sale. If the aircraft is removed from the Commonwealth within 60 days of the date of purchase, the time between the date of purchase and the removal of the aircraft shall not be counted for purposes of determining whether the aircraft is subject to the use tax imposed by this chapter on aircraft that are based in the Commonwealth for over 60 days in any 12-month period.

Code 1950, §§ 58-685.31, 58-685.32; 1974, c. 431; 1980, cc. 109, 618; 1984, cc. 370, 675; 1995, cc. [204](#), [723](#), [786](#); 2007, c. [610](#); 2011, cc. [443](#), [492](#); 2015, cc. [502](#), [503](#).

§58.1-1506. Time for payment of tax.

A. Except as provided in subsection B, the tax on the sale or use of an aircraft required to be licensed by this Commonwealth shall be paid by the purchaser or user of such aircraft and collected by the Commissioner prior to the time the owner applies to the Department of Aviation for, and obtains, a license therefor.

B. The tax on the gross receipts from each aircraft licensed for commercial use shall be paid by the dealer to the Commissioner on or before the twentieth day of each month.

Code 1950, §§ 58-685.30, 58-685.32; 1974, c. 431; 1975, c. 424; 1977, c. 396; 1980, c. 109; 1984, cc. 370, 675.

§58.1-1507. Election by commercial dealer; revocation; eligibility.

Any person holding a commercial dealer's license issued by the Department of Aviation who desires to be subject to the tax imposed by subdivision 3 of § [58.1-1502](#) shall notify the Commissioner in writing of such election. The election may be made at or before the time for filing a return as required by § [58.1-1506](#).

An election shall be revocable only by permission of the Commissioner. Upon revocation of an election, the tax imposed under subdivisions 1 and 2 of § [58.1-1502](#) shall

immediately become due and payable. Any person who so revokes an election shall be ineligible to make an election under this section for two years following such revocation.

Code 1950, § 58-685.30; 1974, c. 431; 1975, c. 424; 1977, c. 396; 1984, c. 675.

§58.1-1508. Retention of documents; examination by Commissioner.

Any person who sells, leases or charters an aircraft in this Commonwealth shall retain a copy of the invoice and other financial data pertaining to the transaction required by § [58.1-1503](#) for three years following such transaction. Each invoice shall give an accurate description of the aircraft sold, leased or used.

Code 1950, § 58-685.36; 1974, c. 431; 1984, c. 675.

§58.1-1509. Disposition of funds.

All funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. The revenue so derived, after deducting refunds, is hereby credited to the special fund created pursuant to the provisions of § [5.1-51](#).

Code 1950, § 58-685.38; 1974, c. 431; 1984, c. 675.

§58.1-1510. Civil penalties.

When any person fails to make any return or pay the full amount of tax required by § [58.1-1502](#) within thirty days of the required filing and payment date, there shall be imposed, in addition to other penalties provided herein, a penalty to be added to the tax, in the amount of six percent of the unpaid tax. An additional six percent of the tax due shall be charged for each additional thirty-day period, or fraction thereof during which the failure to make any return or pay the full amount of tax continues. Such additional penalty shall not exceed thirty percent, in the aggregate.

If any such failure is due to providential or other good cause, shown to the satisfaction of the Commissioner, the return, with remittance, may be accepted exclusive of such penalties but with interest charged at a rate equal to that established pursuant to § [58.1-15](#).

In the case of a false or fraudulent return, where willful intent exists to defraud this Commonwealth of any tax due under this chapter, or in the case of willful failure to file a return with the intent to defraud this Commonwealth of any such tax, a penalty of fifty percent of the amount of the proper tax shall be assessed. It shall be prima facie evidence of intent to defraud this Commonwealth of any tax due under this chapter when any purchaser or user of an aircraft reports the sale price or current

market value of his aircraft, as the case may be, at fifty percent or less of the actual amount. It shall also be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports the gross receipts collected from the lease, charter or other use of aircraft at fifty percent or less of the actual amount received for such lease, charter or use.

All penalties and interest imposed by this chapter shall be payable by the dealer, purchaser or user of the aircraft and shall be collected by the Commissioner in the same manner as if they were a part of the tax imposed.

Interest, at a rate determined in accordance with § [58.1-15](#), on the unpaid amount of the tax from the day after the last day for timely filing and payment of the tax shall accrue until the same is paid.

Code 1950, §§ 58-685.29:1, 58-685.30; 1974, c. 431; 1975, c. 424; 1977, cc. 245, 396; 1984, c. 675; 1991, cc. 316, 331 .

Virginia Antitrust Act

§59.1-9.1. Short title.

This chapter may be known and cited as the "Virginia Antitrust Act."

1974, c. 545.

§59.1-9.2. Purpose of chapter.

The purpose of this chapter is to promote the free market system in the economy of this Commonwealth by prohibiting restraints of trade and monopolistic practices that act or tend to act to decrease competition. This chapter shall be construed in accordance with the legislative purpose to implement fully the Commonwealth's police power to regulate commerce.

1974, c. 545.

§59.1-9.3. Definitions.

When used in this chapter:

(a) The term "person" includes, unless the context otherwise requires, any natural person, any trust or association of persons, formal or otherwise, or any corporation, partnership, company, or other legal or commercial entity.

(b) The terms "trade or commerce," "trade," and "commerce," include all economic activity involving or relating to any commodity, service or business activity.

(c) The term "commodity" includes any kind of real or personal property.

(d) The term "service" includes any activity that is performed in whole or in part for the purpose of financial gain, including but not limited to personal service, rental, leasing or licensing for use.

1974, c. 545.

§59.1-9.4. Certain activities not prohibited.

(a) No provision of this chapter shall be construed to make illegal:

(1) The activities of any labor or professional organization or of individual members thereof that are directed solely to labor or professional objectives legitimate under the laws of this Commonwealth or the United States.

(2) The activities of any agricultural or horticultural cooperative organization, or of individual members thereof, to the extent necessary to achieve the aims of the enacted laws of either this Commonwealth or the United States.

(3) The bona fide religious and charitable activities of any nonprofit corporation, trust or organization established exclusively for religious or charitable purposes.

(4) The activities of any nonprofit hospital, or of any officer, director or employee thereof, that are directed to a reduction in services or an improvement in the quality of services to the extent that any such reduction or improvement will reduce, stabilize or limit cost increases.

(b) Nothing contained in this chapter shall make unlawful conduct that is authorized, regulated or approved (1) by a statute of this Commonwealth, or (2) by an administrative or constitutionally established agency of this Commonwealth or of the United States having jurisdiction of the subject matter and having authority to consider the anticompetitive effect, if any, of such conduct. Nothing in this paragraph shall be construed to alter or terminate any other applicable limitation, exemption or exclusion.

1974, c. 545; 1979, c. 640.

§59.1-9.5. Contracts, etc., in restraint of trade unlawful.

Every contract, combination or conspiracy in restraint of trade or commerce of this Commonwealth is unlawful.

1974, c. 545.

§59.1-9.6. Monopolies unlawful.

Every conspiracy, combination, or attempt to monopolize, or monopolization of, trade or commerce of this Commonwealth is unlawful.

1974, c. 545.

§59.1-9.7. Discriminatory practices unlawful; proof; payment or acceptance of certain commissions, etc., unlawful.

(a) It is unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities or services of like grade and quality, where either or any of the purchasers involved in such commerce are in competition, where such commodities or services are sold for use, consumption or resale within the Commonwealth and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them; provided, that nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the different methods or quantities in which such commodities or services are to such purchasers sold or delivered; and provided further, that nothing herein contained shall prevent persons engaged in selling commodities or services in commerce from selecting their own customers in bona fide transactions and not in restraint of trade; and provided further, that nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Upon proof being made, at any suit on a complaint under this section, that there has been discrimination in price or services or facilities furnished or in payment for services or facilities to be rendered, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section; provided, however, that nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the

furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) It is unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for and not exceeding the actual cost of such services rendered in connection with the sale or purchase of goods, wares or merchandise.

(d) It is unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of any products, commodities or services manufactured, sold or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products, commodities or services.

(e) It is unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) It is unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price that is prohibited by this section.

1974, c. 545.

§59.1-9.8. Forum; restraining orders and injunctions; penalties.

Actions and proceedings for violations of this chapter shall be brought in the circuit courts of this Commonwealth. Those courts may issue temporary restraining orders and injunctions to prevent and restrain violations of this chapter, and may award the damages and impose the civil penalties provided herein. They may also grant mandatory injunctions reasonably necessary to eliminate violations of this chapter.

1974, c. 545.

§59.1-9.9. Venue.

The venue for all actions and proceedings for violations of this chapter shall be as specified below in this section.

The circuit court of the county or city wherein any defendant: (i) resides; or (ii) regularly or systematically conducts affairs or business activity; or (iii) has property that may be affected by the action or proceeding. Provided, however, that if said defendant does not, as specified in (i), (ii) and (iii) above, reside in, conduct affairs or business activity in, or have such property in the Commonwealth, then the action or proceeding may be brought in the circuit court of the county or city in which the registered office of said defendant is located or wherein the alleged violation occurred.

1974, c. 545; 1975, c. 289.

§59.1-9.10. Investigation by Attorney General of suspected violations; civil investigative demand to witnesses; access to business records, etc.

A. Whenever it shall appear to the Attorney General, either upon complaint or otherwise, that any person has engaged in, or is engaging in, or is about to engage in any act or practice prohibited by this chapter, the Attorney General may in his discretion either require or permit such person to file with him a statement in writing or otherwise, under oath, as to all facts and circumstances concerning the subject matter. The Attorney General may also require such other data and information as he may deem relevant to the subject matter of an investigation of a possible violation of this chapter and may make such special and independent investigations as he may deem necessary in connection with such matter.

B. In connection with any such investigation, the Attorney General, or his designee, is empowered to issue a civil investigative demand to witnesses by which he may (i) compel the attendance of such witnesses; (ii) examine such witnesses under oath before himself or a court of record; (iii) subject to subsection C, require the production of any books or papers that he deems relevant or material to the inquiry; and (iv) issue written interrogatories to be answered by the witness served or, if the witness served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the witness. The above investigative powers shall not abate or terminate by reason of any action or proceeding brought by the Attorney General under this chapter. When documentary material is demanded by a civil investigative demand,

said demand shall not: (1) contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this Commonwealth; or (2) require the disclosure of any documentary material that would be privileged, or production of which for any other reason would not be required by a subpoena duces tecum issued by a court of the Commonwealth.

C. Where the information requested pursuant to a civil investigative demand may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based therein, and the burden of deriving or ascertaining the answer is substantially the same for the Attorney General as for the party from whom such information is requested, it is sufficient for that party to specify the records from which the answer may be derived or ascertained and to afford the Attorney General, or other individuals properly designated by the Attorney General, reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. Further, the Attorney General is hereby authorized, and may so elect, to require the production pursuant to this section, of documentary material before or after the taking of any testimony of the person summoned pursuant to a civil investigative demand, in which event, said documentary matter shall be made available for inspection and copying during normal business hours at the principal place of business of the person served, or at such other time and place, as may be agreed upon by the person served and the Attorney General.

D. Any civil investigative demand issued by the Attorney General shall contain the following information:

1. The statute and section hereof, the alleged violation of which is under investigation and the subject matter of the investigation.
2. The date and place at which time the person is required to appear to produce documentary material in his possession, custody or control in the office of the Attorney General located in Richmond, Virginia. Such date shall not be less than twenty days from the date of the civil investigative demand.
3. Where documentary material is required to be produced, the same shall be described by class so as to clearly indicate the material demanded.

E. Service of civil investigative demand of the Attorney General as provided herein may be made by:

1. Delivery of a duly executed copy thereof to the person served, or if a person is not a natural person, to the principal place of business of the person to be served, or
2. Mailing by certified mail, return receipt requested, a duly executed copy thereof addressed to the person to be served at his principal place of business in the Commonwealth, or if said person has no place of business in the Commonwealth, to his principal office.

F. Within twenty days after the service of any such demand upon any person or enterprise, or at any time before the return date specified in the demand, whichever period is shorter, such party may file, in the Circuit Court of the City of Richmond and serve upon the Attorney General a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this chapter or upon any constitutional or other legal right or privilege of such party. The provisions of this subsection shall be the exclusive means for a witness summoned pursuant to a civil investigative demand under this section to challenge a civil investigative demand issued pursuant to subsection B.

G. The examination of all witnesses under this section shall be conducted by the Attorney General, or his designee, before an officer authorized to administer oaths in this Commonwealth. The testimony shall be taken stenographically or by a sound recording device and shall be transcribed.

H. Any person required to testify or to submit documentary evidence shall be entitled, on payment of lawfully prescribed cost, to procure a copy of any document produced by such person and of his own testimony as stenographically reported or, in the case of depositions, as reduced to writing by or under the direction of a person taking the deposition. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, but counsel may not, as a matter of right, otherwise participate in the investigation.

I. All persons served with a civil investigative demand by the Attorney General under this chapter, other than any person or persons whose conduct or practices are being investigated or any officer, director or person in the employ of such person under investigation, shall be paid the same fees and mileage as paid witnesses in the courts of this Commonwealth. No person shall be excused from attending such inquiry pursuant to the mandate of a civil investigative demand, or from producing a paper or from being examined or required to answer questions on the ground of failure to tender or pay a witness fee or mileage unless demand therefor is made at the time testimony is about to be taken and as a condition precedent to offering such production or testimony and unless payment thereof is not thereupon made.

J. Any natural person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience of a civil investigative demand or lawful request of the Attorney General or those properly authorized by the Attorney General, pursuant to this section, shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than \$5,000, or by imprisonment in jail for not more than one year, or both such fine and imprisonment.

Any natural person who commits perjury or false swearing or contempt in answering, or failing to answer, or in producing evidence or failing to do so in accordance with a civil investigative demand or lawful request by the Attorney General, pursuant to this section, shall be guilty of a misdemeanor and upon conviction therefor by a court of competent jurisdiction shall be punished by a fine of not more than \$5,000, or by imprisonment in jail for not more than one year, or both such fine and imprisonment.

K. In any investigation brought by the Attorney General pursuant to this chapter, no individual shall be excused from attending, testifying or producing documentary material, objects or intangible things in obedience to a civil investigative demand or under order of the court on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to any penalty, but no testimony or other information compelled either by the Attorney General or under order of the court, or any information directly or indirectly derived from such testimony or other information, may be used against the individual or witness in any criminal case. However, he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to

answer, or in producing evidence or failing to do so in accordance with the order of the Attorney General or the court. If an individual refuses to testify or produce evidence after being granted immunity from prosecution and after being ordered to testify or produce evidence as aforesaid, he may be adjudged in civil contempt by a court of competent jurisdiction and committed to the county jail until such time as he purges himself of contempt by testifying, producing evidence or presenting a written statement as ordered. The foregoing shall not prevent the Attorney General from instituting other appropriate contempt proceedings against any person who violates any of the above provisions.

L. It shall be the duty of all public officials, both state and local, their deputies, assistants, clerks, subordinates or employees, and all other persons to render and furnish to the Attorney General, his deputy or other designated representative, when so requested, all information and assistance in their possession or within their power. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any such person other than the Attorney General the name of any witness examined or any other information obtained upon such inquiry, except as so directed by the Attorney General, shall be guilty of a misdemeanor and subject to the sanctions prescribed in subsection J. Such inquiry may upon written authorization of the Attorney General be made public.

M. The Attorney General may promulgate rules and regulations to implement and carry out the provisions of this section.

N. It shall be the duty of the Attorney General, or his designees, to maintain the secrecy of all evidence, testimony, documents or other results of such investigations. Violation of this subsection shall be a misdemeanor. Nothing herein contained shall be construed to prevent (i) the disclosure of any such investigative evidence by the Attorney General in his discretion to any federal or state law-enforcement authority that has restrictions governing confidentiality similar to those contained in this subsection or (ii) the presentation and disclosure of any such investigative evidence by the Attorney General, in his discretion, in any action or proceeding brought by the Attorney General under this chapter.

1974, c. 545; 1982, c. 285; 2000, c. [755](#).

§59.1-9.11. Penalty for flagrant violations.

In any action or proceeding brought under § [59.1-9.15](#) (a) the court may assess for the benefit of the Commonwealth a civil penalty of not more than \$100,000 for each

willful or flagrant violation of this chapter. No civil penalty shall be imposed in connection with any violation for which any fine or penalty is imposed pursuant to federal law.

1974, c. 545.

§59.1-9.12. Personal suit for injunction or actual damages.

(a) Any person threatened with injury or damage to his business or property by reason of a violation of this chapter may institute an action or proceeding for injunctive relief when and under the same conditions and principles as injunctive relief is granted in other cases.

(b) Any person injured in his business or property by reason of a violation of this chapter may recover the actual damages sustained, and, as determined by the court, the costs of suit and reasonable attorney's fees. If the trier of facts finds that the violation is willful or flagrant, it may increase damages to an amount not in excess of three times the actual damages sustained.

1974, c. 545.

§59.1-9.13. Effect of conviction in other proceedings.

A final judgment or decree to the effect that a defendant has violated this chapter, other than a consent judgment or decree entered before any testimony has been taken, in an action or proceeding brought under § [59.1-9.15](#) (a) is prima facie evidence against that defendant in any other action or proceeding against him brought under § [59.1-9.12](#) or § [59.1-9.15](#) (b) as to all matters with respect to which the judgment or decree would be an estoppel between the parties thereto.

1974, c. 545.

§59.1-9.14. Limitation of actions.

(a) An action under § [59.1-9.15](#) (a) to recover a civil penalty is barred if it is not commenced within four years after the cause of action accrues.

(b) An action under § [59.1-9.12](#) (b) or § [59.1-9.15](#) (b) to recover damages is barred if it is not commenced within four years after the cause of action accrues, or within one year after the conclusion of any action or proceeding under § [59.1-9.15](#) (a) commenced within or before that time based in whole or in part on any matter complained of in the action for damages, whichever is later.

1974, c. 545.

§59.1-9.15. Actions on behalf of Commonwealth or localities; injunctive relief; damages.

(a) The Attorney General on behalf of the Commonwealth, or the attorney for the Commonwealth or county attorney on behalf of a county, or the city attorney on behalf of a city, or the town attorney on behalf of a town may institute actions and proceedings for injunctive relief and civil penalties for violations of this chapter. In any such action or proceeding in which the plaintiff substantially prevails, the court may award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

(b) The Commonwealth, a political subdivision thereof, or any public agency injured in its business or property by reason of a violation of this chapter, may recover the actual damages sustained, reasonable attorney's fees and the costs of suit. If the trier of facts finds that the violation is willful or flagrant, it may increase damages to an amount not in excess of three times the actual damages sustained.

(c) The Attorney General in acting under subsection (a) or (b) of this section may also bring such action on behalf of any political subdivision of the Commonwealth, provided that the Attorney General shall notify each such subdivision of the pendency of the action and give such subdivision the option of exclusion from the action.

(d) The Attorney General may bring a civil action to recover damages and secure other relief as provided by this chapter as *parens patriae* respecting injury to the general economy of the Commonwealth.

1974, c. 545; 1982, c. 60; 1988, c. 589.

§59.1-9.16. Remedies cumulative.

The remedies in this chapter are cumulative.

1974, c. 545.

§59.1-9.17. Construction of chapter.

This chapter shall be applied and construed to effectuate its general purposes in harmony with judicial interpretation of comparable federal statutory provisions.

1974, c. 545.

§59.1-9.18. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

Virginia Asbestos NESHA Act

§40.1-51.23. Definitions.

As used in this chapter, which may be cited as the Virginia Asbestos NESHAP Act, the following terms shall have the meanings set forth in this section unless the context requires a different meaning:

"Asbestos" means any material containing more than one percent of asbestos by weight, which is friable or which has a reasonable chance of becoming friable in the course of ordinary or anticipated building use.

"Board" means the Safety and Health Codes Board.

"Commissioner" means the Commissioner of Labor and Industry or his authorized representative.

"Department" means the Department of Labor and Industry.

"National Emissions Standards for Hazardous Air Pollutants" or "NESHAP" means those portions of the regulations contained in 40 CFR Part 61 under the federal Clean Air Act which deal with the demolition and renovation of asbestos facilities. The following list of sections of the CFR are included in the Board's authority but do not limit it: §§ 61.140; 61.141; 61.145; 61.146; 61.148; 61.150, except subsection (a) (4); 61.154, except subsection (d); and 61.156.

"Owner" means any person who owns, leases, operates, controls, or supervises the facility being demolished, renovated, sprayed, or insulated; any person who owns, leases, operates, controls, or supervises the demolition, renovation, spraying, or insulation operation; or both.

1992, c. 541 .

§40.1-51.24. Department authorized to enter certain agreements.

The Department is hereby authorized to:

1. Make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this chapter including, but not limited to, contracts with the United States, other states, agencies, and governmental subdivisions of the Commonwealth.
2. Accept grants from the United States government, its agencies and instrumentalities, and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary and desirable.

1992, c. 541 .

§40.1-51.25. Safety and Health Codes Board to formulate rules, regulations, etc.

A. The Board is authorized to formulate definitions, rules, regulations and standards which shall be designed to ensure the proper demolition and renovation of asbestos facilities and effect compliance with the asbestos NESHAP requirements of the federal Environmental Protection Agency. Such standards shall be at least as stringent as the asbestos regulations passed pursuant to § 112 of the Clean Air Act. The regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations of the Department of Air Pollution Control. Any regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ [2.2-4100](#) et seq.).

B. The Board in making regulations and in approving variances, and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located; and
4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

1992, c. 541 .

§40.1-51.26. Commissioner of Labor and Industry to enforce laws.

The Commissioner of Labor and Industry shall have the authority to:

1. Supervise, administer, and enforce the provisions of this chapter and regulations of the Board;
2. Receive complaints as to asbestos NESHAP violations;
3. Hold or cause to be held hearings and enter orders diminishing or abating the causes of air pollution and orders to enforce regulations pursuant to § [40.1-51.28](#);

4. Institute legal proceedings, including suits for injunctions for the enforcement of his orders, regulations of the Board, and for the enforcement of penalties;
5. Investigate any violations of this chapter and regulations;
6. Require that asbestos NESHAP records and reports be made available upon request, and require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of this chapter and regulation; and
7. Upon presenting appropriate credentials to the owner, operator, or agent in charge:
 - a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in this Commonwealth, subject to federal security requirements; and
 - b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the Commissioner or his representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the Commissioner shall have the power to seek an order compelling such entry or inspection, pursuant to § [40.1-49.9](#).

1992, c. 541 .

§40.1-51.27. Inspections, investigations, etc.

The Commissioner is authorized to make or cause to be made, such investigations and inspections and do such other things as are reasonably necessary to carry out the provisions of this chapter.

1992, c. 541 .

§40.1-51.28. Issuance of special orders.

A. The Commissioner shall have the power to issue special orders to:

1. Owners who are permitting or causing asbestos NESHAP violations, to cease and desist from such violation;

2. Owners who have violated or failed to comply with the terms and provisions of any order of the Commissioner, to comply with such terms and provisions;

3. Owners who have contravened duly adopted asbestos NESHAP standards and regulations, to cease such contravention and to comply with air quality standards and policies; and

4. Require any owner to comply with the provisions of this chapter.

B. Such special orders are to be issued only after a hearing with reasonable notice to the affected owners of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection C. Should the Commissioner find that any such owner is unreasonably affecting the public health, safety or welfare, the health of animal or plant life, or property, after a reasonable attempt to give notice, he shall declare a state of emergency and may issue without a hearing an emergency special order directing the owner to cease such pollution immediately, and shall within ten days hold a hearing, after reasonable notice as to the time and place thereof to the owner to affirm, modify, amend or cancel such emergency special order. If the Commissioner finds that an owner who has been issued a special order or an emergency special order is not complying with the terms thereof, he may proceed in accordance with § [40.1-51.35](#) or § [40.1-51.39](#).

C. Any special order issued under the provisions of this section need not be filed with the Secretary of the Commonwealth, but the owner to whom such special order is directed shall be notified by certified mail, return receipt requested, sent to the last known address of such owner, or by personal delivery by an agent of the Commissioner, and the time limits specified shall be counted from the date of receipt.

D. Nothing in this section or in § [40.1-51.26](#) shall limit the Commissioner's authority to proceed against such owner directly under § [40.1-51.35](#) or § [40.1-51.39](#) without the prior issuance of an order, special, or otherwise.

1992, c. 541 .

§40.1-51.29. Decision of Commissioner pursuant to hearing.

Any decision by the Commissioner rendered pursuant to hearings under § [40.1-51.28](#) shall be reduced to writing and shall contain the explicit findings of fact and conclusions of law upon which the decision is based. Certified copies of the written decisions shall be delivered or mailed by certified mail to the parties affected by it. Failure to comply with this section shall render such decision invalid.

1992, c. 541 .

§40.1-51.30. Appeal to Board.

Any owner aggrieved by a final decision of the Commissioner under § [40.1-51.28](#) may file a notice of appeal to the Board within fifteen days. Such notice shall be in writing and addressed to the Commissioner.

1992, c. 541 .

§40.1-51.31. Penalties for noncompliance; judicial review.

A. The Board is authorized to promulgate regulations providing for the determination of a formula for the basis of the amount of any noncompliance penalty to be assessed by a court pursuant to subsection B hereof, in conformance with the requirements of § 120 of the federal Clean Air Act, as amended, and any regulations promulgated thereunder. Any regulations promulgated pursuant to this section shall be in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

B. Upon a determination of the amount by the Commissioner, the Commissioner shall petition the circuit court of the county or city wherein the owner subject to such noncompliance assessment resides, regularly or systematically conducts affairs or business activities, or where such owner's property affected by the administrative action is located for an order requiring payment of a noncompliance penalty in a sum the court deems appropriate.

C. Any order issued by a court pursuant to this section may be enforced as a judgment of the court. All sums collected, less the assessment and collection costs, shall be paid into the general fund of the state treasury.

D. Any penalty assessed under this section shall be in addition to permits, fees, orders, payments, sanctions, or other requirements under this chapter and shall in no way affect any civil or criminal enforcement proceedings brought under other provisions of this chapter.

1992, c. 541 .

§40.1-51.32. Owners to furnish plans, specifications and information.

Every owner which the Commissioner has reason to believe is causing, or may be about to cause, an asbestos NESHAP problem shall on request of the Commissioner furnish such plans, specifications and information as may be required by the Commissioner in the discharge of his duties under this chapter. Any information, except emission data, as to secret processes, formulae or methods of manufacture or

production shall not be disclosed in a public hearing and shall be kept confidential. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person from whom such sample is requested.

1992, c. 541 .

§40.1-51.33. Protection of trade secrets.

Any information, except emissions data, reported to or otherwise obtained by the Commissioner which contains or might reveal a trade secret shall be confidential and shall be limited to those persons who need such information for purposes of enforcement of this chapter or the federal Clean Air Act or regulations and orders of the Commissioner. It shall be the duty of each owner to notify the Commissioner of the existence of trade secrets when he desires the protection provided herein.

1992, c. 541 .

§40.1-51.34. Right of entry.

Whenever it is necessary for the purposes of this chapter, the Commissioner may at reasonable times enter any establishment or upon any property, public or private, subject to federal security requirements, to obtain information or conduct surveys or investigations.

1992, c. 541 .

§40.1-51.35. Compelling compliance with regulations and orders of Board; penalty for violations.

A. Any owner violating or failing, neglecting or refusing to obey any asbestos NESHAP regulation or order of the Commissioner may be compelled to comply by injunction, mandamus or other appropriate remedy.

B. Without limiting the remedies which may be obtained under this section, any owner violating or failing, neglecting or refusing to obey any Board regulation or order or any provision of this chapter shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed pursuant to this subsection, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the owner's business, the severity of the economic impact of the penalty on the business, and the seriousness of the violation. Such civil penalties shall be paid into the state treasury.

C. With the consent of an owner who has violated or failed, neglected or refused to obey any asbestos NESHAP regulation or order or any provision of this chapter, the Commissioner may provide, in any order issued by the Commissioner against the owner, for the payment of civil charges in specific sums, not to exceed the limit of subsection B. Such civil charges shall be in lieu of any civil penalty which could be imposed under subsection B and shall be paid into the state treasury.

1992, c. 541 .

§40.1-51.36. Judicial review of regulations of Board.

The validity of any regulation may be determined through judicial review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

1992, c. 541 .

§40.1-51.37. Appeal from decision of Board.

Any owner aggrieved by a final decision of the Board under § [40.1-51.30](#) or of the Commissioner under subdivision 4 of § [40.1-51.26](#) is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

1992, c. 541 .

§40.1-51.38. Appeal to Court of Appeals.

The Commonwealth or any party aggrieved by any final decision of the judge shall have, regardless of the amount involved, the right to appeal to the Court of Appeals. The procedure shall be the same as that provided by law concerning appeals and supersedeas.

1992, c. 541 .

§40.1-51.39. Penalties; chapter not to affect right to relief or to maintain action.

A. Any owner violating any provision of this chapter, Board regulation, or order of the Commissioner shall upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than \$1,000 for each violation within the discretion of the court. Each day of continued violation after conviction shall constitute a separate offense.

B. Nothing in this chapter shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property.

1992, c. 541 .

§40.1-51.40. Duty of attorney for the Commonwealth.

It shall be the duty of every attorney for the Commonwealth to whom the Commissioner has reported any violation of this chapter or any regulation or order of the Board, to cause proceedings to be prosecuted without delay for the fines and penalties in such cases.

1992, c. 541 .

§40.1-51.41. Local ordinances.

A. Existing local ordinances adopted prior to July 1, 1972, shall continue in force; however, in the event of a conflict between a Board regulation, promulgated pursuant to this chapter, and a local ordinance, the Board regulation shall govern, except when the conflicting local ordinance is more stringent.

B. The governing body of any locality proposing to adopt an ordinance, or an amendment to an existing ordinance, relating to areas covered by asbestos NESHAP after June 30, 1972, shall first obtain the approval of the Board as to the provisions of the ordinance or amendment. The Board shall not approve any local ordinance less stringent than the pertinent regulations of the Board.

1992, c. 541 .

Virginia Assistive Technology Device Warranties Act

§59.1-470. Definitions.

As used in this chapter:

"Assistive device dealer" means a person or company that is in the business of selling assistive devices, including a manufacturer who sells assistive technology devices directly to consumers.

"Assistive device lessor" means a person or company that leases an assistive device to a consumer, or who holds the lessor's rights, under a written lease.

"Assistive technology device," "assistive device," or "device" means any new device, including a demonstrator, that a consumer purchases or accepts transfer of in this

Commonwealth which is used for a major life activity or any other assistive device that enables a person with a disability to communicate, see, hear, or maneuver. These devices include (i) manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility of an individual; (ii) hearing aids, telephone communication devices for the deaf (TTD/TTY), assistive listening devices, visual and audible signal systems, and other aides that enhance an individual's ability to hear; and (iii) voice-synthesized computer modules, optical scanners, talking software, Braille printers, and other devices that enhance a sight-impaired individual's ability to communicate.

"Authorized dealer" means any seller of an assistive device that (i) has, within a specified geographic area, an exclusive distribution arrangement with any person or entity that manufactures or assembles such device or (ii) is designated by the person or company that manufactures or assembles such device to repair or accept for repair such device.

"Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the reasonable costs of obtaining an alternative assistive device.

"Consumer" means:

1. A person with a disability as defined in the Americans With Disabilities Act, 42 U.S.C. § 12102 (2), or his legal representative, (i) who has purchased an assistive device from an assistive device dealer or manufacturer for purposes other than resale; (ii) to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of any warranty established by this chapter; or (iii) who leases a new assistive device from an assistive device lessor under a written lease;
2. An entity which purchases or leases an assistive device using state or federal funds for the use of a person with a disability; or
3. An insurer or self-insurer which purchases or leases an assistive device for the use of a person with a disability.

"Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public.

"Manufacturer" means a person or company that manufactures or assembles assistive devices and agents of that person or company, including an authorized dealer, an

importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's assistive device, but does not include a professional who fabricates, without charge, a device for use in the course of treatment.

"Nonconformity" means a condition or defect that significantly impairs the use, value, function or safety of an assistive device or any of its components, but does not include a condition or defect of the device that is the result of (i) abuse, misuse or neglect by a consumer, (ii) modifications or alterations not authorized by the manufacturer, (iii) normal wear, (iv) normal use which may be resolved through a fitting adjustment, routine maintenance, preventative maintenance or proper care, or (v) a consumer's failure to follow any manufacturer's written service and maintenance guidelines furnished to the customer at the time of purchase.

"Reasonable attempt to repair" means that within one year after the date of first delivery of the assistive device:

1. The same nonconformity has been subject to repair three or more times by the manufacturer, assistive device lessor or any assistive device dealer authorized by the manufacturer to repair such device, and the nonconformity continues to exist and interfere with the device's operation; or
2. The assistive device is out of service, with no fungible loaner available, for a cumulative total of at least thirty days, exclusive of any necessary time in shipment, due to repair by the manufacturer, assistive device lessor or any assistive device dealer authorized by the manufacturer to repair such device, all of which is due to warranty nonconformities. The provisions of this subdivision shall not be applicable if the repairs could not be performed because of conditions beyond the control of the manufacturer, its agents or authorized dealers, including war, invasion, strike, fire, flood or other natural disasters.

1998, cc. [67](#), [242](#).

§59.1-471. Implied warranty; responsibility for repair, return, or replacement.

A. Notwithstanding any other provision of law, in addition to any express warranty furnished by the manufacturer of an assistive device, such manufacturer shall also be deemed to have warranted to any consumer purchasing or leasing such device within this Commonwealth, that for a period of one year from date of first delivery to the consumer (i) the device, when used as intended, will be free from any nonconformity

and (ii) any nonconformity will be repaired (parts and labor) by the manufacturer or its agent, without charge to the consumer.

B. If, after reasonable attempt to repair, any nonconformity is not repaired, the manufacturer shall either:

1. Accept return of the nonconforming assistive technology device and refund to the consumer or consumers, to the extent of each consumer's participation in the initial purchase or lease of the device or collateral costs, within fourteen days thereof, (i) the manufacturer's suggested retail price, if available, (ii) the full purchase price of the device, excluding the cost of services associated with the device's initial purchase, together with reasonable collateral costs, or (iii) if the device was leased, all lease payments made through the date of return together with a proportional share of any required deposit; or

2. Accept return of the nonconforming assistive technology device and replace such nonconforming device with one of comparable market value, function and usefulness within thirty days of such request.

1998, cc. [67](#), [242](#).

§59.1-472. Returned devices; subsequent sale or lease; disclosure.

No assistive device returned due to a nonconformity under the provisions of § [59.1-471](#) by a consumer or assistive device lessor in this Commonwealth or any other state, may be sold or leased again in this Commonwealth unless full disclosure of the reason for such return is made to any prospective buyer or lessee.

1998, cc. [67](#), [242](#).

§59.1-473. Legal action or arbitration.

A. The remedies afforded by this chapter are cumulative and not exclusive and shall be in addition to any other legal or equitable remedies otherwise available to the consumer.

B. In addition to any other remedies otherwise available to him, any consumer who suffers loss as a result of any violation of this chapter may bring an action to recover damages. Such damages may also be recovered through the arbitration mechanism described in subsection C.

C. All persons subject to this chapter shall have the option of submitting any disputes arising under the provisions of this chapter to the arbitration mechanism established

and administered by the Division of Consumer Counsel of the Department of Law, pursuant to subdivision C 2 of § [2.2-517](#). Such mechanism shall ensure that the arbitration is conducted by a neutral third party.

1998, cc. [67](#), [242](#); 2012, cc. [803](#), [835](#).

§59.1-474. Certain actions deemed void.

A. Any manufacturer's exclusion or limitation of the implied warranties or consumer remedies prescribed by this chapter shall be deemed void.

B. Any purported waiver of rights to legal action or arbitration by a consumer within an assistive device purchase agreement shall be deemed void.

1998, cc. [67](#), [242](#).

Virginia Biotechnology Research Act

§2.2-5500. Purpose [Not set out].

Not set out. (2001, c. 844.)

§2.2-5501. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affected localities" means the locality in which a regulated introduction is proposed to be made and any locality within a three-mile radius of the location where the regulated introduction is proposed to be made.

"Confidential business information" means information entitled to confidential treatment under subdivision A 1 or A 2 of § [2.2-5506](#).

"Coordinated Framework" means the federal Coordinated Framework for the Regulation of Biotechnology set forth in 51 Fed. Reg. 23,302 through 23,350 (June 26, 1986), as amended.

"Department" means the department designated by the Secretary of Commerce and Trade to implement the requirements of this chapter for certain types or classes of regulated introductions. Where possible, the Secretary shall designate the department whose purpose most closely resembles the purpose of the federal regulator that will be responsible under the Coordinated Framework for reviewing and authorizing the regulated introduction.

"Federal regulator" means a federal department, agency, or other instrumentality of the federal government, or a designee of such federal instrumentality, which is responsible for regulating an introduction of a genetically engineered organism into the environment under the Coordinated Framework.

"Genetically engineered organism" means an organism (any organism such as animal, plant, bacterium, cyanobacterium, fungus, protist, or virus), altered or produced through genetic modification from a donor, vector, or recipient organism using modern molecular techniques such as recombinant deoxyribonucleic acid (DNA) methodology, and any living organisms derived therefrom.

"Locality" means any county, city or town located within the Commonwealth.

"Planned introduction into the environment" means the intentional introduction or use in the Commonwealth beyond the de minimis level of a genetically engineered organism anywhere except within an indoor facility that is designed to physically contain the genetically engineered organism, including a laboratory, greenhouse, building, structure, growth chamber, or fermenter.

"Regulated introduction" means a planned introduction into the environment for which the Coordinated Framework requires that the person proposing to commence the introduction into the environment do one or more of the following:

1. Notify a federal regulator of the proposed introduction into the environment;
2. Secure the approval of or a permit or license from a federal regulator before commencing the introduction into the environment; or
3. Secure a determination by a federal regulator of the need for notification, approval, licensing or issuance of a permit by the federal regulator if the determination is part of a procedure specified in the Coordinated Framework.

1994, c. [472](#), § 2.1-770; 2001, c. [844](#).

§2.2-5502. Exemptions from chapter to be determined by Department.

A. The Department may waive part or all of the requirements under this chapter for a specified regulated introduction if the Department determines that the satisfaction of that requirement is not necessary to protect the public health or the environment.

B. The Department may exempt a class of regulated introductions from part or all of any requirement under this chapter if the Department determines that the sat-

isfaction of those requirements or part thereof is not necessary to protect the public health or the environment.

C. Planned regulated introductions approved by a federal regulator pursuant to the federal Coordinated Framework prior to enactment of this chapter shall be exempt from the provisions of this chapter.

1994, c. [472](#), § 2.1-771; 2001, c. [844](#).

§2.2-5503. Requirements for regulated introduction.

Except as provided under § [2.2-5502](#), no person may commence a regulated introduction unless the person:

1. Provides to the Department all of the following information within seven days after the person submits or should have submitted the information specified in subdivisions 1 a and 1 b to a federal regulator, whichever is sooner:

a. A copy of all information that the person is required to submit to the federal regulator and that is not confidential information; and

b. A summary of any confidential information that the person submits or is required to submit to a federal regulator. The summary shall provide sufficient information to enable the Department to exercise its notice and comment functions under §§ [2.2-5504](#) and [2.2-5505](#), to provide public notice pursuant to § [2.2-5504](#), and to prepare comments pursuant to § [2.2-5505](#), and shall have minimal extraneous and irrelevant information. The summary shall also provide sufficient information to enable the locality in which the introduction is proposed to be made to exercise its comment function under § [2.2-5505](#).

2. Provides such additional information, if any, as is necessary to enable the Department to fulfill any functions it undertakes, on a case-by-case basis, under § [2.2-5505](#).

1994, c. [472](#), § 2.1-772; 2001, c. [844](#).

§2.2-5504. Public notice of proposed regulated introduction.

Within fifteen days after receiving the information required under § [2.2-5503](#), the Department shall publish notice and a brief description of the proposed regulated introduction. Notice shall also be provided to any affected locality and to any person who has filed a written request to be notified of regulated introductions. Notice shall be given by publication one time in a newspaper having general circulation in each locality where the regulated introduction is proposed to be made. In addition, subject

to the provisions of this chapter regarding confidential business information, any documents submitted to the Department as required under § [2.2-5503](#) shall be available for public inspection or copying at or near the site of the proposed regulated introduction and at the offices of the Department.

1994, c. [472](#), § 2.1-773; 2001, c. [844](#).

§2.2-5505. Comment on proposed regulated introduction.

A. The Department and any affected locality may prepare formal comments on the regulated introduction for submission to the federal regulator for that regulated introduction. The comments shall be submitted within the time established by the federal regulator for that regulated introduction, as determined by the applicable federal requirements or the Coordinated Framework. The comments shall address issues raised by application of the criteria for the granting of approval of a permit or a license under the applicable requirement in the Coordinated Framework and for the protection of the public health and the environment.

B. To assist in the preparation of comments, the Department may do any or all of the following:

1. Hold an informational meeting on the proposed regulated introduction;
2. Provide an opportunity for the public to comment on the proposed regulated introduction;
3. Request any additional information necessary on the proposed regulated introduction from the person providing information under § [2.2-5503](#);
4. Conduct a technical review of the proposed regulated introduction; and
5. Seek the assistance of the faculty and academic staff of any Virginia public institution of higher education, the Department of Health, the Department of Agriculture and Consumer Services, the Department of Environmental Quality, or any other appropriate state agency or organization, including but not limited to an institutional biosafety committee, in reviewing the proposed regulated introduction.

C. To assist in the preparation of comments, affected localities may do either or both of the following:

1. Hold an informational meeting on the proposed regulated introduction. When possible, that meeting shall be held in conjunction with an informational meeting held by the Department; and

2. Provide an opportunity for the public to comment on the proposed regulated introduction.

1994, c. [472](#), § 2.1-774; 2001, c. [844](#).

§2.2-5506. Confidential business information; Department to establish procedures.

A. Except as provided in subsections B and C, the Department and any affected locality shall keep confidential any information received under this chapter if the person submitting the information notifies them that:

1. The federal regulator to whom the information has been submitted has determined that the information is entitled to confidential treatment and is not subject to public disclosure under the federal Freedom of Information Act, 5 U.S.C. § 552, as amended, or under the Coordinated Framework; or

2. The person submitting the information to the Department and any locality has submitted a claim to the federal regulator that the information is entitled to confidential treatment under the federal Freedom of Information Act or under the Coordinated Framework, and the federal regulator has not made a determination on that claim.

B. Subsection A shall not prevent the Department from using the information for the purposes of subdivision B 4 or B 5 of § [2.2-5505](#), subject to the requirements of subsection D.

C. The Department shall allow public access to any information that has been granted confidentiality under subsection A if either of the following occurs:

1. The person providing the information expressly agrees in writing to the public access of the information; or

2. After information has been granted confidentiality under subdivision A. 2., the federal regulator makes a determination that the information is not entitled to confidential treatment under the federal Freedom of Information Act or under the Coordinated Framework.

D. The Department shall establish procedures to protect information required to be kept confidential under subsection A. Under the procedures, the Department shall not submit any information under subdivision B 4 or B 5 of § [2.2-5505](#) to any person who is not an employee of the Department unless that person has signed an agreement that satisfies the requirements of subsection E.

E. Any agreement under subsection D shall (i) provide that information that is the subject of the agreement shall be subject to confidential treatment; (ii) prohibit the release or sharing of the information with any other person except at the direction of the Department and in compliance with this chapter; (iii) acknowledge the penalties in § [59.1-338](#) of the Virginia Uniform Trade Secrets Act (§ [59.1-336](#), et seq.) and any other applicable law of the Commonwealth identified by the Department for the unauthorized disclosure of the information; and (iv) contain a statement that the person receiving the information, any member of his immediate family or any organization with which he is associated has no substantial financial interest in the regulated introduction that is the subject of the information.

F. Any person submitting the information under § [2.2-5503](#) may waive any of the requirements under this section.

1994, c. [472](#), § 2.1-775; 2001, c. [844](#).

§2.2-5507. Enforcement.

The Department shall enforce the provisions of §§ [2.2-5503](#) and [2.2-5506](#). Actions to enforce this chapter by injunctive and any other relief appropriate for enforcement may be filed in the Circuit Court of the City of Richmond or in any county or municipality where a violation occurred in whole or in part. In an enforcement action under this chapter, if it is determined that a person commenced a regulated introduction and did not comply with § [2.2-5503](#), the court may enter an injunction directing the person to cease the regulated introduction and may order any additional action necessary to protect human health and the environment.

1994, c. [472](#), § 2.1-776; 2001, c. [844](#).

§2.2-5508. Penalties.

A civil penalty of not more than \$500 may be assessed by the Department against any person who violates any provision of this chapter. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given the opportunity for a hearing pursuant to the Administrative Process Act, (§ [2.2-4000](#) et seq.). Any continuing failure to notify under § [2.2-5503](#) shall constitute the same offense for purposes of imposing the penalty authorized by this section.

1994, c. [472](#), § 2.1-777; 2001, c. [844](#).

§2.2-5509. Limitation on local regulation.

No locality shall enact any regulation or ordinance regulating or prohibiting (i) the planned introduction of genetically engineered organisms into the environment or (ii) biotechnology research activities; however, the siting of biotechnology research activities shall be subject to the zoning and land-use laws and regulations of the localities in which such activities are conducted, the Uniform Statewide Building Code (§ [36-97](#) et seq.), the Statewide Fire Prevention Code (§ [27-94](#) et seq.), local public utility and public works ordinances and regulations of general application, and local tax ordinances of general application.

1994, c. [472](#), § 2.1-778; 2001, c. [844](#).

Virginia Birth-Related Neurological Injury Compensation Act

§38.2-5000. Short title.

The provisions of this chapter shall be known and may be cited as the Virginia Birth-Related Neurological Injury Compensation Act.

1987, c. 540.

§38.2-5001. (Effective January 1, 2018) Definitions.

As used in this chapter:

"Birth-related neurological injury" means injury to the brain or spinal cord of an infant caused by the deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation necessitated by a deprivation of oxygen or mechanical injury that occurred in the course of labor or delivery, in a hospital which renders the infant permanently motorically disabled and (i) developmentally disabled or (ii) for infants sufficiently developed to be cognitively evaluated, cognitively disabled. In order to constitute a "birth-related neurological injury" within the meaning of this chapter, such disability shall cause the infant to be permanently in need of assistance in all activities of daily living. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality, degenerative neurological disease, or maternal substance abuse.

"Claimant" means any person who files a claim pursuant to § [38.2-5004](#) for compensation for a birth-related neurological injury to an infant. Such claims may be filed by any legal representative on behalf of an injured infant; and, in the case of a deceased infant, the claim may be filed by an administrator, executor, or other legal representative.

"Commission" means the Virginia Workers' Compensation Commission.

"Participating hospital" means a general hospital licensed in Virginia which at the time of the injury (i) had in force an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, whereby the hospital agreed to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent, and upon approval of such program by the Commissioner of Health, to participate in its implementation, (ii) had in force an agreement with the State Department of Health whereby the hospital agreed to submit to review of its obstetrical service, as required by subsection C of § [38.2-5004](#), and (iii) had paid the participating hospital assessment pursuant to § [38.2-5020](#) for the period of time in which the birth-related neurological injury occurred. The term also includes employees of such hospitals, excluding physicians or nurse-midwives who are eligible to qualify as participating physicians, acting in the course of and in the scope of their employment.

"Participating physician" means a physician licensed in Virginia to practice medicine, who practices obstetrics or performs obstetrical services either full or part time or, as authorized in the plan of operation, a licensed nurse-midwife who performs obstetrical services, either full or part time, within the scope of such licensure and who at the time of the injury (i) had in force an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, whereby the physician agreed to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent, and upon approval of such program by the Commissioner of Health, to participate in its implementation, (ii) had in force an agreement with the Board of Medicine whereby the physician agreed to submit to review by the Board of Medicine as required by subsection B of § [38.2-5004](#), and (iii) had paid the participating physician assessment pursuant to § [38.2-5020](#) for the period of time in which the birth-related neurological injury occurred. The term "participating physician" includes a part-

nership, corporation, professional corporation, professional limited liability company or other entity through which the participating physician practices.

"Program" means the Virginia Birth-Related Neurological Injury Compensation Program established by this chapter.

1987, c. 540; 1989, c. 523; 1990, cc. 234, 534; 1994, c. [872](#); 1995, c. [302](#); 1999, c. [806](#); 2000, c. [207](#); 2003, c. [897](#); 2004, cc. [896](#), [931](#); 2017, c. [756](#).

§38.2-5001. (Effective until January 1, 2018) Definitions.

As used in this chapter:

"Birth-related neurological injury" means injury to the brain or spinal cord of an infant caused by the deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation necessitated by a deprivation of oxygen or mechanical injury that occurred in the course of labor or delivery, in a hospital which renders the infant permanently motorically disabled and (i) developmentally disabled or (ii) for infants sufficiently developed to be cognitively evaluated, cognitively disabled. In order to constitute a "birth-related neurological injury" within the meaning of this chapter, such disability shall cause the infant to be permanently in need of assistance in all activities of daily living. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality, degenerative neurological disease, or maternal substance abuse. The definition provided here shall apply retroactively to any child born on and after January 1, 1988, who suffers from an injury to the brain or spinal cord caused by the deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation in the immediate postdelivery period in a hospital.

"Claimant" means any person who files a claim pursuant to § [38.2-5004](#) for compensation for a birth-related neurological injury to an infant. Such claims may be filed by any legal representative on behalf of an injured infant; and, in the case of a deceased infant, the claim may be filed by an administrator, executor, or other legal representative.

"Commission" means the Virginia Workers' Compensation Commission.

"Participating hospital" means a general hospital licensed in Virginia which at the time of the injury (i) had in force an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, whereby the hospital agreed to participate in the development of a program to provide obstetrical care to patients

eligible for Medical Assistance Services and to patients who are indigent, and upon approval of such program by the Commissioner of Health, to participate in its implementation, (ii) had in force an agreement with the State Department of Health whereby the hospital agreed to submit to review of its obstetrical service, as required by subsection C of § [38.2-5004](#), and (iii) had paid the participating hospital assessment pursuant to § [38.2-5020](#) for the period of time in which the birth-related neurological injury occurred. The term also includes employees of such hospitals, excluding physicians or nurse-midwives who are eligible to qualify as participating physicians, acting in the course of and in the scope of their employment.

"Participating physician" means a physician licensed in Virginia to practice medicine, who practices obstetrics or performs obstetrical services either full or part time or, as authorized in the plan of operation, a licensed nurse-midwife who performs obstetrical services, either full or part time, within the scope of such licensure and who at the time of the injury (i) had in force an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, whereby the physician agreed to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent, and upon approval of such program by the Commissioner of Health, to participate in its implementation, (ii) had in force an agreement with the Board of Medicine whereby the physician agreed to submit to review by the Board of Medicine as required by subsection B of § [38.2-5004](#), and (iii) had paid the participating physician assessment pursuant to § [38.2-5020](#) for the period of time in which the birth-related neurological injury occurred. The term "participating physician" includes a partnership, corporation, professional corporation, professional limited liability company or other entity through which the participating physician practices.

"Program" means the Virginia Birth-Related Neurological Injury Compensation Program established by this chapter.

1987, c. 540; 1989, c. 523; 1990, cc. 234, 534; 1994, c. [872](#); 1995, c. [302](#); 1999, c. [806](#); 2000, c. [207](#); 2003, c. [897](#); 2004, cc. [896](#), [931](#).

§38.2-5002. Virginia Birth-Related Neurological Injury Compensation Program; exclusive remedy; exception.

A. There is hereby established the Virginia Birth-Related Neurological Injury Compensation Program.

B. Except as provided in subsection D, the rights and remedies herein granted to an infant on account of a birth-related neurological injury shall exclude all other rights and remedies of such infant, his personal representative, parents, dependents or next of kin, at common law or otherwise arising out of or related to a medical malpractice claim with respect to such injury to the infant, including any claims by the infant's personal representative, parents, dependents or next of kin that, by substantive law, are derivative of the medical malpractice claim with respect to the infant's injury, including but not limited to claims of emotional distress proximately related to the infant's injury. This subsection shall not be construed to exclude other rights and remedies available to the infant's mother arising out of or related to a physical injury, separate and distinct from an injury to the infant, that is suffered by the infant's mother during the course of the infant's delivery.

C. Notwithstanding anything to the contrary in this section, a civil action shall not be foreclosed against a physician or a hospital where there is clear and convincing evidence that such physician or hospital intentionally or willfully caused or intended to cause a birth-related neurological injury, provided that such suit is filed prior to and in lieu of payment of an award under this chapter. Such suit shall be filed before the award of the Commission becomes conclusive and binding as provided for in § [38.2-5011](#).

D. Notwithstanding anything to the contrary in this section, a civil action arising out of or related to a birth-related neurological injury under this chapter, brought by an infant, his personal representative, parents, dependents, or next of kin, shall not be foreclosed against a nonparticipating physician or hospital, provided that (i) no participating physician or hospital shall be made a party to any such action or related action, and (ii) the commencement of any such action, regardless of its outcome, shall constitute an election of remedies, to the exclusion of any claim under this chapter; provided that if claim is made, accepted and benefits are provided by the Fund established under this Virginia Birth-Related Neurological Injury Compensation Program, the Fund shall have the right, and be subrogated, to all of the common law rights, based on negligence or malpractice, which the said infant, his personal representative, parents, dependents or next of kin may have or may have had against the non-participating physician or hospital, as the case may be.

1987, c. 540; 1990, c. 535; 2003, c. [897](#).

§38.2-5002.1. Representation by Office of Attorney General; applicability of Public Procurement Act, Freedom of Information Act, and Administrative Process Act.

A. The Office of the Attorney General shall provide requested legal services to the Program as provided in this subsection. The Program shall compensate the Office of the Attorney General for its provision of such legal services based on a reasonable hourly rate as shall be agreed upon periodically by the Board and the Attorney General. If the Office of the Attorney General is unable to provide such legal services as the result of a conflict of interest or other disqualifying circumstances, the Board may employ such other counsel as it deems necessary.

B. The board of directors of the Program shall adopt and implement rules consistent with the provisions of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) that specify policies and procedures regarding the contracting for services not related to the health care provided for claimants, which rules shall be based on competitive principles generally applicable to the procurement of services by state agencies.

C. The Program and its board of directors shall be public bodies for purposes of the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

D. The procedure for adoption of rules and regulations by the board of directors of the Program shall be consistent with the provisions of Article 2 (§ [2.2-4006](#) et seq.) of the Administrative Process Act.

2003, c. [897](#).

§38.2-5002.2. Confidentiality of certain information; penalty.

The following records of the Program shall be confidential: (i) records subject to the attorney-client privilege; (ii) medical and mental records of claimants obtained by the board of directors in the course of administering the Program; (iii) records concerning deliberations of the board of directors in connection with specific claims; (iv) reports of expert witnesses retained by the board of directors that have not become part of the record before the Commission; and (v) all records required to be kept confidential by federal law. Except as herein authorized, an officer, agent or employee of the Program, and any person who has held any such position, shall not disclose, directly or indirectly, any such confidential record or information.

2003, c. [897](#).

§38.2-5003. Virginia Workers' Compensation Commission authorized to hear and determine claims.

The Virginia Workers' Compensation Commission is authorized to hear and pass upon all claims filed pursuant to this chapter. The Commission may exercise the power and authority granted to it in Chapter 2 of Title 65.2 as necessary to carry out the purposes of this chapter.

When a circuit court refers a civil action to the Commission pursuant to § [8.01-273.1](#) for the purposes of determining whether the cause of action satisfies the requirements of this chapter, the Commission shall set the matter for hearing pursuant to § [38.2-5006](#). The Commission shall communicate its decision to the referring circuit court in due course.

1987, c. 540; 1999, c. [822](#).

§38.2-5004. Filing of claims; review by Board of Medicine; review by Department of Health; filing of responses; medical records.

A. 1. In all claims filed under this chapter, the claimant shall file with the Commission a petition, setting forth the following information:

- a. The name and address of the legal representative and the basis for his representation of the injured infant;
- b. The name and address of the injured infant;
- c. The name and address of any physician providing obstetrical services who was present at the birth and the name and address of the hospital at which the birth occurred;
- d. A description of the disability for which claim is made;
- e. The time and place where the birth-related neurological injury occurred;
- f. A brief statement of the facts and circumstances surrounding the birth-related neurological injury and giving rise to the claim;
- g. All available relevant medical records relating to the person who allegedly suffered a birth-related neurological injury and an identification of any unavailable records known to the claimant and the reasons for their unavailability;
- h. Appropriate assessments, evaluations, and prognoses and such other records and documents as are reasonably necessary for the determination of the amount of com-

pensation to be paid to, or on behalf of, the injured infant on account of a birth-related neurological injury;

i. Documentation of expenses and services incurred to date, which indicates whether such expenses and services have been paid for, and if so, by whom; and

j. Documentation of any applicable private or governmental source of services or reimbursement relative to the alleged impairments.

2. The claimant shall furnish the Commission with as many copies of the petition as required for service upon the Program, any physician and hospital named in the petition, the Board of Medicine and the Department of Health, along with a \$15 filing fee. Upon receipt of the petition the Commission shall immediately serve the Program by service upon the agent designated to accept service on behalf of the Program in the plan of operation by registered or certified mail, and shall mail copies of the petition to any physician and hospital named in the petition, the Board of Medicine and the Department of Health.

B. Upon receipt of the petition or the filing of a claim relating to the conduct of a participating physician, the Department of Health Professions shall investigate the petition or claim, utilizing the same process as it does in investigating complaints filed under any provision contained in Title 54.1. Conduct of health care providers giving rise to disciplinary action shall be referred to the Board of Medicine for action consistent with the authority granted to the Board in Article 2 (§ [54.1-2911](#) et seq.) of Chapter 29 of Title 54.1. If a notice or order is issued by the Board of Medicine, a copy shall be mailed to the petitioner or claimant.

C. Upon receipt of the petition or the filing of a claim relating to the conduct of a participating hospital, the Department of Health shall investigate the petition or claim, utilizing the same process as it does in investigating complaints filed under any provision of Title 32.1. If it determines that there is reason to believe that the alleged injury resulted from, or was aggravated by, substandard care on the part of the hospital at which the birth occurred, it shall take any appropriate action consistent with the authority granted to the Department of Health in Title 32.1.

D. The Program shall file a response to the petition and submit relevant written information relating to the issue of whether the injury alleged is a birth-related neurological injury within the meaning of this chapter within 10 days after the date the

panel report prepared pursuant to subsection C of § [38.2-5008](#) is filed with the Commission.

E. Any hospital at which a birth occurred, upon receipt of written notice from the legal representative of an injured infant that he intends to file a petition under this chapter, shall promptly deliver to such person all available medical records relating to the infant who allegedly suffered a birth-related neurological injury.

F. As used in this chapter, fetal monitoring strips, whether printed or in electronic format, shall be deemed to constitute part of the medical records relating to an infant who allegedly suffered a birth-related neurological injury.

1987, c. 540; 1989, c. 523; 2003, c. [897](#); 2005, cc. [50](#), [52](#); 2013, c. [144](#).

§38.2-5004.1. Notification of possible beneficiaries.

A. Each physician, hospital, and nurse midwife shall disclose in writing to their obstetrical patients, at such time or times and in such detail as the board of directors of the Program shall determine to be appropriate, whether such physician, hospital or nurse midwife is or is not a participating provider under the Program.

B. In addition to any other postpartum materials provided to the mother or other appropriate person, every hospital shall provide for each infant who was hospitalized in a neonatal intensive care unit an informational brochure prepared or approved by the board of directors of the Program. The brochure shall describe the rights and limitations under the Program, including the Program's exclusive remedy provision under subsection B of § [38.2-5002](#).

C. When a claim is made to an insurance company, as described in § [38.2-5020.1](#), licensed to do business in the Commonwealth of Virginia or to any self-insurer, alleging that a possible birth-related neurological injury or a severe adverse outcome related to a birth has occurred, such insurance company or self-insurer shall report such claim to the Program on a form provided by the Program. Upon receipt of such report, the Program shall inform the parent or parents or guardians of the child on whose behalf such claim has been made of the Program's existence and eligibility requirements.

D. No liability or inference of liability or eligibility shall attach to the making of such report. The making of such report shall not be admissible in any court.

1999, c. [825](#); 2000, c. [1038](#); 2003, c. [897](#).

§38.2-5005. Tolling of statute of limitations.

The statute of limitations with respect to any civil action that may be brought by or on behalf of an injured infant allegedly arising out of or related to a birth-related neurological injury shall be tolled by the filing of a claim in accordance with this chapter, and the time such claim is pending shall not be computed as part of the period within which such civil action may be brought.

1987, c. 540; 1989, c. 523; 2003, c. [897](#).

§38.2-5006. Hearing; parties.

A. Immediately after the Program's response is filed pursuant to subsection D of § [38.2-5004](#), the Commission shall set the date for a hearing, which shall be held no sooner than 15 days and no later than 90 days after the filing of the Program's response, and shall notify the parties to the hearing of the time and place of such hearing. The hearing shall be held in the city or county where the birth-related neurological injury occurred, or in a contiguous city or county, unless otherwise agreed to by the parties and authorized by the Commission.

B. The parties to the hearing required under this section shall include the claimant and the Program.

1987, c. 540; 1989, c. 523; 2005, cc. [50](#), [52](#).

§38.2-5007. Interrogatories and depositions.

Any party to a proceeding under this chapter may, upon application to the Commission setting forth the materiality of the information requested, serve interrogatories or cause the depositions of witnesses residing within or without the Commonwealth to be taken, the costs to be taxed as expenses incurred in connection with the filing of a claim, in accordance with § [38.2-5009](#). Such depositions shall be taken after notice and in the manner prescribed by law, for depositions in actions at law, except that they shall be directed to the Commission, the Commissioner or the Deputy Commissioner before whom the proceedings may be pending.

1987, c. 540; 1989, c. 523; 2003, c. [897](#).

§38.2-5008. Determination of claims; presumption; finding of Virginia Workers' Compensation Commission binding on participants; medical advisory panel.

A. The Commission shall determine, on the basis of the evidence presented to it, the following issues:

1. Whether the injury claimed is a birth-related neurological injury as defined in § [38.2-5001](#).

a. A rebuttable presumption shall arise that the injury alleged is a birth-related neurological injury where it has been demonstrated, to the satisfaction of the Virginia Workers' Compensation Commission, that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury, and that the infant was thereby rendered permanently motorically disabled and (i) developmentally disabled or (ii) for infants sufficiently developed to be cognitively evaluated, cognitively disabled.

If either party disagrees with such presumption, that party shall have the burden of proving that the injuries alleged are not birth-related neurological injuries within the meaning of the chapter.

b. A rebuttable presumption of fetal distress, an element of a birth-related injury, shall arise if the hospital fails to provide the fetal heart monitor tape to the claimant, as required by subsection E of § [38.2-5004](#).

2. Whether obstetrical services were delivered by a participating physician at the birth.

3. Whether the birth occurred in a participating hospital.

4. How much compensation, if any, is awardable pursuant to § [38.2-5009](#).

5. If the Commission determines (i) that the injury alleged is not a birth-related neurological injury as defined in § [38.2-5001](#), or (ii) that obstetrical services were not delivered by a participating physician at the birth and that the birth did not occur in a participating hospital, it shall dismiss the petition and cause a copy of its order of dismissal to be sent immediately to the parties by registered or certified mail.

6. All parties are bound for all purposes including any suit at law against a participating physician or participating hospital, by the finding of the Virginia Workers' Compensation Commission (or any appeal therefrom) with respect to whether such injury is a birth-related neurological injury.

B. The deans of the schools of medicine of the Eastern Virginia Medical School, University of Virginia School of Medicine, and Medical College of Virginia of Virginia Commonwealth University shall develop a plan whereby each claim filed with the Commission is reviewed by a panel of three qualified and impartial physicians drawn from the fields of obstetrics, pediatrics, pediatric neurology, neonatology, physical medicine and rehabilitation, or any other specialty particularly appropriate to the facts of a particular case. Such plan shall provide that each of the three

aforementioned medical schools shall maintain a review panel of physicians to review claims, with responsibility for reviewing claims rotating among each medical school's panel on a case-by-case basis. The chair of the panel shall be determined by the school's dean. In no event shall the panel contain more than one panel member from the field of obstetrics. The Commission shall direct the Program to pay to the medical school that performed the assessment and prepared a report in conformity with this provision the sum of \$3,000 per claim reviewed.

C. The panel created pursuant to subsection B shall prepare a report that provides a detailed statement of the opinion of the panel's members regarding whether the infant's injury does or does not satisfy each of the criteria of a birth-related neurological injury enumerated in such term's definition in § [38.2-5001](#). The report shall include the panel's basis for its determination of whether each such criteria was or was not satisfied. In addition, the report shall include such supporting documentation as the board of directors of the program may reasonably request. The panel shall file its report with the Commission 60 days from the date the petition was filed with the Commission. At the same time that the panel files its report with the Commission, the panel shall send copies thereof to the Program and all parties in the proceeding. At the request of the Commission, at least one member of the panel shall be available to testify at the hearing. The Commission shall consider, but shall not be bound by, the recommendation of the panel.

1987, c. 540; 1989, c. 523; 1990, cc. 534, 535; 2003, c. [897](#); 2008, cc. [267](#), [520](#).

§38.2-5008.1. Right to confront and cross-examine witnesses.

Upon a timely motion, all parties to a claim under this chapter shall have the right to confront and cross-examine witnesses. In pursuing that right, a party shall not be precluded from conducting depositions by oral examination or cross-examination at a hearing of any witnesses from whom evidence is elicited.

2008, c. [145](#).

§38.2-5009. Commission awards for birth-related neurological injuries; notice of award.

A. Upon determining (i) that an infant has sustained a birth-related neurological injury and (ii) that obstetrical services were delivered by a participating physician at the birth or that the birth occurred in a participating hospital, the Commission shall make an award providing compensation for the following items relative to such injury:

1. Actual medically necessary and reasonable expenses of medical and hospital, rehabilitative, therapeutic, nursing, attendant, residential and custodial care and service, medications, supplies, special equipment or facilities, and related travel, such expenses to be paid as they are incurred. Reimbursement may be provided for nursing and attendant care that is provided by a relative or legal guardian of a Program beneficiary so long as that care is beyond the scope of child care duties and services normally and gratuitously provided by family members to uninjured children. However, such expenses shall not include:

- a. Expenses for items or services that the infant has received, or is entitled to receive, under the laws of any state or the federal government except to the extent prohibited by federal law;
- b. Expenses for items or services that the infant has received, or is contractually entitled to receive, from any prepaid health plan, health maintenance organization, or other private insuring entity;
- c. Expenses for which the infant has received reimbursement, or for which the infant is entitled to receive reimbursement, under the laws of any state or federal government except to the extent prohibited by federal law; and
- d. Expenses for which the infant has received reimbursement, or for which the infant is contractually entitled to receive reimbursement, pursuant to the provisions of any health or sickness insurance policy or other private insurance program.

Expenses of medical and hospital services under this subdivision shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person.

In order to provide coverage for expenses of medical and hospital services under this subdivision, the Commission, in all cases where a comparative analysis of the costs, including the effects on the infant's family's health insurance coverage, and benefits indicates that such action is more cost-effective than awarding payment of medical and hospital expenses, shall (i) require the claimant to purchase private health insurance providing coverage for such expenses, provided that the premium or other costs of such coverage shall be paid by the Fund; (ii) require the claimant to participate in the State Medicaid Program, the Children's Health Insurance Program or other state or federal health insurance program for which the infant is eligible; or (iii) if the

Commission determines that it would be unreasonably burdensome to require the claimant to purchase private health insurance and that the infant is ineligible for a health insurance program described in clause (ii), to make an award providing compensation for the cost of private accident and sickness insurance for the infant.

2. Loss of earnings from the age of 18 are to be paid in regular installments beginning on the eighteenth birthday of the infant. An infant found to have sustained a birth-related neurological injury shall be conclusively presumed to have been able to earn income from work from the age of 18 through the age of 65, if he had not been injured, in the amount of 50 percent of the average weekly wage in the Commonwealth of workers in the private, nonfarm sector. Payments shall be calculated based on the Commonwealth's reporting period immediately preceding the 18th birthday of the claimant child, and subsequently adjusted based upon the succeeding annual reports of the Commonwealth. The provisions of § [65.2-531](#) shall apply to any benefits awarded under this subdivision.

3. Reasonable expenses incurred by the claimant in connection with the filing of a claim under this chapter, including reasonable attorneys' fees of the claimant's attorney, but excluding attorney fees incurred in opposing a claimant's admission pursuant to § [8.01-273.1](#). Any award for expenses, including attorney's fees, incurred by the claimant in connection with the filing of a claim under this chapter shall be subject to the approval and award of the Commission.

A copy of the award shall be sent immediately by registered or certified mail to the parties.

B. Regardless of whether the Commission makes either of the determinations described in clauses (i) and (ii) of subsection A, the Commission shall not award compensation in connection with a claim under this chapter, or any claim pursuant to § [8.01-273.1](#), for any attorney's fees or other expenses incurred by any physician, hospital, or nurse midwife that is party to a proceeding under this chapter, or pursuant to § [8.01-273.1](#), or by a medical malpractice liability insurer of such party. This prohibition shall not affect the requirement that the Program make reimbursement for photocopying costs as set forth in § [8.01-273.1](#), or the requirement under § [38.2-5002.1](#) that the Program compensate the Office of the Attorney General for its provision of legal services to the Program.

C. The amendments to this section enacted pursuant to Chapter 535 of the Acts of Assembly of 1990 shall be retroactively effective in all cases arising prior to July 1, 1990, that have been timely filed and are not yet final.

1987, c. 540; 1989, c. 523; 1990, c. 535; 1999, c. [823](#); 2000, c. [1038](#); 2003, c. [897](#); 2004, cc. [896](#), [931](#); 2008, cc. [267](#), [520](#); 2011, c. [84](#).

§38.2-5009.1. Infants dying shortly after birth.

A. For births occurring on or after July 1, 2003, if the Commission determines that an infant has sustained a birth-related neurological injury and that obstetrical services were delivered by a participating physician at the birth or that the birth occurred in a participating hospital, and the infant dies within 180 days of birth, the Commission, in its discretion, may make an award in an amount not exceeding \$100,000 to the infant's family, which award shall be in addition to and not in lieu of any other award providing compensation as provided in § [38.2-5009](#).

B. Prior to making an award pursuant to this section, the Commission shall conduct a hearing for the purpose of determining whether such award is appropriate and, if so, the proper amount of such an award and how it should be paid, after receiving evidence pertaining to sorrow, mental anguish, solace, grief associated with the death of the infant, and all other material factors that are relevant.

C. The hearing referred to in subsection B may be conducted as part of a hearing conducted pursuant to § [38.2-5009](#). The same procedural requirements applicable to a hearing conducted pursuant to § [38.2-5009](#) shall apply to a hearing conducted hereunder.

D. As used in this section, an infant's family means the infant's father, mother, or both, or if neither is a party to the proceeding, the infant's legal guardian.

2003, c. [897](#).

§38.2-5010. Rehearing on Commission determination or award.

If an application for review is made to the Commission within twenty days from the date of a determination pursuant to subdivisions A 1 through A 3 of § [38.2-5008](#), or within twenty days from the date of an award by the Commission pursuant to § [38.2-5009](#), the full Commission, excluding any member of the Commission who made the determination or award, if the first hearing was not held before the full Commission, shall review the evidence. If deemed advisable and as soon as practicable, the Commission instead may hear the parties, their representatives and witnesses and shall

make a determination or award, as appropriate. Such review or determination, together with a statement of the findings of fact, rulings of law and other matters pertinent to the questions at issue, shall be filed with the record of the proceedings and shall be sent immediately to the parties.

1987, c. 540; 1999, c. [806](#); 2006, c. [919](#).

§38.2-5011. Conclusiveness of determination or award; appeal.

A. The determination of the Commission pursuant to subdivisions A 1 through A 3 of § [38.2-5008](#), or the award of the Commission, as provided in § [38.2-5009](#), if not reviewed within the time prescribed by § [38.2-5010](#), or a determination or award of the Commission upon such review, as provided in § [38.2-5010](#), shall be conclusive and binding as to all questions of fact. No appeal shall be taken from the decision of one commissioner until a review of the case has been held before the full Commission, as provided in § [38.2-5010](#). Appeals shall lie from the full Commission to the Court of Appeals in the manner provided in the Rules of the Supreme Court.

B. The notice of appeal shall be filed with the clerk of the Commission within thirty days from the date of such determination or award or within thirty days after receipt by registered or certified mail of such determination or award whichever occurs last. A copy of the notice of appeal shall be filed in the office of the clerk of the Court of Appeals as provided in the Rules of the Supreme Court.

C. Cases so appealed shall be placed upon the privileged docket of the Court and be heard at the next ensuing term thereof. In case of an appeal from an award of the Commission to the Court of Appeals, the appeal shall operate as a suspension of the award, and the Program shall not be required to make payment of the award involved in the appeal until the questions at issue therein shall have been fully determined in accordance with the provisions of this chapter.

1987, c. 540; 1989, c. 523 .

§38.2-5012. Enforcement, etc., of orders and awards.

The Commission has full authority to enforce its orders and protect itself from deception. While the language of this section is permissive and provides that a party may enforce an award in court, it must be read and considered in pari materia with the Commission's power pursuant to § [65.2-202](#) to punish for disobedience of its orders.

1987, c. 540.

§38.2-5013. Limitation on claims.

Any claim under this chapter that is filed more than ten years after the birth of an infant alleged to have a birth-related neurological injury is barred.

1987, c. 540; 1999, c. [806](#); 2006, c. [919](#).

§38.2-5014. Scope.

This chapter applies to all claims for birth-related neurological injuries occurring in this Commonwealth on and after January 1, 1988. The chapter shall not apply to disability or death caused by genetic or congenital abnormalities.

1987, c. 540.

§38.2-5015. Birth-Related Neurological Injury Compensation Fund; assets of the Fund; audit.

A. There is established the Birth-Related Neurological Injury Compensation Fund to finance the Virginia Birth-Related Neurological Injury Compensation Program created by this chapter. The assets of the Fund administered by the board of directors of the Program are trust funds and shall be used solely in the interest of the recipients of awards pursuant to § [38.2-5009](#) and to administer the Program.

B. An independent certified public accountant selected by the board of directors of the Program shall annually audit the accounts of the Fund, and the cost of such audit services shall be borne by the Program and be paid from moneys designated for such purposes in the Fund. The audit shall be performed at least each fiscal year, in accordance with generally accepted auditing standards and, accordingly, include such tests of the accounting records and such auditing procedures as considered necessary under the circumstances. The board of directors shall furnish copies of the audit to the same persons who are entitled to receive copies of the board's report on investment of the Fund's assets.

1987, c. 540; 1999, c. [826](#); 2003, c. [897](#).

§38.2-5016. Board of directors; appointment; vacancies; term; list of Program claimants.

A. The Birth-Related Neurological Injury Compensation Program shall be governed by a board of nine directors.

B. Except as provided in subsection C, directors shall be appointed for a term of three years or until their successors are appointed and have qualified.

C. 1. The directors shall be appointed by the Governor as follows:

- a. Six citizen representatives. One of the members shall have a minimum of five years of professional investment experience. One of the members shall have a minimum of five years of professional experience in finance and be licensed as a certified public accountant or hold a similar professional designation. One of the members shall have professional experience working with the disabled community. One of the members shall be the relative of a disabled child experienced in the care of the disabled child. One of the members shall be an attorney with a minimum of three years of experience in the practice of law representing clients with physical personal injuries. One of the members shall be an at large representative consisting of a person deemed qualified to serve by knowledge, education, training, interest or experience;
- b. One representative of participating physicians. The initial term of the member appointed in 1999 shall commence when appointed and shall be for one year;
- c. One representative of participating hospitals. The initial term of the member appointed in 1999 shall commence when appointed and shall be for two years; and
- d. One representative of liability insurers. The initial term of the member appointed in 1999 shall commence when appointed and shall be for three years.

2. The Governor may select the representative of the participating physicians from a list of at least three names to be recommended by the Virginia Society of Obstetrics and Gynecology; the representative of participating hospitals from a list of at least three names to be recommended by the Virginia Hospital & Healthcare Association; and the representative of liability insurers from a list of at least three names, one of whom is recommended by the American Insurance Association and two of whom are recommended by the Property Casualty Insurers Association of America. The Governor may select the attorney member from a list of at least four names to be recommended by the Virginia State Bar. The Governor may select the parent of a disabled child member and the at large member from applications duly submitted. Nothing contained herein shall preclude qualified applicants for any position on the Board from submitting an application to the Governor to serve as a member of the Board. In no case shall the Governor be bound to make any appointment from among the nominees of the respective associations.

D. The Governor shall promptly notify the appropriate association, which may make nominations, of any vacancy other than by expiration among the members of the board representing a particular interest and like nominations may be made for the filling of the vacancy.

E. The directors shall act by majority vote with five directors constituting a quorum for the transaction of any business or the exercise of any power of the Program. The directors shall serve without salary, but each director shall be reimbursed for actual and necessary expenses incurred in the performance of his official duties as a director of the Program. The directors shall not be subject to any personal liability with respect to the administration of the Program or the payment of any award.

F. The board shall have the power to (i) administer the Program, (ii) administer the Birth-Related Neurological Injury Compensation Fund, which shall include the authority to purchase, hold, sell or transfer real or personal property and the authority to place any such property in trust for the benefit of claimants who have received awards pursuant to § [38.2-5009](#), (iii) appoint a service company or companies to administer the payment of claims on behalf of the Program, (iv) direct the investment and reinvestment of any surplus in the Fund over losses and expenses, provided any investment income generated thereby remains in the Fund, (v) reinsure the risks of the Fund in whole or in part, and (vi) obtain and maintain directors' and officers' liability insurance. The board shall discharge its duties with respect to the Fund solely in the interest of the recipients of awards pursuant to §§ [38.2-5009](#) and [38.2-5009.1](#) and shall invest the assets of the Fund with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Any decisions regarding the investment of the assets of the Fund shall be based on the advice of one or more investment advisors retained by the board, provided that any investment advisor retained by the board shall be registered pursuant to the provisions of Article 3 (§ [13.1-504](#) et seq.) of Chapter 5 of Title 13.1 or shall be a federal covered advisor as defined in § [13.1-501](#) who has filed such documents and paid such fees as may be necessary to transact business in the Commonwealth pursuant to § [13.1-504](#). The board shall report annually to the Governor and to the Speaker of the House of Delegates and the Clerk of the House of Delegates and to the Chairman of the Senate Rules Committee and the Clerk of the Senate regarding the investment of the Fund's assets. The board shall establish a procedure in the plan of operation for notice to be given to obstetrical patients concerning the no-fault alternative for birth-related neurological injuries provided in this chapter, such notice to include a clear and concise explanation of a patient's rights and limitations under the program.

G. The board shall establish a procedure in the plan of operation for maintaining a list of Program claimants. Each claimant may consent to have his name, address, phone number, and other personal information included on such list, for distribution to other Program claimants. The Board shall distribute the list to Program claimants who have given consent to be included on such list, and to no other person.

1987, c. 540; 1989, c. 523; 1994, c. [872](#); 1996, c. [232](#); 1997, c. [399](#); 1999, c. [824](#); 2002, c. [857](#); 2003, c. [897](#); 2006, c. [777](#); 2008, cc. [267](#), [520](#).

§38.2-5016.1. Investment strategy advice; expected returns.

The investment advisor or advisors retained by the board pursuant to subsection F of § [38.2-5016](#) shall provide the board with annual statements explaining the expected returns on its equities and fixed income portfolios.

2003, c. [897](#); 2006, c. [777](#).

§38.2-5017. Plan of operation.

A. On or before September 30, 1987, the directors of the Program shall submit to the State Corporation Commission for review a proposed plan of operation consistent with this chapter.

B. The plan of operation shall provide for the efficient administration of the Program and for the prompt processing of claims made against the Fund pursuant to an award under this chapter. The plan shall contain other provisions including:

1. Establishment of necessary facilities;
2. Management of the Fund;
3. Appointment of servicing carriers or other servicing arrangements to administer the processing of claims against the Fund;
4. Initial and annual assessment of the persons and entities listed in § [38.2-5020](#) to pay awards and expenses, which assessments shall be on an actuarially sound basis subject to the limits set forth in § [38.2-5020](#); and
5. Any other matters necessary for the efficient operation of the Program.

C. The plan of operation shall be subject to approval by the State Corporation Commission after consultation with representatives of interested individuals and organizations. If the State Corporation Commission disapproves all or any part of the proposed plan of operation, the directors shall within thirty days submit for review an appropriate revised plan of operation. If the directors fail to do so, the State

Corporation Commission shall promulgate a plan of operation. The plan of operation approved or promulgated by the State Corporation Commission shall become effective and operational upon order of the State Corporation Commission.

D. Amendments to the plan of operation may be made by the directors of the Program, subject to the approval of the State Corporation Commission.

1987, c. 540; 1994, c. [872](#).

§38.2-5018. Assessments to be held in restricted cash account.

All assessments paid pursuant to the plan of operation, shall be held in a separate restricted cash account under the sole control of an independent fund manager to be selected by the directors. The Fund, and any income from it, shall be disbursed for the payment of awards as provided in this chapter and for the payment of the expenses of administration of the Fund and the Program, including the reasonable expenses of the Commission.

1987, c. 540; 1989, c. 523; 1990, c. 244 .

§38.2-5019. Repealed.

Repealed by Acts 1989, c. 523 .

§38.2-5020. Assessments.

A. A physician who otherwise qualifies as a participating physician pursuant to this chapter may become a participating physician in the Program for a particular calendar year by paying an annual participating physician assessment to the Program in the amount of \$5,000 on or before December 1 of the previous year, in the manner required by the plan of operation. Effective January 1, 2009, the total annual assessment shall be \$5,600, and shall increase by \$300 for the 2010 assessment and by \$100 each year thereafter, to a maximum of \$6,200 per year. The board may authorize a prorated participating physician or participating hospital assessment for a particular year in its plan of operation, but such prorated assessment shall not become effective until the physician or hospital has given at least 30 days' notice to the Program of the request for a prorated assessment.

B. Notwithstanding the provisions of subsection A, a participating hospital with a residency training program accredited to the American Council for Graduate Medical Education may pay an annual participating physician assessment to the Program for residency positions in the hospital's residency training program, in the manner provided by the plan of operation. However, any resident in a duly accredited family

practice or obstetrics residency training program at a participating hospital shall be considered a participating physician in the Program and neither the resident nor the hospital shall be required to pay any assessment for such participation. No resident shall become a participating physician in the Program, however, until 30 days following notification by the hospital to the Program of the name of the resident or residents filling the particular position for which the annual participating physician assessment payment, if required, has been made.

C. A hospital that otherwise qualifies as a participating hospital pursuant to this chapter may become a participating hospital in the Program for a particular year by paying an annual participating hospital assessment to the Program, on or before December 1 of the previous year, amounting to \$50 per live birth for the prior year, as reported to the Department of Health in the Annual Survey of Hospitals. Effective January 1, 2009, the annual participating hospital assessment shall increase by \$2.50 per live birth for the prior year, as reported to the Department of Health in the Annual Survey of Hospitals, and shall be increased at that rate each year thereafter to a maximum of \$55 per live birth so reported for the prior year. The participating hospital assessment shall not exceed \$150,000 for any participating hospital in any 12-month period until January 1, 2005. Effective January 1, 2005, the maximum total annual assessment shall be \$160,000, and shall increase by \$10,000 each year thereafter, to a maximum of \$200,000 in any 12-month period.

D. All licensed physicians practicing in the Commonwealth on September 30 of a particular year, other than participating physicians, shall pay to the Program an annual assessment of \$250 for the following year, in the manner required by the plan of operation until January 1, 2005. Effective January 1, 2005, the total annual assessment shall be \$260, and shall increase by \$10 each year thereafter to a maximum of \$300 per year.

Upon proper certification to the Program, the following physicians shall be exempt from the payment of the annual assessment under this subsection:

1. A physician who is employed by the Commonwealth or federal government and whose income from professional fees is less than an amount equal to 10 percent of the annual salary of the physician.
2. A physician who is enrolled in a full-time graduate medical education program accredited by the American Council for Graduate Medical Education.
3. A physician who has retired from active clinical practice.

4. A physician whose active clinical practice is limited to the provision of services, voluntarily and without compensation, to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge as provided in § [54.1-106](#).

E. Taking into account the assessments collected pursuant to subsections A through D of this section, if required to maintain the Fund on an actuarially sound basis, all insurance carriers licensed to write and engaged in writing liability insurance in the Commonwealth of a particular year, shall pay into the Fund an assessment for the following year, in an amount determined by the State Corporation Commission pursuant to subsection A of § [38.2-5021](#), in the manner required by the plan of operation. Liability insurance for the purposes of this provision shall include the classes of insurance defined in §§ [38.2-117](#), [38.2-118](#), and [38.2-119](#) and the liability portions of the insurance defined in §§ [38.2-124](#), [38.2-125](#), [38.2-130](#), [38.2-131](#), and [38.2-132](#).

1. All annual assessments against liability insurance carriers shall be made on the basis of net direct premiums written for the business activity which forms the basis for each such entity's inclusion as a funding source for the Program in the Commonwealth during the prior year ending December 31, as reported to the State Corporation Commission, and shall be in the proportion that the net direct premiums written by each on account of the business activity forming the basis for their inclusion in the Program bears to the aggregate net direct premiums for all such business activity written in this Commonwealth by all such entities. For purposes of this chapter "net direct premiums written" means gross direct premiums written in this Commonwealth on all policies of liability insurance less (i) all return premiums on the policy, (ii) dividends paid or credited to policyholders, and (iii) the unused or unabsorbed portions of premium deposits on liability insurance.

2. The entities listed in this subsection shall not be individually liable for an annual assessment in excess of one quarter of one percent of that entity's net direct premiums written.

3. Liability insurance carriers shall be entitled to recover their initial and annual assessments through (i) a surcharge on future policies, (ii) a rate increase applicable prospectively, or (iii) a combination of the two, at the discretion of the State Corporation Commission.

F. On and after January 1, 1989, a participating physician covered under the provisions of this section who has paid an annual assessment for a particular calendar year to the Program and who retires from the practice of medicine during that particular calendar year shall be entitled to a refund of a prorated share of his or her annual assessment for the calendar year that corresponds to the portion of the calendar year remaining following his or her retirement.

G. Whenever the State Corporation Commission determines the Fund is actuarially sound in conjunction with actuarial investigations conducted pursuant to § [38.2-5021](#), it shall enter an order suspending the assessment required under subsection D. The annual assessment shall be reinstated whenever the State Corporation Commission determines that such assessment is required to maintain the Fund's actuarial soundness.

1987, c. 540; 1989, cc. 361, 463, 523; 1990, c. 498; 1991, c. 486; 1992, cc. 414, 767; 1994, c. [872](#); 2004, cc. [896](#), [931](#); 2008, cc. [267](#), [520](#).

§38.2-5020.1. Credits against malpractice insurance premiums.

A. Each insurer issuing or issuing for delivery in the Commonwealth any personal injury liability policy which provides medical malpractice liability coverage for the obstetrical practice of any participating physician under this chapter shall provide a credit on such physician's annual medical malpractice liability insurance premium in an amount that will produce premiums that are neither inadequate, excessive nor unfairly discriminatory, as required by § [38.2-1904](#), and as determined by the Commission.

B. Each insurer issuing or issuing for delivery in the Commonwealth any personal injury liability policy which provides medical malpractice liability coverage for the obstetrical services of any participating hospital under this chapter shall provide a credit on such hospital's annual medical malpractice liability insurance premium in an amount that will produce premiums that are neither inadequate, excessive nor unfairly discriminatory, as required by § [38.2-1904](#), and as determined by the Commission.

1990, c. 498 .

§38.2-5021. Actuarial investigation, valuations, gain/loss analysis; notice if assessments prove insufficient.

A. The Bureau of Insurance of the State Corporation Commission shall undertake an actuarial investigation of the requirements of the Fund based on the Fund's experience in the first year of operation, including without limitation the assets and liabilities of the Fund. Pursuant to such investigation, the State Corporation Commission shall establish the rate of contribution of the entities listed in subsection E of § [38.2-5020](#) for the tax year beginning January 1, 1989.

Following the initial valuation, the State Corporation Commission shall cause an actuarial valuation to be made of the assets and liabilities of the Fund no less frequently than biennially. Pursuant to the results of such valuations, the State Corporation Commission shall prepare a statement as to the contribution rate applicable to contributors listed in subsection E of § [38.2-5020](#). However, at no time shall the rate be greater than one quarter of one percent of net direct premiums written.

In conducting the actuarial evaluation, a loss reserving methodology consistent with the one employed by the Florida Birth-Related Neurological Injury Compensation Association as of July 1, 2007, may be employed in order to account for individual participant costs and injury characteristics to the extent that the data are available to perform such methodology and the State Corporation Commission's actuary determines that such methodology is actuarially appropriate.

B. In the event that the State Corporation Commission finds that the Fund cannot be maintained on an actuarially sound basis subject to the maximum assessments listed in § [38.2-5020](#), the Commission shall promptly notify the Speaker of the House of Delegates, the President of the Senate, the board of directors of the Program, and the Virginia Workers' Compensation Commission.

1987, c. 540; 1989, c. 523; 2008, cc. [267](#), [520](#).

Virginia Coal Surface Mining Control and Reclamation Act of 1979

§45.1-226. Short title.

This chapter shall be known as the "Virginia Coal Surface Mining Control and Reclamation Act of 1979."

1979, c. 290.

§45.1-227. Findings and policy [Not set out].

Not set out. (1979, c. 290.)

§45.1-228. Purpose and policy of chapter.

A. It is the purpose and policy of this chapter to do the following:

1. Provide for the implementation and enforcement, by the Commonwealth, of the federal Surface Mining Control and Reclamation Act of 1977, and the regulations of the United States Secretary of the Interior promulgated thereunder, and amendments thereto, as the same may be or become effective at any time or from time to time.

2. Promote the reclamation of coal-mined areas, and areas which have been affected by such mining, which were not adequately reclaimed, or abandoned, prior to the enactment of the federal Surface Mining Control and Reclamation Act of 1977, and which, in their unreclaimed condition, continue to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the public health or safety;

3. Exercise the police power of the Commonwealth in a coordinated statewide program to effectively control present and future problems associated with coal surface mining and provide for the reclamation of disturbed lands to insure the protection of the public welfare and safety;

4. Authorize and enable the Department to submit, and obtain approval of, a permanent state regulatory program and abandoned mine reclamation program, pursuant to the federal Surface Mining Control and Reclamation Act of 1977.

B. Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge, or otherwise affect, substantially or procedurally, the rights of any person in any dispute involving property rights, including interests in water resources, or the right of any person to damage or other relief on account of injury to persons or property, including interests in water resources, and to maintain any action or other appropriate proceeding therefor, except as is otherwise specifically provided in this chapter; nor to affect the powers of the Commonwealth to initiate, prosecute and maintain actions to abate public nuisances.

1979, c. 290; 1984, c. 590.

§45.1-229. Definitions.

The following words and phrases when used in this chapter shall have the meaning respectively ascribed to them in this section except where the context clearly requires

a different meaning; the Director shall have the power to adopt by regulation such other definitions as may be deemed necessary to carry out the intent of this chapter.

"Approximate original contour" means that surface configuration achieved by back-filling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the Director determines that they are in compliance with the applicable performance standards promulgated pursuant to this chapter.

"Division" means the Division of Mined Land Reclamation.

"Federal act" means the federal Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, 91 U.S. Stat. 445.

"Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a coal surface mining and reclamation operation, which condition, practice or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.

"State regulatory program" or "permanent state regulatory program" means the program established by this chapter meeting the requirements of the federal act for the regulation of coal surface mining and reclamation operations within the Commonwealth, submitted to the Secretary pursuant to § 503 of the federal act.

"Person" means any individual, partnership, association, joint venture, trust, company, firm, joint stock company, corporation, or any other group or combination acting as a unit, or any other legal entity.

"Secretary" means the Secretary of the Interior of the United States.

"State or local agency" means any department, agency or instrumentality of the Commonwealth; or any public authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth; or any department, agency or instrumentality of any public authority, municipal corporation, local governmental unit,

political subdivision of the Commonwealth, or two or more of any of the aforementioned.

"Coal surface mining and reclamation operations" means surface mining operations and all activities necessary and incidental to the reclamation of such operations after March 20, 1979.

"Coal surface mining operations" means the following:

1. Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of § [45.1-243](#), surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; however, such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 162/3 percent of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to § [45.1-233](#) of this chapter; and

2. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the chapter due to indifference, lack of diligence, or lack of reasonable care.

"Operator" means any person engaging in coal surface mining operations whether or not such coal is sold within or without the Commonwealth.

"Permit" means a permit issued by the Director pursuant to the approved state regulatory program.

"Permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by § [45.1-241](#) and shall be readily identifiable by appropriate markers on the site.

"Permittee" means a person holding a permit issued by the Director for coal surface mining pursuant to § [45.1-234](#), for coal exploration pursuant to § [45.1-233](#), or for an NPDES permit pursuant to § [45.1-254](#).

"Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

1979, c. 290; 1984, c. 590.

§45.1-230. Authority and duties of Director.

A. The authority to publish and promulgate such regulations as may be necessary to carry out the purposes and provisions of this chapter is hereby vested in the Director. Regulations shall be consistent with regulations promulgated by the Secretary pursuant to the federal act or in conformity to any court ruling construing such act. In promulgating such regulations, the Director shall provide an opportunity for public comment, both oral and written, and shall give public notice of proposed regulations, in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) and the Virginia Register Act (§ [2.2-4100](#) et seq.).

A1. In addition to the adoption of regulations under this chapter, the Director may at his discretion issue or distribute to the public interpretative, advisory or procedural bulletins or guidelines pertaining to permit applications or to matters reasonably related thereto without following any of the procedures set forth in the Administrative Process Act (§ [2.2-4000](#) et seq.). The materials shall be clearly designated as to their nature, shall be solely for purposes of public information and education, and shall not have the force of regulations under this chapter or under any other provision of this Code.

B. The authority to administer and enforce the provisions of this chapter is hereby vested in the Director. In administering and enforcing the provisions of this chapter, the Director shall exercise the following powers in addition to any other powers conferred upon him by law:

1. To supervise the administration and enforcement of this chapter; to make investigations and inspections necessary to insure compliance with this chapter; to conduct hearings, administer oaths, issue subpoenas and compel the attendance of witnesses and production of written or printed material as provided for in this chapter; to issue orders and notices of violation; to review and vacate or modify or approve orders and decisions; and order the suspension, revocation, or withholding of any permit for failure to comply with any of the provisions of this chapter or any rules and regulations adopted thereunder;
2. To administer the program for the purchase and reclamation of abandoned and unreclaimed mine areas pursuant to Article 4 (§ [45.1-260](#) et seq.) of this chapter;
3. To encourage and conduct investigations, research, experiments and demonstrations, and to collect and disseminate information relating to coal surface mining and reclamation of lands and waters affected by coal surface mining;
4. To receive any federal or state funds, or any other funds, and to enter into any contracts for which funds are available to carry out the purposes of this chapter;
5. To enter into cooperative agreements with the Secretary to regulate coal surface mining on federal lands.

C. The Division of Mined Land Reclamation shall have the responsibilities provided under this chapter and such duties and responsibilities as the Director may assign, or as may be provided for in regulations promulgated by the Director.

1979, c. 290; 1982, c. 425; 1984, c. 590.

§45.1-231. Conflicts of interest prohibited.

A. No employee of the Department performing any function or duty under this chapter, shall have a financial interest in any underground or surface coal mining operation.

B. For the purposes of this section, "financial interest" shall include a pecuniary interest accruing to an employee or to his spouse, minor children or other relatives living in the same household.

C. The Director shall promulgate regulations by which the provisions of this section will be monitored and enforced, including provisions for the filing and review of statements and supplements by employees concerning any financial interest which may be affected by this section, for the hiring, transfer, and removal of employees consistent with the prohibition of this section, for the resolution of prohibited interests, for the confidentiality, protection and disclosure to enforcement authorities of reporting statements and for such exemptions from the provisions of this section as may be consistent with federal law.

D. [Repealed.]

E. Judicial proceedings to enforce the provisions of this section may be brought by the Attorney General at the request of the Director.

Nothing in this article shall be construed as repealing or amending any other provisions of law pertaining to conflicts of interest except that in cases of conflict, the provisions of this article shall control.

1979, c. 290; 1984, c. 590.

§45.1-232. Repealed.

Repealed by Acts 1984, c. 590.

§45.1-233. Coal exploration operations.

A. Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with exploration regulations promulgated by the Director. Such regulations shall include, at a minimum (i) the requirement that prior to conducting any exploration under this section, any person must file with the Director notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration, and (ii) provisions for reclamation, in accordance with the performance standards established pursuant to [§ 45.1-242](#), of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

B. Information submitted to the Director pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intended to explore the described area shall not be available for public examination.

C. Any person who conducts any coal exploration activities which substantially disturbs the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of § [45.1-246](#).

D. No person shall remove more than 250 tons of coal while engaged in coal exploration operations without a specific written coal exploration permit issued by the Director.

1979, c. 290.

§45.1-234. Permits required; certain operations conducted pending initial administrative decision; time for application and action of Director thereon; term; transfer, etc.

A. On and after eight months from the date on which a permanent state regulatory program is approved for the Commonwealth by the Secretary, no person shall engage in or carry out any coal surface mining operations without having first obtained a permit to engage in the operations issued by the Director, in accordance with the approved state regulatory program, except that a person conducting coal surface mining operations under a valid permit issued by the Director pursuant to Chapter 19 (§ [45.1-226](#) et seq.) may conduct operations beyond the period if an application for a new permit has been filed in accordance with the provisions of this chapter, but the initial administrative decision has not yet been rendered. Operations so conducted pending an administrative decision shall be subject to the penalties and enforcement provisions of §§ [45.1-245](#), [45.1-246](#), [45.1-247](#), [45.1-249](#), [45.1-250](#), and [45.1-251](#) and the penalty and enforcement regulations implementing those sections.

B. No later than two months following the Secretary's approval of the state regulatory program, regardless of any litigation contesting that approval, all operators of coal surface mines expecting to operate such mines after the expiration of eight months from the Secretary's approval shall file an application for a permit with the Director. Such application shall cover those lands to be mined after the expiration of eight months from the Secretary's approval.

C. Coal surface mining permits issued pursuant to the requirements of this chapter shall be for a term of five years. The rights granted under a permit shall not be transferred, assigned, or sold without the written approval of the Director in accordance with regulations promulgated by him. The Director shall also promulgate regulations, meeting the requirements of § 506 of the federal act, for longer permit terms, successors in interest to the permittee, termination of permit for failure to commence

operations, right of and procedure for permit renewal, and extension of boundaries of mining operations.

1979, c. 290; 1980, c. 364; 1983, c. 134; 1984, c. 590; 2013, cc. [47](#), [129](#).

§45.1-235. Form and contents of permit application; fee.

A. Application for a surface mining permit shall be made to the Division in the format required by the Director and shall be signed and verified under oath by the person, or his legal representative, intending to engage in the surface mining of coal.

B. The application shall contain such information as shall be required by regulations adopted by the Director, including, but not limited to, the information required under the provisions of § 507 (b) of the federal act.

C. To the extent that funds are available from the federal Office of Surface Mining, the Director shall provide for permit application assistance to small operators as provided in § 507 (c) and (h) of the federal act. Such assistance shall be provided in accordance with regulations adopted by the Director.

D. Each applicant for a permit shall be required to submit to the Division as part of the permit application an operations plan and a reclamation plan which shall meet the requirements of this chapter and regulations promulgated by the Director.

E. Each application for a coal surface mining permit issued under this chapter shall be accompanied by a fee of \$26 per acre for the area of land to be affected by the total operation for which plans have been submitted. An anniversary payment of \$13 per acre for areas disturbed under the permit shall be payable annually on the anniversary date of the permit. All fees collected under the provisions of this chapter shall be paid into a special fund of the Department to be used for the administration of the coal surface mining regulatory program and are hereby appropriated for that purpose.

F. Each applicant for a coal surface mining permit shall file a copy of his application for public inspection at an appropriate public office approved by the Director where the mining is proposed to occur. However, information which pertains only to the analysis of the chemical and physical property of the coal, excepting information regarding such mineral or elemental content which is potentially toxic in the environment, shall be kept confidential upon request of the applicant and not made a matter of public record.

G. Each applicant for a coal surface mining permit shall be required to submit to the Division as part of the permit application a certificate issued by an insurance company authorized to do business in the Commonwealth, certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought. Such policy shall provide for personal injury and property damage protection in an amount, not less than that specified in regulations adopted by the Director, adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled by law to compensation under applicable provisions of law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, and including the length of all reclamation operations. The Director is authorized to promulgate regulations which provide for the submission by the applicant of evidence of self-insurance, meeting the requirements of this subsection, in lieu of a certificate of a public liability insurance policy.

1979, c. 290; 1982, c. 246; 1984, c. 590; 1999, c. [114](#); 2003, cc. [542](#), [550](#).

§45.1-236. Operations and reclamation plans.

Each application for a coal surface mining permit pursuant to the approved state regulatory program shall include an operations plan and a reclamation plan, in such form and containing such information as the Director shall require and meeting the requirements of this chapter and regulations adopted by the Director, including but not limited to the information required under § 508 (a) of the federal act. Operations plans shall not include underground workings. The operations and reclamation plans as approved by the Director shall be an integral part of the terms and conditions of the coal surface mining permit.

1979, c. 290; 1984, c. 590.

§45.1-237. Revision of permits.

A.1. During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised operations plan and reclamation plan, to the Director.

2. An application for a revision of a permit shall not be approved unless the Director finds that reclamation as required by the federal act and the permanent state regulatory program can be accomplished under the revised reclamation plan. The Director shall establish, by regulation, the period of time within which the revision shall be approved or disapproved, as well as guidelines for a determination of the scale or

extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; however, any revisions which propose significant alterations in the operations plan and reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

3. Any extension to the area covered by the permit, except insignificant boundary revisions, must be made by application for another permit.

B. The Director shall, within a time limit prescribed in regulations promulgated by him, review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of such permit; however, such revision or modification shall be based upon a written finding and subject to notice and hearing requirements.

1979, c. 290; 1984, c. 590.

§45.1-238. Approval or denial of permit.

A. Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by the federal act and pursuant to the approved permanent state regulatory program, including public notification and opportunity for public hearing, the Director shall grant, require modification of, or deny the application for a permit in a reasonable time established by regulation and shall notify the applicant in writing. The applicant shall have the burden of establishing that the application is in compliance with all the requirements of the permanent state regulatory program. Within ten days after the granting of a permit the Director shall notify the government officials in the city or county in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

B. No permit or revision application shall be approved unless the application affirmatively demonstrates, and the Director finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicant, that:

1. The permit application is accurate and complete and that all the requirements of the federal act and the permanent state regulatory program have been complied with;
2. The applicant has demonstrated that reclamation as required by the federal act and the permanent state regulatory program can be accomplished under the reclamation plan contained in the permit application;

3. The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the Director in accordance with regulation and the proposed operation has been designed to prevent material damage to hydrologic balance outside the permit area;

4. The area proposed to be mined is not included within an area designated unsuitable for coal surface mining pursuant to this chapter nor is it within an area under study for such designation in an administrative proceeding commenced pursuant to this chapter, unless in such an area as to which an administrative proceeding has commenced, the applicant demonstrates that prior to January 1, 1977, he made substantial legal and financial commitments in relation to the operation for which he seeks a permit;

5. In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the Director:

a. The written consent of the surface owner to the extraction of coal by surface mining methods; or

b. A conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

c. If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with the laws of this Commonwealth; provided, however, that nothing herein shall be construed to authorize the Director to adjudicate property rights disputes.

C. The applicant shall file with his permit application a schedule listing any and all notices of violations of the federal act, this chapter and any law, rule or regulation of the United States or of this Commonwealth or of any department or agency in the United States pertaining to air or water environmental protection, incurred by the applicant in connection with any coal surface mining operation during the three-year period preceding the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the schedule or other information available to the Director indicates that any coal surface mining operation owned or controlled by the applicant is currently in violation of the laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the authority, department or agency which has jurisdiction over such violation,

and no permit shall be issued to an applicant after a finding by the Director after opportunity for a hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of the federal act or this chapter of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the federal act or this chapter.

D. In addition to finding the application in compliance with subsection B of this section, if the area proposed to be mined contains prime farmland pursuant to § 507 (b) (16) of the federal act, the Director shall comply with applicable regulations issued by the Secretary in determining whether to issue a permit for such area.

1979, c. 290.

§45.1-239. Public participation in process of issuing or revising permits.

A. The Director shall establish, by regulation, procedures for the notification of and participation by the public and appropriate federal, state and local governmental authorities in the process for issuing or revising coal surface mining permits, in accordance with § 513 of the federal act.

B. Any person having an interest which is or may be adversely affected, or the officer or head of any federal, state or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for a permit for a coal surface mining operation with the Director within thirty days after the last publication of the applicant's notice required by the regulation promulgated pursuant to subsection A hereof. If written objections are filed and an informal hearing requested, the Director shall then hold an informal hearing in the manner and location prescribed by regulation, unless all the parties requesting the informal hearing stipulate agreement prior to the requested informal hearing and withdraw their request therefor.

1979, c. 290; 1984, c. 590.

§45.1-240. Decision of Director upon permit application; hearing; appeal.

A. The Director shall notify the applicant for a permit within a reasonable time, as set forth in regulations, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and such written objections as may have been filed, of his written decision to approve or disapprove the application, in whole or in part, except that if an informal hearing has been held pursuant to §

[45.1-239](#), the Director shall issue to the applicant and the parties to the hearing his written decision within sixty days of such hearings.

B. If the application is approved the permit shall be issued. If the application is disapproved, specific reasons therefor shall be set forth in the notification. Within thirty days after the applicant is notified of the final decision of the Director on the permit application, the applicant, or any person with an interest which is or may be adversely affected, may request a hearing on the reasons for the final determination. The Director shall hold a formal adjudicatory hearing in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.), and within thirty days thereafter issue to the applicant and all persons who participated in the hearing the written decision of the Director granting or denying the permit in whole or in part and stating the reasons therefor. No person who presided at an informal hearing under § [45.1-239](#) shall preside at the formal adjudicatory hearing or participate in the decision therein or any administrative appeal therefrom.

C. Where a hearing is requested pursuant to subsection B herein, the Director, under such conditions as he may prescribe, may grant such temporary relief as he deems appropriate pending final determination of the proceedings if:

1. All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;
2. The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and
3. Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

D. Any applicant, or any person with an interest which is or may be adversely affected and who has participated in the formal hearing as an objector, aggrieved by the decision of the Director or by the failure of the Director to act within the time limits specified in this chapter shall have a right to judicial review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

1979, c. 290; 1983, c. 92; 1986, c. 615.

§45.1-241. Performance bonds.

A. After a coal surface mining permit application has been approved, but before such permit is issued, the applicant shall file with the Director on a form prescribed and furnished by the Director, a bond for performance payable to the Commonwealth and

conditioned upon faithful performance of all the requirements of this chapter and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of coal surface mining and reclamation operations are initiated and conducted within the permit area, the permittee shall file with the Director an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit, shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the Director. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Director in the event of forfeiture, but in no case shall the bond for the entire area under one permit be less than \$10,000.

B. Liability under the bond shall be for the duration of the coal surface mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation as required under regulations promulgated pursuant to [§ 45.1-242](#). The bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth, except that the operator may elect to deposit cash, negotiable bonds of the United States Government or of the Commonwealth, or negotiable certificates of deposit of any bank organized for transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

C. The Director may accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the United States. The letters of credit shall be irrevocable, unconditional, shall be payable to the Department upon demand, and shall afford to the Department protection equivalent to a corporate surety's bond. The issuer of the letter of credit shall give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, the issuer shall immediately notify the permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the

permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the Department, and the Department shall then issue a notice to the permittee specifying a reasonable period, which shall not exceed ninety days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the Department has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the Department may suspend the permit until acceptable bond is posted. The letter of credit shall be provided on the form and format established by the Director. Nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit. The Director is further authorized to develop and promulgate an alternative system that will achieve the objectives and purposes of the bonding program established under this section.

D. Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.

E. The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the Director from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

1979, c. 290; 1984, c. 590; 1997, c. [285](#); 1998, c. [692](#); 2014, cc. [111](#), [135](#).

§45.1-242. Performance standards.

A. The Director shall, by regulation, establish performance standards meeting the requirement of § 515 of the federal act and consistent with regulations adopted by the Secretary thereunder which shall be applicable to all coal surface mining and reclamation operations, except as otherwise provided in this chapter.

B. Any permit issued pursuant to this chapter to conduct coal surface mining operations shall require that such operations meet all applicable performance standards established by the Director.

C. The Director shall include, in his regulations, special procedures and standards, consistent with regulations promulgated by the Secretary, for the issuance of permits

for mountain-top removal operations, without regard to requirements to restore to approximate original contour, and for variances from such requirements for steep-slope operations.

D. Because of the diversity in terrain, climate, biologic, chemical and other physical conditions in Virginia, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for coal surface mining and reclamation operations should rest with the Commonwealth, and accordingly, the Director is encouraged and authorized to develop and promulgate, with the approval of the Secretary, alternative performance standards and procedures for administering and enforcing the program created pursuant to this chapter.

E. The Director, with the approval of the Secretary, may authorize departures on an experimental basis from the environmental protection performance standards promulgated under this section and § [45.1-243](#).

1979, c. 290; 1984, c. 590.

§45.1-243. Surface effects of underground coal mining operations.

A. The Director shall promulgate regulations directed toward the surface effects of underground coal mining operations embodying the requirements of §§ 516 and 720 (a) (1) of the federal act. The provisions of this chapter relating to permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. Nothing in § 720 (a) (1) of the federal act shall be construed to prohibit or interrupt underground coal mining operations.

B. The Director's regulations shall require that permit applicants submit hydrologic reclamation plans that include measures that will be utilized to prevent the sudden release of accumulated water from underground workings.

C. In order to protect the stability of the land, the Director shall suspend underground coal mining under elementary and secondary schools, institutions of higher education, urbanized areas, cities, towns and communities, and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to the inhabitants or occupants of the elementary and

secondary schools, institutions of higher education, urbanized areas, cities, towns and communities.

1979, c. 290; 1984, c. 590; 1993, c. 582; 1996, cc. [409](#), [410](#).

§45.1-244. Inspections and monitoring.

A. For the purpose of administering and enforcing any permit issued under this chapter or of determining whether any person is in violation of any requirement of this chapter or any regulation promulgated hereunder:

1. The Director shall require any permittee to (i) establish and maintain appropriate records, (ii) make monthly reports to the Division, (iii) install, use and maintain any necessary monitoring equipment or methods, (iv) evaluate results in accordance with such methods, at such locations, intervals, and in such manner as the Director shall prescribe, and (v) provide such other information relative to coal surface mining and reclamation operations as the Director deems reasonable and necessary;
2. For those coal surface mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the Director shall specify those (i) monitoring sites to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence, and to record level, amount, and samples of ground water and aquifers potentially affected by mining, and also directly below the deepest coal seam to be mined, and to record precipitation; and (ii) records of well logs and borehole data to be maintained. The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth in regulations promulgated by the Director in order to assure their reliability and validity; and
3. The authorized representatives of the Director, without advance notice and upon presentation of appropriate credentials, (i) shall have the right of entry to, upon, or through any coal surface mining and reclamation operation; and (ii) shall have the right to inspect any monitoring equipment, any method of exploration, any method of operation, or any records required by this chapter, and shall have the right to copy any such records.

No search warrant shall be required for any entry or inspection under this subsection, except with respect to entry into a building.

B. The inspections by the Director shall (i) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the coal surface mining and reclamation operations covered by each permit; (ii) occur without prior notice to the permittee or his agents or employees except for necessary on-site meetings with the permittee; and (iii) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.

C. Each permittee shall conspicuously maintain at the entrance to the coal surface mining and reclamation operation a clearly visible sign setting forth such information as shall be prescribed by regulation.

D. Each inspector, upon detection of each violation of any requirement of this chapter or of the regulations promulgated hereunder, shall forthwith inform the operator in writing and shall report in writing any such violation to the Director.

E. Copies of any records, reports, inspection materials, or information obtained by the Director under this article shall be made immediately available to the public at central and sufficient locations in the area of mining so that they are conveniently available to residents in such areas; however, information which pertains only to the analysis of the chemical and physical properties of the coal, excepting information regarding mineral or elemental content which is potentially toxic in the environment, shall be kept confidential and not made a matter of public record.

1979, c. 290; 1984, cc. 323, 590.

§45.1-245. Enforcement of chapter generally.

A. Whenever the Director or his authorized representative determines that any condition or practices exist, or that any permittee is in violation of any requirement of this chapter or of any regulation promulgated hereunder or of any permit condition, which condition, practice or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, the Director or his authorized representative shall immediately order a cessation of coal surface mining and reclamation operation or the portion thereof relevant to the condition, practice or violation. Such cessation order shall remain in effect until the Director or his authorized representative determines that the condition, practice or violation has been abated, or until modified, vacated or terminated by the Director or his authorized representative. Whenever the Director or his authorized representative finds that

the ordered cessation of coal surface mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air or water resources, the Director shall, in addition to the cessation order, impose affirmative obligations on the operator and require him to take whatever steps the Director or his authorized representative determines necessary to abate the imminent danger or the significant environmental harm.

B. Whenever the Director or his authorized representative determines that any permittee is in violation of any requirement of this chapter or any regulation thereunder, or any permit condition, but such violation does not create an imminent danger to the health or safety of the public, or cannot reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, the Director or his authorized representative shall issue a notice of violation to the permittee or his agent setting a reasonable time but not more than ninety days for the abatement of the violation and provide an opportunity for public hearing.

If, upon expiration of the period of time as originally set or subsequently extended for good cause shown upon the written finding of the Director or his authorized representative, the Director or his authorized representative finds that a violation has not been abated, he shall immediately order a cessation of coal surface mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Director or his authorized representative determines that the violation has been abated, or until modified, vacated or terminated by the Director or his authorized representative pursuant to subsection D of this section. The Director or his authorized representative shall include in the cessation order the necessary measures to abate the violation in the most expeditious manner possible.

C. Whenever the Director or his authorized representative determines that a pattern of violations of the requirements of this chapter, or regulations promulgated thereunder, or any permit conditions exist or have existed, and if the Director or his authorized representative also finds that such violations are caused by the unwarranted failure of the permittee to comply with any such requirements, or that such violations are willfully caused by the permittee, the Director or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a

formal public hearing. If a hearing is requested the Director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Director or his authorized representative shall forthwith suspend or revoke the permit.

D. Notices and order issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the coal surface mining and reclamation operation to which the notice or order applies. Each notice or order shall be given promptly to the permittee or his agent by the Director or his authorized representative issuing such notice or order, and all such notices and orders shall be in writing and signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated or terminated by the Director or his authorized representative. Any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within thirty days of actual notice to the operator unless an informal public hearing, unless waived by the operator, is held at the site or close enough to the site to allow viewings thereof during the course of the public hearing.

E. The Director may institute a civil action for injunctive or other relief in any court of competent jurisdiction whenever any permittee or his agent, or any other person:

1. Violates, fails or refuses to comply with any order or decision issued by the Director; or
2. Interferes with, hinders or delays the Director in carrying out the provisions of this chapter or the regulations thereunder; or
3. Refuses to admit such authorized representative to the mine; or
4. Refuses to permit inspection of the mine; or
5. Refuses to furnish any information or report requested by the Director pursuant to the provisions of this chapter or the regulations thereunder; or
6. Refuses to permit access to, and copying of, such records as the Director determines necessary in carrying out the provisions of this chapter or the regulations thereunder; or

7. Conducts coal surface mining or coal exploration operations without first obtaining a permit, or after a permit has lapsed, or after suspension or revocation of a permit.

1979, c. 290.

§45.1-246. Civil and criminal penalties.

A. Any permittee who violates any permit condition or any other provision of this chapter or the regulations thereunder may be assessed a civil penalty by the Director, except that if such violation leads to the issuance of a cessation order, the civil penalty shall be assessed. Such penalty shall not exceed \$5,000 for each violation except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty shall not exceed \$70,000 for each violation. Each day of continuing violation may be deemed a separate violation for the purposes of assessing penalties. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular coal surface mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

B. A civil penalty may be assessed by the Director only after the person charged with a violation has been given an opportunity for a public hearing. Where such a public hearing has been held, the Director shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Director shall consolidate such hearings with other proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act (Chapter 40 (§ [2.2-4000](#) et seq.) of Title 2.2). When the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Director after the Director determines that a violation has occurred and the amount of the penalty warranted, and issues an order requiring that the penalty be paid.

C. Upon the issuance of a notice or order charging that a violation described under subsection A of this section has occurred, the Director shall inform the permittee within 30 days of the proposed amount of the penalty. The permittee charged with

the penalty shall then have 30 days to pay the proposed penalty in full or if the permittee wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Director for placement in an interest-bearing trust account in the State Treasurer's office. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the Director shall within 30 days of that determination remit the appropriate amount to the permittee with accrued interest thereon. Failure to forward the money to the Director within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

D. If a permittee who is required to pay a civil penalty fails to do so, the Director may transmit a true copy of the final order assessing such penalty to the clerk of the court of any county or city wherein it is ascertained that the permittee owing the penalty has any estate; and the clerk to whom such copy is so sent shall record it, as a judgment is required by law to be recorded, and shall index the same as well in the name of the Commonwealth as of the person owing the penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property of the permittee within such county or city in the amount of the penalty. The Director may collect civil penalties which are owed in the same manner as provided by law in respect to judgment of a court of record. All civil penalties shall be paid into a special fund in the State Treasurer's office to be used by the Director for enhancing conservation and recreational opportunities in the coal-producing counties of the Commonwealth. The Director shall transfer quarterly 50 percent of the fund balance to the Virginia Coalfield Economic Development Authority for the purposes of developing infrastructure and improvements at Breaks Interstate Park and 50 percent of the fund balance to the Tourism Development Authority for the purpose of developing conservation and recreational opportunities consistent with the provisions of Chapter 55 (§ [15.2-5500](#) et seq.) of Title 15.2.

E. Any person who willfully and knowingly (i) conducts coal surface mining or coal exploration operations without first obtaining a permit, or after a permit has lapsed, or after suspension or revocation of a permit; or (ii) violates a condition of a permit issued pursuant to this chapter; or (iii) disregards, fails or refuses to comply with the regulations or orders promulgated or issued pursuant to the provisions of this chapter, except an order incorporated in a decision under subsection B of this section

shall, upon conviction, be punished by a fine of not more than \$10,000, by confinement in jail for not more than 12 months, or both.

F. Whenever a corporate permittee violates a condition of a permit or disregards, fails, or refuses to comply with any order issued under this chapter, except an order incorporated in a decision issued under subsection B of this section, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines and confinement in jail that may be imposed upon a person under subsections A and E of this section.

G. Whoever knowingly makes any false statement, representation or certification, or knowingly fails to make any required statement, representation or certification, in any application, objection, record, report, plan or other document filed or required to be maintained pursuant to this chapter, the regulations promulgated thereunder, or any order or decision issued by the Director under this chapter shall, upon conviction thereof, be punished by a fine of not more than \$10,000, or by confinement in jail for not more than 12 months, or both.

H. Any operator who fails to correct a violation for which a notice or order has been issued within the period permitted for its correction, which period shall not end until the entry of a final order by the Director, in the case of any review proceedings initiated by the operator wherein the Director orders after an expedited hearing the suspension of the abatement requirements of the notice or order after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until entry of an order of the court, in the case of any review proceedings initiated by the operator wherein the court orders the suspension of the abatement requirements, shall be assessed a civil penalty of not less than \$750 for each day during which such failure or violation occurs.

1979, c. 290; 1980, c. 510; 1993, c. 663; 2005, c. [3](#).

§45.1-246.1. Citizen suits; rights of citizens to accompany inspectors.

A. Except as provided in subsections B or C of this section, any person having an interest which is or may be adversely affected may, in order to compel compliance with the provisions of this chapter, commence a civil action on his own behalf against:

1. The United States or any other governmental instrumentality or agency, or any other person that is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order or permit issued pursuant thereto; or

2. The Director when there is alleged a failure of the Director to perform any act or duty under this chapter which is not discretionary with the Director.

B. No action may be commenced under subdivision A 1 of this section:

1. Prior to sixty days after the plaintiff has given written notice of the violation to (i) the Secretary, (ii) the Director and (iii) any alleged violator; or

2. If the Commonwealth of Virginia or the Secretary of the Interior has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or this Commonwealth to require compliance with the provisions of this chapter, or any rule, regulation, order, or permit issued pursuant to this chapter, provided, however, that any person may intervene as a matter of right in any such action in a court of the Commonwealth;

C. No action may be commenced under subdivision A 2 of this section prior to sixty days after the plaintiff has given written notice of such action to the Director, in such manner as shall be prescribed by regulation, provided, however, that such action may be brought immediately after such notification in any case in which it is alleged that a violation or order would constitute an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

D. Any action with respect to a violation of this chapter or the regulations thereunder may be brought only in the circuit court of the county or city in which the surface coal mining operation complained of is located. In any such action commenced under the provisions of this section, the Director may intervene as a matter of right, whether or not he is a party to the action.

E. The court, in issuing any final order in any action brought pursuant to subsection A of this section, may award costs of litigation, including attorney and expert witness fees, to any party, provided that the court determines such award is appropriate. If a preliminary injunction is sought the court may require the filing of a bond or equivalent security in accordance with the rules of civil procedure.

F. Nothing in this section shall restrict any common-law or statutory right which any person or class of persons may have to seek enforcement of any of the provisions of

this chapter and the regulations thereunder, or to seek any other relief, including relief against the Director.

G. Any person who as a result of the violation by any operator of any rule, regulation, order, or permit issued pursuant to this chapter, suffers injury to his person or property may bring an action for damages, including reasonable attorney and expert witness fees. Such action may be brought only in the circuit court of the county or city in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under Title 65.2.

H. Whenever information provided the Director by any person results in any inspection, the Director shall notify such person of the time at which the inspection is scheduled to occur, and such person shall be allowed to accompany the inspector during the inspection.

1980, c. 510.

§45.1-247. Forfeiture or release of performance bond.

A. The Director shall promulgate regulations, consistent with regulations promulgated by the Secretary, establishing procedures, conditions, criteria, and schedules for the forfeiture or release of performance bonds or deposits required under this chapter; however, no bond shall be fully released until all reclamation requirements of this chapter and the regulations thereunder are fully met.

B. Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond by the Director within thirty days after the last publication of notice, as required by regulation. If written objections are filed, and a hearing requested, the Director shall inform all interested parties of the time and place of the hearing and hold a public hearing in the locality of the coal surface mining operation proposed for bond release, or in Richmond at the option of the objector, within thirty days of the request for such hearing.

C. Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the Director pursuant to this section, the Director may establish an informal conference, in accordance with regulations promulgated pursuant to § [45.1-239](#) B, to resolve written objections.

D. For the purpose of such hearing the Director is authorized to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of materials, and take evidence including but not limited to inspections of the land affected or other coal surface mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made and a transcript made available on the motion of any party or by order of the Director.

1979, c. 290; 1984, c. 590.

§45.1-248. Performance of reclamation operations by Director.

In the event of forfeiture of a performance bond, in whole or in part, the Director shall deposit the proceeds in the State Treasurer's office in a special fund to be used by the Director to complete the reclamation plan and other regulatory requirements pertaining to the operation for which the forfeited bond had been posted. The Director may use the resources and facilities of the Division or he may enter into contracts for performance of such reclamation with any individual, corporation, partnership, association, or any other legal entity, any soil conservation district, or any agency of the state or federal government. After completion of the reclamation and payment of all costs and administrative expenses associated with the completion of reclamation, any additional funds from the forfeiture of the bond shall be returned.

1979, c. 290; 1984, c. 590.

§45.1-249. Administrative review of notice or order issued under § 45.1-245.

A. A permittee who is issued a notice or order pursuant to § [45.1-245](#), or any person having an interest which is or may be adversely affected by such notice or order by any modification, vacation, or termination of such notice or order, may apply to the Director for the review of the notice or order within thirty days of the receipt thereof or within thirty days of its modification, vacation, or termination. Upon receipt of such application, the Director shall cause such investigation to be made as he deems appropriate, which shall include an opportunity for a public formal hearing, at the request of the applicant or the person having an interest which is or may be adversely

affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

B. Upon receiving the report of such investigation, the Director shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying or terminating the notice or order complained of and incorporate his findings therein. When the application for review concerns an order for cessation of coal surface mining and reclamation operations issued pursuant to the provisions of subsection A or B of § [45.1-245](#), the Director shall issue the written decision within thirty days of the receipt of the application for review unless temporary relief has been granted by the Director pursuant to subsection C of this section or by a court pursuant to § [45.1-251](#).

C. Pending completion of the hearing required by this section, the applicant may file with the Director a written request that the Director grant temporary relief from any notice or order issued under § [45.1-245](#), together with a detailed statement giving reasons for granting such relief. The Director shall issue an order granting or denying such relief expeditiously. Where the applicant requests relief from an order for cessation of coal surface mining and reclamation operations issued pursuant to subsection A or B of § [45.1-245](#), the order on such a request shall be issued within five days of its receipt. The Director may grant such relief, under such conditions as he may prescribe, if:

1. A hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;
2. The applicant shows that there is substantial likelihood that the decision of the Director will be favorable to him; and
3. Such relief will not adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air or water resources.

D. Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to § [45.1-245](#), the Director shall hold a public formal hearing, unless waived by the permittee, after giving written notice of the time, place and date thereof. Within sixty days following the formal hearing, the Director shall issue and furnish to the permittee and all other parties to the hearing a written

decision concerning suspension or revocation of the permit and reasons therefor. If the Director revokes the permit, the permittee shall immediately cease coal surface mining operations on the permit area and shall complete reclamation within a period specified by the Director or the Director shall declare as forfeited the performance bonds for the operation.

E. The Director is authorized to promulgate regulations providing for the award of costs and expenses, including attorney fees, to any party to any administrative proceedings under this chapter, incurred by such person in connection with his participation in such proceedings and to assess such costs and expenses against any other party, as may be proper. For the purpose of this subsection, the term "party" shall include the Commonwealth or any of its agents, officers or employees.

1979, c. 290; 1983, c. 93.

§45.1-250. Hearings.

A. [Repealed.]

B. All formal hearings shall be conducted in accordance with § [2.2-4020](#) unless the parties consent to informal proceedings. When a hearings officer presides, he shall recommend findings and a decision to the Director, who shall then issue findings and a decision, unless he provides for the making of findings and an initial decision by such hearings officer subject to review and reconsideration by the Director on appeal as of right or on the Director's own motion. Such regulations shall also provide for a reasonable time in which such appeals shall be acted upon, which shall be in addition to the period required for the making of the initial decision.

1979, c. 290; 1984, c. 590.

§45.1-251. Judicial review of final order or decision or of decision under § 45.1-263.

A. Any party aggrieved by a final order or decision, and any decision for entry upon property pursuant to § [45.1-263](#), issued by the Director, after exhaustion of the administrative remedies provided for in this chapter, shall have the right to the judicial review thereof in the circuit court of the county or city in which the land or a major portion thereof is located. In all other respects, judicial review shall be in accordance with the provisions of the Virginia Administrative Process Act (§ [2.2-4020](#) et seq.).

B. The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the Director. The court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

1. All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;
2. The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and
3. Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

C. To any proceeding under this section, the court may award costs and expenses, including attorneys' fees, to any party and to assess such costs and expenses against any other party as the court may deem proper. For the purpose of this subsection, the term "party" shall include the Commonwealth or any of its agents, officers or employees.

1979, c. 290; 1983, c. 93; 1984, c. 590; 1986, c. 615.

§45.1-252. Designating areas unsuitable for coal surface mining.

A.1. The Director shall establish a planning process enabling objective decisions based on competent and scientifically sound data and information as to which, if any, land areas of the Commonwealth are unsuitable for all or certain types of coal surface mining operations pursuant to the standards set forth in subdivisions 2 and 3 of this subsection but such designation shall not prevent the mineral exploration pursuant to this chapter of any area so designated.

2. Upon petition pursuant to subsection C of this section, the Director shall designate an area as unsuitable for all or certain types of coal surface mining operations if he determines that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.

3. Upon petition pursuant to subsection C of this section, a surface area may be designated unsuitable for certain types of coal surface mining operations if such operations will (i) be incompatible with existing land use plans or programs; or (ii) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific and aesthetic values and natural systems; or

(iii) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or (iv) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

4. Determinations of the unsuitability of land for coal surface mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state and local levels.

5. The requirements of this section shall not apply to lands on which coal surface mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to the provisions of the federal act, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.

B. Prior to designating any land areas as unsuitable for coal surface mining operations, the Director shall cause to be prepared a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy and the supply of coal.

C. Any person having an interest which is or may be adversely affected shall have the right to petition the Director to have an area designated as unsuitable for coal surface mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition, the Department shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time and location of the hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. The Director shall issue and furnish to the petitioner and any other party to the hearing, within sixty days after such hearing, a written decision regarding the petition and the reasons therefor. In the event that all petitioners stipulate agreement prior to hearing and withdraw their request such hearing need not be held.

D. On and after March 20, 1979, and subject to valid existing rights, no coal surface mining operations, except those which were existing on August 3, 1977, shall be permitted:

1. On any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under § 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by act of Congress and any federal lands within the boundaries of any national forest, except as otherwise provided by federal law;
2. Which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the Director and federal, state or local agency with jurisdiction over the park or historic site;
3. Within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the Director may permit such roads to be relocated or the area affected to lie within 100 feet of such road, if after public notice and opportunity for hearing in the locality, a written finding is made that the interests of the public and landowners affected thereby will be protected; or
4. Within 300 feet from any occupied dwelling, unless waived by the owner thereof, nor within 300 feet of any public building, school, church, community, or institutional building, public park, or within 100 feet of a cemetery.

1979, c. 290; 1984, c. 590.

§45.1-253. Certain mining operations exempt from this chapter.

The provisions of this chapter shall not apply to any of the following activities:

1. The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him; and
2. The extraction of coal as an incidental part of federal, state or local government-financed highway or other construction under regulations established by the Director.

1979, c. 290; 1984, c. 590; 1988, c. 295.

§45.1-254. National pollutant discharge elimination system permits.

A. The authority to issue, amend, revoke and enforce national pollutant discharge elimination system permits under the State Water Control Law (§ [62.1-44.2](#) et seq.) for the discharge of sewage, industrial wastes and other wastes from coal surface mining operations, to the extent delegated by the U.S. Environmental Protection Agency and required under the federal Clean Water Act, P.L. 92-500, as amended, is vested

solely in the Director, notwithstanding any provision of law contained in Title 62.1, except as provided herein. For the purpose of enforcement under this section, the provisions of §§ [62.1-44.31](#) and [62.1-44.32](#) shall apply to permits, orders and regulations issued by the Director in accordance with this section.

B. The Director shall transmit to the State Water Control Board a copy of each application for a national pollutant discharge elimination system permit received by the Director, and provide written notice to the State Water Control Board of every action related to the consideration of such permit application.

C. Prior to the issuance or reissuance of a permit, applicants shall submit an application on a form approved by the Director and a fee of \$300 for each discharge outfall point under the permit. If an application is approved the permittee shall, on the anniversary of the permit approval for each year of the permit term, submit \$300 for each discharge outfall point under the permit. Each permit shall remain valid for five years. All fees provided for under this section shall be in addition to any other fees levied pursuant to this chapter.

D. No national pollutant discharge elimination system permit shall be issued if, within 30 days of the date of the transmittal of the complete application and the proposed national pollution discharge elimination system permit, the State Water Control Board objects in writing to the issuance of such permit. Whenever the State Water Control Board objects to the issuance of such permit under this section, such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permits would include if it were issued by the State Water Control Board.

E. An applicant who is aggrieved by an objection made under subsection D of this section shall have the right to a hearing before the State Water Control Board pursuant to § [62.1-44.25](#). If the State Water Control Board withdraws, in writing, its objection to the issuance of a certificate, the Director may issue the permit. Any applicant, aggrieved by a final decision of the State Water Control Board made pursuant to this subsection, shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

F. Whenever, on the basis of any information available to it, the State Water Control Board finds that any person is in violation of any condition or limitation contained in a national pollutant discharge elimination system permit issued by the Director, it shall notify the person in alleged violation and the Director. If beyond the thirtieth

day after notification by the State Water Control Board, the Director has not commenced appropriate enforcement action, the State Water Control Board may take appropriate enforcement action pursuant to §§ [62.1-44.15](#), [62.1-44.23](#), and [62.1-44.32](#).

G. The Director shall promulgate such regulations as deemed necessary for the issuance, administration, monitoring and enforcement of national pollutant discharge elimination system permits for coal surface mining operations.

H. For the purpose of this section, the terms "sewage," "industrial wastes" and "other wastes" shall have the meanings ascribed to them in § [62.1-44.3](#).

I. The Director, by examining the available and relevant data, shall determine whether a discharge may cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard.

J. If a total maximum daily load (TMDL) has been established by the State Water Control Board for the receiving water body, then there shall be consideration of the TMDL in the reasonable potential determination as to whether a discharge may cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard. If the receiving water body does not have a TMDL established, the Director may consider biological monitoring, chemical monitoring, and whole effluent toxicity testing to determine whether a discharge may cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard. The Director may require whole effluent toxicity testing if he determines that the discharge adversely affects the biological condition of the receiving water body.

1979, c. 290; 1986, c. 615; 2008, c. [275](#); 2011, cc. [252](#), [290](#).

§45.1-255. Repealed.

Repealed by Acts 1984, c. 714.

§45.1-255.1. Repealed.

Repealed by Acts 1988, c. 489.

§45.1-256. Training and certification of blasters.

A. In order to ensure that explosives are used only in accordance with applicable state and federal laws, the Director is authorized to promulgate regulations requiring the training, examination and certification of persons engaging in or directly respons-

ible for blasting or the use, storage and handling of explosives in coal surface mining operations.

B. The Division shall assume primary responsibility for conducting the examinations and issuing the certificates for such persons in accordance with the regulations adopted pursuant to subdivision A of this section.

1979, c. 290; 1984, cc. 230, 590; 1996, c. [758](#).

§45.1-257. Impeding, etc., Director or agents a misdemeanor.

It shall be a misdemeanor, punishable by a fine of not more than \$5,000 or by confinement in jail for not more than one year, or both, for any person, except as permitted by law, to willfully resist, prevent, impede, or interfere with the Director or any of his agents in the performance of duties pursuant to this chapter.

1979, c. 290.

§45.1-258. Replacement of water supply.

A. The operator of any coal surface mining operation shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such coal surface mine operation.

B. Underground coal mining operations conducted after October 24, 1992, shall promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. Until amendments to the regulations governing the permanent state regulatory program implementing the provisions of this subsection are effective, the Director shall issue guidelines in accordance with subsection A of § [45.1-230](#) regarding the replacement of any water supply pursuant to this subsection. Nothing in this subsection shall be construed to prohibit or interrupt underground coal mining operations.

C. Each operator of an underground coal mine shall record the daily progress of mining operations on a mine map or maps maintained at the mine site or in the company office. The map or maps shall, at a minimum, include information on the daily progress of mining operations conducted after October 24, 1992, and be maintained

until the completion of the mining. The operator shall provide the map or maps to the Division upon completion of mining and upon request of the Director.

D. If the Director has ordered replacement under subsection B of this section and the operator subject to the order has failed to provide the map or maps in accordance with subsection C of this section, then the Director's order shall not be overturned absent clear and convincing evidence to the contrary. Upon conclusion of an investigation, if the Director does not order replacement under the provisions of subsection B of this section and reasonable access for a pre-mining survey was denied, the Director's determination shall not be overturned absent clear and convincing evidence to the contrary.

E. Each operator of an underground coal mine shall provide a certificate issued by an insurance company licensed to do business in the Commonwealth certifying that the operator has a public liability insurance policy in force for the underground coal mining operation which shall provide for protection in an amount adequate to replace any water supply as required by subsection B of this section. The policy shall be maintained in full force during the term of the permit, including any renewal thereof, and including the liability period necessary to complete all reclamation operations under this chapter. The provisions of this subsection shall expire on the date the amendments to the regulations governing the permanent state regulatory program implementing the provisions of subsection B of this section are approved for the Commonwealth by the Secretary of the Interior of the United States.

1979, c. 290; 1993, c. 582 .

§45.1-259. Applicability of chapter to public agencies, utilities and corporations.

Any agency, unit, or instrumentality of the Commonwealth, or of federal or local government, including any publicly owned utility or publicly owned corporation of federal, state or local government, which proposes to engage in coal surface mining operations which are subject to the requirements of this chapter shall comply with the provisions of this chapter.

1979, c. 290.

§45.1-260. State Reclamation Program.

A. The Commonwealth's program for the reclamation of land and water adversely affected by past mining shall include the State Reclamation Plan and fund and annual reclamation projects, as provided for in this article.

B. The Director is authorized to develop and submit to the Secretary for his approval a State Reclamation Plan in accordance with the provisions of Title IV of the federal act and of this article. The plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the programmatic capability of the Division to perform such work, and shall include such regulations, policies, and procedures as may be necessary to establish and implement the plan and annual reclamation projects, and to carry out the provisions of this article. The Director may from time to time develop and submit to the Secretary amendments and revisions to the plan, consistent with this article.

C. The Director is authorized:

1. To prepare and submit to the Secretary annual applications for the support of the State Reclamation Program and implementation of specific reclamation projects;
2. To enter into agreements with the Secretary for the emergency restoration, reclamation, abatement, control or prevention of the adverse effects of coal mining practices;
3. To administer the State Reclamation Plan and the annual reclamation projects and to receive and administer grants from the Secretary therefor;
4. To prepare and submit such information and reports as the Secretary may request.

D. The Director and the Department, in carrying out the functions of preparing and revising the State Reclamation Plan and developing annual reclamation projects, shall provide appropriate opportunities for public involvement.

1979, c. 290; 1984, c. 590.

§45.1-261. Abandoned Mine Reclamation Fund.

A. There is hereby created in the State Treasurer's office a special fund to be known as the Abandoned Mine Reclamation Fund, referred to in this article as the fund, which shall be administered by the Director.

B. The fund shall consist of deposits, made from time to time, of:

1. Amounts granted by the Secretary for purposes of conducting the approved State Reclamation Plan and annual reclamation projects;

2. Use fees charged for uses of lands acquired or reclaimed pursuant to this article, after expenditures for maintenance have been deducted;

3. Moneys recovered through the satisfaction of liens filed against privately owned land pursuant to this article;

4. Moneys recovered from sale of lands acquired by the Director pursuant to this article;

5. Donations made for the purposes of this article and other moneys made available or appropriated to the Director for such purposes.

C. Moneys deposited in the fund shall be used to carry out the State Reclamation Program as approved by the Secretary.

1979, c. 290.

§45.1-261.1. Operators may perform reclamation; bidding; conditions; adjustment of required bonds; regulations.

A. Notwithstanding any licensing requirement under Title 54.1, an operator shall be eligible to bid on contracts to conduct reclamation projects under the State Reclamation Program and the Coal Surface Mining Reclamation Fund in accordance with this article and Article 5 (§ [45.1-270.1](#) et seq.), provided the Director finds that the following conditions have been met: (i) the operator has had at least three years of relevant mining experience in the Commonwealth pursuant to Chapter 19 (§ [45.1-226](#) et seq.) and (ii) the operator meets all other applicable requirements of federal, state, and local law.

B. Notwithstanding the provisions of Title 11, the Director may adjust the amount of required bid or performance bonds for such contracts upon a finding that such amounts are sufficient to protect the public interest.

C. The Director shall promulgate regulations to implement this section.

1983, c. 77; 1984, c. 590; 1991, c. 495; 2013, cc. [47](#), [129](#).

§45.1-262. Eligible lands and water; priorities for expenditures.

A. Lands and water eligible for reclamation or drainage abatement expenditures under this article are those which were mined for coal or which were affected by such mining, waste banks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status and for which there is no continuing reclamation responsibility under state or federal laws.

B. The Director shall establish priorities in the State Reclamation Plan for the expenditure of funds in conformance with the priorities set forth in § 403 of the federal act.

1979, c. 290; 1984, c. 590.

§45.1-263. Right of entry, acquisition, disposition and reclamation of land adversely affected by past coal mining practices.

A. The Director shall take all reasonable actions to obtain written consent from the owner or owners of record of the land or property to be entered onto to perform an inspection for purposes of reclamation or for conducting studies or exploratory work pertaining to the need for and feasibility of reclamation, prior to such entry.

B. If the Director, pursuant to an approved state program, makes a finding of fact that:

1. Land or water resources have been adversely affected by past coal mining practices;
2. The adverse effects are at a state where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
3. The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or
4. The owners will not give permission for the Director or his agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices, then, upon giving notice by certified mail to the owners if known or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality or county in which the land lies, the Director, his agents, employees, or contractors shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land to the extent provided in § [45.1-264](#), and shall mitigate or offset any claim in or any action brought by any owner of any interest in such

premises for any alleged damages by virtue of such entry; provided, however, that this provision is not intended to create new rights of action or eliminate the existing sovereign immunity of the Commonwealth and its agents and employees.

C. The Director, his agents, employees, or contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

D. The Director, pursuant to an approved state program, may acquire title in the name of the Commonwealth to any land or interest therein by purchase, donation, or condemnation, if such land or interest is adversely affected by past coal mining practices, after approval of the Secretary and upon a determination that acquisition of such land is necessary to successful reclamation, and that:

1. The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space benefits; and
2. Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices; or
3. Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

E. The Director, with the approval of the Secretary, and in accordance with the State Reclamation Plan, may:

1. Transfer the administrative responsibility for land acquired under this section to any state, regional, or local agency, department, or institution, with or without cost, upon such terms as will insure that the use of the land is consistent with the authorization under which the land was acquired;

2. Sell land acquired under this section which is suitable for industrial, commercial, residential, or recreational development, by public sale under a system of competitive bidding, at not less than fair market value and under such regulations promulgated to insure that such lands are put to proper use consistent with local, state or federal land use plan, if any, for the area in which the land is located; and

3. Transfer land acquired under this section to the United States to be reclaimed by the Secretary and after reclamation is completed, any state, regional, or local agency, department, or institution may purchase such land from the Secretary for governmental, educational, recreational, historical, open-space or other public purposes upon such terms as the Secretary may require.

F. Prior to the disposition of any land acquired under this section the Director, pursuant to the State Reclamation Plan, when requested after appropriate public notice shall hold a public hearing in the city or county or cities or counties where the land is located. The hearing shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

G. The Director may authorize the use, pending disposition, of land acquired under this section, for any lawful purpose that is not inconsistent with the reclamation and post-reclamation uses for which the land was acquired. The Director shall charge any user of the land a reasonable use fee, which shall go toward the purpose of operating and maintaining improvement of the land, and any excess thereof shall be deposited in the State Reclamation Fund. The Director may waive the fee if he finds in writing that a waiver is in the public interest.

H. Any state, regional, or local agency, department, or institution may purchase or otherwise acquire and develop lands which the Secretary is authorized to dispose of pursuant to § 407(h) of the federal act.

1979, c. 290.

§45.1-264. Commonwealth to have lien for reclamation work.

The Commonwealth shall have a lien, if perfected as hereinafter provided, on land reclaimed by the Director pursuant to this article for the amount of the increase in the appraised market value of the land resulting from the reclamation, except that no lien shall attach to or be filed against the property of any person who owned the

surface of the land prior to May 2, 1977, and who neither consented to, nor participated in, nor exercised control over the mining operation which necessitated the reclamation performed under this article, nor shall any lien attach to or be filed against any property if the Director waives the lien as hereinafter provided.

1979, c. 290.

§45.1-265. Perfection of lien; waiver of lien.

A. The Director shall perfect the lien given under the provisions of § [45.1-264](#), by filing, within six months after completion of the reclamation, in the clerk's office of the court of the county or city in which the land or any part thereof is situate, a statement consisting of the names of the owner or owners of record of the property sought to be charged, an itemized account of moneys expended for the reclamation work, and notarized copies of appraisals, made by an independent appraiser, of the fair market value of the land both before and upon completion of the reclamation work, and a brief description of the property to which the lien attaches.

B. The Director shall waive a lien if he determines that the direct and indirect costs of filing such lien exceeds the increase in fair market value resulting from reclamation, or that the reclamation primarily benefits health, safety or environmental values of the community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence, that the reclamation will not result in a significant increase in the market value of the land.

1979, c. 290.

§45.1-266. Recordation and indexing of lien; notice.

It shall be the duty of the clerk in whose office the statement described in § [45.1-265](#) is filed to record the same in the deed books of such office, and to index the same in the general index of deeds, in the name of the Commonwealth as well as the owner of the property, and showing the type of such lien. From the time of such recording and indexing, all persons shall be deemed to have notice thereof.

1979, c. 290.

§45.1-267. Priority of lien.

Liens acquired under this article shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

1979, c. 290.

§45.1-268. Hearing to determine amount of lien.

Any party having an interest in the real property against which a lien has been filed may, within sixty days of such filing, petition the court of equity having jurisdiction wherein the property or some portion thereof is located to hold a hearing to determine the increase in the market value of the land as a result of reclamation. After reasonable notice to the Director the court shall hold a hearing to determine such increase. If the court determines such increase to be erroneously excessive, it shall determine the proper amount and order that the lien and the record be amended to show this amount.

1979, c. 290.

§45.1-269. Satisfaction of lien.

Liens acquired under this article shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this section. If an owner fails to satisfy a lien as provided herein the Director may proceed to enforce the lien by a bill filed in a court of equity having jurisdiction wherein the property or some portion thereof is located.

1979, c. 290.

§45.1-270. Miscellaneous powers of Director.

A. In addition to any other remedies provided for in this chapter, the Director may petition any court of competent jurisdiction for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work pursuant to this chapter.

B. The Director is authorized, to the extent of funds available for the purposes herein, to construct and operate plants for the control and treatment of water pollution resulting from mine drainage. Such plants may include major interceptors and other facilities appurtenant to the plant. No such control or treatment shall in any way be less than that required under the federal Water Pollution Control Act.

C. The Director may transfer funds to other appropriate state or local agencies in order to carry out the reclamation authorized by this article.

1979, c. 290.

§45.1-270.1. Creation of Fund.

There is hereby created in the office of the State Treasurer a special fund to be known as the Coal Surface Mining Reclamation Fund, hereinafter referred to as the Fund,

which shall be administered as set forth in this article. The Fund shall consist of all payments made into the Fund in accordance with the provisions of this article, as well as all interest earned on money contained in the Fund.

1982, c. 334.

§45.1-270.2. Participation in Fund.

A. Participation in the Fund shall be open to all operators applying for a permit under Chapter 19 (§ [45.1-226](#) et seq.) of this title, who can demonstrate to the Director at least a consecutive three-year history of compliance under this act or any other comparable state or federal act.

B. Participation in the Fund shall be optional as to each permit application and approval of such participation by the Division, upon payment by the operator of all entrance fees to the Fund required by this article, shall constitute compliance with all requirements of § [45.1-241](#) and regulations issued pursuant thereto. Such participation shall relieve the operator of all bonding requirements except those set forth in this article. Nothing herein shall preclude compliance with § [45.1-241](#) in lieu of participation in the Fund, prior to commencement of the participation. Commencement of participation in the Fund, as to the applicable permit, shall constitute an irrevocable commitment to participate therein as to the applicable permit and for the duration of the coal surface mining operations covered thereunder.

C. For mining operations bonded under this article, the total cumulative amount of exposed highwall shall not exceed 1,500 linear feet. The width of the coal pit shall be limited to two mining cuts or 500 feet, whichever is less, measured perpendicular from the most advanced highwall to the coal outcrop or to the nearest point of rough backfilling and grading.

D. The Director may allow extended distances for rough backfilling and grading beyond those established in this section provided (i) the applicant can demonstrate to the Director at least a seven consecutive year history of compliance with this act or with any other comparable state or federal act, or (ii) the applicant submits a bond for the proposed additional area. The additional bond shall be equal to the ratio of the extended distance to the distance specified in subsection C above, times an approved cost estimate of reclamation prepared for the permit.

1982, c. 334; 1983, c. 131; 1989, c. 432 .

§45.1-270.3. Initial payments into Fund; renewal payments; bonds.

A. Operators filing permit applications for coal surface mining operations participating in the pool fund shall be required to pay into the Fund, as an entrance fee, a sum equal to \$1,000 for each applicable permit application. An entrance fee of \$5,000 shall be required of all operators who elect to participate in the Fund when the Director has determined the total balance of the Fund is less than \$1,750,000. The entrance fee shall be reduced to \$1,000 when the total Fund balance is greater than \$2 million. A renewal fee of \$1,000 shall be required of all permittees in the Fund at permit renewal.

1. For the purposes of this section, all planned expenditures shall be deducted from the balance of the Fund during each calendar quarter, including forfeitures on which engineering cost estimates have been prepared, but no money has actually been expended from the Fund.

2. Should the actual expenditures from the Fund be less than the engineering cost estimate, then the difference shall be credited to the balance of the Fund during the calendar quarter in which the final expenditure is made from the Fund to accomplish the reclamation.

B. In addition to the initial payments into the Fund described in subsection A of this section, all operators that participate in the Fund shall furnish to the Fund a bond which meets the criteria of § [45.1-241](#) and regulations issued pursuant thereto as follows:

1. For those underground mining operations participating in the Fund prior to July 1, 1991, the amount of \$1,000 per acre covered by each permit. In no event shall such total bond be less than \$40,000, except that on permits which have completed all mining and for which completion reports have been approved prior to July 1, 1991, the total bond shall not be less than \$10,000.

2. For underground mining operations entering the Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the amount of \$3,000 per acre. In no event shall the total bond for such underground operations entering the Fund on or after July 1, 1991, be less than \$40,000.

3. For other coal mining operations participating in the Fund prior to July 1, 1991, the amount of \$1,500 per acre covered by each permit. In no event shall such total bond be less than \$100,000, except that on permits which have completed all mining

and for which completion reports have been approved prior to July 1, 1991, the total bond shall not be less than \$25,000.

4. For other coal mining operations entering the Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the amount of \$3,000 per acre. In no event shall the total bond for such operations entering the Fund on or after July 1, 1991, be less than \$100,000.

C. All fees and payments provided in this article shall be in addition to initial permit application and anniversary payments provided pursuant to § [45.1-235](#) or any other payments required in compliance with this chapter.

D. Fund participants shall be allowed to post incremental bonds as set forth in § [45.1-241](#). Such bonds will be posted in annual increments according to a schedule contained in the permit application and approved annually by the Director on the anniversary date.

E. Any mining operation participating in the Fund that has been in temporary cessation for more than six months as of July 1, 1991, shall within 90 days of that date post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that has been in temporary cessation six months or less as of July 1, 1991, shall within 90 days after the date on which the operation has been in temporary cessation for more than six months post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that enters temporary cessation on or after July 1, 1991, shall, prior to the date on which the operation has been in temporary cessation for more than six months, post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Such bond shall remain in effect throughout the remainder of the period during which the site is in temporary cessation. At such time as the site returns to active status, the bond posted under this subsection may be released, provided the permittee has posted bond pursuant to subsection B of this section.

1982, c. 334; 1983, c. 131; 1989, c. 432; 1991, c. 495; 2014, cc. [111](#), [135](#).

§45.1-270.3:1. Repealed.

Repealed by Acts 1991, c. 495 .

§45.1-270.4. Assessment of reclamation tax revenues for Fund.

A. There is hereby levied a reclamation tax upon the production of coal by operators participating in the Fund under permits issued under this chapter as set forth herein.

B. Thirty days after the end of each calendar quarter during which the total balance of the Fund, including interest thereon, is less than \$20 million, all operators shall pay into the Fund an amount equal to:

1. Four cents per clean ton of coal produced by a surface mining operation permitted under this chapter.

2. Three cents per clean ton of coal produced by a deep mining operation permitted under this chapter.

3. One and one-half cents per clean ton of coal processed or loaded by preparation or loading facilities permitted under this chapter.

C. At the end of each calendar quarter during which the total balance in the Fund, including interest thereon, exceeds \$20 million, payments under this section shall cease until again required pursuant to subsection B.

D. In no event shall any operator pay reclamation tax under this section on total coal production in excess of five million tons per calendar year, regardless of the number of permits held by that operator. In no event shall any operator holding more than one type of permit pay tax at a rate in excess of five and one-half cents per ton on coal originally surface mined by that operator or in excess of four and one-half cents per ton on coal originally deep mined by that operator. Any operator holding one permit upon which coal is mined and processed or loaded shall pay only the tax applicable under this section to the surface mining operation or deep mining operation.

1982, c. 334; 1983, c. 131; 1987, c. 468; 1991, c. 495; 2014, cc. [111](#), [135](#).

§45.1-270.4:1. Special assessment.

A. In addition to the tax assessed pursuant to § [45.1-270.4](#), and in order to ensure Fund solvency, the Commissioner of the Division of Mined Land Reclamation shall require each permittee to pay any special assessment made pursuant to subsection B of this section.

B. On and after July 1, 1990, the Commissioner of the Division of Mined Land Reclamation shall assess each permit in the Fund the amount of \$500. This assessment shall be made only one time and all revenues collected shall be applied to the

balance of the Fund. The permittee shall be responsible for payment of the assessment.

On or after July 1, 1991, the Commissioner of the Division of Mined Land Reclamation shall assess an amount not to exceed \$500,000. The amount of the assessment shall be \$250 for each permit participating in the Fund which has completed all mining activity and for which a completion report has been approved. The remaining assessments shall be made in equal amounts per acre for each disturbed acre permitted under the Fund. The amount of disturbed acreage for each permit shall be determined by the most recent anniversary map, or updated anniversary map, submitted by the permittee to the Division of Mined Land Reclamation prior to July 1, 1991. The assessments under this subsection shall not apply to acreage that has been reclaimed and for which an increment of the bond has been transferred to other acreage in the permit. The assessments under this subsection shall be made only one time and all revenues collected shall be applied to the balance of the Fund. The permittee shall be responsible for payment of the assessment.

C. Failure to tender moneys assessed pursuant to the provisions of this section within thirty calendar days of assessment shall constitute a violation of the Virginia Coal Surface Mining Control and Reclamation Act (§ [45.1-226](#) et seq.). Any civil penalties collected for violations of this section shall be applied to the balance of the Fund.

1990, c. 427; 1991, c. 495 .

§45.1-270.5. Collection of reclamation tax and penalties for nonpayment.

A. Payment of taxes under this section shall be made no later than thirty days after the end of each calendar quarter when taxes are applicable in accordance with § [45.1-270.4](#). The Division shall notify each operator holding a permit under Chapter 19 (§ [45.1-226](#) et seq.) of this title of those periods during which the taxes are applicable, and shall provide forms for reporting coal production figures subject to taxes and shall collect all taxes for the Fund.

B. Pursuant to regulations promulgated by the Director, and consistent with the provisions of § [45.1-248](#), all funds paid into the Fund, and interest accrued to the Fund, shall be available for the completion of defaulted reclamation plans filed pursuant to § [45.1-236](#). From the interest accrued to the Fund, amounts sufficient to properly administer the Fund are hereby appropriated to the Division. The Director shall also

promulgate regulations for the implementation of this article and for the collection of taxes hereunder.

C. The Division, upon advance written request to an operator, may audit the relevant books and records of the operator upon which taxes paid under this section are based. Failure to consent to a reasonable request for the audit shall be deemed a violation of this article by the operator.

D. Upon the failure of an operator to pay taxes when due under this section, the Division shall issue a notice of violation pursuant to § [45.1-245](#) B. The notice of violation shall state that upon failure of payment within fifteen days thereafter, the Division shall issue a cessation order to the operator for failure to abate the notice of violation. Upon the issuance of the cessation order, the enforcement procedures set forth in § [45.1-245](#) et seq. shall apply. Civil penalties imposed upon an operator pursuant to a violation of this article shall be placed in the Fund.

1982, c. 334; 1984, c. 590.

§45.1-270.5:1. Forfeiture of bonds on operations participating in the Fund; alternative remedies.

A. Forfeiture of bonds of operations participating in the Fund shall be accomplished as set forth in § [45.1-247](#) and the regulations promulgated by the Director.

B. In addition to forfeiture, the Director may proceed against the permittee of the surface coal mining operation, under the provisions of § [45.1-245](#) E, by filing a civil action for injunctive or other relief in any court of competent jurisdiction to compel the permittee to perform the reclamation work in full compliance with this chapter, the regulations and the approved permit plans. Any injunctive relief shall be granted without the necessity of pleading or proving inadequate remedy at law or irreparable harm and no bond shall be required.

C. Proceedings under either subsection A or subsection B shall not constitute a waiver by the Director to proceed under the other subsection, nor shall the commencement of action under one subsection constitute an election to proceed solely under that subsection.

1987, c. 468.

§45.1-270.6. Reinstatement to the Fund; recovery of Fund expenditures.

A. An operator who has defaulted on any reclamation obligation and has thereby caused the Fund to incur reclamation expenses as a result thereof shall not be

eligible to participate in the Fund thereafter until restitution for such default has been made. Compliance with this requirement shall be a prerequisite to the filing by the operator of any new permit application under this chapter but shall not affect the operator's need to comply with all other requirements of this chapter in applying for a permit.

B. The Director may file a motion for judgment in any court of competent jurisdiction against the permittee to recover all moneys expended by the Fund to accomplish the reclamation. Such expenditures shall include but not be limited to construction costs, engineering costs, administrative costs, and legal costs. In any action to recover these costs, the defendant may not relitigate the facts giving rise to the forfeiture nor may the defendant defend by claiming the forfeiture was improper.

1982, c. 334; 1987, c. 468.

§45.1-270.7. Coal Surface Mining Reclamation Fund Advisory Committee continued as Coal Surface Mining Reclamation Fund Advisory Board.

A. The Coal Surface Mining Reclamation Fund Advisory Committee is continued and shall hereafter be known as the Coal Surface Mining Reclamation Fund Advisory Board. The Reclamation Fund Advisory Board shall consist of five members appointed by the Governor subject to confirmation by the General Assembly, three of whom shall represent the coal industry, one of whom shall be a representative of the Director and one of whom shall be a member of the public without any coal industry interests. The Commissioner of the Division shall be a continuing ex officio non-voting member of the Reclamation Fund Advisory Board and shall serve as Secretary thereto.

B. The voting members of the Reclamation Fund Advisory Board shall initially be appointed for terms of one, two, three, four and five years, such terms to be assigned by lot. Thereafter, all members shall be appointed for five-year terms. No person shall serve more than two consecutive terms.

C. The Reclamation Fund Advisory Board shall annually elect a chairman and shall formulate rules for its organization and procedure.

D. The voting members of the Reclamation Fund Advisory Board shall serve without compensation or reimbursement for expenses incurred in the performance of their duties.

E. The Reclamation Fund Advisory Board shall meet not less than twice each year for the purpose of formulating recommendations to the Director concerning oversight of the general operation of the Fund. The Reclamation Fund Advisory Board shall report biannually to the Director and to the Governor on the status of the Fund and shall recommend to the Director regulations or changes thereto for the administration or operation of the Fund. The Director, in his discretion, may adopt the recommendations of the Reclamation Fund Advisory Board through regulatory action from time to time in accordance with the provisions of Chapter 19 (§ [45.1-226](#) et seq.) of this title and otherwise in accordance with law.

1982, c. 334; 1985, c. 448.

Virginia College Building Authority

§23-30.23. (Repealed effective October 1, 2016) Title.

This chapter shall be known and may be cited as the "Virginia College Building Authority Act of 1966."

1964, c. 607; 1966, c. 685.

§23-30.24. (Repealed effective October 1, 2016) Legislative declaration; definitions.

It is hereby found, determined and declared that the providing of funds for the construction of projects of capital improvement at educational institutions within this Commonwealth is or may be hindered, impeded and delayed by the high financing costs resulting from the sale of bonds of such educational institutions in the open market, and it is desirable that a state agency be created as hereinafter provided, authorized either (i) to purchase such bonds in order to serve educational institution purposes by financing the construction of projects of capital improvement at less cost, thereby facilitating such construction or (ii) to issue its own revenue bonds for purposes of paying for the costs of such projects.

It is hereby further found, determined and declared that there is an urgent need to provide substantial amounts of new scientific, technical and other equipment for teaching, research and related activities at such educational institutions so that they may remain competitive in attracting high-quality faculty and obtaining research grants, and it is desirable that a state agency be empowered, as hereinafter provided,

to purchase such equipment for lease or sale to such educational institutions in order to provide them with such equipment at the lowest possible cost, thereby facilitating the acquisition and supply of such equipment to educational institutions and increasing the purchasing power of their funds, including funds provided by tuition and fees and by appropriations from the General Assembly.

As used in this chapter, the following words and terms shall have the following meanings unless the context shall otherwise indicate:

"Authority" means the Virginia College Building Authority created by § [23-30.25](#), or, if said Authority shall be abolished, the board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers given by this chapter to the Authority shall be given by law.

"Bonds" means bonds, notes or other evidences of indebtedness or other obligations of the Authority pursuant to this chapter.

"Educational institution" means those institutions enumerated in § [23-14](#), area career and technical schools established under Chapter 16 (§ [23-214](#) et seq.) of this title, and all other schools owned and operated by the Commonwealth in which a college education is taught for less than four years.

"Equipment" means any personal property, including, but without limitation, computer hardware and software and any other improvements of all types, including infrastructure improvements related to equipment, to be used to support academic instruction and research, at educational institutions.

"Project" has the same meaning as it is defined in § [23-15](#).

1964, c. 607; 1966, c. 685; 1986, c. 597; 1996, cc. [672](#), [689](#).

§23-30.25. (Repealed effective October 1, 2016) Creation and organization of Authority; surety bonds.

The Virginia College Building Authority is hereby created as a public body corporate and as a political subdivision and an agency and instrumentality of the Commonwealth of Virginia, and as such, shall have and is hereby vested with the powers, rights and duties hereinafter conferred in this chapter.

The Virginia College Building Authority shall consist of the State Treasurer, the State Comptroller, the Director of Planning and Budget, the Director of the State Council of Higher Education for Virginia, and seven additional members appointed by the

Governor, subject to confirmation by the General Assembly, if in session when such appointments are made, and if not in session, at its first session subsequent to such appointment, who shall serve at the pleasure of the Governor. The initial members shall be the members of the Authority heretofore appointed under the Virginia College Building Authority Act of 1964 for the terms appointed pursuant to that act and until their successors shall be appointed and qualified. The successors of each of the appointed members shall be appointed for a term of four years, except that appointments to fill vacancies shall be made for the unexpired terms. Such members shall serve no more than two consecutive terms. The secretary and the assistant secretary may receive such compensation as the Authority may provide.

The Governor shall appoint one member as chairman who shall serve a two-year term. No member shall be eligible to serve more than two consecutive terms as chairman. The chairman shall be the chief executive officer of the Authority and shall receive such compensation as the Governor shall fix. Neither the State Treasurer, the State Comptroller, the Director of the State Council of Higher Education for Virginia nor the Director of Planning and Budget shall be eligible to serve as chairman. Six members of the Authority shall constitute a quorum for the transaction of all business of the Authority. The Authority shall elect one member from the group of seven members appointed by the Governor as vice-chairman, who shall exercise the powers of the chairman in the absence of the chairman. The Authority shall elect a treasurer, a secretary, and an assistant secretary, each of whom may perform the duties and functions commonly performed by such officers. All such officers, except the secretary and the assistant secretary, shall be selected from members of the Authority. Each member of the Authority hereafter appointed and the secretary and the assistant secretary of the Authority shall execute a surety bond in such penal sum as shall be determined by the Attorney General, each such surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the Commonwealth of Virginia as surety and to be approved by the Attorney General and filed in the office of the Secretary of the Commonwealth.

1964, c. 607; 1966, c. 685; 1980, c. 728; 1986, c. 597; 2011, cc. [691](#), [714](#).

§23-30.26. (Repealed effective October 1, 2016) Administration of assets, moneys or obligations.

The Authority shall manage and administer as hereinafter provided all assets, moneys or obligations that may be set aside and transferred to it by the General Assembly or educational institutions.

1966, c. 685; 1996, cc. [672](#), [689](#).

§23-30.27. (Repealed effective October 1, 2016) Purchase and sale of bonds or other obligations of educational institutions.

The Authority is authorized to purchase, with any funds of the Authority available for such purpose, at public or private sale and for such price and on such terms as it shall determine, bonds or other obligations issued by educational institutions pursuant to Chapter 3 (§ [23-14](#) et seq.) of this title.

The Authority may pledge to the payment of the interest on and the principal of any bonds of the Authority all or any part of the educational institution bonds so purchased, including payments of principal and interest thereon as they shall become due. The Authority may also, subject to any such pledge, sell any such educational institution bonds so purchased and apply the proceeds of such sale in the purchase of other like educational institution bonds or for such purpose and in such manner as shall be provided by any resolution authorizing the issuance of bonds of the Authority.

1966, c. 685.

§23-30.27:1. (Repealed effective October 1, 2016) Acquisition and disposition of equipment.

A. The Authority is authorized to acquire equipment or any interest therein by purchase, exchange, gift, lease or otherwise, to sell, exchange, donate, convey, lease and dispose of the same, or any portion thereof or interest therein, including security interests therein, and to retain or receive security interests in such equipment.

B. Without regard to the requirements, restrictions, limitations or other provisions contained in any other general, special or local law, educational institutions are authorized to grant security interests in or other liens on equipment held or acquired by the educational institution under any lease or agreement of sale with the Authority.

C. The Authority is authorized to acquire equipment with any funds of the Authority available for such purpose. Acquisition and disposition of equipment may be at public or private sale and for such price and on such terms as the Authority shall

determine, provided that the Authority shall acquire equipment for, and shall lease or sell the same to, educational institutions only pursuant to standards and procedures as approved through the Commonwealth's budget and appropriation process. The budget document shall present the lease payments and corresponding total value of equipment to be acquired by each institution. Each institution shall make available such additional detail on specific equipment to be purchased as may be requested by the Governor or the General Assembly. If emergency acquisitions and leases are necessary when the General Assembly is not in session, the Governor may approve such acquisitions and leases. Prior to such acquisitions and leases the Governor shall submit such proposed acquisitions and leases to the House Appropriations Committee and the Senate Finance Committee for their review and approval.

D. The Authority is authorized to establish and maintain such funds as it may deem appropriate from time to time to provide funds for acquisition of equipment on a continuing basis. The Authority may deposit therein such funds as it deems appropriate, including, but without limitation, the proceeds of any Authority bonds issued to finance the purchase of equipment and payments made to the Authority under equipment leases and sale agreements with educational institutions and others. Any moneys held in such funds may also be used in the Authority's discretion to secure payment of principal of and interest on any Authority bonds, whether issued to finance the purchase of equipment, or to pay administrative costs of the authority, whether incurred in connection with the purchase, lease or sale of equipment, or may be transferred by the Authority to be used in connection with any other program of the Authority. However, no funds of the Authority derived from the equipment program authorized under this section may be used in connection with the issuance or securing of indebtedness for the benefit of private institutions for higher education pursuant to Chapter 3.3 (§ [23-30.39](#) et seq.) of this title.

E. The Authority is authorized to determine and charge rent or sale prices for equipment leased or sold by the Authority to educational institutions and terminate such leases or sale agreements upon the failure of an educational institution to comply with any of the obligations thereof, and may include in such leases, options for the educational institution to renew such leases, or to purchase any or all of the leased equipment and provisions for the Authority to repossess and sell equipment leased or sold upon any default under the lease or agreement for the sale of such equipment.

1986, c. 597.

§23-30.28. (Repealed effective October 1, 2016) Bonds of Authority generally.

In order to provide funds for the purchase of educational institution bonds as authorized by § [23-30.27](#), to provide funds for the acquisition of equipment as authorized by § [23-30.27:1](#), to provide funds for the reimbursement of the Central Capital Planning Fund, established under § [2.2-1520](#), for payments made for pre-planning or detailed planning of all projects that have been approved for construction by the General Assembly, and to provide funds for the purpose of paying all or any part of the cost of any one or more projects or of any portion or portions thereof, the Authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of bonds of the Authority in such amount or amounts as the Authority shall determine. Such bonds of the Authority shall be payable solely from funds of the Authority, including, but without limitation, any one or more of the following: (i) payments of principal of and interest on educational institution bonds purchased by the Authority, (ii) the proceeds of the sale of any such educational institution bonds, (iii) payments of principal of and interest on obligations transferred to the Authority by the General Assembly or from other assets or moneys transferred to the Authority by the General Assembly or educational institutions, including lease payments or any other source of revenue, (iv) the proceeds of the sale of any such obligations or assets, (v) the proceeds from the sale of bonds of the Authority, (vi) payments made by educational institutions under leases or sales of equipment by the Authority, (vii) funds realized from the enforcement of security interests or other liens securing such bonds, (viii) payments due under letters of credit, policies of bond insurance, bond purchase agreements or other credit enhancements securing payment of principal of and interest on bonds of the Authority, (ix) any moneys held in funds established by the Authority pursuant to § [23-30.27:1](#), (x) any reserve or sinking funds created to secure such payment, and (xi) other available funds of the Authority. Bonds of the Authority issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith or credit of the Commonwealth and all bonds of the Authority shall contain on the face thereof a statement to the effect that neither the faith and credit, nor the taxing power of the Commonwealth or of any political subdivision thereof is, or shall be, pledged to the payment of the principal of or the interest on such bonds.

The bonds of each issue shall be dated, shall mature at such time or times, not exceeding 40 years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such

price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The bonds may bear interest payable at such time or times and at such rate or rates as determined by the Authority or as determined in such manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by it. The principal and interest of such bonds may be made payable in any lawful medium. The Authority shall determine the form of the bonds and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at the office of the State Treasurer or at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All revenue bonds issued under the provisions of this chapter (other than bonds registered as to principal or in registered form) shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the law of this Commonwealth. The bonds shall be in such form, shall bear interest at such rate or rates, either fixed rates or rates established by formula or other method, and may contain such other provisions, all as the Authority may determine. The principal of and premium, if any, and interest on the bonds shall be payable in lawful money of the United States of America. The Authority shall fix the denomination or denominations of the bonds and place or places of payments of principal, premium, if any, and interest at any one or more banks or trust companies within or without the Commonwealth.

Bonds may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal of and premium, if any, and interest on the bonds.

The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be in the best interests of the Authority. The proceeds of such bonds shall be disbursed for the purposes for which such bonds shall have been issued under such restrictions, if any, as the resolution authorizing the issuance of such bonds or the trust indenture hereinafter mentioned may provide. Prior to the preparation of definitive bonds, the Authority may under like restrictions issue temporary bonds, with or without coupons, exchangeable for definitive bonds

when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bond which shall become mutilated or shall be destroyed or lost. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than the proceedings, conditions, and things which are specified and required by this chapter.

Neither the members of the Authority nor any person executing any bonds issued under the provisions of this chapter shall be liable personally on such bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

No project for an institution listed in § [23-14](#) shall be undertaken by the Authority if such project was not specifically included in a bill passed by a majority of those elected to each house of the General Assembly, authorizing such project or projects. In addition, any such project to be financed by bonds issued by the Authority secured by a pledge of any one or more of the revenue sources cited in subdivisions (1) through (4) of subsection (d) of § [23-19](#) shall have been designated by the institution's board of visitors as a project to be undertaken by the Authority.

1964, c. 607; 1966, c. 685; 1986, c. 597; 1994, cc. [191](#), [219](#); 1996, cc. [672](#), [689](#); 2000, cc. [414](#), [445](#); 2004, c. [711](#); 2008, Sp. Sess. I, cc. [1](#), [2](#).

§23-30.29. (Repealed effective October 1, 2016) Security for bonds.

In the discretion of the Authority, any bonds issued under the provisions of this chapter may be secured by a trust indenture by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without this Commonwealth. Such trust indenture or the resolution providing for the issuance of such bonds may pledge or assign all or any part of the funds of the Authority available for such purpose, including, but without limitation, (i) payments of principal of and interest on educational institution bonds purchased by the Authority, (ii) proceeds of the sale of any such educational institution bonds, (iii) payments of principal of and interest on obligations transferred to the Authority by the General Assembly or from other assets or moneys transferred to the Authority by the General Assembly or educational institutions, including lease payments and other sources of revenue, (iv) proceeds of the sale of any such obligations or assets, (v) proceeds from the sale of bonds of the Authority, (vi) security interests granted by the Authority or any educational institution in, or other liens on, equipment, whether such equipment has been leased or sold to an educational institution, (vii) all or any part of the payments due the Authority from educational institutions

under any leases, sale agreements, loans or other agreements made by the Authority with the educational institutions pursuant to § [23-30.27:1](#), and any funds realized from enforcing security for such payments, (viii) payments due under policies of bond insurance, letters of credit or other credit enhancement securing payment of principal of and interest on bonds of the Authority, (ix) any moneys in any, or all of the funds as the Authority may from time to time establish pursuant to § [23-30.27:1](#), (x) any reserve or sinking funds created by the Authority to secure such bonds, and (xi) other available funds of the Authority. Such trust indenture or resolution may also pledge or assign any other rights of the Authority in equipment owned by, or leases or sales of equipment made by, the Authority. Such trust indenture or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law. Such trust indenture or resolution providing for the issuance of such bonds may provide for the creation and maintenance of such reserves as the Authority shall determine to be proper, and may include covenants setting forth the duties of the Authority in relation to the acquisition of any equipment or educational institution bonds; the care, leasing or sale of equipment to educational institutions; the substitution of any educational institution bonds, equipment, leases, security interest or other security as security for the payment of the bonds of the Authority; care, use and insurance of equipment; the repossession and sale of leased or sold equipment by the Authority or the trustee under any trust indenture upon any default under the lease or sale of such equipment; and the collection of payments due the Authority under leases or agreements of sale of equipment and payments of principal and interest on any educational institution bonds and on any obligations or other assets held by the Authority. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust indenture may set forth the rights and remedies of the bondholders and the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust indenture or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust indenture or resolution may be treated as a part of the administration costs of the Authority. Neither the resolution nor any trust indenture by which a pledge is created need be filed or recorded except

in the records of the Authority.

1964, c. 607; 1966, c. 685; 1986, c. 597; 1996, cc. [672](#), [689](#).

§23-30.29:1. (Repealed effective October 1, 2016) Reserve fund; limitations.

A. If the Authority deems it proper to create a reserve fund or funds from bond proceeds or other funds of the Authority to support an issuance of bonds in accordance with the provisions of this section, all moneys held in such reserve fund, except as hereinafter provided, shall be pledged solely for the payment of the principal of and interest on the bonds secured in whole or in part by such a fund. Any income or interest earned on, or increment to, any reserve fund may be transferred by the Authority to other funds or accounts of the Authority to the extent it does not reduce the amount of the reserve fund below its minimum requirement.

B. In order to assure further the maintenance of reserve funds established in accordance with the provisions of this section, the chairman of the Authority shall annually, on or before November 15, make and deliver to the Governor and the Secretary of Finance a certificate stating the sum, if any, required to restore each reserve fund to its minimum requirement. The Governor shall submit to the presiding officer of each house of the General Assembly printed copies of a budget including the sum, if any, required to restore each reserve fund to its minimum requirement; such submission shall be made at the time the Governor presents his budget and budget bill to the General Assembly pursuant to §§ [2.2-1508](#) and [2.2-1509](#). All sums, if any, which may be appropriated by the General Assembly for any restoration and paid to the Authority shall be deposited by the Authority in the applicable reserve fund. All sums paid to the Authority pursuant to this section shall constitute and be accounted for as advances by the Commonwealth to the Authority and, subject to the rights of the holders of any bonds of the Authority, shall be repaid to the Commonwealth without interest from available revenues of the Authority in excess of the amounts required for payment of bonds or other obligations of the Authority, maintenance of reserve funds, and operating expenses.

C. The Authority shall not at any time issue bonds secured in whole or in part by any reserve fund referred to in subsection A if, upon the issuance of the bonds, the amount in the reserve fund will be less than its minimum requirement unless the Authority, at the time of the issuance of the bonds, deposits in the fund an amount which, together with the amount then in the fund, will not be less than the fund's minimum reserve requirement.

D. The total principal amount of bonds outstanding at any one time, secured by a reserve fund in accordance with the provisions of this section, shall not exceed the sum of \$300 million without the prior approval of the General Assembly.

E. Nothing in this section shall be construed as limiting the power of the Authority to issue bonds (i) not secured by a reserve fund or (ii) secured by a reserve fund not described in this section.

1996, cc. [672](#), [689](#).

§23-30.29:2. (Repealed effective October 1, 2016) Educational institutions' pledge of tuition, fees, etc.

In order to provide funds for the repayment of bonds issued by the Authority either (i) for the purchase of any educational institution's bonds or (ii) to provide funds for the purpose of paying all or any part of the cost of any one or more projects or of any portion or portions thereof, each educational institution is authorized to agree to pledge and transfer to the Authority all or a part of the educational institution's revenues derived from any one or more of the sources mentioned in subdivisions (1) through (4) of subsection (d) of § [23-19](#). Any agreement related to such transfer may contain such other provisions the Authority and educational institution deem reasonable and proper and not in violation of law. Any such agreement shall not be deemed to constitute a debt of the Commonwealth or a pledge of the full faith and credit of the Commonwealth. Neither the full faith and credit of the Commonwealth nor the taxing power of the Commonwealth or any political subdivision thereof is or shall be pledged to the payment of the principal of and interest on bonds so secured by such agreement. Prior to execution, any such agreement shall be approved by (i) the Secretary of Finance and (ii) the Secretary of Education.

1996, cc. [672](#), [689](#).

§23-30.29:3. (Repealed effective October 1, 2016) Investigation by Governor of alleged defaults; withholding of state funds from defaulting institution; payment of funds withheld; receipts, reports, etc.

A. Whenever it appears to the Governor from an affidavit filed with him by the paying agent for the bonds issued by the Authority that the institution has defaulted in the payment of the principal of or premium, if any, or interest on its bonds pursuant to this chapter, the Governor shall immediately make a summary investigation into the facts set forth in the affidavit. If it is established to the satisfaction of the Governor that the institution is in default in the payment of its bonds or the interest thereon,

the Governor immediately shall make an order directing the State Comptroller to make payment immediately to the owners of the bonds in default, or the paying agent for the bonds, on behalf of the institution from any appropriation available to the institution in the amount due and remaining unpaid by the institution on its bonds.

B. Any payment so made by the State Comptroller to the owners of the bonds in default, or to the paying agent of the bonds for the bonds, shall be credited as if made directly by the institution and shall be charged by the State Comptroller against the appropriations of the institution. The owners of the bonds in default, or the paying agent for the bonds, at the time of payment or at the time of each payment shall deliver to the State Comptroller, in a form satisfactory to the State Comptroller, a receipt for payment of the principal or interest satisfied by the payment. The State Comptroller shall report each payment made to the governing body of the defaulting institution under the provisions of this section.

C. In addition, for any institution which defaulted on its bonds pursuant to this section, the Governor shall direct the State Comptroller to charge against the appropriations available to such institution all future payments of principal of and interest on the institution's bonds when due and payable and to make such payments to the owners of the bonds, or the paying agent for the bonds, on behalf of the institution so as to ensure that no future default will occur on such bonds. The charge and payment shall be made upon receipt of such documentation as in the opinion of the State Comptroller provides satisfactory evidence of the claim. The owners of the bonds, or the paying agent for the bonds, at the time of each payment shall deliver to the State Comptroller, in a form satisfactory to the State Comptroller, a receipt for payment of the principal or interest satisfied by the payment.

D. Nothing in this section shall be construed to create any obligation on the part of the State Comptroller or the Commonwealth to make any payment on behalf of the defaulting institution other than from funds appropriated to the defaulting institution.

1996, cc. [672](#), [689](#).

§23-30.30. (Repealed effective October 1, 2016) Investment of funds.

Any moneys or funds held by the Authority or by the trustee under any trust indenture under the provisions of this chapter may be invested and reinvested in securities

that are legal investments under the laws of the Commonwealth for moneys or funds held by fiduciaries.

1966, c. 685.

§23-30.31. (Repealed effective October 1, 2016) Powers of Authority.

In order to enable the Authority to carry out the purposes for which it is established, the Authority is vested with the powers of a public body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same, and is authorized and empowered:

1. To have perpetual succession as a public body corporate, and to adopt bylaws and regulations for the conduct of its affairs;
2. To maintain an office at such place or places as it may designate;
3. To collect, or to authorize the trustee under any trust indenture securing any bonds of the Authority to collect, as the same shall become due, (i) the principal of and the interest on all obligations transferred to the Authority by the General Assembly and (ii) other assets or moneys transferred to the Authority by the General Assembly or educational institutions, including lease payments and other sources of revenue;
4. To conduct a program of purchasing equipment for lease or sale to educational institutions as authorized by this chapter;
5. To collect, or to authorize the trustee under any trust indenture securing any bonds of the Authority to collect, as the same shall become due, payments due under leases or agreements of sale of equipment or leases or other obligations of real property by the Authority to educational institutions, and the principal of and the interest on all educational institution bonds purchased by the Authority;
6. To repossess and sell, or to authorize the trustee under any trust indenture securing any bonds of the Authority to repossess and sell, any equipment upon any default under the lease or agreement for the sale of such equipment;
7. To repossess and re-lease, or to authorize the trustee under any trust indenture securing any bonds of the Authority to repossess and re-lease, any project upon any default under the lease of such project;
8. To assist educational institutions in applying for grants from, or entering into other agreements with, the federal or state government or foundations or others

designed to provide guarantees of or funds for payments under leases or contracts of sale or other benefits and to enter into similar agreements with such entities itself;

9. To select in such manner as it deems fit, and to appoint and employ financial experts, corporate depositories, trustees, paying agents, attorneys, accountants, consulting engineers, construction experts and for such other services as may be necessary in the judgment of the Authority, and to pay their compensation and reasonable expenses either from moneys received by the Authority under the provisions of this chapter, or from appropriations made by the General Assembly for such purposes;

10. To issue bonds of the Authority as authorized by this chapter, and to refund any of such bonds;

11. To receive and accept any grants, aid or contributions from any source of either money, property, labor or other things of value, or to reject the same in the judgment of the Authority; and

12. To do any and all other acts and things necessary, appropriate, incidental or convenient to carrying out the powers expressly granted in this chapter.

1964, c. 607; 1966, c. 685; 1986, c. 597; 1996, cc. [672](#), [689](#).

§23-30.32. (Repealed effective October 1, 2016) Enforcement of rights and duties by bondholder or trustee under trust indenture.

Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee under any trust indenture, except to the extent the rights herein given may be restricted by such trust indenture or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the Commonwealth of Virginia or granted hereunder or under such trust indenture or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this chapter or by such trust indenture or resolution to be performed by the Authority or by any officer thereof.

1964, c. 607; 1966, c. 685.

§23-30.33. (Repealed effective October 1, 2016) Exemption of bonds from taxation.

The bonds issued by the Authority under the provisions of this chapter, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all

times be free and exempt from taxation by the Commonwealth and by any municipality, county, or any other political subdivision thereof.

1964, c. 607; 1966, c. 685.

§23-30.34. (Repealed effective October 1, 2016) Bonds made lawful investments.

All bonds issued by the Authority under the provisions of this chapter are hereby made securities in which all public officers and bodies of the Commonwealth, and all counties, cities and towns, and municipal subdivisions, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, commercial banks and trust companies, beneficial and benevolent associations, administrators, guardians, executors, trustees and other fiduciaries in the Commonwealth may properly and legally invest funds under their control. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter [after June 27, 1966] be authorized by law.

1964, c. 607; 1966, c. 685.

§23-30.35. (Repealed effective October 1, 2016) Action by Authority may be authorized by resolution.

Any action taken by the Authority under the provisions of this chapter may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted.

1964, c. 607; 1966, c. 685.

§23-30.36. (Repealed effective October 1, 2016) Annual report; examination of records, books and accounts.

The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain, at a minimum, the annual financial statements of the Authority for the year ending the preceding June 30. The records, books and accounts of the Authority shall be subject to examination and inspection by duly authorized representatives of the General Assembly and any bondholder or bondholders at any reasonable time, provided the business of the Authority is not unduly interrupted or interfered with thereby.

1964, c. 607; 1966, c. 685; 1984, c. 734; 1985, c. 146; 2004, c. [650](#).

§23-30.36:1. (Repealed effective October 1, 2016) Annual audit.

The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the accounts of the Authority, and the cost of such audit services as shall be required shall be borne by the Authority.

1987, c. 74.

§23-30.37. (Repealed effective October 1, 2016) Chapter liberally construed; powers of Authority not subject to supervision by municipalities, etc.

This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purpose thereof.

Except as otherwise expressly provided in this chapter, none of the powers granted to the Authority under the provisions of this chapter shall be subject to the supervision or regulation or require the approval or consent of any municipality or political subdivision or any commission, board, bureau, official or agency thereof or of the Commonwealth.

1964, c. 607; 1966, c. 685; 2015, c. [709](#).

§23-30.38. (Repealed effective October 1, 2016) Jurisdiction of suits against Authority; service of process.

The Circuit Court of the City of Richmond shall have exclusive jurisdiction of any suit brought in Virginia against the Authority, and process in such suit shall be served either on the State Comptroller or the chairman of the Authority.

1964, c. 607; 1966, c. 685.

Virginia Commonwealth University Health System Authority

§23-50.16:1. (Repealed effective October 1, 2016) Short title.

This chapter shall be known and may be cited as the "Virginia Commonwealth University Health System Authority Act."

1996, cc. [905](#), [1046](#); 2000, c. [720](#).

§23-50.16:2. (Repealed effective October 1, 2016) Findings and declaration of necessity.

The General Assembly finds that:

1. Provision of health care, including indigent care, is an essential governmental function protecting and promoting the health and welfare of the citizens of the Commonwealth;
2. Education of medical and health sciences professionals and the performance of medical and related research are essential to promote such health care;
3. Teaching hospitals and related facilities of high quality are essential both to provide high levels of health care and to promote medical and health sciences education, because such hospitals and related facilities (i) provide facilities necessary to train physicians and other health sciences professionals, (ii) provide medical services not generally available at other hospitals, and (iii) treat patients of the type and on the scale necessary to facilitate medical research and to attract physicians, faculty members, researchers and other persons necessary to maintain quality medical and health sciences education;
4. The missions of the Medical College of Virginia Hospitals are to (i) serve as a general hospital and health care facility, (ii) facilitate and support the health education, research and public service activities of the Health Sciences Schools of the Medical College of Virginia, Health Sciences Division of Virginia Commonwealth University, (iii) provide high quality patient care and other specialized health services not widely available in the Commonwealth, including the provision of medical care to indigent patients, (iv) serve as the principal teaching and training hospital for undergraduate and graduate students of the Schools of the Health Sciences Division of Virginia Commonwealth University, and (v) provide a site for faculty members of the Health Sciences Division of Virginia Commonwealth University to conduct medical and biomedical research, all of which missions constitute essential governmental functions for protecting and promoting the health and welfare of the citizens of the Commonwealth;
5. Such hospital, health care and related facilities require specialized management and operation to remain economically viable, to earn revenues necessary for their operation, and to engage in arrangements with public and private entities and other activities, taking into account changes that have occurred or may occur in the future in the provision of health care and related services; and
6. The needs of the citizens of the Commonwealth and the needs of the Health Sciences Division of Virginia Commonwealth University will best be served if the Medical College of Virginia Hospitals are transferred to and operated by an

independent public authority charged with the missions of operating such Hospitals as teaching hospitals for the benefit of the Schools of the Health Sciences Division of Virginia Commonwealth University, providing high quality patient care, and providing a site for medical and biomedical research, all in close affiliation with the Health Sciences Division of Virginia Commonwealth University so that the public authority does not duplicate or compete with the undergraduate and graduate programs, research, training and teaching facilities offered at or operated by the University.

The exercise of the powers permitted by this chapter shall be deemed the performance of essential governmental functions and matters of public necessity for the entire Commonwealth in the provision of health care, medical and health sciences education and research, for which public moneys may be borrowed, loaned, spent or otherwise utilized and for which private property may be utilized or acquired.

1996, cc. [905](#), [1046](#).

§23-50.16:3. (Repealed effective October 1, 2016) Authority created; purposes.

A. There is hereby created as a public body corporate and as a political subdivision of the Commonwealth, the Virginia Commonwealth University Health System Authority, referred to in this chapter as the Authority, with such public and corporate powers as are set forth in this chapter. The Authority is hereby constituted a public instrumentality, exercising public and essential governmental functions with the power and purpose to provide for the health, welfare, convenience, knowledge, benefit and prosperity of the residents of the Commonwealth and such other persons who might be served by the Authority by delivering and supporting the delivery of medical care and related services to such residents and persons, by providing educational opportunities in the medical field and related disciplines, by conducting and facilitating research in the medical field and related disciplines, and by enhancing the delivery of health care and related services to the Commonwealth's indigent population.

B. The Authority is authorized to provide, promote, support and sponsor education, public knowledge and scientific research in medicine, public health and related fields; to administer programs to assist in the delivery of medical and related services to the citizens of the Commonwealth and others; and to participate in and administer federal, state and local programs affecting, supporting or carrying out any of its purposes. The Authority is further authorized to exercise independently the powers conferred by this chapter in furtherance of its corporate and public purposes, and the

Authority is directed to undertake the operation of teaching hospitals and related facilities and to maintain and, as appropriate, to expand the same, all for the benefit of the Commonwealth, its citizens and such other persons who might be served by the Authority.

1996, cc. [905](#), [1046](#); 2000, c. [720](#).

§23-50.16:4. (Repealed effective October 1, 2016) Definitions.

As used in this chapter, the following terms have the following meanings, unless the context requires otherwise:

"Authority" means the Virginia Commonwealth University Health System Authority.

"Board" means the Board of Directors of the Authority.

"Bonds" means bonds, notes, revenue certificates, lease participation certificates or other evidences of indebtedness or deferred purchase financing arrangements.

"Costs" means costs of construction, reconstruction, renovation, site work and acquisition of lands, structures, rights-of-way, franchises, easements and other property rights and interests; costs of demolition, removal or relocation of buildings or structures; costs of labor, materials, machinery and all other kinds of equipment; financing charges; costs of engineering and inspections; costs of financial, legal and accounting services; costs of plans, specifications, studies, and surveys; estimates of costs and of revenues; feasibility studies and administrative expenses, including administrative expenses during the start-up of any project; costs of issuance of bonds, including printing, engraving, advertising, legal and other similar expenses; credit enhancement and liquidity facility fees; fees for interest rate caps, collars, swaps or other financial derivative products; interest on bonds in connection with a project prior to and during construction or acquisition thereof and for a period not exceeding one year thereafter; provisions for working capital to be used in connection with any project; redemption premiums, obligations purchased to provide for the payment of bonds being refunded and other costs necessary or incident to refunding of bonds; operating and maintenance reserve funds, debt reserve funds and other reserves for the payment of principal and interest on bonds; and all other expenses necessary, desirable or incidental to the operation of the Authority's facilities or the construction, reconstruction, renovation, acquisition or financing of projects or other facilities or equipment appropriate for carrying out the purposes of this chapter and the placing of the same in operation; or the refunding of bonds.

"Chief executive officer" means the chief executive officer of the Virginia Commonwealth University Health System Authority.

"Hospital facilities" means all property or rights in property, real and personal, tangible and intangible, including all facilities suitable for providing hospital and health care services and including any and all structures, buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, furnishings, landscaping, approaches, roadways and other related and supporting facilities, now or hereafter owned, leased, operated or used, in whole or in part, by Virginia Commonwealth University as part of, or in connection with, the Medical College of Virginia Hospitals in the normal course of its operations as a teaching, research and medical treatment facility.

"Hospital obligations" means all debts or other obligations, contingent or certain, owing to any person or other entity on the transfer date, arising out of the operation of the Medical College of Virginia Hospitals as a medical treatment facility or arising out of the financing or refinancing of hospital facilities, and including all bonds and other debts for the purchase of goods and services, whether or not delivered, and obligations for the delivery of services, whether or not performed.

"Project" means any health care, research or educational facility or equipment necessary or convenient to or consistent with the purposes of the Authority, whether or not owned by the Authority, including, without limitation, hospitals; nursing homes; continuing care facilities; self-care facilities; wellness and health maintenance centers; medical office facilities; clinics; out-patient clinics; surgical centers; alcohol, substance abuse, and drug treatment centers; laboratories; sanitariums; hospices; facilities for the residence or care of the elderly, the handicapped, or the chronically ill; residential facilities for nurses, interns, and physicians; other kinds of facilities for the treatment of sick, disturbed, or infirm persons or the prevention of disease or maintenance of health; colleges, schools or divisions offering undergraduate or graduate programs for the health professions and sciences and such other branches of learning as may be appropriate, together with research, training, and teaching facilities; all related and supporting facilities and equipment necessary or desirable in connection therewith or incidental thereto; or equipment alone, including, without limitation, parking, kitchen, laundry, laboratory, wellness, pharmaceutical, administrative, communications, computer, and recreational facilities; power plants and equipment; storage space; mobile medical facilities; vehicles; air transport equipment and other

equipment necessary or desirable for the transportation of medical equipment, medical personnel or patients; and all lands, buildings, improvements, approaches and appurtenances necessary or desirable in connection with or incidental to any project.

"Transfer date" means a date or dates agreed to by the Board of Visitors of Virginia Commonwealth University and the Authority for the transfer of employees to the Authority and for the transfer of hospital facilities, or any parts thereof, to and the assumption, directly or indirectly, of hospital obligations by the Authority, which dates for the various transfers and the various assumptions may be different, but in no event shall any date be later than June 30, 1997.

"University" means Virginia Commonwealth University.

1996, cc. [905](#), [1046](#); 2000, c. [720](#).

§23-50.16:5. (Repealed effective October 1, 2016) Board of Directors; appointment; officers; employees.

A. The Authority shall be governed by a Board of Directors consisting of 21 members as follows: six nonlegislative citizen members, including two physician-faculty members, to be appointed by the Governor; five members, including two physician-faculty members, to be appointed by the Speaker of the House of Delegates; three members, including one physician-faculty member, to be appointed by the Senate Committee on Rules; five nonlegislative citizen members of the Board of Visitors of Virginia Commonwealth University, to be appointed by the Rector, all of whom shall also be members of the Board of Visitors of the University at all times while serving on the Board; the President of the University and the Vice-President for Health Sciences of the University, or the person who holds such other title as subsequently may be established by the Board of Visitors of the University for the chief academic and administrative officer for the Health Sciences Campus of the University, both of whom shall serve as ex officio voting members during their respective terms of office.

The five physician-faculty members shall be faculty members of Virginia Commonwealth University with hospital privileges at Medical College of Virginia Hospitals at all times while serving on the Board.

After the initial staggering of terms, all appointments shall be for terms of three years each, except appointments to fill unexpired vacancies which shall be made for the remainder of the unexpired terms.

The Governor, the Speaker of the House of Delegates, and the Senate Committee on Rules shall appoint faculty physicians after consideration of the names from lists submitted by the faculty physicians of the School of Medicine of Virginia Commonwealth University through the Vice-President for Health Sciences of the University. The list shall contain not less than two names for each expired or unexpired vacancy that occurs.

No person shall be eligible to serve more than two consecutive full three-year terms as an appointed member, but after the expiration of a term of two years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, or after one year following the expiration of a second full three-year term, two additional three-year terms may be served by a member if so appointed. The terms of members serving by virtue of their office shall expire upon termination of their holding such office. All members shall continue to hold office until their successors have been appointed and have qualified.

All appointed members, other than those who are members of the Board of Visitors, shall have demonstrated experience or expertise in business, health-care management or legal affairs. Immediately after their appointments, members shall enter upon the performance of their duties. The Board members appointed from the Board of Visitors and the ex officio members shall not vote on matters that shall require them to breach their fiduciary duties to the University or to the Authority.

B. All appointments, including the initial appointments to the Board and appointments to fill vacancies, are subject to confirmation by the affirmative vote of a majority of those voting in each house of the General Assembly if in session when such appointments are made and, if not in session, at its first regular session subsequent to such appointment. Any member whose nomination is subject to confirmation during a regular session of the General Assembly shall be deemed terminated when the General Assembly rejects the nomination or when it adjourns without confirming the nomination, whichever is earlier. No such termination shall affect the validity of any action taken by such member prior to such termination.

C. A Board member may be removed for malfeasance, misfeasance, incompetence or gross neglect of duty by the individual or entity that appointed him or, if such appointing individual no longer holds the office creating the right of appointment, by the current holder of that office.

D. The President of the University shall serve as the chairman of the Board of Directors. The Board of Directors of the Authority shall elect annually a vice-chairman from among its membership. The Board shall also elect a secretary and treasurer and such assistant secretaries and assistant treasurers as the Board may authorize for terms determined by the Board, each of whom may or may not be a member of the Board. The same person may serve as both secretary and treasurer. The Board may also appoint an executive committee and other standing or special committees and prescribe their duties and powers, and any executive committee may exercise all such powers and duties of the Board under this chapter as the Board may delegate.

E. The Board may provide for the appointment, employment, term, compensation, and removal of a director, officers, employees and agents of the Authority, including engineers, consultants, lawyers and accountants as the Board deems appropriate.

F. The Board shall meet at least four times each year and may hold such special meetings as it deems appropriate. The Board may adopt, amend and repeal such rules, regulations, procedures and bylaws, not contrary to law or inconsistent with this chapter, as it deems expedient for its own governance and for the governance and management of the Authority. A majority of the Board shall constitute a quorum for meetings, and the Board may act by a majority of those present at any meeting.

G. Legislative board members shall be entitled to such compensation as provided § [30-19.12](#) and nonlegislative citizen board members shall be entitled to such compensation as provided in § [2.2-2813](#) for their services. All members shall be entitled to reimbursement for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the costs of compensation and expenses of the members shall be provided by the Authority.

H. The provisions of the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.) shall apply to the members of the Board and the employees of the Authority.

1996, cc. [905](#), [1046](#); 1998, c. [449](#); 2000, c. [720](#); 2004, c. [1000](#); 2014, cc. [3](#), [456](#).

§23-50.16:6. (Repealed effective October 1, 2016) Powers generally.

The Authority shall have all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including, without limitation, the following powers:

1. To sue and be sued in its own name.
2. To have and alter an official seal.
3. To have perpetual duration and succession in its name.
4. To locate and maintain offices at such places as it may designate.
5. To make and execute contracts, guarantees or any other instruments and agreements necessary or convenient for the exercise of its powers and functions including, without limitation, to make and execute contracts with hospitals or health-care businesses to operate and manage any or all of the hospital facilities or operations, and to incur liabilities and secure the obligations of any entity or individual.
6. To conduct or engage in any lawful business, activity, effort or project consistent with the Authority's purposes or necessary or convenient to exercise its powers.
7. To exercise, in addition to its other powers, all powers that are granted to corporations by the provisions of Title 13.1 or similar provisions of any successor law, except in those cases where, by the express terms of the provisions thereof, the power is confined to corporations created under such title, and that are not inconsistent with the purposes and intent of this chapter or the limitations included in this chapter.
8. To accept, hold and enjoy any gift, devise or bequest to the Authority or its predecessors, the same to be held for the uses and purposes designated by the donor, if any, or if not so designated, for the general purposes of the Authority, whether given directly or indirectly; and to accept, execute and administer any trust or endowment fund in which it has or may have an interest under the terms of the instrument creating the trust or endowment fund.
9. To borrow money and issue bonds as provided in this chapter and to purchase such bonds.
10. To seek financing from, incur or assume indebtedness to and enter into contractual commitments with, the Virginia Public Building Authority and the Virginia College Building Authority, which authorities are authorized to borrow money and make and issue negotiable notes, bonds and other evidences of indebtedness to provide such financing relating to the hospital facilities or any project.

11. To seek financing from, incur or assume indebtedness to, and enter into contractual commitments with the Commonwealth of Virginia as otherwise provided by law relating to the hospital facilities or any project.

12. To procure such insurance, participate in such insurance plans and/or provide such self-insurance as it deems necessary or convenient to carry out the purposes and provisions of this chapter. The purchase of insurance, participation in an insurance plan, or creation of a self-insurance plan by the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its officers, directors, employees, or agents are otherwise entitled.

13. To develop policies and procedures consistent with Article 4 (§ [2.2-4347](#) et seq.) of Chapter 43 of Title 2.2.

14. To develop policies and procedures generally applicable to the procurement of goods, services and construction, based upon competitive principles.

1996, cc. [905](#), [1046](#).

§23-50.16:7. (Repealed effective October 1, 2016) Appointment, salary and powers of the Chief Executive Officer.

A. The Authority shall be under the immediate supervision and direction of a Chief Executive Officer, subject to the policies and direction established by the Board. The Chief Executive Officer shall be the person who holds the title of Vice-President for Health Sciences of Virginia Commonwealth University, or such other title as subsequently may be established by the Board of Visitors of the University for the chief academic and administrative officer for the Health Sciences Campus of the University, subject to the following: notwithstanding any other provision of law to the contrary, the selection and removal of the Chief Executive Officer, as well as the conditions of appointment, including salary, shall be made jointly by the Board and the Board of Visitors of the University at a joint meeting of the Board and the Board of Visitors of the University upon a vote of a majority of the members of each board, present and voting at the aforementioned joint meeting, acting separately in accordance with applicable provisions of law.

B. In the event that a majority of the members of each board do not agree upon the selection, removal, or conditions of appointment, including salary, of the Chief Executive Officer as provided in subsection A, then each board shall appoint a committee of three members of its respective board to consider the matter or matters upon

which the boards disagree. The selection, removal, or conditions of appointment shall be made jointly by the two committees at a joint meeting of the committees upon a vote by a majority of the members of each committee present and voting at the joint meeting. In the event that a majority of the members of each committee agree upon the selection, removal, or conditions of appointment of the Chief Executive Officer, then the decision shall be reported to the Board and the Board of Visitors of the University, each of which shall be bound by the decision of the committees. In the event that a majority of the members of each committee do not agree on the selection, removal, or conditions of appointment of the Chief Executive Officer within 30 days of the appointment of the committees by each board, then the President of the University shall decide upon the matter or matters upon which the committees disagree. The President of the University shall report his decision to both boards, each of which shall be bound by the decision of the President.

C. The Chief Executive Officer shall devote his full time to the performance of his official duties and shall not be engaged in any other profession or occupation.

D. The Chief Executive Officer shall supervise and administer the operation of the Authority in accordance with the provisions of this chapter.

1996, cc. [905](#), [1046](#); 2000, c. [720](#); 2014, cc. [3](#), [456](#).

§23-50.16:8. (Repealed effective October 1, 2016) Audit.

The accounts of the Authority shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives, or by a certified public accounting firm, as selected by the Authority. The Authority shall select a certified public accounting firm or the Auditor of Public Accounts through a process of competitive negotiation. Copies of the annual audit shall be distributed to the Governor and to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance. The Auditor of Public Accounts and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the Authority; however, the Authority shall not be deemed to be a state or governmental agency, advisory agency, public body or agency or instrumentality for purposes of Chapter 14 (§ [30-130](#) et seq.) of Title 30. The Authority shall be subject to periodic external review under the provisions of the Legislative Program Review and Evaluation Act (§ [30-65](#) et seq.).

1996, cc. [905](#), [1046](#).

§23-50.16:9. (Repealed effective October 1, 2016) Operation of projects.

A. The Authority may acquire, plan, design, construct, own, rent as landlord or tenant, operate, control, remove, renovate, enlarge, equip, and maintain, directly or through stock or nonstock corporations or other entities, any project as defined in this chapter. Such projects may be owned or operated by the Authority or other parties, or jointly by the Authority and other parties, and may be operated within or without the Commonwealth, so long as their operations are necessary or desirable to assist the Authority in carrying out its public purposes within the Commonwealth, and so long as any private benefit resulting to any such other private parties from any such project is merely incidental to the public benefit of such project.

B. In the operation of hospitals and other health-care and related facilities, the Authority may make and enforce all rules and regulations necessary or desirable for such operation, including those relating to the conditions under which the privilege of practicing may be available therein, the admission and treatment of patients, the procedures for determining the qualification of patients for indigent care or other programs, and the protection of patients and employees, provided that such rules and regulations shall not discriminate on the basis of race, religion, color, sex or national origin.

1996, cc. [905](#), [1046](#).

§23-50.16:10. (Repealed effective October 1, 2016) Police power.

A. The Authority is empowered to adopt and enforce reasonable rules and regulations governing access to, conduct in or on, and use of its property and facilities and surrounding streets, sidewalks and other public areas, and governing other matters affecting the safety and security of Authority property and of those using or occupying Authority property. Such rules and regulations shall have the force and effect of law (i) after publication one time in full in a newspaper of general circulation in the city or county where the affected property is located and (ii) when posted where the public using such property may conveniently see them.

B. The campus police department of Virginia Commonwealth University, established in accordance with the provisions of Chapter 17 (§ [23-232](#) et seq.) of this title, may enforce on Authority property the laws of the Commonwealth and rules and regulations adopted pursuant to subsection A of this section. To the extent that such police services are not provided by the University, the Authority is authorized to establish a police department in accordance with the provisions of Chapter 17 of this

title, except that the employment of such personnel by the Authority shall not be subject to the Virginia Personnel Act (§ [2.2-2900](#) et seq.).

1996, cc. [905](#), [1046](#).

§23-50.16:11. (Repealed effective October 1, 2016) Acquisition and disposition of property; acceptance of grants and loans.

A. Except as to those hospital facilities or any parts thereof that are leased to the Authority by the University, the control and disposition of which shall be determined by such lease instruments, the Authority may:

1. Own, hold, improve, use and otherwise deal with real or personal property, tangible or intangible, or any right, easement, estate or interest therein, acquired by purchase, exchange, gift, assignment, transfer, foreclosure, lease, bequest, devise, operation of law or other means on such terms and conditions and in such manner as it may deem proper;
2. Sell, assign, lease, encumber, mortgage or otherwise dispose of any project or any other real or personal property, tangible or intangible, or any right, easement, estate or interest therein, or any deed of trust or mortgage lien interest owned by it, under its control or custody or in its possession. The Authority may release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption in property foreclosed by it; and
3. Do any of the foregoing by public or private sale, with or without public bidding, notwithstanding the provisions of any other law.

B. The Authority may accept loans, grants, contributions or other assistance from the federal government, the Commonwealth or any political subdivision thereof, or from any other public or private source to carry out any of the purposes of this chapter.

The Authority may enter into any agreement or contract regarding or relating to the acceptance, use or repayment of any such loan, grant, contribution or assistance and may enter into such other agreements with any such entity in furtherance of the purposes of this chapter.

Counties, cities and towns are hereby authorized to lend or donate money or other property to the Authority for any of its purposes. The local government making the grant or loan may restrict the use of such grants or loans to a specific project, within or without that locality.

1996, cc. [905](#), [1046](#).

§23-50.16:12. (Repealed effective October 1, 2016) Eminent domain.

The Authority may exercise the power of eminent domain pursuant to the provisions of Chapter 2 (§ [25.1-200](#) et seq.) of Title 25.1 to acquire by condemnation any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this chapter, upon its adoption of a resolution declaring that the acquisition of such property is in the public interest and necessary for public use and upon the approval of the Governor. The Authority may acquire property already devoted to a public use, provided that no property belonging to any city, town or county, government or to any religious corporation, unincorporated church or charitable corporation may be acquired without its consent.

1996, cc. [905](#), [1046](#); 2003, c. [940](#); 2006, c. [673](#).

§23-50.16:13. (Repealed effective October 1, 2016) Fees, rentals and other charges.

The Authority may fix, revise from time to time, charge and collect rates, rentals, fees and other charges for the services or facilities furnished by or on behalf of the Authority, and establish regulations regarding any such service rendered or the use, occupancy or operation of any such facility. Such charges and regulations shall not be subject to supervision or regulation by any commission, board, bureau, or agency of the Commonwealth except as otherwise provided by law for the providers of health care.

1996, cc. [905](#), [1046](#).

§23-50.16:14. (Repealed effective October 1, 2016) Creation of entities; participation in joint ventures; provision of assistance by Authority; moneys; investments.

A. Consistent with § [23-50.16:15](#), the Authority may create or assist in the creation of; may own in whole or in part or otherwise control; may participate in or with any entities, public or private; and may purchase, receive, subscribe for, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise acquire or dispose of any (i) shares or obligations of, or other interests in, any entities organized for any purpose within or without the Commonwealth, and (ii) obligations of any person or corporation.

B. The Authority may participate in joint ventures with individuals, corporations, governmental bodies or agencies, partnerships, associations, insurers or other entities to

facilitate any activities or programs consistent with the public purposes and intent of this chapter.

C. The Authority may create a nonprofit entity or entities for the purpose of soliciting, accepting and administering grants, outright gifts and bequests, endowment gifts and bequests, and gifts and bequests in trust, which entity or entities shall not engage in trust business; however, the Authority shall not be empowered to create a nonprofit entity or entities that would in any way duplicate such activities by the University or its related foundations.

D. In carrying out any activities authorized by this chapter, the Authority may provide appropriate assistance, including making loans and providing time of employees, to corporations, partnerships, associations, joint ventures or other entities, whether or not such corporations, partnerships, associations, joint ventures or other entities are owned or controlled in whole or in part, directly or indirectly, by the Authority.

E. Effective July 1, 1997, all moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give security for such deposits, if required by the Authority. The moneys in such accounts shall be paid out on the warrant or other orders of the treasurer of the Authority or such other person or persons as the Authority may authorize to execute such warrants or orders.

F. Notwithstanding any provision of law to the contrary, the Authority may, effective July 1, 1997, invest its operating funds in any obligations or securities that are considered legal investments for public funds in accordance with Chapter 45 (§ [2.2-4500](#) et seq.) of Title 2.2. The Board shall adopt written investment guidelines and shall retain an independent investment advisory firm or consultant to review, a minimum of every five years, the suitability of the Authority's investments and their consistency with the investment guidelines.

1996, cc. [905](#), [1046](#).

§23-50.16:15. (Repealed effective October 1, 2016) Public purpose.

The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the Commonwealth and for the promotion of their safety, health, welfare, knowledge, convenience and prosperity. No part of the assets or net earnings of the Authority shall inure to the benefit of, or be distributable to, any

private individual, except that reasonable compensation may be paid for services rendered to or for the Authority affecting one or more of its purposes, and benefits may be conferred that are in conformity with said purposes, and no private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Authority.

1996, cc. [905](#), [1046](#).

§23-50.16:16. (Repealed effective October 1, 2016) Exemption from taxation.

As set forth in § [23-50.16:3](#), the Authority will be performing essential governmental functions in the exercise of the powers conferred upon it by this chapter. Accordingly, the Authority shall not be required to pay any taxes or assessments upon any project or any property or upon any operations of the Authority or the income therefrom, or any taxes or assessments upon any project or any property or local obligation acquired or used by the Authority under the provisions of this chapter or upon the income therefrom. The exemptions hereby granted shall not extend to persons or entities conducting on the Authority's property businesses for which payment of state or local taxes would otherwise be required. Any bonds issued by the Authority under the provisions of this chapter, the transfer thereof and the income therefrom, and all rents, fees, charges, gifts, grants, revenues, receipts and other moneys received or pledged to pay or secure the payment of such notes or bonds, shall at all times be free from taxation and assessment of every kind by the Commonwealth and by the local governments and other political subdivisions of the Commonwealth.

1996, cc. [905](#), [1046](#).

§23-50.16:17. (Repealed effective October 1, 2016) Assistance by the University; transfer of existing facilities.

A. The University is hereby authorized to lease, convey or otherwise transfer to the Authority any or all assets and liabilities appearing on the balance sheet of the Medical College of Virginia Hospitals and any or all of the hospital facilities, except real estate which may be leased to the Authority for a term not to exceed ninety-nine years, upon such terms as may be approved by the University.

B. Any transfer of hospital facilities shall be conditioned upon the following:

1. The existence of a binding agreement between the University and the Authority that requires the Authority to assume, directly or indirectly, those hospital obligations directly related to the hospital facilities, or any parts thereof, that are

transferred, which in the case of a lease of hospital facilities may take the form of rental, as provided in subsection C of this section, or a combination of assumption and such rental;

2. The existence of a binding agreement between the University and the Authority that provides that, effective on the transfer date and thereafter, the Authority shall assume responsibility for and shall defend, indemnify and hold harmless the University and its officers and directors with respect to:

a. All liabilities and duties of the University pursuant to contracts, agreements and leases for commodities, services and supplies used by the Medical College of Virginia Hospitals, including property leases;

b. All claims related to the employment relationship between employees of the Authority and the University on and after the transfer date;

c. All claims for breach of contract resulting from the Authority's action or failure to act on and after the transfer date; and

d. All claims related to the Authority's errors and omissions, including, but not limited to, medical malpractice, directors' and officers' liability, workers' compensation, automobile liability, and premises, completed operations and products liability, resulting from the Authority's action or failure to act on and after the transfer date; and

3. The existence of a binding agreement between the University and the Authority by which the Authority shall accept and agree to abide by provisions that ensure the continued support of the education, research, patient care and public service missions of the Medical College of Virginia Hospitals, specifically including, without limitation:

a. A requirement that the Authority continue to provide emergency and inpatient indigent care services on the Medical College of Virginia campus of the University in a location or locations including, without limitation, downtown Richmond; and

b. A requirement that the Authority continue to act as the primary teaching facility for the Medical College of Virginia School of Medicine and Health Sciences Center of the University.

C. Any lease of hospital facilities, or any parts thereof, from the University to the Authority may include a provision that requires the Authority to pay the University a rental payment for the hospital facilities, or any parts thereof, that are leased. For

those hospital facilities for which rental is paid, the rental shall be an amount that may not be less than the greater of the following:

1. An amount equal to the debt service accruing during the term of the lease on all outstanding bonds issued for the purpose of financing the acquisition, construction or improvement of the hospital facilities, or any parts thereof, on which rental is paid; or

2. A nominal amount determined by the parties to be necessary to prevent the lease from being unenforceable because of a lack of consideration.

D. Any lease of hospital facilities, or any parts thereof, shall include a provision that requires the Authority to continue to support the education, research, patient care and public service missions of the Medical College of Virginia Hospitals, specifically including, without limitation:

1. A requirement that the Authority continue to provide emergency and inpatient indigent care services on the Medical College of Virginia campus of the University in a location or locations including, without limitation, downtown Richmond; and

2. A requirement that the Authority continue to act as the primary teaching facility for the Medical College of Virginia School of Medicine and Health Sciences Center of the University.

E. All other agencies and officers of the Commonwealth are authorized and directed to take such actions as may be necessary or desirable in the judgment of the University to permit such conveyance and the full use and enjoyment of the hospital facilities, including, without limitation, the transfer of property of any type held in the name of the Commonwealth or some instrumentality or agency thereof but used by the University in the operation of the hospital facilities.

F. The Authority may pay to or on behalf of the University some or all of the costs of the hospital facilities. The University may apply some or all of such proceeds to the payment or defeasance of its obligations issued to finance the hospital facilities, and the Authority may issue its bonds to finance or refinance such payment to or on behalf of the University.

G. Funds held by or for the University or any predecessor or division thereof, specifically including, without limitation, funds held by the University Foundation or the Medical College of Virginia Foundation for the benefit of the Medical College of Virginia Hospitals or any predecessor thereof, for use in operating, maintaining or

constructing hospital facilities, providing medical and health sciences education, or conducting medical or related research may be transferred, in whole or in part, to the Authority if the University or any foundation determines that the transfer is consistent with the intended use of the funds. The University may direct in writing that all or part of the money or property representing its beneficial interest under a will, trust agreement or other donative instrument be distributed to the Authority if the University determines that such direction will further any of the original purposes of the will, trust agreement or other instrument. Such a direction shall not be considered a waiver, disclaimer, renunciation, assignment or disposition of the beneficial interest by the University. A fiduciary's distribution to the Authority pursuant to such a written direction from the University shall be deemed a distribution to the University for all purposes relating to the donative instrument, and the fiduciary shall have no liability for distributing any money or property to the Authority pursuant to such a direction. None of the foregoing shall deprive any court of its jurisdiction to determine whether such a distribution is appropriate, under its cy pres powers or otherwise.

1996, cc. [905](#), [1046](#).

§23-50.16:18. (Repealed effective October 1, 2016) Capital projects.

A. All capital projects shall be approved by the Board. Within thirty days after approval of any capital project in excess of \$5 million, the Board shall notify the House Appropriations and Senate Finance Committees of the scope, cost, and construction schedule of the proposed capital project. The Board may undertake the project unless objections are raised by either Committee within thirty days of the notification. If objections are made, the Authority may not undertake the project until the objections are resolved.

B. No capital project that has been presented to the Committees without objection, no capital project for which objections were raised and resolved, and no capital project for which construction has commenced shall be materially increased in size or materially changed in scope without following the procedure of subsection A of this section.

C. Notwithstanding any laws or regulations to the contrary, the Authority shall not be subject to any further process or procedure that requires the submission, review or approval of any capital project; however, the Authority shall ensure that BOCA Code and fire safety inspections of any capital project are conducted and that such projects

are inspected by the State Fire Marshal or his designee prior to certification for building occupancy.

1996, cc. [905](#), [1046](#).

§23-50.16:19. (Repealed effective October 1, 2016) Leases of property.

The Authority shall be exempt from the provisions of § [2.2-1149](#) and from any rules, regulations and guidelines of the Division of Engineering and Buildings in relation to leases of real property into which it enters.

1996, cc. [905](#), [1046](#).

§23-50.16:20. (Repealed effective October 1, 2016) Operation of hospital facilities.

The Authority shall not operate any of the hospital facilities prior to execution of the lease or leases and agreement or agreements required by § [23-50.16:17](#), and such other agreements as may be necessary or convenient in the University's judgment to provide for the transfer of the operations of the hospital facilities to the Authority, unless, and to the extent that, the University approves otherwise.

1996, cc. [905](#), [1046](#).

§23-50.16:21. (Repealed effective October 1, 2016) Assignment of agreements.

The University may assign, and the Authority may accept the rights and assume the obligations under, any contracts or other agreements of any type relating to the financing or the operating of the hospital facilities. Upon evidence that such assignment and acceptance have been made, all agencies and instrumentalities of the Commonwealth are directed to consent to such assignment and to accept the substitution of the Authority for the University as a party to such agreements to the extent that the University's obligations thereunder relate to the ownership, operation or financing of the hospital facilities. Indebtedness previously incurred by the Commonwealth, the Virginia Public Building Authority, the Virginia College Building Authority and any other agencies and instrumentalities of the Commonwealth to finance the hospital facilities may continue to remain outstanding after the transfer and the assignment of the agreements relating thereto by the University to the Authority.

1996, cc. [905](#), [1046](#).

§23-50.16:22. (Repealed effective October 1, 2016) Licenses and permits.

The transfer of the hospital facilities from the University to the Authority shall not require a certificate of public need pursuant to Article 1.1 (§ [32.1-102.1](#) et seq.) of

Chapter 4 of Title 32.1. All licenses, permits, certificates of public need or other authorizations of the Commonwealth or any agency thereof or of any county, city or town held by the University in connection with the ownership or operation of the hospital facilities shall be deemed to be transferred, without further action, to the Authority as and to the extent the Authority undertakes the activity thereby permitted. All agencies and officers of the Commonwealth and all agencies and officers of counties, cities and towns are directed to confirm such transfer by the issuance of new or amended licenses, permits, certificates of public need or other authorizations upon the request of the University and the Authority.

1996, cc. [905](#), [1046](#).

§23-50.16:23. (Repealed effective October 1, 2016) Agent for University.

If for any reason the Authority cannot replace the University as a party to any agreement in connection with the financing, ownership or operation of the hospital facilities, the Authority and the University may provide that the Authority shall act as agent for the University in carrying out its obligations under such agreement or in receiving the benefits thereunder, or both.

1996, cc. [905](#), [1046](#).

§23-50.16:24. (Repealed effective October 1, 2016) Employees of the Authority.

A. Until July 1, 2001, employees of the Authority shall be considered employees of the Commonwealth. Employees of the Authority shall be employed on such terms and conditions as established by the Authority. The Board of Directors of the Authority shall develop and adopt policies and procedures that will afford its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants and shall prohibit discrimination because of race, religion, color, sex or national origin. Any grievance procedure adopted by the Board other than that contained in § [2.2-1202.1](#) shall take effect no earlier than July 1, 1997; however, such grievance procedure shall not take effect unless the Authority delivers copies of such grievance procedure to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance on or before January 1, 1997.

B. The Authority shall issue a written notice to all persons whose employment will be transferred to the Authority. The date upon which such written notice is issued shall be referred to herein as the "Option Date." Each person whose employment will be transferred to the Authority may, by written request made within 180 days of the Option Date, elect not to become employed by the Authority. Any employee of the

Medical College of Virginia Hospitals who (i) elects not to become employed by the Authority and who is not reemployed by any department, institution, board, commission or agency of the Commonwealth; (ii) is not offered the opportunity to transfer to employment by the Authority; or (iii) is not offered a position with the Authority for which the employee is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ [2.2-3200](#) et seq.). Any employee who accepts employment with the Authority shall not be considered to be involuntarily separated from state employment and shall not be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act.

C. Without limiting its power generally with respect to employees, the Authority may employ any person employed by the University in the operation of the hospital facilities and may assume obligations under any employment agreement for such person and the University may assign any such contract to the Authority.

D. The Authority and the University may also enter into agreements providing for the purchase of services of employees of the University utilized in the operation of the hospital facilities by payment of such amounts as may be agreed upon to cover all or part of the salaries and other costs of such employees.

E. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this chapter and who is a member of any plan for providing health insurance coverage pursuant to Chapter 28 (§ [2.2-2800](#) et seq.) of Title 2.2, shall continue to be a member of such health insurance plan under the same terms and conditions as if no transfer had occurred. Notwithstanding subsection A of § [2.2-2818](#), the costs of providing health insurance coverage to such employees who elect to continue to be members of the state employees' health insurance plan shall be paid by the Authority. Alternatively, an employee may elect to become a member of any health insurance plan established by the Authority. The Authority is authorized to (i) establish a health insurance plan for the benefit of its employees, residents and interns and (ii) enter into agreements with the Department of Human Resource Management providing for the coverage of its employees, interns and residents under the state employees' health insurance plan, provided that such agreement shall require the Authority to pay the costs of providing health insurance coverage under such plan.

F. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this chapter and who is a member of the Virginia Retirement System, or other retirement plan as authorized by Article 4 (§ [51.1-125](#) et seq.) of Chapter 1 of Title 51.1, shall continue to be a member of the Virginia Retirement System or other such authorized retirement plan under the same terms and conditions as if no transfer had occurred. Alternatively, such employee (and any employee employed by the Authority between July 1, 1997, and June 30, 1998, who elected to be covered by the Virginia Retirement System) may elect, during an open enrollment period from April 1, 2001, through April 30, 2001, to become a member of the retirement program established by the Authority for the benefit of its employees pursuant to § [23-50.16:24.1](#) by transferring assets equal to the actuarially determined present value of the accrued basic benefit as of the transfer date. The Authority shall reimburse the Virginia Retirement System for the actual cost of actuarial services necessary to determine the present value of the accrued basic benefit of employees who elect to transfer to the Authority's retirement plan. The following rules shall apply:

1. With respect to any transferred employee who elects to remain a member of the Virginia Retirement System or other such authorized retirement plan, the Authority shall collect and pay all employee and employer contributions to the Virginia Retirement System or other such authorized retirement plan for retirement in accordance with the provisions of Chapter 1 (§ [51.1-124.1](#) et seq.) of Title 51.1 for such transferred employees.
2. Transferred employees who elect to become members of the retirement program established by the Authority for the benefit of its employees shall be given full credit for their creditable service as defined in § [51.1-124.3](#), vesting and benefit accrual under the retirement program established by the Authority. For any such employee, employment with the Authority shall be treated as employment with any non-participating employer for purposes of the Virginia Retirement System or other retirement plan as authorized by Article 4 of Chapter 1 of Title 51.1.
3. For transferred employees who elect to become members of the retirement program established by the Authority, the Virginia Retirement System or other such authorized plan shall transfer to the retirement plan established by the Authority assets equal to the actuarially determined present value of the accrued basic benefit as of the transfer date. For purposes hereof, the basic benefits shall be the benefit

accrued under the Virginia Retirement System or other such authorized retirement plan, based on creditable service and average final compensation as defined in § [51.1-124.3](#) and determined as of the transfer date. The actuarial present value shall be determined on the same basis, using the same actuarial factors and assumptions used in determining the funding needs of the Virginia Retirement System or other such authorized retirement plan, so that the transfer of assets to the retirement plan established by the Authority will have no effect on the funded status and financial stability of the Virginia Retirement System or other such authorized retirement plan.

1996, cc. [905](#), [1046](#); 1998, c. [449](#); 2000, cc. [66](#), [657](#); 2012, cc. [803](#), [835](#).

§23-50.16:24.1. (Repealed effective October 1, 2016) Retirement benefits for employees of the Authority.

A. The Authority may establish one or more retirement plans covering in whole or in part its employees, including employees who, prior to the effective date of any plan established pursuant to this section, had been participants in any plan established pursuant to §§ [51.1-126](#), [51.1-126.1](#), or former § [51.1-126.2](#). The Authority is authorized to make contributions for the benefit of its employees who elect to participate in such plan or arrangement rather than in any other retirement system established by Chapter 1 (§ [51.1-124.1](#) et seq.) of Title 51.1. Any such alternative retirement plan shall become effective at such time as determined by the Authority.

B. Notwithstanding any other provision of law to the contrary, any employee of the Authority employed prior to July 1, 1998, may make an irrevocable election to participate in the retirement plan established by Chapter 1 (§ [51.1-124.1](#) et seq.) of Title 51.1 or any plan established by the Authority, in accordance with guidelines established by the Authority. The election herein provided shall, as to any employee of the Authority employed following the effective date of any plan established pursuant to this section, be exercised not later than thirty-one days from the time of entry upon the performance of his duties. Any employee of the Authority hired on or after July 1, 1998, shall participate in a plan established by the Authority, subject to the plan's eligibility criteria.

C. No employee of the Authority who is an active member of a plan established under this section shall also be an active member of the retirement system established pursuant to Chapter 1 (§ [51.1-124.1](#) et seq.) of Title 51.1 or a beneficiary of such retirement system other than as a contingent annuitant.

D. Notwithstanding any other provision of law to the contrary, the contribution by the Authority to any other retirement plan established on behalf of employees of the Authority hired before July 1, 1998, pursuant to subsection A shall be (i) equal to the contribution the Commonwealth would be required to make if the employee were a member of the retirement system established by Chapter 1 (§ [51.1-124.1](#) et seq.) of Title 51.1 or (ii) eight percent of creditable compensation, whichever is less. The contribution by the Authority to any retirement plan established on behalf of employees of the Authority hired on or after July 1, 1998, pursuant to subsection A shall be determined by the Board.

E. If the institution of higher education with which the Authority is affiliated has adopted a retirement plan under § [51.1-126](#) for its employees who are engaged in the performance of teaching, administrative, or research duties, the plan established under this section shall offer similar investment opportunities as are available to the participants of the plan established pursuant to § [51.1-126](#).

F. The Authority shall develop policies and procedures for the administration of any retirement plan established by the Authority under this section. A copy of such policies and procedures shall be filed with the Board of Trustees of the Virginia Retirement System.

1998, c. [449](#).

§23-50.16:24.2. (Repealed effective October 1, 2016) Insurance for employees of the Authority.

The Authority shall purchase group life, accidental death and dismemberment, and disability insurance policies covering in whole or in part its employees. Authority employees shall not be required to present at their own expense evidence of insurability satisfactory to an insurance company for basic group life insurance coverage. Any employee hired prior to July 1, 1998, shall be provided basic group life insurance at the same level of coverage as provided by the Virginia Retirement System. Any employee hired on or after July 1, 1998, shall be provided basic group life insurance at a level of coverage determined by the Board, provided that the level of coverage shall not be less than the equivalent of one times the employee's annual salary. The Authority may require employees hired on or after July 1, 1998, to pay all or a portion of the required basic group life insurance coverage, which may be collected through a payroll deduction program. The Authority may increase the insurance coverage under such policies to make available to active insured employees optional life,

accidental death and dismemberment, and disability insurance. Authority employees shall not be covered by the Virginia Retirement System's group insurance program under § [51.1-501](#).

1998, c. [449](#).

§23-50.16:25. (Repealed effective October 1, 2016) Power to issue bonds.

The Authority may issue bonds from time to time for any of its purposes, including financing or refinancing all or any part of its programs or general operations, costs of any project, including the hospital facilities, whether or not owned by the Authority, or to refund bonds or other obligations issued therefor by or on behalf of the Authority, the University or otherwise, including bonds or obligations not then subject to redemption, and may guarantee, assume or otherwise agree to pay, in whole or in part, indebtedness issued by the University or any other party resulting in the acquisition or construction of facilities for the benefit of the Authority or the refinancing thereof. Notwithstanding Article 1 (§ [2.2-1800](#) et seq.) of Chapter 18 of Title 2.2, bonds may be issued under the provisions of this chapter without obtaining the consent of any commission, board, bureau or agency of the Commonwealth or of any political subdivision, and without any proceedings or the happening of conditions or things other than those proceedings, conditions or things that are specifically required by this chapter; however, each debt offering shall be submitted to the State Treasurer sufficiently prior to the sale of such offering to allow the State Treasurer to undertake a review for the sole purposes of determining (i) whether the offering may constitute tax-supported debt of the Commonwealth and (ii) the potential impact of the offering on the debt capacity of the Commonwealth. After such review, the State Treasurer shall determine if the offering constitutes tax-supported debt of the Commonwealth and the potential impact of the offering on the debt capacity of the Commonwealth. If the State Treasurer determines that the debt offering may constitute tax-supported debt of the Commonwealth, or may have an adverse impact on the debt capacity of the Commonwealth, then the debt offering shall be submitted to the Treasury Board for review and approval of the terms and structure of the offering in a manner consistent with § [2.2-2416](#). The Authority may issue such types of bonds as it may determine, including, without limitation, bonds payable as to principal and interest from any one or more of the following sources: (i) its revenues generally; (ii) income and revenues derived from the operation, sale or lease of a particular project or projects, whether or not they are financed or refinanced from the proceeds of such bonds; (iii) funds realized from the enforcement of security interests or other liens or

obligations securing such bonds; (iv) proceeds from the sale of bonds; (v) payments under letters of credit, policies of municipal bond insurance, guarantees or other credit enhancements; (vi) any reserve or sinking funds created to secure such payment; (vii) accounts receivable of the Authority; or (viii) other available funds of the Authority.

Any bonds may be additionally guaranteed by, or secured by a pledge of, any grant, contribution or appropriation from a participating political subdivision, the University, the Commonwealth or any political subdivision, agency or instrumentality thereof, any federal agency or any unit, private corporation, partnership, association or individual.

1996, cc. [905](#), [1046](#).

§23-50.16:26. (Repealed effective October 1, 2016) Liability on bonds.

No member of the Board of Directors or officer, employee or agent of the Authority or any person executing bonds of the Authority shall be liable personally on the bonds by reason of their issuance or execution. Bonds of the Authority shall not be a debt of the Commonwealth or any political subdivision thereof other than the Authority and shall so state on their face. Neither the Commonwealth nor any political subdivision thereof other than the Authority shall be liable for payment of bonds of the Authority, nor shall such bonds be payable out of any funds or properties of the Commonwealth or any political subdivision thereof other than those of the Authority, except as permitted by § [23-50.16:25](#). Bonds of the Authority are declared to be issued for an essential public and governmental purpose.

1996, cc. [905](#), [1046](#).

§23-50.16:27. (Repealed effective October 1, 2016) Form of bonds.

Bonds of the Authority shall be authorized by resolution setting forth the maximum principal amount issuable and may be issued in one or more series, shall be dated, shall mature at such time or times not exceeding forty years from their date and may be made redeemable or subject to tender before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority or its agents prior to issuance. Bonds of the Authority shall bear interest payable at such times and at such rates as may be determined by the Authority, or as may be determined in such manner as the Authority or its agents may provide, including rates approved by officers of the Authority under authorization of the Board, rates tied to indices, rates of other securities or other standards and

determinations by agents designated by the Authority under guidelines established by the Authority.

The Authority shall determine the form of its bonds and the manner of execution and shall fix the denominations thereof and the place or places of payment of principal and interest, which may be at any bank or trust company or securities depository within or without the Commonwealth. The bonds may be issued in coupon or registered form, or both, and provision may be made for their registration in whole or in part. Bonds issued in registered form may be issued under a system of book-entry for recording the ownership and transfer of ownership of rights to receive payments thereon. If any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before delivery of such bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes. The Authority may contract for the services of one or more banks, trust companies, financial institutions or other entities or persons, within or outside the Commonwealth, for the authentication, registration, transfer, exchange and payment of bonds, or may provide such services itself. The Authority may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine.

Notwithstanding any of the other provisions of this chapter or any recitals in any bonds issued under the provisions of this chapter, all such bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth.

Prior to the preparation of definitive bonds, the Authority may issue interim receipts or temporary bonds, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any mutilated, destroyed, stolen or lost bonds.

1996, cc. [905](#), [1046](#).

§23-50.16:28. (Repealed effective October 1, 2016) Trust indentures and mortgages; security for the bonds.

Any bond issued under this chapter may be issued pursuant to or secured by a trust indenture, deed of trust or mortgage of any project or projects or any other property of the Authority, whether or not financed, in whole or in part, from the proceeds of such bonds, by a trust or other agreement with a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth, or other agent for bondholders, or any combination thereof. Any such trust indenture or other agreement, or the resolution providing for the issuance

of bonds, may pledge or assign fees, rents and other charges to be received and may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law. Such provisions may include covenants: (i) providing for the collection and application of revenues and the repossession and sale by the Authority, or any trustees under any trust indenture or agreement, of any project or other property upon default; (ii) setting forth duties of the Authority in relation to the acquisition, construction, maintenance, operation and insurance of any project or other property of the Authority and the amounts of fees, rents and other charges to be charged; (iii) providing for the collection of such fees, rents and other charges, and the custody, safeguarding and application of all moneys of the Authority; (iv) providing for the creation of sinking funds and the creation and maintenance of reserves; and (v) setting forth conditions or limitations with respect to the incurrence of indebtedness or the granting of mortgages or other liens. Such trust indenture, trust or other agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee or other agent for bondholders and may restrict the individual right of action by bondholders.

In addition, the Authority may grant mortgages, deeds of trust, security interests and other liens on its real and personal property, including its accounts receivable, to secure bonds. All pledges of revenues of the Authority for payment of bonds shall be valid and binding from the time when the pledge is made, and the revenues pledged and thereafter received by the Authority shall be subject immediately to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. The Authority may also provide for the recording or filing of any mortgage, deed of trust, security interest or other lien, or any financing statement or other instrument, necessary or desirable to create, perfect or evidence any lien created pursuant to this chapter.

It shall be lawful for any bank or trust company within or without the Commonwealth to serve as depository of the proceeds of bonds or of other revenues of the Authority and to furnish indemnifying bonds or to pledge such securities as may be required by the Authority.

All expenses incurred in carrying out the provisions of such trust indenture or agreement or resolution or other agreements relating to any project, including those to

which the Authority may not be a party, may be treated as a part of the costs of a project.

1996, cc. [905](#), [1046](#).

§23-50.16:29. (Repealed effective October 1, 2016) Remedies of obligees of Authority.

Except to the extent that the rights herein given may be restricted by such trust indenture or trust or other agreement, any holder of bonds or coupons issued under the provisions of this chapter and the trustee or other agent for bondholders under any trust indenture or trust or other agreement may, either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted by this chapter or under such trust indenture, trust or other agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this chapter or by such trust indenture, trust or other agreement or resolution to be performed by the Authority or by any officer or agent thereof, including the fixing, charging and collecting of fees, rents and other charges.

1996, cc. [905](#), [1046](#).

§23-50.16:30. (Repealed effective October 1, 2016) Bonds to be legal investments.

Bonds issued by the Authority under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.

1996, cc. [905](#), [1046](#).

§23-50.16:31. (Repealed effective October 1, 2016) Existing bonds.

The Authority may assume, or may agree to make payments in amounts sufficient for the University to pay, some or all of the hospital obligations incurred under resolutions previously adopted by the University with respect to the hospital facilities

and may issue bonds to refund bonds issued under such resolutions or to refinance such payment obligations. If the Authority has assumed all hospital obligations under any such bond resolution and commenced its operation of substantially all of the hospital facilities financed or refinanced thereby, the University, the State Treasurer, the Virginia Public Building Authority and the Virginia College Building Authority shall take such steps as are appropriate to provide for the substitution of the Authority for the University under such resolution and to transfer to the Authority any funds payable to the University under the terms of such resolution.

1996, cc. [905](#), [1046](#).

§23-50.16:32. (Repealed effective October 1, 2016) Confidential and public information.

A. The Authority shall be subject to the provisions of the Freedom of Information Act (§ [2.2-3700](#) et seq.), which shall include the exclusions set forth in subdivision 15 of § [2.2-3705.7](#) and subdivision 23 of subsection A of § [2.2-3711](#).

B. For purposes of the Freedom of Information Act (§ [2.2-3700](#) et seq.), meetings of the Board shall not be considered meetings of the Board of Visitors of the University. Meetings of the Board may be conducted through telephonic or video means as provided in § [2.2-3708](#) or similar provisions of any successor law.

1996, cc. [905](#), [1046](#); 1998, c. [449](#); 1999, cc. [703](#), [726](#); 2004, c. [690](#); 2007, c. [945](#).

§23-50.16:33. (Repealed effective October 1, 2016) Chapter liberally construed.

This chapter shall constitute full and complete authority, without regard to the provisions of any other law, for the doing of the acts and things herein authorized and shall be liberally construed to effect the purposes hereof. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, specific or local, the provisions of this chapter shall be controlling.

1996, cc. [905](#), [1046](#).

§23-50.16:34. (Repealed effective October 1, 2016) Exemption of Authority from Personnel Act, Workforce Transition Act, Administrative Process Act, and Public Procurement Act.

The provisions of Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2, Chapter 32 (§ [2.2-3200](#) et seq.) of Title 2.2, Chapter 40 (§ [2.2-4000](#) et seq.) of Title 2.2, and Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2 shall not apply to the Authority in the exercise of any power conferred under this chapter.

1996, cc. [905](#), [1046](#).

§23-50.16:35. (Repealed effective October 1, 2016) Reversion to University.

Upon dissolution of the Authority, all assets of the Authority, after satisfaction of creditors, shall revert to the University.

1996, cc. [905](#), [1046](#).

Virginia Communications Sales and Use Tax

§58.1-645. Short title.

This chapter shall be known and may be cited as the "Virginia Communications Sales and Use Tax Act."

2006, c. [780](#).

§58.1-646. Administration of chapter.

The Tax Commissioner shall administer and enforce the collection of the taxes and penalties imposed by this chapter.

2006, c. [780](#).

§58.1-647. Definitions.

Terms used in this chapter shall have the same meanings as those used in Chapter 6 of this title, unless defined otherwise, as follows:

"Cable service" means the one-way transmission to subscribers of (i) video programming as defined in 47 U.S.C. § 522 (20) or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332 (d) and any direct-to-home satellite service as defined in 47 U.S.C. § 303 (v).

"Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

"Coin-operated communications service" means a communications service paid for by means of inserting coins in a coin-operated telephone.

"Communications services" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance. The term includes, but is not limited to, (i) the connection, movement, change, or termination of communications services; (ii) detailed billing of communications services; (iii) sale of directory listings in connection with a communications service; (iv) central office and custom calling features; (v) voice mail and other messaging services; and (vi) directory assistance.

"Communications services provider" means every person who provides communications services to customers in the Commonwealth and is or should be registered with the Department as a provider.

"Cost price" means the actual cost of the purchased communications service computed in the same manner as the sales price.

"Customer" means the person who contracts with the seller of communications services. If the person who utilizes the communications services is not the contracting party, the person who utilizes the services on his own behalf or on behalf of an entity is the customer of such service. "Customer" does not include a reseller of communications services or the mobile communications services of a serving carrier under an agreement to serve the customer outside the communications service provider's licensed service area.

"Customer channel termination point" means the location where the customer either inputs or receives the private communications service.

"Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services for purposes other than the electronic transmission, conveyance, or routing.

"Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. "Internet access service" does not include tele-

communications services, except to the extent telecommunications services are purchased, used, or sold by a provider of Internet access to provide Internet access.

"Place of primary use" means the street address representative of where the customer's use of the communications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile communications services, the place of primary use shall be within the licensed service area of the home service provider.

"Postpaid calling service" means the communications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, debit card, or by a charge made to a telephone number that is not associated with the origination or termination of the communications service.

"Prepaid calling service" means the right to access exclusively communications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars that decrease in number with use.

"Private communications service" means a communications service that entitles the customer or user to exclusive or priority use of a communications channel or group of channels between or among channel termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

"Retail sale" or a "sale at retail" means a sale of communications services for any purpose other than for resale or for use as a component part of or for the integration into communications services to be resold in the ordinary course of business.

"Sales price" means the total amount charged in money or other consideration by a communications services provider for the sale of the right or privilege of using communications services in the Commonwealth, including any property or other services that are part of the sale. The sales price of communications services shall not be reduced by any separately identified components of the charge that constitute expenses of the communications services provider, including but not limited to, sales

taxes on goods or services purchased by the communications services provider, property taxes, taxes measured by net income, and universal-service fund fees.

"Service address" means, (i) the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. If the location is not known in clause (i), "service address" means (ii) the origination point of the signal of the telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If the location is not known in clauses (i) and (ii), the service address means (iii) the location of the customer's place of primary use.

2006, c. [780](#).

§58.1-648. Imposition of sales tax; exemptions.

A. Beginning January 1, 2007, there is levied and imposed, in addition to all other taxes and fees of every kind imposed by law, a sales or use tax on the customers of communications services in the amount of 5% of the sales price of each communications service that is sourced to the Commonwealth in accordance with § [58.1-649](#).

B. The sales price on which the tax is levied shall not include charges for any of the following: (i) an excise, sales, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service that is permitted or required to be added to the sales price of such service, if the tax is stated separately; (ii) a fee or assessment levied by the United States or any state or local government, including but not limited to, regulatory fees and emergency telephone surcharges, that is required to be added to the price of service if the fee or assessment is separately stated; (iii) coin-operated communications services; (iv) sale or recharge of a prepaid calling service; (v) provision of air-to-ground radiotelephone services, as that term is defined in 47 C.F.R. § 22.99; (vi) a communications services provider's internal use of communications services in connection with its business of providing communications services; (vii) charges for property or other services that are not part of the sale of communications services, if the charges are stated separately from the charges for communications services; (viii) sales for resale; (ix) charges for communications services to the Commonwealth, any political subdivision of the Commonwealth, and the federal government and any agency or instrumentality of the federal government; and (x) charges for

communications services to any customers on any federal military bases or installations when a franchise fee or similar fee for access is payable to the federal government, or any agency or instrumentality thereof, with respect to the same communications services.

C. Communications services on which the tax is hereby levied shall not include the following: (i) information services; (ii) installation or maintenance of wiring or equipment on a customer's premises; (iii) the sale or rental of tangible personal property; (iv) the sale of advertising, including but not limited to, directory advertising; (v) bad check charges; (vi) billing and collection services; (vii) Internet access service, electronic mail service, electronic bulletin board service, or similar services that are incidental to Internet access, such as voice-capable e-mail or instant messaging; (viii) digital products delivered electronically, such as software, downloaded music, ring tones, and reading materials; and (ix) over-the-air radio and television service broadcast without charge by an entity licensed for such purposes by the Federal Communications Commission. Also, those entities exempt from the tax imposed in accordance with the provisions of Article 4 (§ [58.1-3812](#) et seq.) of Chapter 38 of Title 58.1, in effect on January 1, 2006, shall continue to be exempt from the tax imposed in accordance with the provisions of this chapter.

2006, c. [780](#); 2007, c. [811](#).

§58.1-649. Sourcing rules for communication services.

A. Except for the defined communication services in subsection C, the sale of communications service sold on a call-by-call basis shall be sourced to the Commonwealth when the call (i) originates and terminates in the Commonwealth or (ii) either originates or terminates in the Commonwealth and the service address is also located in the Commonwealth.

B. Except for the defined communication services in subsection C, a sale of communication services sold on a basis other than a call-by-call basis, shall be sourced to the customer's place of primary use.

C. The sale of the following communication services shall be sourced to the Commonwealth as follows:

1. Subject to the definitions and exclusions of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 116, a sale of mobile communication services shall be sourced to the customer's place of primary use.

2. A sale of postpaid calling service shall be sourced to the origination point of the communications signal as first identified by either (i) the seller's communications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. A sale of a private communications service shall be sourced as follows:

a. Service for a separate charge related to a customer channel termination point shall be sourced to each jurisdiction in which such customer channel termination point is located;

b. Service where all customer termination points are located entirely within one jurisdiction shall be sourced to such jurisdiction in which the customer channel termination points are located;

c. Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of a channel are separately charged shall be sourced 50% to each jurisdiction in which the customer channel termination points are located; and

d. Service for segments of a channel located in more than one jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on a percentage determined by dividing the number of customer channel termination points in each jurisdiction by the total number of customer channel termination points.

2006, c. [780](#).

§58.1-650. Bundled transaction of communications services.

A. For purposes of this chapter, a bundled transaction of communications services includes communications services taxed under this chapter and consists of distinct and identifiable properties, services, or both, sold for one nonitemized charge for which the tax treatment of the distinct properties and services is different.

B. In the case of a bundled transaction described in subsection A, if the charge is attributable to services that are taxable and services that are nontaxable, the portion of the charge attributable to the nontaxable services shall be subject to tax unless the communications services provider can reasonably identify the nontaxable portion from its books and records kept in the regular course of business.

2006, c. [780](#).

§58.1-651. Tax collectible by communication service providers; jurisdiction.

A. The tax levied by § [58.1-648](#) shall be collectible by all persons who are communications services providers, who have sufficient contact with the Commonwealth to qualify under subsection B, and who are required to be registered under § [58.1-653](#). However, the communications services provider shall separately state the amount of the tax and add that tax to the sales price of the service. Thereafter, the tax shall be a debt from the customer to the communications services provider until paid and shall be recoverable at law in the same manner as other debts.

B. A communications services provider shall be deemed to have sufficient activity within the Commonwealth to require registration if he does any of the activities listed in § [58.1-612](#).

C. Nothing contained in this chapter shall limit any authority that the Commonwealth may enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require the collection of communications sales and use taxes by any communications services provider.

2006, c. [780](#).

§58.1-652. Customer remedy procedures for billing errors.

If a customer believes that an amount of tax, or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the communications service provider reasonably requires to process the request. Within 15 days of receiving a notice under this section in the provider's billing dispute office, the communications service provider shall review its records, within an additional 15 days, to determine the customer's taxing jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications service provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the communications service provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of

place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by the communications service provider, and no cause of action based upon a dispute arising from such taxes shall accrue until a customer has reasonably exercised the rights and procedures set forth in this subsection.

2006, c. [780](#).

§58.1-653. Communications services providers' certificates of registration; penalty.

A. Every person desiring to engage in or conduct business as a communications services provider in the Commonwealth shall file with the Tax Commissioner an application for a certificate of registration.

B. Every application for a certificate of registration shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business, and such other information as the Tax Commissioner may reasonably require.

C. When the required application has been made, the Tax Commissioner shall issue to each applicant a certificate of registration. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of the business designated therein.

D. Whenever a person fails to comply with any provision of this chapter or any rule or regulation relating thereto, the Tax Commissioner, upon a hearing after giving the noncompliant person 30 days' notice in writing, specifying the time and place of the hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend the certificate of registration held by that person. The notice may be personally served or served by registered mail directed to the last known address of the noncompliant person.

E. Any person who engages in business as a communications services provider in the Commonwealth without obtaining a certificate of registration, or after a certificate of registration has been suspended or revoked, shall be guilty of a Class 2 misdemeanor as shall each officer of a corporation that so engages in business as an unregistered communications services provider. Each day's continuance in business in violation of this section shall constitute a separate offense.

F. If the holder of a certificate of registration ceases to conduct his business, the certificate shall expire upon cessation of business, and the certificate holder shall inform

the Tax Commissioner in writing within 30 days after he has ceased to conduct business. If the holder of a certificate of registration desires to change his place of business, he shall so inform the Tax Commissioner in writing and his certificate shall be revised accordingly.

G. This section shall also apply to any person who engages in the business of furnishing any of the things or services taxable under this chapter. Moreover, it shall apply to any person who is liable only for the collection of the use tax.

2006, c. [780](#).

§58.1-654. Returns by communications services providers; payment to accompany return.

A. Every communications services provider required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax is billed, transmit to the Tax Commissioner a return showing the sales price, or cost price, as the case may be, and the tax collected or accrued arising from all transactions taxable under this chapter. In the case of communications services providers regularly keeping books and accounts on the basis of an annual period that varies from 52 to 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

A sales or use tax return shall be filed by each registered communications services provider even though the communications services provider is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

B. At the time of transmitting the return required under subsection A, the communications services provider shall remit to the Tax Commissioner the amount of tax due after making appropriate adjustments for accounts uncollectible and charged off as provided in § [58.1-655](#). The tax imposed by this chapter shall, for each period, become delinquent on the twenty-first day of the succeeding month if not paid.

2006, c. [780](#).

§58.1-655. Bad debts.

In any return filed under the provisions of this chapter, the communications services provider may credit, against the tax shown to be due on the return, the amount of sales or use tax previously returned and paid on accounts that are owed to the communications services provider and that have been found to be worthless within the period covered by the return. The credit, however, shall not exceed the amount of the

uncollected payment determined by treating prior payments on each debt as consisting of the same proportion of payment, sales tax, and other nontaxable charges as in the total debt originally owed to the communications services provider. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the communications services provider shall be included in the first return filed after such collection.

2006, c. [780](#).

§58.1-656. Discount.

For the purpose of compensating a communications services provider holding a certificate of registration under § [58.1-653](#) for accounting for and remitting the tax levied by this chapter, a communications services provider shall be allowed the following percentages of the first 3% of the tax levied by § [58.1-648](#) and accounted for in the form of a deduction in submitting his return and paying the amount due by him if the amount due was not delinquent at the time of payment.

Monthly Taxable SalesPercentage

\$0 to \$62,5004%

\$62,501 to \$208,0003%

\$208,001 and above2%

The discount allowed by this section shall be computed according to the schedule provided, regardless of the number of certificates of registration held by a communications services provider.

2006, c. [780](#).

§58.1-657. Sales presumed subject to tax; exemption certificates; Internet access service providers.

A. All sales are subject to the tax until the contrary is established. The burden of proving that a sale of communications services is not taxable is upon the communications services provider unless he takes from the taxpayer a certificate to the effect that the service is exempt under this chapter.

B. The exemption certificate mentioned in this section shall relieve the person who obtains such a certificate from any liability for the payment or collection of the tax, except upon notice from the Tax Commissioner that the certificate is no longer acceptable. The exemption certificate shall be signed, manually or electronically, by

and bear the name and address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the taxpayer; shall indicate the general character of the communications services sold or to be sold under a blanket exemption certificate; and shall be substantially in the form as the Tax Commissioner may prescribe.

C. In the case of a provider of Internet access service that purchases a telecommunications service to provide Internet access, the Internet access provider shall give the communications service provider a certificate of use containing its name, address and signature, manually or electronically, of an officer of the Internet access service provider. The certificate of use shall state that the purchase of telecommunications service is being made in its capacity as a provider of Internet access in order to provide such access. Upon receipt of the certificate of use, the communications service provider shall be relieved of any liability for the communications sales and use tax related to the sale of telecommunications service to the Internet access service provider named in the certificate. In the event the provider of Internet access uses the telecommunications service for any taxable purpose, that provider shall be liable for and pay the communications sales and use tax directly to the Commonwealth in accordance with § [58.1-658](#).

D. If a taxpayer who holds a certificate under this section and makes any use of the service other than an exempt use or retention, demonstration, or display while holding the communications service for resale in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the service is first used by him, and the cost of the property to him shall be deemed the sales price of such retail sale.

2006, c. [780](#).

§58.1-658. Direct payment permits.

A. Notwithstanding any other provision of this chapter, the Tax Commissioner shall authorize a person who uses taxable communications services within the Commonwealth to pay any tax levied by this chapter directly to the Commonwealth and waive the collection of the tax by the communications services provider. No such authority shall be granted or exercised except upon application to the Tax Commissioner and issuance by the Tax Commissioner of a direct payment permit. If a direct payment permit is issued, then payment of the communications sales and use tax

on taxable communications services shall be made directly to the Tax Commissioner by the permit holder.

B. On or before the twentieth day of each month every permit holder shall file with the Tax Commissioner a return for the preceding month, in a form prescribed by the Tax Commissioner, showing the total value of the taxable communications services so used, the amount of tax due from the permit holder, which amount shall be paid to the Tax Commissioner with the submitted return, and other information as the Tax Commissioner deems reasonably necessary. The Tax Commissioner, upon written request by the permit holder, may grant a reasonable extension of time for filing returns and paying the tax. Interest on the tax shall be chargeable on every extended payment at the rate determined in accordance with § [58.1-15](#).

C. A permit granted pursuant to this section shall continue to be valid until surrendered by the holder or cancelled for cause by the Tax Commissioner.

D. A person holding a direct payment permit that has not been cancelled shall not be required to pay the tax to the communications services provider as otherwise required by this chapter. Such persons shall notify each communications services provider from whom purchases of taxable communications services are made of their direct payment permit number and that the tax is being paid directly to the Tax Commissioner. Upon receipt of notice, a communications services provider shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales of taxable communications services to the direct payment permit holder. Communications services providers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in a manner that the amount involved and identity of each purchaser may be ascertained.

E. Upon the cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held the direct payment permit, and that person shall promptly notify in writing communications services providers from whom purchases of taxable communications services are made of such cancellation or surrender. Upon receipt of notice, the communications services provider shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales of taxable communications services thereafter made to the former direct payment permit holder.

2006, c. [780](#).

§58.1-659. Collection of tax; penalty.

A. The tax levied by this chapter shall be collected and remitted by the communications services provider, but the communications services provider shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, the tax shall be a debt from the customer to the communications services provider until paid and shall be recoverable at law in the same manner as other debts.

B. Notwithstanding any exemption from taxes that any communications services provider now or hereafter may enjoy under the Constitution or laws of the Commonwealth, or any other state, or of the United States, a communications services provider shall collect the tax from the customer of taxable communications services and shall remit the same to the Tax Commissioner as provided by this chapter.

C. Any communications services provider collecting the communications sales or use tax on transactions exempt or not taxable under this chapter shall remit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has been refunded to the customer or credited to his account.

D. Any communications services provider who intentionally neglects, fails, or refuses to collect the tax upon every taxable sale of communications services made by him, or his agents or employees on his behalf, shall be liable for and pay the tax himself. Moreover, any communications services provider who intentionally neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

All sums collected by a communications services provider as required by this chapter shall be deemed to be held in trust for the Commonwealth.

2006, c. [780](#).

§58.1-660. Sale of business.

If any communications services provider liable for any tax, penalty, or interest levied by this chapter sells his business or stock of goods or quits the business, he shall make a final return and payment within 15 days after the date of selling or quitting the business. His successors or assigns, if any, shall withhold a sufficient amount of the purchase money to cover taxes, penalties, and interest due and unpaid until the former owner produces a receipt from the Tax Commissioner showing that all taxes,

penalties, and interest have been paid or a certificate stating that no taxes, penalties, or interest are due. If the purchaser of a business or stock of goods fails to withhold the purchase money as required above, he shall be personally liable for the payment of the taxes, penalties, and interest due and unpaid that were incurred by the business operation of the former owner. In no event, however, shall the tax, penalties, and interest due by the purchaser be more than the purchase price paid for the business or stock of goods.

2006, c. [780](#).

§58.1-661. Certain provisions in Chapter 6 of this title to apply, mutatis mutandis.

The provisions in §§ [58.1-630](#) through [58.1-637](#) of this title shall apply to this chapter, mutatis mutandis, except as herein provided and except that whenever the term "dealer" is used in these sections, the term "communications services provider" shall be substituted. The Tax Commissioner shall promulgate regulations to interpret and clarify the applicability of §§ [58.1-630](#) through [58.1-637](#) to this chapter.

2006, c. [780](#).

§58.1-662. Disposition of communications sales and use tax revenue; Communications Sales and Use Tax Trust Fund; localities' share.

A. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be known as the Communications Sales and Use Tax Trust Fund (the Fund). The Fund shall be established on the books of the Comptroller and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. After transferring moneys from the Fund to the Department of Taxation to pay for the direct costs of administering this chapter, the moneys in the Fund shall be allocated to the Commonwealth's counties, cities, and towns, and distributed in accordance with subsection C, after the payment (i) for the telephone relay service center is made to the Department for the Deaf and Hard-of-Hearing in accordance with the provisions of § [51.5-115](#) and (ii) of any franchise fee amount due to localities in accordance with any cable franchise in effect as of January 1, 2007.

B. The localities' share of the net revenue distributable under this section among the counties, cities, and towns shall be apportioned by the Tax Commissioner and distributed as soon as practicable after the close of each month during which the net revenue was received into the Fund. The distribution of the localities' share of such net

revenue shall be computed with respect to the net revenue received in the state treasury during each month.

C. The net revenue distributable among the counties, cities, and towns shall be apportioned and distributed monthly according to each county's, city's, and town's pro rata distribution from the Fund in fiscal year 2010. Beginning July 1, 2011, the percentage share of the distribution due to Lancaster County shall be adjusted as if, in addition to the revenues Lancaster County received from telecommunications and television cable taxes in fiscal year 2006, it received \$270,497 in local consumer utility taxes on telephone service in fiscal year 2006.

An amount equal to the total franchise fee paid to each locality with a cable franchise existing on the effective date of this section at the rate in existence on January 1, 2007, shall be subtracted from the amount owed to such locality prior to the distribution of moneys from the Fund.

The Department of Taxation shall adjust the percentage share of distribution from the Fund due to each locality entitled to a distribution from the Fund upon a ruling by the Tax Commissioner in favor of a county, city, or town, provided that any such ruling in favor of a county, city, or town shall not result in more than an aggregate of \$100,000 being redistributed from all other counties, cities, and towns. Counties, cities, and towns are authorized to request such ruling. The Tax Commissioner shall issue no such ruling changing the current distribution in favor of a county, city, or town unless the county, city, or town provides evidence to the Tax Commissioner that it had collected telecommunications and television cable funds (local consumer utility tax on landlines and wireless, E-911, business license tax in excess of 0.5 percent, cable franchise fee, video programming excise tax, local consumer utility tax on cable television) in fiscal year 2006 from local tax rates adopted on or before January 1, 2006.

D. For the purposes of the Comptroller making the required transfers, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the communications sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Communications Sales and Use Tax Trust Fund.

E. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next month or for subsequent months.

2006, c. [780](#); 2008, cc. [25](#), [148](#); 2009, cc. [680](#), [683](#); 2010, cc. [285](#), [365](#), [385](#); 2011, c. [364](#).

Virginia Consumer Protection Act

§59.1-196. Title.

This chapter may be cited as the Virginia Consumer Protection Act of 1977.

1977, c. 635.

§59.1-197. Intent.

It is the intent of the General Assembly that this chapter shall be applied as remedial legislation to promote fair and ethical standards of dealings between suppliers and the consuming public.

1977, c. 635.

§59.1-198. Definitions.

As used in this chapter:

"Business opportunity" means the sale of any products, equipment, supplies or services which are sold to an individual for the purpose of enabling such individual to start a business to be operated out of his residence, but does not include a business opportunity which is subject to the Business Opportunity Sales Act, Chapter 21 (§ [59.1-262](#) et seq.) of this title.

"Children's product" means a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors shall be considered:

1. A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable;
2. Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;

3. Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and

4. The Age Determination Guidelines issued by the staff of the Consumer Products Safety Commission in September 2002, and any successor to such guidelines.

"Consumer transaction" means:

1. The advertisement, sale, lease, license or offering for sale, lease or license, of goods or services to be used primarily for personal, family or household purposes;

2. Transactions involving the advertisement, offer or sale to an individual of a business opportunity that requires both his expenditure of money or property and his personal services on a continuing basis and in which he has not been previously engaged;

3. Transactions involving the advertisement, offer or sale to an individual of goods or services relating to the individual's finding or obtaining employment;

4. A layaway agreement, whereby part or all of the price of goods is payable in one or more payments subsequent to the making of the layaway agreement and the supplier retains possession of the goods and bears the risk of their loss or damage until the goods are paid in full according to the layaway agreement; and

5. Transactions involving the advertisement, sale, lease, or license, or the offering for sale, lease or license, of goods or services to a church or other religious body.

"Cure offer" means a written offer of one or more things of value, including but not limited to the payment of money, that is made by a supplier and that is delivered to a person claiming to have suffered a loss as a result of a consumer transaction or to the attorney for such person. A cure offer shall be reasonably calculated to remedy a loss claimed by the person and it shall include a minimum additional amount equaling 10 percent of the value of the cure offer or \$500, whichever is greater, as compensation for inconvenience, any attorney's or other fees, expenses, or other costs of any kind that such person may incur in relation to such loss; provided, however that the minimum additional amount need not exceed \$4,000.

"Defective drywall" means drywall, or similar building material composed of dried gypsum-based plaster, that (i) as a result of containing the same or greater levels of strontium sulfide that has been found in drywall manufactured in the People's Republic of China and imported into the United States between 2004 and 2007 is capable,

when exposed to heat, humidity, or both, of releasing sulfur dioxide, hydrogen sulfide, carbon disulfide, or other sulfur compounds into the air or (ii) has been designated by the U.S. Consumer Product Safety Commission as a product with a product defect that constitutes a substantial product hazard within the meaning of § 15(a)(2) of the Consumer Product Safety Act (15 U.S.C. § 2064 (a)(2)).

"Goods" means all real, personal or mixed property, tangible or intangible. For purposes of this chapter, intangible property includes but shall not be limited to "computer information" and "informational rights" in computer information as defined in § [59.1-501.2](#).

"Person" means any natural person, corporation, trust, partnership, association and any other legal entity.

"Services" includes but shall not be limited to (i) work performed in the business or occupation of the supplier, (ii) work performed for the supplier by an agent whose charges or costs for such work are transferred by the supplier to the consumer or purchaser as an element of the consumer transaction, or (iii) the subject of an "access contract" as defined in § [59.1-501.2](#).

"Supplier" means a seller, lessor or licensor who advertises, solicits or engages in consumer transactions, or a manufacturer, distributor or licensor who advertises and sells, leases or licenses goods or services to be resold, leased or sublicensed by other persons in consumer transactions.

1977, c. 635; 1981, c. 205; 1987, c. 464; 1988, c. 485; 1992, c. 278; 2001, cc. [741](#), [762](#); 2004, cc. [41](#), [90](#); 2009, cc. [359](#), [700](#); 2010, c. [143](#); 2011, c. [615](#).

§59.1-199. Exclusions.

Nothing in this chapter shall apply to:

A. Any aspect of a consumer transaction which aspect is authorized under laws or regulations of this Commonwealth or the United States, or the formal advisory opinions of any regulatory body or official of this Commonwealth or the United States.

B. Acts done by the publisher, owner, agent or employee of a newspaper, periodical, or radio or television station, or other advertising media such as outdoor advertising and advertising agencies, in the publication or dissemination of an advertisement in violation of § [59.1-200](#), unless it be proved that such person knew that the advertisement was of a character prohibited by § [59.1-200](#).

C. Those aspects of a consumer transaction which are regulated by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.

D. Banks, savings institutions, credit unions, small loan companies, public service corporations, mortgage lenders as defined in § [6.2-1600](#), broker-dealers as defined in § [13.1-501](#), gas suppliers as defined in subsection E of § [56-235.8](#), and insurance companies regulated and supervised by the State Corporation Commission or a comparable federal regulating body.

E. Any aspect of a consumer transaction which is subject to the Landlord and Tenant Act, Chapter 13 (§ [55-217](#) et seq.) of Title 55 or the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ [55-248.2](#) et seq.) of Title 55, unless the act or practice of a landlord constitutes a misrepresentation or fraudulent act or practice under § [59.1-200](#).

F. Real estate licensees who are licensed under Chapter 21 (§ [54.1-2100](#) et seq.) of Title 54.1.

1977, c. 635; 1987, c. 464; 1994, c. [400](#); 1995, c. [703](#); 1996, cc. [61](#), [77](#), [179](#); 1999, c. [494](#); 2000, cc. [691](#), [706](#).

§59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars,

imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";

8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;

11. Misrepresenting by the use of any written or documentary material that appears to be an invoice or bill for merchandise or services previously ordered;

12. Notwithstanding any other provision of law, using in any manner the words "wholesale," "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the goods or services advertised or offered for sale;

13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or under federal statutes or regulations;

13a. Failing to provide to a consumer, or failing to use or include in any written document or material provided to or executed by a consumer, in connection with a

consumer transaction any statement, disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection with the consumer transaction;

14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction;

15. Violating any provision of § [3.2-6512](#), [3.2-6513](#), or [3.2-6516](#), relating to the sale of certain animals by pet dealers which is described in such sections, is a violation of this chapter;

16. Failing to disclose all conditions, charges, or fees relating to:

a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § [46.2-100](#);

b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the agreement;

- 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;
17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;
18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ [59.1-294](#) et seq.);
19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ [59.1-21.1](#) et seq.);
20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ [59.1-207.1](#) et seq.);
21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ [59.1-207.17](#) et seq.);
22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ [59.1-415](#) et seq.);
23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ [59.1-424](#) et seq.);
24. Violating any provision of § [54.1-1505](#);
25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ [59.1-207.34](#) et seq.);
26. Violating any provision of § [3.2-5627](#), relating to the pricing of merchandise;
27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ [59.1-429](#) et seq.);
28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ [59.1-435](#) et seq.);

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ [59.1-311](#) et seq.);
30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ [59.1-207.40](#) et seq.);
31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ [59.1-445](#) et seq.);
32. Violating any provision of §§ [46.2-1231](#) and [46.2-1233.1](#);
33. Violating any provision of Chapter 40 (§ [54.1-4000](#) et seq.) of Title 54.1;
34. Violating any provision of Chapter 10.1 (§ [58.1-1031](#) et seq.) of Title 58.1;
35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;
36. Violating any provision of Chapter 18 (§ [6.2-1800](#) et seq.) of Title 6.2;
37. Violating any provision of § [8.01-40.2](#);
38. Violating any provision of Article 7 (§ [32.1-212](#) et seq.) of Chapter 6 of Title 32.1;
39. Violating any provision of Chapter 34.1 (§ [59.1-441.1](#) et seq.);
40. Violating any provision of Chapter 20 (§ [6.2-2000](#) et seq.) of Title 6.2;
41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ [59.1-525](#) et seq.);
42. Violating any provision of Chapter 47 (§ [59.1-530](#) et seq.);
43. Violating any provision of § [59.1-443.2](#);
44. Violating any provision of Chapter 48 (§ [59.1-533](#) et seq.);
45. Violating any provision of Chapter 25 (§ [6.2-2500](#) et seq.) of Title 6.2;
46. Violating the provisions of clause (i) of subsection B of § [54.1-1115](#);
47. Violating any provision of § [18.2-239](#);
48. Violating any provision of Chapter 26 (§ [59.1-336](#) et seq.);
49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a

children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds";

50. Violating any provision of Chapter 44.1 (§ [59.1-518.1](#) et seq.);

51. Violating any provision of Chapter 22 (§ [6.2-2200](#) et seq.) of Title 6.2;

52. Violating any provision of § [8.2-317.1](#);

53. Violating subsection A of § [9.1-149.1](#);

54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in which defective drywall has been permanently installed or affixed;

55. Engaging in fraudulent or improper or dishonest conduct as defined in § [54.1-1118](#) while engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § [44-146.16](#) or (ii) to repair damage resulting from the event that prompted the declaration of a state of emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant to Chapter 11 (§ [54.1-1100](#) et seq.) of Title 54.1; and

56. (Effective January 1, 2018) Violating any provision of Chapter 33.1 (§ [59.1-434.1](#) et seq.).

B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.

1977, c. 635; 1979, c. 304; 1981, c. 205; 1983, c. 173; 1986, c. 432; 1987, cc. 462 to 464; 1988, cc. 24, 534; 1989, cc. 689, 703; 1990, c. 584; 1991, cc. 300, 605, 608, 630, 654; 1992, cc. 278, 545, 768; 1993, cc. 455, 760; 1994, cc. [261](#), [400](#), [655](#); 1995, c. [10](#); 1998, c. [848](#); 2000, cc. [880](#), [901](#); 2002, cc. [217](#), [897](#); 2003, cc. [800](#), [1003](#); 2004, cc. [784](#), [790](#), [798](#), [817](#); 2005, cc. [269](#), [303](#), [640](#), [861](#); 2006, c. [399](#); 2008, cc. [294](#),

[791](#), [842](#); 2009, cc. [321](#), [359](#), [376](#), [699](#), [700](#); 2010, cc. [477](#), [713](#); 2011, c. [615](#); 2014, cc. [396](#), [459](#); 2016, c. [591](#); 2017, cc. [11](#), [16](#), [727](#).

§59.1-200.1. Prohibited practices; foreclosure rescue.

A. In addition to the provisions of § [59.1-200](#), the following fraudulent acts or practices committed by a supplier, as defined in § [59.1-198](#), in a consumer transaction involving residential real property owned and occupied as the primary dwelling unit of the owner, are prohibited:

1. The supplier of service to avoid or prevent foreclosure charges or receives a fee (i) prior to the full and complete performance of the services it has agreed to perform, if the transaction does not involve the sale or transfer of residential real property, or (ii) prior to the settlement on the sale or transfer of residential real property, if the transaction involves the sale or transfer of such residential real property;
2. The supplier of such services (i) fails to make payments under the mortgage or deed of trust that is a lien on such residential real property as the payments become due, where the supplier has agreed to do so, regardless of whether the purchaser is obligated on the loan, and (ii) applies rents received from such dwellings for his own use;
3. The supplier of such services represents to the seller of such residential real property that the seller has an option to repurchase such residential real property, after the supplier of such services takes legal or equitable title to such residential real property, unless there is a written contract providing such option to repurchase on terms and at a price stated in such contract; or
4. The supplier advertises or offers such services as are prohibited by this section.

B. This section shall not apply to any mortgage lender or servicer regularly engaged in making or servicing mortgage loans that is subject to the supervisory authority of the State Corporation Commission, a comparable regulatory authority of another state, or a federal banking agency.

C. In connection with any consumer transaction covered by subsection A, any provision in an agreement between the supplier of such services and the owner of such residential real property that requires the owner to submit to mandatory arbitration shall be null and void, and notwithstanding any such provisions, the owner of such residential real property shall have the rights and remedies under this chapter.

2008, c. [485](#); 2009, cc. [203](#), [272](#).

§59.1-201. Civil investigative orders.

A. Whenever the attorney for the Commonwealth or the attorney for a county, city, or town has reasonable cause to believe that any person has engaged in, or is engaging in, or is about to engage in, any violation of § [59.1-200](#) or [59.1-200.1](#), the attorney for the Commonwealth or the attorney for a county, city, or town if, after making a good faith effort to obtain such information, is unable to obtain the data and information necessary to determine whether such violation has occurred, or that it is impractical for him to do so, he may apply to the circuit court within whose jurisdiction the person having information resides, or has its principal place of business, for an investigative order requiring such person to furnish to the attorney for the Commonwealth or attorney for a county, city, or town such data and information as is relevant to the subject matter of the investigation.

B. The circuit courts are empowered to issue investigative orders, authorizing discovery by the same methods and procedures as set forth for civil actions in the Rules of the Supreme Court of Virginia, in connection with investigations of violations of § [59.1-200](#) or [59.1-200.1](#) by the attorney for the Commonwealth or the attorney for a county, city, or town. An application for an investigative order shall identify:

1. The specific act or practice alleged to be in violation of § [59.1-200](#) or [59.1-200.1](#);
2. The grounds which shall demonstrate reasonable cause to believe that a violation of § [59.1-200](#) or [59.1-200.1](#) may have occurred, may be occurring or may be about to occur;
3. The category or class of data or information requested in the investigative order; and
4. The reasons why the attorney for the Commonwealth or attorney for a county, city, or town is unable to obtain such data and information, or the reason why it is impractical to do so, without a court order.

C. Within 21 days after the service upon a person of an investigative order, or at any time before the return date specified in such order, whichever is later, such person may file a motion to modify or set aside such investigative order or to seek a protective order as provided by the Rules of the Supreme Court of Virginia. Such motion shall specify the grounds for modifying or setting aside the order, and may be based upon the failure of the application or the order to comply with the requirements of this section, or upon any constitutional or other legal basis or privilege of such person.

D. Where the information requested by an investigative order may be derived or ascertained from the business records of the person upon whom the order is served, or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the information is substantially the same for the attorney for the Commonwealth or attorney for a county, city, or town as for the person from whom such information is requested, it shall be sufficient for that person to specify the records from which the requested information may be derived or ascertained, and to afford the attorney for the Commonwealth or attorney for the county, city, or town reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries thereof.

E. It shall be the duty of the attorney for the Commonwealth or attorney for a county, city, or town, his assistants, employees and agents, to maintain the secrecy of all evidence, documents, data and information obtained through the use of investigative orders or obtained as a result of the voluntary act of the person under investigation and it shall be unlawful for any person participating in such investigations to disclose to any other person not participating in such investigation any information so obtained. Any person violating this subsection shall be guilty of a Class 2 misdemeanor and shall be punished in accordance with § [18.2-11](#). Notwithstanding the foregoing, this section shall not preclude the presentation and disclosure of any information obtained pursuant to this section in any suit or action in any court of this Commonwealth wherein it is alleged that a violation of § [59.1-200](#) or [59.1-200.1](#) has occurred, is occurring or may occur, nor shall this section prevent the disclosure of any such information by the attorney for the Commonwealth or attorney for a county, city, or town to any federal or state law-enforcement authority that has restrictions governing confidentiality and the use of such information similar to those contained in this subsection; however, such disclosures may only be made as to information obtained after July 1, 1979.

F. Upon the failure of a person without lawful excuse to obey an investigative order under this section, the attorney for the Commonwealth or attorney for the county, city, or town may initiate contempt proceedings in the circuit court that issued the order to hold such person in contempt.

G. No information, facts or data obtained through an investigative order shall be admissible in any civil or criminal proceeding other than for the enforcement of this chapter and the remedies provided herein.

1977, c. 635; 1979, c. 493; 1982, c. 13; 1987, c. 464; 1995, c. [703](#); 2008, c. [485](#).

§59.1-201.1. Attorney General empowered to issue civil investigative demands.

Whenever the Attorney General has reasonable cause to believe that any person has engaged in, or is engaging in, or is about to engage in, any violation of this chapter, the Attorney General is empowered to issue a civil investigative demand. The provisions of § [59.1-9.10](#) shall apply mutatis mutandis to civil investigative demands issued pursuant to this section.

1995, c. [703](#).

§59.1-202. Assurances of voluntary compliance.

A. The Attorney General, the attorney for the Commonwealth, or the attorney for a county, city, or town may accept an assurance of voluntary compliance with this chapter from any person subject to the provisions of this chapter. Any such assurance shall be in writing and be filed with and be subject on petition to the approval of the appropriate circuit court. Such assurance of voluntary compliance shall not be considered an admission of guilt or a violation for any purpose. Such assurance of voluntary compliance may at any time be reopened by the Attorney General, or the attorney for the Commonwealth, or attorney for the county, city, or town respectively, for additional orders or decrees to enforce the assurance of voluntary compliance.

B. When an assurance is presented to the circuit court for approval, the Attorney General, the attorney for the Commonwealth, or the attorney for the appropriate county, city, or town shall file, in the form of a motion for judgment or complaint, the allegations which form the basis for the entry of the assurance. The assurance may provide by its terms for any relief which an appropriate circuit court could grant, including but not limited to restitution, arbitration of disputes between the supplier and its customers, investigative expenses, civil penalties and costs; provided, however, that nothing in this chapter shall be construed to authorize or require the Commonwealth, the Attorney General, an attorney for the Commonwealth or the attorney for any county, city or town to participate in arbitration of violations under this section.

1977, c. 635; 1981, c. 423; 1982, c. 13; 1988, c. 850.

§59.1-203. Restraining prohibited acts.

A. Notwithstanding any other provisions of law to the contrary, the Attorney General, any attorney for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth, or of the county, city, or town to enjoin any violation of § [59.1-200](#) or [59.1-200.1](#). The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not be necessary that damages be proved.

B. Unless the Attorney General, any attorney for the Commonwealth, or the attorney for any county, city, or town determines that a person subject to the provisions of this chapter intends to depart from this Commonwealth or to remove his property herefrom, or to conceal himself or his property herein, or on a reasonable determination that irreparable harm may occur if immediate action is not taken, he shall, before initiating any legal proceedings as provided in this section, give notice in writing that such proceedings are contemplated, and allow such person a reasonable opportunity to appear before said attorney and show that a violation did not occur or execute an assurance of voluntary compliance, as provided in § [59.1-202](#).

C. The circuit courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of § [59.1-200](#) or [59.1-200.1](#).

D. The Commissioner of the Department of Agriculture and Consumer Services, or his duly authorized representative, shall have the power to inquire into possible violations of subdivisions A 18, 28, 29, 31, 39, and 41, as it relates to motor fuels, of § [59.1-200](#) and § [59.1-335.12](#), and, if necessary, to request, but not to require, an appropriate legal official to bring an action to enjoin such violation.

1977, c. 635; 1982, c. 13; 1988, c. 485; 2008, c. [485](#); 2012, cc. [803](#), [835](#).

§59.1-204. Individual action for damages or penalty.

A. Any person who suffers loss as the result of a violation of this chapter shall be entitled to initiate an action to recover actual damages, or \$500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or \$1,000, whichever is greater. Any person who accepts a cure offer under this chapter may not initiate or maintain any other or additional action based on any cause of action arising under any other statute or common law theory if such other action is sub-

stantially based on the same allegations of fact on which the action initiated under this chapter is based.

B. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person also may be awarded reasonable attorneys' fees and court costs.

C. No cure offer shall be admissible in any proceeding initiated under this section, unless the cure offer is delivered by a supplier to the person claiming loss or to any attorney representing such person, prior to the filing of the supplier's initial responsive pleading in such proceeding. If the cure offer is timely delivered by the supplier, then the supplier may introduce the cure offer into evidence at trial. The supplier shall not be liable for such person's attorneys' fees and court costs incurred following delivery of the cure offer unless the actual damages found to have been sustained and awarded, without consideration of attorneys' fees and court costs, exceed the value of the cure offer.

D. In any action which the parties desire to settle all matters in dispute, the question of whether the plaintiff shall be awarded reasonable attorneys' fees and court costs in accordance with subsections B and C may be tendered to the court for consideration of the amount of such an award, if any.

1977, c. 635; 1995, cc. [703](#), [726](#); 2004, cc. [41](#), [90](#); 2005, c. [250](#); 2006, c. [453](#).

§59.1-204.1. Tolling of limitation.

A. Any individual action pursuant to § [59.1-204](#) for which the right to bring such action first accrues on or after July 1, 1995, shall be commenced within two years after such accrual. The cause of action shall accrue as provided in § [8.01-230](#).

B. When any of the authorized government agencies files suit under this chapter, the time during which such governmental suit and all appeals therefrom is pending shall not be counted as any part of the period within which an action under § [59.1-204](#) shall be brought.

1988, c. 241; 1995, cc. [703](#), [726](#).

§59.1-205. Additional relief.

The circuit court may make such additional orders or decrees as may be necessary to restore to any identifiable person any money or property, real, personal, or mixed, tangible or intangible, which may have been acquired from such person by means of any act or practice declared to be unlawful in § [59.1-200](#) or [59.1-200.1](#), provided,

that such person shall be identified by order of the court within 180 days from the date of the order permanently enjoining the unlawful act or practice.

1977, c. 635; 2008, c. [485](#).

§59.1-206. Civil penalties; attorney's fees.

A. In any action brought under this chapter, if the court finds that a person has willfully engaged in an act or practice in violation of § [59.1-200](#) or [59.1-200.1](#), the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than \$2,500 per violation. For purposes of this section, prima facie evidence of a willful violation may be shown when the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town notifies the alleged violator by certified mail that an act or practice is a violation of § [59.1-200](#) or [59.1-200.1](#), and the alleged violator, after receipt of said notice, continues to engage in the act or practice.

B. Any person who willfully violates the terms of an assurance of voluntary compliance or an injunction issued under § [59.1-203](#) shall forfeit and pay to the Literary Fund a civil penalty of not more than \$5,000 per violation. For purposes of this section, the circuit court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town may petition for recovery of civil penalties.

C. In any action pursuant to subsection A or B and in addition to any other amount awarded, the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town may recover any applicable civil penalty or penalties, costs, reasonable expenses incurred by the state or local agency in investigating and preparing the case not to exceed \$1,000 per violation, and attorney's fees. Such civil penalty or penalties, costs, reasonable expenses, and attorney's fees shall be paid into the general fund of the Commonwealth or of the county, city, or town which such attorney represented.

D. Nothing in this section shall be construed as limiting the power of the court to punish as contempt the violation of any order issued by the court, or as limiting the power of the court to enter other orders under § [59.1-203](#) or [59.1-205](#).

E. The right of trial by jury as provided by law shall be preserved in actions brought under this section.

1977, c. 635; 1980, c. 171; 1982, c. 13; 1991, c. 156; 1995, c. [703](#); 2008, c. [485](#).

§59.1-207. Unintentional violations.

In any case arising under this chapter, no liability shall be imposed upon a supplier who shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of § [59.1-200](#) or [59.1-200.1](#) was an act or practice of the manufacturer or distributor to the supplier over which the supplier had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation; however, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to § [59.1-204](#) B to individuals aggrieved as a result of an unintentional violation of this chapter.

1977, c. 635; 1995, cc. [703](#), [726](#); 2008, c. [485](#).

Virginia Credit Services Businesses Act

§59.1-335.1. Title.

This chapter may be cited as the "Virginia Credit Services Businesses Act."

1989, cc. 651, 655 .

§59.1-335.2. Definitions.

In this chapter the following words have the following meanings:

"Attorney General" means the Office of the Attorney General of Virginia.

"Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.

"Consumer" means any individual who is solicited to purchase or who purchases the services of a credit services business.

"Consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which (i) is furnished or (ii) is used or expected to be

used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

1. Credit or insurance to be used primarily for personal, family, or household purposes; or

2. Employment purposes; or

3. Other purposes which shall be limited to the following circumstances:

a. In response to the order of a court having jurisdiction to issue the order.

b. In accordance with the written instructions of the consumer to whom the report relates.

c. To a person which the agency has reason to believe:

(i) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to or review or collection of an account of, the consumer; or

(ii) Intends to use the information for employment purposes; or

(iii) Intends to use the information in connection with the underwriting of insurance involving the consumer; or

(iv) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(v) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

The term "consumer report" does not include:

1. Any report containing information solely as to transactions or experiences between the consumer and the person making the report;

2. Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or

3. Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to the request, if the third party advises the consumer of the name and

address of the person to whom the request was made and the person makes the disclosures to the consumer as to the exact nature of the request and the effect of the report on its decision to extend credit.

"Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of commerce for the purpose of preparing or furnishing consumer reports. "Consumer reporting agency" does not include a private detective or investigator licensed under the provisions of Article 4 (§ [9.1-138](#) et seq.) of Chapter 1 of Title 9.1.

"Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:

1. Improving a consumer's credit record, history, or rating;
2. Obtaining an extension of credit for a consumer; or
3. Providing advice or assistance to a consumer with regard to either subdivision 1 or 2 herein.

"Credit services business" does not include:

- (i) The making, arranging, or negotiating for a loan or extension of credit under the laws of this Commonwealth or the United States;
- (ii) Any bank, trust company, savings bank, or savings institution whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation or other federal insurance agency, or any credit union organized and chartered under the laws of this Commonwealth or the United States;
- (iii) Any nonprofit organization exempt from taxation under § 501(c) (3) of the Internal Revenue Code (26 U.S.C. § 501(c) (3));
- (iv) Any person licensed as a real estate broker by this Commonwealth where the person is acting within the course and scope of that license;
- (v) Any person licensed to practice law in this Commonwealth where the person renders services within the course and scope of that person's practice as a lawyer;

(vi) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission where the broker-dealer is acting within the course and scope of that regulation;

(vii) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act (15 U.S.C. §§ 1681 -1681v); or

(viii) Any person selling personal, family, or household goods to a consumer who, in connection with the seller's sale of its goods to the consumer, assists the consumer in obtaining a loan or extension of credit or extends credit to the consumer.

"Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes.

"File" when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

"Investigative consumer report" means a consumer report or portion of it in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any items of information. However, the information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

"Person" includes an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, and any other legal or commercial entity.

1989, cc. 651, 655; 1990, c. 3; 2003, c. [359](#).

§59.1-335.3. Registration; fees.

A. It shall be unlawful for any credit services business to offer, advertise, or execute or cause to be executed by a consumer any contract in this Commonwealth unless the credit services business at the time of the offer, advertisement, sale or execution of a contract has been properly registered with the Commissioner. The Commissioner may

charge the credit services business a reasonable fee not exceeding \$100 to cover the costs of filing.

B. The registration shall contain (i) the name and address of the credit services business, (ii) the name and address of the registered agent authorized to accept service of process on behalf of the credit services business, (iii) the name and address of any person who directly or indirectly owns or controls a ten percent or greater interest in the credit services business, and (iv) the name and address of the surety company that issued a bond pursuant to § [59.1-335.4](#) or the name and address of the bank that issued a letter of credit pursuant to § [59.1-335.4](#). The registration statement shall also contain either a full and complete disclosure of any litigation or unresolved complaint filed within the preceding five years with a governmental authority of the Commonwealth, any other state or the United States relating to the operation of the credit services business, or a notarized statement that there has been no litigation or unresolved complaint filed within the preceding five years with the governmental authority of the Commonwealth, any other state or the United States relating to the operation of the credit services business.

C. The credit services business shall attach to the registration statement a copy of (i) the information statement required under § [59.1-335.6](#), (ii) a copy of the contract which the credit services business intends to execute with its consumers, and (iii) evidence of the bond or trust account required under § [59.1-335.4](#).

D. The credit services business shall update the registration statement required under this section not later than ninety days after the date from which a change in the information required in the statement occurs.

E. Each credit services business registering under this section shall maintain a copy of the registration statement in its files. The credit services business shall allow a buyer to inspect the registration statement on request.

1989, c. 655 .

§59.1-335.4. Bond or letter of credit required.

A. Every credit services business, before it enters into a contract with a consumer, shall file and maintain with the Commissioner, in form and substance satisfactory to him, a bond with corporate surety from a company authorized to transact business in the Commonwealth, or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation in an amount equal to 100 times the standard fee charged by

the credit services business but in no event shall the bond or letter of credit required under this section be less than \$5,000 or greater than \$50,000.

B. The required bond or letter of credit shall be in favor of the Commonwealth of Virginia for the benefit of any person who is damaged by any violation of this Act. The bond or letter of credit shall also be in favor of any person damaged by such practices. Any person claiming against the bond or letter of credit for a violation of this Act may maintain an action at law against the credit services business and against the surety or bank. The surety or bank shall be liable only for actual damages and attorneys fees and not for penalties permitted under §§ [59.1-206](#) and [59.1-335.12](#) or punitive damages permitted under § [59.1-335.10](#). The aggregate liability of the surety or bank to all persons damaged by a credit services business violation of this chapter shall in no event exceed the amount of the bond or letter of credit.

C. The bond or letter of credit shall be maintained for a period of two years after the date that the credit services business ceases operation.

1989, c. 655 .

§59.1-335.5. Prohibited practices.

A credit services business, and its salespersons, agents and representatives, and independent contractors who sell or attempt to sell the services of a credit services business, shall not do any of the following:

1. Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer, unless the consumer has agreed to pay for such services during the term of a written subscription agreement that provides for the consumer to make periodic payments during the agreement's term in consideration for the credit services business's ongoing performance of services for or on behalf of the consumer, provided that such subscription agreement may be cancelled at any time by the consumer;
2. Charge or receive any money or other valuable consideration solely for referral of the consumer to a retail seller or to any other credit grantor who will or may extend to the consumer, if the credit that is or will be extended to the consumer is upon substantially the same terms as those available to the general public;
3. Make, or counsel or advise any consumer to make, any statement that is untrue or misleading and which is known, or which by the exercise of reasonable care should be

known, to be untrue or misleading, to a consumer reporting agency or to any person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, with respect to a consumer's creditworthiness, credit standing, or credit capacity; or

4. Make or use any untrue or misleading representations in the offer or sale of the services of a credit services business or engage, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit services business.

1989, cc. 651, 655; 2010, c. [421](#).

§59.1-335.6. Information statement required.

Before (i) the execution of a contract or agreement between a consumer and a credit services business or (ii) the receipt by the credit services business of any money or other valuable consideration, whichever occurs first, the credit services business shall provide the consumer with an information statement in writing containing all of the information required under § [59.1-335.7](#). The credit services business shall maintain on file or microfilm for a period of two years from the date of the consumer's acknowledgement an exact copy of the information statement personally signed by the consumer acknowledging receipt of a copy of the information statement.

1989, cc. 651, 655 .

§59.1-335.7. Contents of information statement.

The information statement required under § [59.1-335.6](#) of this chapter shall include all of the following:

1. a. A complete and accurate statement of the consumer's right to review any file on the consumer maintained by any consumer reporting agency, and the right of the consumer to receive a copy of a consumer report containing all information in that file as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681g);
- b. A statement that a copy of the consumer report containing all information in the consumer's file will be furnished free of charge by the consumer reporting agency if requested by the consumer within 30 days of receiving a notice of a denial of credit as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681j); and
- c. A statement that a nominal charge may be imposed on the consumer by the consumer reporting agency for a copy of the consumer report containing all information

in the consumer's file, if the consumer has not been denied credit within 30 days from receipt of the consumer's request;

2. A complete and accurate statement of the consumer's right to dispute the completeness or accuracy of any item contained in any file on the consumer that is maintained by any consumer reporting agency, as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681i);

3. A complete and detailed description of the services to be performed by the credit services business for or on behalf of the consumer, and the total amount the consumer will have to pay, or become obligated to pay, for the services. Such statement shall include the following notice in at least 10-point bold type:

IMPORTANT NOTICE:

YOU HAVE NO OBLIGATION TO PAY
ANY FEES OR CHARGES UNTIL ALL
SERVICES HAVE BEEN PERFORMED
COMPLETELY FOR YOU, UNLESS YOU
ENTER INTO A SUBSCRIPTION AGREEMENT
REQUIRING PERIODIC PAYMENTS IN
CONSIDERATION FOR ONGOING SERVICES.

; and

4. The notice prescribed by subdivision 3 of this section shall also be posted by means of a conspicuous sign so as to be readily noticeable and readable at the location within the premises of the credit services business where consumers are interviewed by personnel of the business.

1989, cc. 651, 655; 2010, c. [421](#).

§59.1-335.8. Contents of contracts.

A. Every contract between a consumer and a credit services business for the purchase of the services of the credit services business shall be in writing, dated, signed by the consumer, and shall include all of the following:

1. A conspicuous statement in size equal to at least ten-point bold type, in immediate proximity to the space reserved for the signature of the consumer as follows:

"You, the buyer, may cancel this contract at any time prior to midnight of the third business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.";

2. The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit services business or to some other person;

3. A complete and detailed description of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services business expects to have modified;

4. The principal business address of the credit services business and the name and address of its agent in this Commonwealth authorized to receive service of process;

5. A statement asserting the buyer's right to proceed against the bond or letter of credit required under § [59.1-335.4](#); and

6. The name and address of the surety company which issued the bond, or the name and address of the bank which issued the letter of credit.

B. 1. The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract and easily detachable, and which shall contain in at least ten-point bold type the following statement:

"NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, at any time prior to midnight of the third business day after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within ten days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to

_____ (Name of Seller)

At _____ (Address of Seller)

_____ (Place of Business)

Not later than midnight_____ (Date)

I HEREBY CANCEL THIS TRANSACTION.

_____ (Date)

_____ (Buyer's Signature)"

2. A copy of the fully completed contract and all other documents the credit services business requires the consumer to sign shall be given by the credit services business to the consumer at the time they are signed.

1989, cc. 651, 655.

§59.1-335.9. Breach; null and void contract.

A. Any breach by a credit services business of a contract under this chapter, or of any obligation arising under it, shall constitute a violation of this chapter.

B. Any contract for services from a credit services business that does not comply with the applicable provisions of this chapter shall be void and unenforceable as contrary to the public policy of this Commonwealth.

C. Any waiver by a consumer of any of the provisions of this chapter shall be deemed void and unenforceable by a credit services business as contrary to public policy of this Commonwealth, and any attempt by a credit services business to have a consumer waive rights given by this chapter shall constitute a violation of this chapter.

D. In any proceeding involving this chapter the burden of proving an exemption or an exception from a definition is upon the person claiming it.

1989, cc. 651, 655 .

§59.1-335.10. Liability to consumer.

A. Any credit services business which willfully fails to comply with any requirement imposed under this chapter with respect to any consumer is liable to that consumer in an amount equal to the sum of:

1. Any actual damages sustained by the consumer as a result of the failure; and
2. Such amount of punitive damages as the court may allow.

B. Any credit services business which is negligent in failing to comply with any requirement imposed under this chapter with respect to any consumer is liable to that consumer in an amount equal to the sum of any actual damages sustained by the consumer as a result of the failure.

1989, cc. 651, 655 .

§59.1-335.11. Statute of limitations.

An action to enforce any liability created under this chapter may be brought within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this chapter to be disclosed to a consumer and the information so misrepresented is material to the establishment of the defendant's liability to that consumer under this chapter, the action may be brought at any time within two years after discovery by the consumer of the misrepresentation.

1989, cc. 651, 655 .

§59.1-335.12. Violations of chapter; enforcement.

A. Each sale of the services of a credit services business that violates any provision of this chapter is a prohibited practice under § [59.1-200](#).

B. If the Attorney General, any attorney for the Commonwealth, or any attorney for a county, city or town has reason to believe that any credit services business, or any salesperson, agent, representative, or independent contractor acting on behalf of a credit services business, has violated any provision of this chapter, the Attorney General, the attorney for the Commonwealth, or attorney for the county, city or town may institute a proceeding under Chapter 17 (§ [59.1-196](#) et seq.) of Title 59.1.

1989, cc. 651, 655 .

Virginia Debt Collection Act

§2.2-4800. Policy of the Commonwealth; collection of accounts receivable.

This chapter establishes the policy of the Commonwealth as it relates to the accounting for, management and collection of all accounts receivable due to the Commonwealth. It shall be the policy of the Commonwealth that all state agencies and institutions shall take all appropriate and cost-effective actions to aggressively collect all accounts receivable. All state agencies and institutions shall be subject to this chapter and shall establish internal policies and procedures for the management and collection of accounts receivable that are in accordance with regulations adopted by the Department of Accounts and the Office of the Attorney General.

1988, c. 544, § 2.1-727; 2001, c. [844](#).

§2.2-4801. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Administrative offset" includes, but is not limited to, offsetting any monies, except those specifically exempted by state or federal law, paid by agency or institution for a debt owed to any other state agency or institution.

"Accounts receivable" refers to the classification of debts due the Commonwealth, including judgments, fines, costs, and penalties imposed upon conviction for criminal and traffic offenses, and as defined in the guidelines adopted by the State Comptroller.

"Discharge" means the compromise and settlement of disputes, claims, and controversies of the Commonwealth by the Office of the Attorney General as authorized by § [2.2-514](#).

"Division" means the Division of Debt Collection of the Office of the Attorney General created pursuant to § [2.2-518](#).

"Past-due" means any account receivable for which payment has not been received by the payment due date.

"State agency and institution" means any authority, board, department, instrumentality, agency or other unit in any branch of state government. The term shall not include any county, city or town, or any local or regional governmental authority or any "nonstate agency" as defined in the appropriation act.

"Write-off" means a transaction to remove from an agency's financial accounting records an account receivable that management has determined to be uncollectible.

1988, c. 544, § 2.1-726; 1994, c. [565](#); 2001, c. [844](#); 2009, c. [797](#).

§2.2-4802. Responsibility for accounts receivable policy; reports.

The Department of Accounts shall be the primary state agency responsible for the oversight, reporting and monitoring of the Commonwealth's accounts receivable program.

The Department of Accounts shall adopt necessary policies and procedures for reporting, accounting for, and collecting the Commonwealth's accounts receivable. The Department of Accounts is also charged with adopting regulations concerning guidelines and procedures for writing off accounts receivable.

1988, c. 544, § 2.1-728; 2001, c. [844](#).

§2.2-4803. Legal counsel.

The Office of the Attorney General shall be the primary agency responsible for the provision of all legal services and advice related to the collection of accounts receivable, pursuant to § [2.2-507](#).

The Attorney General shall adopt necessary policies and procedures pertaining to all accounts receivable legal matters and the litigation of past-due accounts receivable that shall be published together with the policies and procedures adopted by the Department of Accounts.

1988, c. 544, § 2.1-729; 2001, c. [844](#).

§2.2-4804. Annual reports.

The Department of Accounts and the Attorney General shall annually report to the Governor, the Secretary of Finance and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations those agencies and institutions that are not making satisfactory progress toward implementing the provisions of this chapter and establishing effective accounts receivable programs.

1988, c. 544, § 2.1-730; 2001, c. [844](#).

§2.2-4805. Interest, administrative charges and penalty fees.

A. Each state agency and institution may charge interest on all past due accounts receivable in accordance with guidelines adopted by the Department of Accounts. Each past due accounts receivable may also be charged an additional amount that shall approximate the administrative costs arising under § [2.2-4806](#). Agencies and institutions may also assess late penalty fees, not in excess of ten percent of the past-due account on past-due accounts receivable. The Department of Accounts shall adopt regulations concerning the imposition of administrative charges and late penalty fees.

B. Failure to pay in full at the time goods, services, or treatment are rendered by the Commonwealth or when billed for a debt owed to any agency of the Commonwealth shall result in the imposition of interest at the judgment rate as provided in § [6.2-302](#) on the unpaid balance unless a higher interest rate is authorized by contract with the debtor or provided otherwise by statute. Interest shall begin to accrue on the 60th day after the date of the initial written demand for payment. A public institution of higher education in the Commonwealth may elect to impose a late fee in addition to, or in lieu of, interest for such time as the institution retains the claim

pursuant to subsection D of § [2.2-4806](#). Returned checks or dishonored credit card or debit card payments shall incur a handling fee of \$50 unless a higher amount is authorized by statute to be added to the principal account balance.

C. If the matter is referred for collection to the Division, the debtor shall be liable for reasonable attorney fees unless higher attorney fees are authorized by contract with the debtor.

D. A request for or acceptance of goods or services from the Commonwealth, including medical treatment, shall be deemed to be acceptance of the terms specified in this section.

1988, c. 544, § 2.1-732; 2001, c. [844](#); 2009, c. [797](#).

§2.2-4806. Utilization of certain collection techniques.

A. Each state agency and institution shall take all appropriate and cost-effective actions to aggressively collect its accounts receivable. Each agency and institution shall utilize, but not be limited to, the following collection techniques, according to the policies and procedures required by the Department of Accounts and the Division: (i) credit reporting bureaus, (ii) collection agencies, (iii) garnishments, liens and judgments, (iv) administrative offset, and (v) participation in the Treasury Offset Program of the United States under 31 U.S.C. § 3716.

B. Except as provided otherwise herein, for collection of accounts receivable of \$3,000 or more that are 60 days past due, each agency and institution shall forward those claims to the Division for collection. The Division shall review forwarded accounts, determine the appropriate collection efforts, if any, for each account, and take such actions on the accounts as the Division may so determine.

C. Except as provided otherwise herein, for collection of accounts receivable under \$3,000 that are 60 days past due, each agency and institution shall contract with a private collection agency for the collection of those debts. Prior to referring accounts receivable of less than \$3,000, agencies and institutions may refer such accounts to the Division. The Division may accept the account for collection or return it to the agency or institution for collection by a private collection agency.

D. Except as otherwise provided in this subsection, where a debtor is paying a debt in periodic payments to an agency or institution, the agency or institution may elect to retain the claim in excess of 60 days provided that such periodic payments are promptly paid until the account is satisfied. In the event the debtor is delinquent (i)

by 60 days in paying a periodic payment or (ii) for such other period of time approved by the Division, the account shall be handled in the manner provided by subsections B and C of this section.

E. Each state agency and institution shall report and pay required fees to the Division as required by subsection C of § [2.2-518](#).

1988, c. 544, § 2.1-733; 2001, c. [844](#); 2004, c. [919](#); 2008, cc. [314](#), [637](#); 2009, c. [797](#).

§2.2-4807. Debtor information and skip-tracing.

Each agency and institution shall collect minimum prescribed information from clients, debtors, and payees. Debtor information available from state agencies, credit reporting bureaus and other appropriate sources shall be used for the purpose of skip-tracing debtors, as specified in the guidelines of the Department of Accounts and the Attorney General. The minimum prescribed information to be collected shall include the federal employer identification number of partnerships, proprietorships, and corporate clients, debtors, and payees. This minimum prescribed information shall be included in the contract payment clause required by § [2.2-4354](#). The Department of Accounts may require that the minimum prescribed information be supplied on any request for payment, including invoices.

1988, c. 544, § 2.1-734; 1992, c. 110; 2001, c. [844](#).

§2.2-4808. Provision of state services to delinquent debtors.

Each state agency and institution shall develop internal policies and procedures, in accordance with accounts receivable policies of the Department of Accounts and the Attorney General, for delaying or withholding certain state services to those persons who refuse to pay their debts.

1988, c. 544, § 2.1-735; 2001, c. [844](#).

§2.2-4809. Agreement authorized; setoff federal debts.

A. The Comptroller is authorized to enter into an agreement with the United States to participate in the Treasury Offset Program pursuant to 31 U.S.C. § 3716 for the collection of any debts owed to state agencies. The agreement may provide for the United States to submit debts owed to federal agencies for offset against state payments similar to the procedures for offsetting debts owed to state agencies.

B. The Treasurer shall reduce any state payment by the amount of any federal debt submitted in accordance with the agreement authorized by this section, and pay such

amount to the appropriate federal official in accordance with the procedures specified in such agreement.

2008, c. [314](#).

Virginia Electric Utility Regulation Act

§56-576. Definitions.

As used in this chapter:

"Affiliate" means any person that controls, is controlled by, or is under common control with an electric utility.

"Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases, electric energy or (ii) offers to arrange for, or arranges for, the purchase of electric energy, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv) providing default service under § [56-585](#); (v) engaging in activities of a retail electric energy supplier, licensed pursuant to § [56-587](#), which are authorized by such supplier's license; and (vi) engaging in actions of a retail customer, in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electric energy for consumption by such retail customers.

"Combined heat and power" means a method of using waste heat from electrical generation to offset traditional processes, space heating, air conditioning, or refrigeration.

"Commission" means the State Corporation Commission.

"Cooperative" means a utility formed under or subject to Chapter 9.1 (§ [56-231.15](#) et seq.).

"Covered entity" means a provider in the Commonwealth of an electric service not subject to competition but shall not include default service providers.

"Covered transaction" means an acquisition, merger, or consolidation of, or other transaction involving stock, securities, voting interests or assets by which one or more persons obtains control of a covered entity.

"Curtailment" means inducing retail customers to reduce load during times of peak demand so as to ease the burden on the electrical grid.

"Customer choice" means the opportunity for a retail customer in the Commonwealth to purchase electric energy from any supplier licensed and seeking to sell electric energy to that customer.

"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

"Distribute," "distributing," or "distribution of" electric energy means the transfer of electric energy through a retail distribution system to a retail customer.

"Distributor" means a person owning, controlling, or operating a retail distribution system to provide electric energy directly to retail customers.

"Electric utility" means any person that generates, transmits, or distributes electric energy for use by retail customers in the Commonwealth, including any investor-owned electric utility, cooperative electric utility, or electric utility owned or operated by a municipality.

"Energy efficiency program" means a program that reduces the total amount of electricity that is required for the same process or activity implemented after the expiration of capped rates. Energy efficiency programs include equipment, physical, or program change designed to produce measured and verified reductions in the amount of electricity required to perform the same function and produce the same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs that result in improvements in lighting design, heating, ventilation, and air conditioning systems, appliances, building envelopes, and industrial and commercial processes; (ii) measures, such as but not limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel use or losses of electricity and otherwise improve internal operating efficiency in generation, transmission, and distribution systems; and (iii) customer engagement programs that

result in measurable and verifiable energy savings that lead to efficient use patterns and practices. Energy efficiency programs include demand response, combined heat and power and waste heat recovery, curtailment, or other programs that are designed to reduce electricity consumption so long as they reduce the total amount of electricity that is required for the same process or activity. Utilities shall be authorized to install and operate such advanced metering technology and equipment on a customer's premises; however, nothing in this chapter establishes a requirement that an energy efficiency program be implemented on a customer's premises and be connected to a customer's wiring on the customer's side of the inter-connection without the customer's expressed consent.

"Generate," "generating," or "generation of" electric energy means the production of electric energy.

"Generator" means a person owning, controlling, or operating a facility that produces electric energy for sale.

"Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1, 1999, supplied electric energy to retail customers located in an exclusive service territory established by the Commission.

"Independent system operator" means a person that may receive or has received, by transfer pursuant to this chapter, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

"In the public interest," for purposes of assessing energy efficiency programs, describes an energy efficiency program if, among other factors, the net present value of the benefits exceeds the net present value of the costs as determined by the Commission upon consideration of the following four tests: (i) the Total Resource Cost Test; (ii) the Utility Cost Test (also referred to as the Program Administrator Test); (iii) the Participant Test; and (iv) the Ratepayer Impact Measure Test. Such determination shall include an analysis of all four tests, and a program or portfolio of programs shall not be rejected based solely on the results of a single test. In addition, an energy efficiency program may be deemed to be "in the public interest" if the program provides measurable and verifiable energy savings to low-income customers or elderly customers.

"Measured and verified" means a process determined pursuant to methods accepted for use by utilities and industries to measure, verify, and validate energy savings and

peak demand savings. This may include the protocol established by the United States Department of Energy, Office of Federal Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects, measurement and verification standards developed by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand savings associated with specific energy efficiency measures, as determined by the Commission.

"Municipality" means a city, county, town, authority, or other political subdivision of the Commonwealth.

"New underground facilities" means facilities to provide underground distribution service. "New underground facilities" includes underground cables with voltages of 69 kilovolts or less, pad-mounted devices, connections at customer meters, and transition terminations from existing overhead distribution sources.

"Peak-shaving" means measures aimed solely at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.

"Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, (the definitions of which shall be liberally construed), energy from waste, landfill gas, municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas, or nuclear power. Renewable energy shall also include the proportion of the thermal or electric energy from a facility that results from the co-firing of biomass.

"Renewable thermal energy" means the thermal energy output from (i) a renewable-fueled combined heat and power generation facility that is (a) constructed, or renovated and improved, after January 1, 2012, (b) located in the Commonwealth, and (c) utilized in industrial processes other than the combined heat and power generation facility or (ii) a solar energy system, certified to the OG-100 standard of the Solar Ratings and Certification Corporation or an equivalent certification body, that (a) is constructed, or renovated and improved, after January 1, 2013, (b) is located in

the Commonwealth, and (c) heats water or air for residential, commercial, institutional, or industrial purposes.

"Renewable thermal energy equivalent" means the electrical equivalent in megawatt hours of renewable thermal energy calculated by dividing (i) the heat content, measured in British thermal units (BTUs), of the renewable thermal energy at the point of transfer to a residential, commercial, institutional, or industrial process by (ii) the standard conversion factor of 3.413 million BTUs per megawatt hour.

"Renovated and improved facility" means a facility the components of which have been upgraded to enhance its operating efficiency.

"Retail customer" means any person that purchases retail electric energy for its own consumption at one or more metering points or nonmetered points of delivery located in the Commonwealth.

"Retail electric energy" means electric energy sold for ultimate consumption to a retail customer.

"Revenue reductions related to energy efficiency programs" means reductions in the collection of total non-fuel revenues, previously authorized by the Commission to be recovered from customers by a utility, that occur due to measured and verified decreased consumption of electricity caused by energy efficiency programs approved by the Commission and implemented by the utility, less the amount by which such non-fuel reductions in total revenues have been mitigated through other program-related factors, including reductions in variable operating expenses.

"Solar energy system" means a system of components that produces heat or electricity, or both, from sunlight.

"Supplier" means any generator, distributor, aggregator, broker, marketer, or other person who offers to sell or sells electric energy to retail customers and is licensed by the Commission to do so, but it does not mean a generator that produces electric energy exclusively for its own consumption or the consumption of an affiliate.

"Supply" or "supplying" electric energy means the sale of or the offer to sell electric energy to a retail customer.

"Transmission of," "transmit," or "transmitting" electric energy means the transfer of electric energy through the Commonwealth's interconnected transmission grid from a generator to either a distributor or a retail customer.

"Transmission system" means those facilities and equipment that are required to provide for the transmission of electric energy.

1999, c. [411](#); 2000, c. [991](#); 2001, c. [421](#); 2007, cc. [888](#), [933](#); 2008, cc. [272](#), [883](#); 2009, cc. [748](#), [824](#); 2012, cc. [46](#), [200](#), [210](#), [821](#); 2013, c. [494](#); 2014, cc. [212](#), [548](#).

§56-577. Schedule for transition to retail competition; Commission authority; exemptions; pilot programs.

A. Retail competition for the purchase and sale of electric energy shall be subject to the following provisions:

1. Each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which entity may be an independent system operator, to which such utility shall transfer the management and control of its transmission system, subject to the provisions of § [56-579](#).
2. The generation of electric energy shall be subject to regulation as specified in this chapter.
3. From January 1, 2004, until the expiration or termination of capped rates, all retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth. After the expiration or termination of capped rates, and subject to the provisions of subdivisions 4 and 5, only individual retail customers of electric energy within the Commonwealth, regardless of customer class, whose demand during the most recent calendar year exceeded five megawatts but did not exceed one percent of the customer's incumbent electric utility's peak load during the most recent calendar year unless such customer had noncoincident peak demand in excess of 90 megawatts in calendar year 2006 or any year thereafter, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, except for any incumbent electric utility other than the incumbent electric utility serving the exclusive service territory in which such a customer is located, subject to the following conditions:
 - a. If such customer does not purchase electric energy from licensed suppliers after that date, such customer shall purchase electric energy from its incumbent electric utility.

b. Except as provided in subdivision 4, the demands of individual retail customers may not be aggregated or combined for the purpose of meeting the demand limitations of this provision, any other provision of this chapter to the contrary notwithstanding. For the purposes of this section, each noncontiguous site will nevertheless constitute an individual retail customer even though one or more such sites may be under common ownership of a single person.

c. If such customer does purchase electric energy from licensed suppliers after the expiration or termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the incumbent electric utility without giving five years' advance written notice of such intention to such utility, except where such customer demonstrates to the Commission, after notice and opportunity for hearing, through clear and convincing evidence that its supplier has failed to perform, or has anticipatorily breached its duty to perform, or otherwise is about to fail to perform, through no fault of the customer, and that such customer is unable to obtain service at reasonable rates from an alternative supplier. If, as a result of such proceeding, the Commission finds it in the public interest to grant an exemption from the five-year notice requirement, such customer may thereafter purchase electric energy at the costs of such utility, as determined by the Commission pursuant to subdivision 3 d hereof, for the remainder of the five-year notice period, after which point the customer may purchase electric energy from the utility under rates, terms and conditions determined pursuant to § [56-585.1](#). However, such customer shall be allowed to individually purchase electric energy from the utility under rates, terms, and conditions determined pursuant to § [56-585.1](#) if, upon application by such customer, the Commission finds that neither such customer's incumbent electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting such petition. In making such determination, the Commission shall take into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to such incumbent electric utility. Any customer that returns to purchase electric energy from its incumbent electric utility, before or after expiration of the five-year notice period, shall be subject to minimum stay periods equal to those prescribed by the Commission pursuant to subdivision C 1.

d. The costs of serving a customer that has received an exemption from the five-year notice requirement under subdivision 3 c hereof shall be the market-based costs of

the utility, including (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin as determined pursuant to the provisions of subdivision A 2 of § [56-585.1](#). The methodology established by the Commission for determining such costs shall ensure that neither utilities nor other retail customers are adversely affected in a manner contrary to the public interest.

4. After the expiration or termination of capped rates, two or more individual non-residential retail customers of electric energy within the Commonwealth, whose individual demand during the most recent calendar year did not exceed five megawatts, may petition the Commission for permission to aggregate or combine their demands, for the purpose of meeting the demand limitations of subdivision 3, so as to become qualified to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth under the conditions specified in subdivision 3. The Commission may, after notice and opportunity for hearing, approve such petition if it finds that:

a. Neither such customers' incumbent electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting such petition. In making such determination, the Commission shall take into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to such incumbent electric utility; and

b. Approval of such petition is consistent with the public interest.

If such petition is approved, all customers whose load has been aggregated or combined shall thereafter be subject in all respects to the provisions of subdivision 3 and shall be treated as a single, individual customer for the purposes of said subdivision. In addition, the Commission shall impose reasonable periodic monitoring and reporting obligations on such customers to demonstrate that they continue, as a group, to meet the demand limitations of subdivision 3. If the Commission finds, after notice and opportunity for hearing, that such group of customers no longer meets the above demand limitations, the Commission may revoke its previous approval of the petition, or take such other actions as may be consistent with the public interest.

5. After the expiration or termination of capped rates, individual retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted:

a. To purchase electric energy provided 100 percent from renewable energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, other than any incumbent electric utility that is not the incumbent electric utility serving the exclusive service territory in which such a customer is located, if the incumbent electric utility serving the exclusive service territory does not offer an approved tariff for electric energy provided 100 percent from renewable energy; and

b. To continue purchasing renewable energy pursuant to the terms of a power purchase agreement in effect on the date there is filed with the Commission a tariff for the incumbent electric utility that serves the exclusive service territory in which the customer is located to offer electric energy provided 100 percent from renewable energy, for the duration of such agreement.

6. A tariff for one or more classes of residential customers filed with the Commission for approval by a cooperative on or after July 1, 2010, shall be deemed to offer a tariff for electric energy provided 100 percent from renewable energy if it provides undifferentiated electric energy and the cooperative retires a quantity of renewable energy certificates equal to 100 percent of the electric energy provided pursuant to such tariff. A tariff for one or more classes of nonresidential customers filed with the Commission for approval by a cooperative on or after July 1, 2012, shall be deemed to offer a tariff for electric energy provided 100 percent from renewable energy if it provides undifferentiated electric energy and the cooperative retires a quantity of renewable energy certificates equal to 100 percent of the electric energy provided pursuant to such tariff. For purposes of this section, "renewable energy certificate" means, with respect to cooperatives, a tradable commodity or instrument issued by a regional transmission entity or affiliate or successor thereof in the United States that validates the generation of electricity from renewable energy sources or that is certified under a generally recognized renewable energy certificate standard. One renewable energy certificate equals 1,000 kWh or one MWh of electricity generated from renewable energy. A cooperative offering electric energy provided 100 percent from renewable energy pursuant to this subdivision that involves the retirement of renewable energy certificates shall disclose to its retail customers who express an interest

in purchasing energy pursuant to such tariff (i) that the renewable energy is comprised of the retirement of renewable energy certificates, (ii) the identity of the entity providing the renewable energy certificates, and (iii) the sources of renewable energy being offered.

B. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this section.

C. 1. By January 1, 2002, the Commission shall promulgate regulations establishing whether and, if so, for what minimum periods, customers who request service from an incumbent electric utility pursuant to subsection D of § [56-582](#) or a default service provider, after a period of receiving service from other suppliers of electric energy, shall be required to use such service from such incumbent electric utility or default service provider, as determined to be in the public interest by the Commission.

2. Subject to (i) the availability of capped rate service under § [56-582](#), and (ii) the transfer of the management and control of an incumbent electric utility's transmission assets to a regional transmission entity after approval of such transfer by the Commission under § [56-579](#), retail customers of such utility (a) purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods prescribed by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such minimum stay obligations by agreeing to purchase electric energy at the market-based costs of such utility or default providers after a period of obtaining electric energy from another supplier. Such costs shall include (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin. The methodology of ascertaining such costs shall be determined and approved by the Commission after notice and opportunity for hearing and after review of any plan filed by such utility to procure electric energy to serve such customers. The methodology established by the Commission for determining such costs shall be consistent with the goals of (a) promoting the development of effective competition and economic development within the Commonwealth as provided in subsection A of § [56-596](#), and (b) ensuring that neither incumbent utilities nor retail customers that do not choose to obtain electric energy from alternate suppliers are adversely affected.

3. Notwithstanding the provisions of subsection D of § [56-582](#) and subsection C of § [56-585](#), however, any such customers exempted from any applicable minimum stay periods as provided in subdivision 2 shall not be entitled to purchase retail electric energy thereafter from their incumbent electric utilities, or from any distributor required to provide default service under subsection B of § [56-585](#), at the capped rates established under § [56-582](#), unless such customers agree to satisfy any minimum stay period then applicable while obtaining retail electric energy at capped rates.

4. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this subsection, which rules and regulations shall include provisions specifying the commencement date of such minimum stay exemption program.

1999, c. [411](#); 2001, c. [748](#); 2003, cc. [795](#), [990](#); 2004, c. [827](#); 2007, cc. [888](#), [933](#); 2010, cc. [326](#), [397](#).

§56-578. Nondiscriminatory access to transmission and distribution system.

A. All distributors shall have the obligation to connect any retail customer, including those using distributed generation, located within its service territory to those facilities of the distributor that are used for delivery of retail electric energy, subject to Commission rules and regulations and approved tariff provisions relating to connection of service.

B. Except as otherwise provided in this chapter, every distributor shall provide distribution service within its service territory on a basis which is just, reasonable, and not unduly discriminatory to suppliers of electric energy, including distributed generation, as the Commission may determine. The distribution services provided to each supplier of electric energy shall be comparable in quality to those provided by the distribution utility to itself or to any affiliate.

C. The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability, which standards shall not be inconsistent with nationally recognized standards acceptable to the Commission. In adopting standards pursuant to this subsection, the Commission shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive. The Commission shall determine questions about the ability of specific equipment to meet interconnection standards.

D. The Commission shall consider developing expedited permitting processes for small generation facilities of fifty megawatts or less. The Commission shall also consider developing a standardized permitting process and interconnection arrangements for those power systems less than 500 kilowatts which have demonstrated approval from a nationally recognized testing laboratory acceptable to the Commission.

E. Upon the separation and deregulation of the generation function and services of incumbent electric utilities, the Commission shall retain jurisdiction over utilities' electric transmission function and services, to the extent not preempted by federal law. Nothing in this section shall impair the Commission's authority under §§ [56-46.1](#), [56-46.2](#), and [56-265.2](#) with respect to the construction of electric transmission facilities.

1999, c. [411](#); 2007, cc. [888](#), [933](#).

§56-579. Regional transmission entities.

A. As set forth in § [56-577](#), each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which hereafter may be referred to as "RTE," to which such utility shall transfer the management and control of its transmission assets, subject to the following:

1. No such incumbent electric utility shall transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth prior to July 1, 2004, and without obtaining, following notice and hearing, the prior approval of the Commission, as hereinafter provided. However, each incumbent electric utility shall file an application for approval pursuant to this section by July 1, 2003, and shall transfer management and control of its transmission assets to a regional transmission entity by January 1, 2005, subject to Commission approval as provided in this section.

2. The Commission shall develop rules and regulations under which any such incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth, may transfer all or part of such control, ownership or responsibility to an RTE, upon such terms and conditions that the Commission determines will:

a. Promote:

- (1) Practices for the reliable planning, operating, maintaining, and upgrading of the transmission systems and any necessary additions thereto; and
 - (2) Policies for the pricing and access for service over such systems that are safe, reliable, efficient, not unduly discriminatory and consistent with the orderly development of competition in the Commonwealth;
- b. Be consistent with lawful requirements of the Federal Energy Regulatory Commission;
 - c. Be effectuated on terms that fairly compensate the transferor;
 - d. Generally promote the public interest, and are consistent with (i) ensuring that consumers' needs for economic and reliable transmission are met and (ii) meeting the transmission needs of electric generation suppliers both within and without this Commonwealth, including those that do not own, operate, control or have an entitlement to transmission capacity.
- B. The Commission shall also adopt rules and regulations, with appropriate public input, establishing elements of regional transmission entity structures essential to the public interest, which elements shall be applied by the Commission in determining whether to authorize transfer of ownership or control from an incumbent electric utility to a regional transmission entity.
- C. The Commission shall, to the fullest extent permitted under federal law, participate in any and all proceedings concerning regional transmission entities furnishing transmission services within the Commonwealth, before the Federal Energy Regulatory Commission. Such participation may include such intervention as is permitted state utility regulators under Federal Energy Regulatory Commission rules and procedures.
- D. Nothing in this section shall be deemed to abrogate or modify:
1. The Commission's authority over transmission line or facility construction, enlargement or acquisition within this Commonwealth, as set forth in Chapter 10.1 (§ [56-265.1](#) et seq.) of this title;
 2. The laws of this Commonwealth concerning the exercise of the right of eminent domain by a public service corporation pursuant to the provisions of Article 5 (§ [56-257](#) et seq.) of Chapter 10 of this title; or

3. The Commission's authority over retail electric energy sold to retail customers within the Commonwealth by licensed suppliers of electric service, including necessary reserve requirements, all as specified in § [56-587](#).

E. For purposes of this section, transmission capacity shall not include capacity that is primarily operated in a distribution function, as determined by the Commission, taking into consideration any binding federal precedents.

F. Any request to the Commission for approval of such transfer of ownership or control of or responsibility for transmission facilities shall include a study of the comparative costs and benefits thereof, which study shall analyze the economic effects of the transfer on consumers, including the effects of transmission congestion costs. The Commission may approve such a transfer if it finds, after notice and hearing, that the transfer satisfies the conditions contained in this section.

G. The Commission shall report annually to the Commission on Electric Utility Regulation its assessment of the practices and policies of the RTE. Such report shall set forth actions taken by the Commission regarding requests for the approval of any transfer of ownership or control of transmission facilities to an RTE, including a description of the economic effects of such proposed transfers on consumers.

1999, c. [411](#); 2001, c. [576](#); 2003, cc. [885](#), [990](#); 2007, cc. [888](#), [933](#); 2008, c. [883](#).

§56-580. Transmission and distribution of electric energy.

A. Subject to the provisions of § [56-585.1](#), the Commission shall continue to regulate pursuant to this title the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail distribution systems.

C. The Commission shall develop codes of conduct governing the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, generation, distribution, or transmission services, to the extent necessary to prevent impairment of competition. Nothing in this chapter shall prevent an incumbent electric utility from offering metering options to its customers.

D. The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007, and if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § [56-585.1](#), and (iii) are not otherwise contrary to the public interest. In review of a petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § [56-46.1](#), unless exempt as a small renewable energy project for which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ [10.1-1197.5](#) et seq.) of Chapter 11.1 of Title 10.1. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. The Commission shall complete any proceeding under this section, or under any provision of the Utility Facilities Act (§ [56-265.1](#) et seq.), involving an application for a certificate, permit, or approval required for the construction or operation by a public utility of a small renewable energy project as

defined in § [10.1-1197.5](#), within nine months following the utility's submission of a complete application therefore. Small renewable energy projects as defined in § [10.1-1197.5](#) are in the public interest and in determining whether to approve such project, the Commission shall liberally construe the provisions of this title.

E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. Subject to the provisions of § [56-585.1](#), the Commission shall continue to exercise its existing authority over the provision of electric distribution services to retail customers in the Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ [56-232](#) et seq.) and 10.1 (§ [56-265.1](#) et seq.) of this title.

F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#). Nor shall any provision of this chapter apply to any such electric utility unless (i) that municipality or that authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#) elects to have this chapter apply to that utility or (ii) that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer eligible to purchase electric energy from any supplier in accordance with § [56-577](#) if that retail customer is outside the geographic area that was served by such municipality as of July 1, 1999, except (a) any area within the municipality that was served by an incumbent public utility as of that date but was thereafter served by an electric utility owned or operated by a municipality or by an authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#) pursuant to the terms of a franchise agreement between the municipality and the incumbent public utility, or (b) where the geographic area served by an electric utility owned or operated by a municipality is changed pursuant to mutual agreement between the municipality and the affected incumbent public utility in accordance with § [56-265.4:1](#). If an electric utility owned or operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the referendum requirement of § [15.2-5403](#) is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any such utility, mutatis mutandis.

G. The applicability of all provisions of this chapter except § [56-594](#) to any investor-owned incumbent electric utility supplying electric service to retail customers on January 1, 2003, whose service territory assigned to it by the Commission is located entirely within Dickenson, Lee, Russell, Scott, and Wise Counties shall be suspended effective July 1, 2003, so long as such utility does not provide retail electric services in any other service territory in any jurisdiction to customers who have the right to receive retail electric energy from another supplier. During any such suspension period, the utility's rates shall be (i) its capped rates established pursuant to § [56-582](#) for the duration of the capped rate period established thereunder, and (ii) determined thereafter by the Commission on the basis of such utility's prudently incurred costs pursuant to Chapter 10 (§ [56-232](#) et seq.) of this title.

H. The expiration date of any certificates granted by the Commission pursuant to subsection D, for which applications were filed with the Commission prior to July 1, 2002, shall be extended for an additional two years from the expiration date that otherwise would apply.

1999, c. [411](#); 2000, c. [991](#); 2001, cc. [738](#), [748](#), [755](#); 2002, c. [483](#); 2003, c. [719](#); 2004, cc. [262](#), [827](#); 2006, cc. [811](#), [819](#), [929](#), [941](#); 2007, cc. [877](#), [888](#), [933](#); 2009, cc. [808](#), [854](#).

§56-581. Regulation of rates subject to Commission's jurisdiction.

A. After the expiration or termination of capped rates except as provided in § [56-585.1](#), the Commission shall regulate the rates of investor-owned incumbent electric utilities for the transmission of electric energy, to the extent not prohibited by federal law, and for the generation of electric energy and the distribution of electric energy to retail customers pursuant to § [56-585.1](#).

B. Beginning July 1, 1999, and thereafter, no cooperative that was a member of a power supply cooperative on January 1, 1999, shall be obligated to file any rate rider as a consequence of an increase or decrease in the rates, other than fuel costs, of its wholesale supplier, nor must any adjustment be made to such cooperative's rates as a consequence thereof.

C. Except for the provision of default services under § [56-585](#) or emergency services in § [56-586](#), nothing in this chapter shall authorize the Commission to regulate the rates or charges for electric service to the Commonwealth and its municipalities.

1999, c. [411](#); 2000, c. [991](#); 2007, cc. [888](#), [933](#).

§56-581.1. Repealed.

Repealed by Acts 2007, cc. [888](#) and [933](#), cl. 2.

§56-582. Rate caps.

A. The Commission shall establish capped rates, effective January 1, 2001, for each service territory of every incumbent utility as follows:

1. Capped rates shall be established for customers purchasing bundled electric transmission, distribution and generation services from an incumbent electric utility.
2. Capped rates for electric generation services, only, shall also be established for the purpose of effecting customer choice for those retail customers authorized under this chapter to purchase generation services from a supplier other than the incumbent utility during this period.
3. The capped rates established under this section shall be the rates in effect for each incumbent utility as of the effective date of this chapter, or rates subsequently placed into effect pursuant to a rate application filed by an incumbent electric utility with the Commission prior to January 1, 2001, and subsequently approved by the Commission, and made by an incumbent electric utility that is not currently bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002. If such rate application is filed, the rates proposed therein shall go into effect on January 1, 2001, but such rates shall be interim in nature and subject to refund until such time as the Commission has completed its investigation of such application. Any amount of the rates found excessive by the Commission shall be subject to refund with interest, as may be ordered by the Commission. The Commission shall act upon such applications prior to January 1, 2002. Such rate application and the Commission's approval shall give due consideration, on a forward-looking basis, to the justness and reasonableness of rates to be effective for a period of time ending as late as July 1, 2007. The capped rates established under this section, which include rates, tariffs, electric service contracts, and rate programs (including experimental rates, regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs of each incumbent electric utility, provided that experimental rates and rate programs may be closed to new customers upon application to the Commission. Such capped rates shall also include rates for new services where, subsequent to January 1, 2001, rate applications for any such rates are filed by incumbent electric utilities with the Commission and are thereafter approved by the Commission. In establishing such rates for new services, the

Commission may use any rate method that promotes the public interest and that is fairly compensatory to any utilities requesting such rates.

B. The Commission may adjust such capped rates in connection with the following: (i) utilities' recovery of fuel and purchased power costs pursuant to § [56-249.6](#), and, if applicable, in accordance with the terms of any Commission order approving the divestiture of generation assets pursuant to § [56-590](#), (ii) any changes in the taxation by the Commonwealth of incumbent electric utility revenues, (iii) any financial distress of the utility beyond its control, (iv) with respect to cooperatives that were not members of a power supply cooperative on January 1, 1999, and as long as they do not become members, their cost of purchased wholesale power and discounts from capped rates to match the cost of providing distribution services, (v) with respect to cooperatives that were members of a power supply cooperative on January 1, 1999, their recovery of fuel costs, through the wholesale power cost adjustment clauses of their tariffs pursuant to § [56-231.33](#), and (vi) with respect to incumbent electric utilities that were not, as of the effective date of this chapter, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, the Commission shall adjust such utilities' capped rates, not more than once in any 12-month period, for the timely recovery of their incremental costs for transmission or distribution system reliability and compliance with state or federal environmental laws or regulations to the extent such costs are prudently incurred on and after July 1, 2004. Any adjustments pursuant to § [56-249.6](#) and clause (i) of this subsection by an incumbent electric utility that transferred all of its generation assets to an affiliate with the approval of the Commission pursuant to § [56-590](#) prior to January 1, 2002, shall be effective only on and after July 1, 2007. Notwithstanding the provisions of § [56-249.6](#), the Commission may authorize tariffs that include incentives designed to encourage an incumbent electric utility to reduce its fuel costs by permitting retention of a portion of cost savings resulting from fuel cost reductions or by other methods determined by the Commission to be fair and reasonable to the utility and its customers.

C. A utility may petition the Commission to terminate the capped rates to all customers any time after January 1, 2004, and such capped rates may be terminated upon the Commission finding of an effectively competitive market for generation services within the service territory of that utility. If its capped rates, as established and adjusted from time to time pursuant to subsections A and B, are continued after January 1, 2004, an incumbent electric utility that is not, as of the effective date of this

chapter, bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002, may petition the Commission, during the period January 1, 2004, through June 30, 2007, for approval of a one-time change in its rates, and if the capped rates are continued after July 1, 2007, such incumbent electric utility may at any time after July 1, 2007, petition the Commission for approval of a one-time change in its rates. Any change in rates pursuant to this subsection by an incumbent electric utility that divested its generation assets with approval of the Commission pursuant to § [56-590](#) prior to January 1, 2002, shall be in accordance with the terms of any Commission order approving such divestiture. Any petition for changes to capped rates filed pursuant to this subsection shall be governed by the provisions of Chapter 10 (§ [56-232](#) et seq.) of this title.

D. Until the expiration or termination of capped rates as provided in this section, the incumbent electric utility, consistent with the functional separation plan implemented under § [56-590](#), shall make electric service available at capped rates established under this section to any customer in the incumbent electric utility's service territory, including any customer that, until the expiration or termination of capped rates, requests such service after a period of utilizing service from another supplier.

E. During the period when capped rates are in effect for an incumbent electric utility, such utility may file with the Commission a plan describing the method used by such utility to assure full funding of its nuclear decommissioning obligation and specifying the amount of the revenues collected under either the capped rates, as provided in this section, or the wires charges, as provided in former § [56-583](#), that are dedicated to funding such nuclear decommissioning obligation under the plan. The Commission shall approve the plan upon a finding that the plan is not contrary to the public interest.

F. The capped rates established pursuant to this section shall expire on December 31, 2008, unless sooner terminated by the Commission pursuant to the provisions of subsection C; however, rates after the expiration or termination of capped rates shall equal capped rates until such rates are changed pursuant to other provisions of this title.

1999, c. [411](#); 2000, cc. [942](#), [991](#); 2001, c. [748](#); 2004, c. [827](#); 2007, cc. [888](#), [933](#); 2008, c. [883](#).

§56-583. Repealed.

Repealed by Acts 2007, cc. [888](#) and [933](#), cl. 2.

§56-584. Stranded costs.

Just and reasonable net stranded costs, to the extent that they exceed zero value in total for the incumbent electric utility, shall be recoverable by each incumbent electric utility provided each incumbent electric utility shall only recover its just and reasonable net stranded costs through either capped rates as provided in § [56-582](#). To the extent not preempted by federal law, the establishment by the Commission of wires charges for any distribution cooperative shall be conditioned upon such cooperative entering into binding commitments by which it will pay to any power supply cooperative of which such distribution cooperative is or was a member, as compensation for such power supply cooperative's stranded costs, all or part of the proceeds of such wires charges, as determined by the Commission.

1999, c. [411](#); 2007, cc. [888](#), [933](#).

§56-585. Default service.

A. The Commission shall, after notice and opportunity for hearing, (i) determine the components of default service and (ii) establish one or more programs making such services available to retail customers requiring them during the availability throughout the Commonwealth of customer choice for all retail customers as established pursuant to § [56-577](#). For purposes of this chapter, "default service" means service made available under this section to retail customers who (i) do not affirmatively select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform. Availability of default service shall expire upon the expiration or termination of capped rates.

B. A distributor shall have the obligation and right to be the supplier of default services in its certificated service territory, and shall do so, in a safe and reliable manner, at rates determined pursuant to subsection C; however, the Commission may not require a distributor, or affiliate thereof, to provide any such services outside the territory in which such distributor provides service.

C. Until the expiration or termination of capped rates, the rates for default service shall equal the capped rates established pursuant to subdivision A 2 of § [56-582](#).

D. A distribution electric cooperative, or one or more affiliates thereof, shall have the obligation and right to be the supplier of default services in its certificated service territory. A distribution electric cooperative's rates for such default services shall be the capped rate for the duration of the capped rate period. Subsections B and C shall not

apply to a distribution electric cooperative or its rates. Such default services, for the purposes of this subsection, shall include the supply of electric energy.

1999, c. [411](#); 2000, c. [991](#); 2001, c. [748](#); 2003, c. [885](#); 2004, c. [827](#); 2007, cc. [888](#), [933](#).

§56-585.1. Generation, distribution, and transmission rates after capped rates terminate or expire.

A. During the first six months of 2009, the Commission shall, after notice and opportunity for hearing, initiate proceedings to review the rates, terms and conditions for the provision of generation, distribution and transmission services of each investor-owned incumbent electric utility. Such proceedings shall be governed by the provisions of Chapter 10 (§ [56-232](#) et seq.), except as modified herein. In such proceedings the Commission shall determine fair rates of return on common equity applicable to the generation and distribution services of the utility. In so doing, the Commission may use any methodology to determine such return it finds consistent with the public interest, but such return shall not be set lower than the average of the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility, nor shall the Commission set such return more than 300 basis points higher than such average. The peer group of the utility shall be determined in the manner prescribed in subdivision 2 b. The Commission may increase or decrease such combined rate of return by up to 100 basis points based on the generating plant performance, customer service, and operating efficiency of a utility, as compared to nationally recognized standards determined by the Commission to be appropriate for such purposes. In such a proceeding, the Commission shall determine the rates that the utility may charge until such rates are adjusted. If the Commission finds that the utility's combined rate of return on common equity is more than 50 basis points below the combined rate of return as so determined, it shall be authorized to order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such combined rate of return. If the Commission finds that the utility's combined rate of return on common equity is more than 50 basis points above the combined rate of return as so determined, it shall be authorized either (i) to order reductions to the utility's rates it finds appropriate, provided that the Commission may not order such rate reduction unless it finds that

the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than the fair rates of return on common equity applicable to the generation and distribution services; or (ii) to direct that 60 percent of the amount of the utility's earnings that were more than 50 basis points above the fair combined rate of return for calendar year 2008 be credited to customers' bills, in which event such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order and be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates. Commencing in 2011, the Commission, after notice and opportunity for hearing, shall conduct biennial reviews of the rates, terms and conditions for the provision of generation, distribution and transmission services by each investor-owned incumbent electric utility, subject to the following provisions:

1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis, and such reviews shall be conducted in a single, combined proceeding. The first such review shall utilize the two successive 12-month test periods ending December 31, 2010. However, the Commission may, in its discretion, elect to stagger its biennial reviews of utilities by utilizing the two successive 12-month test periods ending December 31, 2010, for a Phase I Utility, and utilizing the two successive 12-month test periods ending December 31, 2011, for a Phase II Utility, with subsequent proceedings utilizing the two successive 12-month test periods ending December 31 immediately preceding the year in which such proceeding is conducted. For purposes of this section, a Phase I Utility is an investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, and a Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

2. Subject to the provisions of subdivision 6, fair rates of return on common equity applicable separately to the generation and distribution services of such utility, and for the two such services combined, shall be determined by the Commission during each such biennial review, as follows:

a. The Commission may use any methodology to determine such return it finds consistent with the public interest, but such return shall not be set lower than the average of the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility subject to such biennial review, nor shall the Commission set such return more than 300 basis points higher than such average.

b. In selecting such majority of peer group investor-owned electric utilities, the Commission shall first remove from such group the two utilities within such group that have the lowest reported returns of the group, as well as the two utilities within such group that have the highest reported returns of the group, and the Commission shall then select a majority of the utilities remaining in such peer group. In its final order regarding such biennial review, the Commission shall identify the utilities in such peer group it selected for the calculation of such limitation. For purposes of this subdivision, an investor-owned electric utility shall be deemed part of such peer group if (i) its principal operations are conducted in the southeastern United States east of the Mississippi River in either the states of West Virginia or Kentucky or in those states south of Virginia, excluding the state of Tennessee, (ii) it is a vertically-integrated electric utility providing generation, transmission and distribution services whose facilities and operations are subject to state public utility regulation in the state where its principal operations are conducted, (iii) it had a long-term bond rating assigned by Moody's Investors Service of at least Baa at the end of the most recent test period subject to such biennial review, and (iv) it is not an affiliate of the utility subject to such biennial review.

c. The Commission may, consistent with its precedent for incumbent electric utilities prior to the enactment of Chapters 888 and 933 of the Acts of Assembly of 2007, increase or decrease the utility's combined rate of return based on the Commission's consideration of the utility's performance.

d. In any Current Proceeding, the Commission shall determine whether the Current Return has increased, on a percentage basis, above the Initial Return by more than the increase, expressed as a percentage, in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the date on which the

Commission determined the Initial Return. If so, the Commission may conduct an additional analysis of whether it is in the public interest to utilize such Current Return for the Current Proceeding then pending. A finding of whether the Current Return justifies such additional analysis shall be made without regard to any enhanced rate of return on common equity awarded pursuant to the provisions of subdivision 6. Such additional analysis shall include, but not be limited to, a consideration of overall economic conditions, the level of interest rates and cost of capital with respect to business and industry, in general, as well as electric utilities, the current level of inflation and the utility's cost of goods and services, the effect on the utility's ability to provide adequate service and to attract capital if less than the Current Return were utilized for the Current Proceeding then pending, and such other factors as the Commission may deem relevant. If, as a result of such analysis, the Commission finds that use of the Current Return for the Current Proceeding then pending would not be in the public interest, then the lower limit imposed by subdivision 2 a on the return to be determined by the Commission for such utility shall be calculated, for that Current Proceeding only, by increasing the Initial Return by a percentage at least equal to the increase, expressed as a percentage, in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the date on which the Commission determined the Initial Return. For purposes of this subdivision:

"Current Proceeding" means any proceeding conducted under any provisions of this subsection that require or authorize the Commission to determine a fair combined rate of return on common equity for a utility and that will be concluded after the date on which the Commission determined the Initial Return for such utility.

"Current Return" means the minimum fair combined rate of return on common equity required for any Current Proceeding by the limitation regarding a utility's peer group specified in subdivision 2 a.

"Initial Return" means the fair combined rate of return on common equity determined for such utility by the Commission on the first occasion after July 1, 2009, under any provision of this subsection pursuant to the provisions of subdivision 2 a.

e. In addition to other considerations, in setting the return on equity within the range allowed by this section, the Commission shall strive to maintain costs of retail

electric energy that are cost competitive with costs of retail electric energy provided by the other peer group investor-owned electric utilities.

f. The determination of such returns shall be made by the Commission on a stand-alone basis, and specifically without regard to any return on common equity or other matters determined with regard to facilities described in subdivision 6.

g. If the combined rate of return on common equity earned by the generation and distribution services is no more than 50 basis points above or below the return as so determined or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, such return is no more than 70 basis points above or below the return as so determined, such combined return shall not be considered either excessive or insufficient, respectively. However, for any test period commencing after December 31, 2012, for a Phase II Utility, and after December 31, 2013, for a Phase I Utility, if the utility has, during the test period or periods under review, earned below the return as so determined, whether or not such combined return is within 70 basis points of the return as so determined, the utility may petition the Commission for approval of an increase in rates in accordance with the provisions of subdivision 8 a as if it had earned more than 70 basis points below a fair combined rate of return, and such proceeding shall otherwise be conducted in accordance with the provisions of this section.

h. Any amount of a utility's earnings directed by the Commission to be credited to customers' bills pursuant to this section shall not be considered for the purpose of determining the utility's earnings in any subsequent biennial review.

3. Each such utility shall make a biennial filing by March 31 of every other year, beginning in 2011, consisting of the schedules contained in the Commission's rules governing utility rate increase applications; however, if the Commission elects to stagger the dates of the biennial reviews of utilities as provided in subdivision 1, then each Phase I Utility shall commence biennial filings in 2011 and each Phase II Utility shall commence biennial filings in 2012. Such filing shall encompass the two successive 12-month test periods ending December 31 immediately preceding the year in which such proceeding is conducted, and in every such case the filing for each year shall be identified separately and shall be segregated from any other year encompassed by the filing. If the Commission determines that rates should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate adjustment clauses previously implemented pursuant to subdivision 5 or those related to

facilities utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's costs, revenues and investments until the amounts that are the subject of such rate adjustment clauses are fully recovered. The Commission shall combine such clauses with the utility's costs, revenues and investments only after it makes its initial determination with regard to necessary rate revisions or credits to customers' bills, and the amounts thereof, but after such clauses are combined as herein specified, they shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of future biennial review proceedings. A Phase I Utility shall delay for one year the filing of its biennial review from March 31, 2013, to March 31, 2014, and shall not defer on its books for future recovery any costs incurred during calendar year 2011, other than as provided in subdivision 7 or § [56-249.6](#), and its subsequent biennial filing shall be made by March 31, 2016, and every two years thereafter.

4. The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms and conditions approved by the Federal Energy Regulatory Commission, and (ii) costs charged to the utility that are associated with demand response programs approved by the Federal Energy Regulatory Commission and administered by the regional transmission entity of which the utility is a member. Upon petition of a utility at any time after the expiration or termination of capped rates, but not more than once in any 12-month period, the Commission shall approve a rate adjustment clause under which such costs, including, without limitation, costs for transmission service, charges for new and existing transmission facilities, administrative charges, and ancillary service charges designed to recover transmission costs, shall be recovered on a timely and current basis from customers. Retail rates to recover these costs shall be designed using the appropriate billing determinants in the retail rate schedules.

5. A utility may at any time, after the expiration or termination of capped rates, but not more than once in any 12-month period, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of the following costs:

a. Incremental costs described in clause (vi) of subsection B of § [56-582](#) incurred between July 1, 2004, and the expiration or termination of capped rates, if such

utility is, as of July 1, 2007, deferring such costs consistent with an order of the Commission entered under clause (vi) of subsection B of § [56-582](#). The Commission shall approve such a petition allowing the recovery of such costs that comply with the requirements of clause (vi) of subsection B of § [56-582](#);

b. Projected and actual costs for the utility to design and operate fair and effective peak-shaving programs. The Commission shall approve such a petition if it finds that the program is in the public interest; provided that the Commission shall allow the recovery of such costs as it finds are reasonable;

c. Projected and actual costs for the utility to design, implement, and operate energy efficiency programs, including a margin to be recovered on operating expenses, which margin for the purposes of this section shall be equal to the general rate of return on common equity determined as described in subdivision 2. The Commission shall only approve such a petition if it finds that the program is in the public interest. As part of such cost recovery, the Commission, if requested by the utility, shall allow for the recovery of revenue reductions related to energy efficiency programs. The Commission shall only allow such recovery to the extent that the Commission determines such revenue has not been recovered through margins from incremental off-system sales as defined in § [56-249.6](#) that are directly attributable to energy efficiency programs.

None of the costs of new energy efficiency programs of an electric utility, including recovery of revenue reductions, shall be assigned to any customer that has a verifiable history of having used more than 10 megawatts of demand from a single meter of delivery. Nor shall any of the costs of new energy efficiency programs of an electric utility, including recovery of revenue reductions, be incurred by any large general service customer as defined herein that has notified the utility of non-participation in such energy efficiency program or programs. A large general service customer is a customer that has a verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery. Non-participation in energy efficiency programs shall be allowed by the Commission if the large general service customer has, at the customer's own expense, implemented energy efficiency programs that have produced or will produce measured and verified results consistent with industry standards and other regulatory criteria stated in this section. The Commission shall, no later than November 15, 2009, promulgate rules and regulations to accommodate the process under which such large general service customers shall file notice for such an

exemption and (i) establish the administrative procedures by which eligible customers will notify the utility and (ii) define the standard criteria that must be satisfied by an applicant in order to notify the utility. In promulgating such rules and regulations, the Commission may also specify the timing as to when a utility shall accept and act on such notice, taking into consideration the utility's integrated resource planning process as well as its administration of energy efficiency programs that are approved for cost recovery by the Commission. The notice of non-participation by a large general service customer, to be given by March 1 of a given year, shall be for the duration of the service life of the customer's energy efficiency program. The Commission on its own motion may initiate steps necessary to verify such non-participants' achievement of energy efficiency if the Commission has a body of evidence that the non-participant has knowingly misrepresented its energy efficiency achievement. A utility shall not charge such large general service customer, as defined by the Commission, for the costs of installing energy efficiency equipment beyond what is required to provide electric service and meter such service on the customer's premises if the customer provides, at the customer's expense, equivalent energy efficiency equipment. In all relevant proceedings pursuant to this section, the Commission shall take into consideration the goals of economic development, energy efficiency and environmental protection in the Commonwealth;

d. Projected and actual costs of participation in a renewable energy portfolio standard program pursuant to § [56-585.2](#) that are not recoverable under subdivision 6. The Commission shall approve such a petition allowing the recovery of such costs as are provided for in a program approved pursuant to § [56-585.2](#);

e. Projected and actual costs of projects that the Commission finds to be necessary to comply with state or federal environmental laws or regulations applicable to generation facilities used to serve the utility's native load obligations. The Commission shall approve such a petition if it finds that such costs are necessary to comply with such environmental laws or regulations; and

f. Projected and actual costs, not currently in rates, for the utility to design, implement, and operate programs approved by the Commission that accelerate the vegetation management of distribution rights-of-way. No costs shall be allocated to or recovered from customers that are served within the large general service rate classes for a Phase II Utility or that are served at subtransmission or transmission voltage, or

take delivery at a substation served from subtransmission or transmission voltage, for a Phase I Utility.

The Commission shall have the authority to determine the duration or amortization period for any adjustment clause approved under this subdivision.

6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the utility's projected native load obligations and to promote economic development, a utility may at any time, after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth as described in § [15.2-6002](#), regardless of whether such facility is located within or without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major unit modifications of generation facilities, including the costs of any system or equipment upgrade, system or equipment replacement, or other cost reasonably appropriate to extend the combined operating license for or the operating life of one or more generation facilities utilizing nuclear power, (iv) one or more new underground facilities to replace one or more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth, or (v) one or more pumped hydroelectricity generation and storage facilities that utilize on-site or off-site renewable energy resources as all or a portion of their power source and such facilities and associated resources are located in the coalfield region of the Commonwealth as described in § [15.2-6002](#), regardless of whether such facility is located within or without the utility's service territory; however, subject to the provisions of the following sentence, the utility shall not file a petition under clause (iv) more often than annually and, in such petition, shall not seek any annual incremental increase in the level of investments associated with such a petition that exceeds five percent of such utility's distribution rate base, as such rate base was determined for the most recently ended 12-month test period in the utility's latest biennial review proceeding conducted pursuant to subdivision 3 and concluded by final order of the Commission prior to the date of filing of such petition under clause (iv). In all proceedings regarding petitions filed under clause (iv), the level of investments approved for recovery in such proceedings shall be in addition to, and not in lieu of, levels of investments previously approved for recovery in prior proceedings under clause (iv). Such a petition concerning facilities described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-

fueled and will be built by a Phase I Utility, or facilities described in clause (i) may also be filed before the expiration or termination of capped rates. A utility that constructs or makes modifications to any such facility, or purchases any facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress, and any associated allowance for funds used during construction, planning, development and construction or acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate of return on common equity calculated as specified below; however, in determining the amounts recoverable under a rate adjustment clause for new underground facilities, the Commission shall not consider, or increase or reduce such amounts recoverable because of (a) the operation and maintenance costs attributable to either the overhead distribution facilities being replaced or the new underground facilities or (b) any other costs attributable to the overhead distribution facilities being replaced. Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain eligible for recovery from customers through the utility's base rates for distribution service. A utility filing a petition for approval to construct or purchase a facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may propose a rate adjustment clause based on a market index in lieu of a cost of service model for such facility. A utility seeking approval to construct or purchase a generating facility described in clause (i) or (ii) shall demonstrate that it has considered and weighed alternative options, including third-party market alternatives, in its selection process. The costs of the facility, other than return on projected construction work in progress and allowance for funds used during construction, shall not be recovered prior to the date a facility constructed by the utility and described in clause (i), (ii), or (iii) begins commercial operation, the date the utility becomes the owner of a purchased generation facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one

or more Virginia businesses, or the date new underground facilities are classified by the utility as plant in service. Such enhanced rate of return on common equity shall be applied to allowance for funds used during construction and to construction work in progress during the construction phase of the facility and shall thereafter be applied to the entire facility during the first portion of the service life of the facility. The first portion of the service life shall be as specified in the table below; however, the Commission shall determine the duration of the first portion of the service life of any facility, within the range specified in the table below, which determination shall be consistent with the public interest and shall reflect the Commission's determinations regarding how critical the facility may be in meeting the energy needs of the citizens of the Commonwealth and the risks involved in the development of the facility. After the first portion of the service life of the facility is concluded, the utility's general rate of return shall be applied to such facility for the remainder of its service life. As used herein, the service life of the facility shall be deemed to begin on the date a facility constructed by the utility and described in clause (i), (ii), or (iii) begins commercial operation, the date the utility becomes the owner of a purchased generation facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, or the date new underground facilities are classified by the utility as plant in service, and such service life shall be deemed equal in years to the life of that facility as used to calculate the utility's depreciation expense. Such enhanced rate of return on common equity shall be calculated by adding the basis points specified in the table below to the utility's general rate of return, and such enhanced rate of return shall apply only to the facility that is the subject of such rate adjustment clause. Allowance for funds used during construction shall be calculated for any such facility utilizing the utility's actual capital structure and overall cost of capital, including an enhanced rate of return on common equity as determined pursuant to this subdivision, until such construction work in progress is included in rates. The construction of any facility described in clause (i) or (v) is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title. The construction or purchase by a utility of one or more generation facilities with at least one megawatt of generating capacity, and with an aggregate rated capacity that does not exceed 500 megawatts, that use energy derived from sunlight and are located in the Commonwealth, regardless of whether any of such facilities are

located within or without the utility's service territory, is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title. A utility may enter into short-term or long-term power purchase contracts for the power derived from sunlight generated by such generation 6 of 10 facility prior to purchasing the generation facility. The replacement of any subset of a utility's existing overhead distribution tap lines that have, in the aggregate, an average of nine or more total unplanned outage events-per-mile over a preceding 10-year period with new underground facilities in order to improve electric service reliability is in the public interest. In determining whether to approve petitions for rate adjustment clauses for such new underground facilities that meet this criteria, and in determining the level of costs to be recovered thereunder, the Commission shall liberally construe the provisions of this title. There shall be a rebuttable presumption that the conversion of such facilities will provide local and system-wide benefits, that such new underground facilities are cost beneficial, and that the costs associated with such new underground facilities are reasonably and prudently incurred. The basis points to be added to the utility's general rate of return to calculate the enhanced rate of return on common equity, and the first portion of that facility's service life to which such enhanced rate of return shall be applied, shall vary by type of facility, as specified in the following table:

Type of Generation Facility	Basis Points	First Portion of Service Life
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Nuclear-powered	200	Between 12 and 25 years
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Carbon capture compatible,		
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clean-coal powered	200	Between 10 and 20 years
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Renewable powered, other than		
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landfill gas powered	200	Between 5 and 15 years
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Coalbed methane gas powered	150	Between 5 and 15 years
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Landfill gas powered	200	Between 5 and 15 years
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Conventional coal or combined-		
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cycle combustion turbine	100	Between 10 and 20 years
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For generating facilities other than those utilizing nuclear power constructed pursuant to clause (ii) or those utilizing energy derived from offshore wind, as of July 1, 2013, only those facilities as to which a rate adjustment clause under this subdivision has been previously approved by the Commission, or as to which a petition for approval of such rate adjustment clause was filed with the Commission, on or before January 1, 2013, shall be entitled to the enhanced rate of return on common equity as specified in the above table during the construction phase of the facility and the approved first portion of its service life.

For generating facilities within the Commonwealth utilizing nuclear power or those utilizing energy derived from offshore wind projects located in waters off the Commonwealth's Atlantic shoreline, such facilities shall continue to be eligible for an enhanced rate of return on common equity during the construction phase of the facility and the approved first portion of its service life of between 12 and 25 years in the case of a facility utilizing nuclear power and for a service life of between 5 and 15 years in the case of a facility utilizing energy derived from offshore wind, provided, however, that, as of July 1, 2013, the enhanced return for such facilities constructed pursuant to clause (ii) shall be 100 basis points, which shall be added to the utility's general rate of return as determined under subdivision 2. Thirty percent of all costs of such a facility utilizing nuclear power that the utility incurred between July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by the utility and recovered through a rate adjustment clause under this subdivision at such time as the Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be deferred for recovery through a rate adjustment clause under this subdivision; however, such remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by the Commission in the test periods under review in the utility's next biennial review filed after July 1, 2014. Thirty percent of all costs of such a facility utilizing energy derived from offshore wind that the utility incurred between July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by the utility and recovered through a rate adjustment clause under this subdivision at such time as the Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be deferred for recovery through a rate adjustment clause under

this subdivision; however, such remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by the Commission in the test periods under review in the utility's next biennial review filed after July 1, 2014.

In connection with planning to meet forecasted demand for electric generation supply and assure the adequate and sufficient reliability of service, consistent with § [56-598](#), planning and development activities for a new nuclear generation facility or facilities are in the public interest.

In connection with planning to meet forecasted demand for electric generation supply and assure the adequate and sufficient reliability of service, consistent with § [56-598](#), planning and development activities for a new utility-owned and utility-operated generating facility or facilities utilizing energy derived from sunlight with an aggregate capacity of 500 megawatts, or from offshore wind, are in the public interest.

Neither generation facilities described in clause (ii) that utilize simple-cycle combustion turbines nor new underground facilities shall receive an enhanced rate of return on common equity as described herein, but instead shall receive the utility's general rate of return during the construction phase of the facility and, thereafter, for the entire service life of the facility. No rate adjustment clause for new underground facilities shall allocate costs to, or provide for the recovery of costs from, customers that are served within the large power service rate class for a Phase I Utility and the large general service rate classes for a Phase II Utility. New underground facilities are hereby declared to be ordinary extensions or improvements in the usual course of business under the provisions of § [56-265.2](#).

As used in this subdivision, a generation facility is (1) "coalbed methane gas powered" if the facility is fired at least 50 percent by coalbed methane gas, as such term is defined in § [45.1-361.1](#), produced from wells located in the Commonwealth, and (2) "landfill gas powered" if the facility is fired by methane or other combustible gas produced by the anaerobic digestion or decomposition of biodegradable materials in a solid waste management facility licensed by the Waste Management Board. A landfill gas powered facility includes, in addition to the generation facility itself, the equipment used in collecting, drying, treating, and compressing the landfill gas and in transmitting the landfill gas from the solid waste management facility where it is collected to the generation facility where it is combusted.

For purposes of this subdivision, "general rate of return" means the fair combined rate of return on common equity as it is determined by the Commission from time to time for such utility pursuant to subdivision 2. In any proceeding under this subdivision conducted prior to the conclusion of the first biennial review for such utility, the Commission shall determine a general rate of return for such utility in the same manner as it would in a biennial review proceeding.

Notwithstanding any other provision of this subdivision, if the Commission finds during the biennial review conducted for a Phase II Utility in 2018 that such utility has not filed applications for all necessary federal and state regulatory approvals to construct one or more nuclear-powered or coal-fueled generation facilities that would add a total capacity of at least 1500 megawatts to the amount of the utility's generating resources as such resources existed on July 1, 2007, or that, if all such approvals have been received, that the utility has not made reasonable and good faith efforts to construct one or more such facilities that will provide such additional total capacity within a reasonable time after obtaining such approvals, then the Commission, if it finds it in the public interest, may reduce on a prospective basis any enhanced rate of return on common equity previously applied to any such facility to no less than the general rate of return for such utility and may apply no less than the utility's general rate of return to any such facility for which the utility seeks approval in the future under this subdivision.

7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or that are related to facilities and projects described in clause (i) of subdivision 6, or that are related to new underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and records of the utility until the Commission's final order in the matter, or until the implementation of any applicable approved rate adjustment clauses, whichever is later. Except as otherwise provided in subdivision 6, any costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during the consideration thereof by the Commission, that are proposed for recovery in such petition and that are related to facilities and projects described in clause (ii) or clause (iii) of subdivision 6 that utilize nuclear power, or coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-

fueled facilities will be built by a Phase I Utility, shall be deferred on the books and records of the utility until the Commission's final order in the matter, or until the implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs prudently incurred after the expiration or termination of capped rates related to other matters described in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or termination of capped rates, provided, however, that no provision of this act shall affect the rights of any parties with respect to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a regulatory asset for regulatory accounting and ratemaking purposes under which it shall defer its operation and maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant and (ii) other work at such plant normally performed during a refueling outage. The utility shall amortize such deferred costs over the refueling cycle, but in no case more than 18 months, beginning with the month in which such plant resumes operation after such refueling. The refueling cycle shall be the applicable period of time between planned refueling outages for such plant. As of January 1, 2014, such amortized costs are a component of base rates, recoverable in base rates only ratably over the refueling cycle rather than when such outages occur, and are the only nuclear refueling costs recoverable in base rates. This provision shall apply to any nuclear-powered generating plant refueling outage commencing after December 31, 2013, and the Commission shall treat the deferred and amortized costs of such regulatory asset as part of the utility's costs for the purpose of proceedings conducted (a) with respect to biennial filings under subdivision 3 made on and after July 1, 2014, and (b) pursuant to [§ 56-245](#) or the Commission's rules governing utility rate increase applications as provided in subsection B. This provision shall not be deemed to change or reset base rates.

The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall be entered not more than three months, eight months, and nine months, respectively, after the date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment clause be applied to customers' bills not more than 60 days after the date of the order, or upon the expiration or termination of capped rates, whichever is later.

8. In any biennial review proceeding, the following utility generation and distribution costs not proposed for recovery under any other subdivision of this

subsection, as recorded per books by the utility for financial reporting purposes and accrued against income, shall be attributed to the test periods under review: costs associated with asset impairments related to early retirement determinations made by the utility prior to December 31, 2012, for utility generation plant; costs associated with severe weather events; and costs associated with natural disasters. Such costs shall be deemed to have been recovered from customers through rates for generation and distribution services in effect during the test periods under review unless such costs, individually or in the aggregate, together with the utility's other costs, revenues, and investments to be recovered through rates for generation and distribution services, result in the utility's earned return on its generation and distribution services for the combined test periods under review to fall more than 50 basis points below the fair combined rate of return authorized under subdivision 2 for such periods or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to fall more than 70 basis points below the fair combined rate of return authorized under subdivision 2 for such periods. In such cases, the Commission shall, in such biennial review proceeding, authorize deferred recovery of such costs and allow the utility to amortize and recover such deferred costs over future periods as determined by the Commission. The aggregate amount of such deferred costs shall not exceed an amount that would, together with the utility's other costs, revenues, and investments to be recovered through rates for generation and distribution services, cause the utility's earned return on its generation and distribution services to exceed the fair rate of return authorized under subdivision 2, less 50 basis points, for the combined test periods under review or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under subdivision 2 less 70 basis points. Nothing in this section shall limit the Commission's authority, pursuant to the provisions of Chapter 10 (§ [56-232](#) et seq.), including specifically § [56-235.2](#), following the review of combined test period earnings of the utility in a biennial review, for normalization of nonrecurring test period costs and annualized adjustments for future costs, in determining any appropriate increase or decrease in the utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

If the Commission determines as a result of such biennial review that:

a. The utility has, during the test period or periods under review, considered as a whole, earned more than 50 basis points below a fair combined rate of return on its

generation and distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points below a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, the Commission shall order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such fair combined rate of return, using the most recently ended 12-month test period as the basis for determining the amount of the rate increase necessary. However, the Commission may not order such rate increase unless it finds that the resulting rates are necessary to provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for determining the permissibility of any rate increase under the standards of this sentence, and the amount thereof;

b. The utility has, during the test period or test periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, the Commission shall, subject to the provisions of subdivision 9, direct that 60 percent of the amount of such earnings that were more than 50 basis points, or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, that 70 percent of the amount of such earnings that were more than 70 basis points, above such fair combined rate of return for the test period or periods under review, considered as a whole, shall be credited to customers' bills. Any such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order, and shall be allocated among customer classes such that the relationship between the specific customer class rates of

return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates; or

c. Such biennial review is the second consecutive biennial review in which the utility has, during the test period or test periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matter determined with respect to facilities described in subdivision 6, the Commission shall, subject to the provisions of subdivision 9 and in addition to the actions authorized in subdivision b, also order reductions to the utility's rates it finds appropriate. However, the Commission may not order such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for determining the permissibility of any rate reduction under the standards of this sentence, and the amount thereof.

The Commission's final order regarding such biennial review shall be entered not more than eight months after the date of filing, and any revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order. The fair combined rate of return on common equity determined pursuant to subdivision 2 in such biennial review shall apply, for purposes of reviewing the utility's earnings on its rates for generation and distribution services, to the entire two successive 12-month test periods ending December 31 immediately preceding the year of the utility's subsequent biennial review filing under subdivision 3.

9. If, as a result of a biennial review required under this subsection and conducted with respect to any test period or periods under review ending later than December 31, 2010 (or, if the Commission has elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the Commission finds,

with respect to such test period or periods considered as a whole, that (i) any utility has, during the test period or periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, and (ii) the total aggregate regulated rates of such utility at the end of the most recently-ended 12-month test period exceeded the annual increases in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, compounded annually, when compared to the total aggregate regulated rates of such utility as determined pursuant to the biennial review conducted for the base period, the Commission shall, unless it finds that such action is not in the public interest or that the provisions of subdivisions 8 b and c are more consistent with the public interest, direct that any or all earnings for such test period or periods under review, considered as a whole that were more than 50 basis points, or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points, above such fair combined rate of return shall be credited to customers' bills, in lieu of the provisions of subdivisions 8 b and c. Any such credits shall be amortized and allocated among customer classes in the manner provided by subdivision 8 b. For purposes of this subdivision:

"Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected to stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test period with respect to which credits have been applied to customers' bills under the provisions of this subdivision, whichever is later.

"Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § [56-249.6](#), except for any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31, 2010, pursuant to the provisions of clause (ii) of subsection C of § [56-249.6](#); (ii) rate adjustment clauses implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8 a; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility

rate increase applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as of July 1, 2009.

10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital structure and cost of capital of such utility, unless the Commission finds that the debt to equity ratio of such capital structure is unreasonable for such utility, in which case the Commission may utilize a debt to equity ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant to subdivisions 8 a and c, and without regard to the cost of capital, capital structure, revenues, expenses or investments of any other entity with which such utility may be affiliated. In particular, and without limitation, the Commission shall determine the federal and state income tax costs for any such utility that is part of a publicly traded, consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable income or loss of its affiliates.

B. Nothing in this section shall preclude an investor-owned incumbent electric utility from applying for an increase in rates pursuant to § [56-245](#) or the Commission's rules governing utility rate increase applications; however, in any such filing, a fair rate of return on common equity shall be determined pursuant to subdivision A 2. Nothing in this section shall preclude such utility's recovery of fuel and purchased power costs as provided in § [56-249.6](#).

C. Except as otherwise provided in this section, the Commission shall exercise authority over the rates, terms and conditions of investor-owned incumbent electric utilities for the provision of generation, transmission and distribution services to retail customers in the Commonwealth pursuant to the provisions of Chapter 10 (§ [56-232](#) et seq.), including specifically § [56-235.2](#).

D. The Commission may determine, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding. A determination of the Commission regarding the reasonableness or prudence of any such cost shall be consistent with the Commission's authority to determine the reasonableness

or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ [56-232](#) et seq.). In determining the reasonableness or prudence of a utility providing energy and capacity to its customers from renewable energy resources, the Commission shall consider the extent to which such renewable energy resources, whether utility-owned or by contract, further the objectives of the Commonwealth Energy Policy set forth in §§ [67-101](#) and [67-102](#), and shall also consider whether the costs of such resources is likely to result in unreasonable increases in rates paid by consumers.

E. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this section.

2007, cc. [888](#), [933](#); 2008, c. [476](#); 2009, c. [824](#); 2011, cc. [236](#), [367](#), [371](#), [380](#), [382](#); 2012, c. [435](#); 2013, c. [2](#); 2014, cc. [212](#), [541](#), [548](#), [550](#); 2015, cc. [37](#), [599](#); 2016, c. [3](#); 2017, cc. [246](#), [564](#), [583](#), [820](#).

§56-585.1:1. Transitional Rate Period: review of rates, terms and conditions for utility generation facilities.

Notwithstanding the provisions of §§ [56-249.6](#) and [56-585.1](#):

A. No biennial reviews of the rates, terms, and conditions for any service of a Phase I Utility, as defined in § [56-585.1](#), shall be conducted at any time by the State Corporation Commission for the four successive 12-month test periods beginning January 1, 2014, and ending December 31, 2017. No biennial reviews of the rates, terms, and conditions for any service of a Phase II Utility, as defined in § [56-585.1](#), shall be conducted at any time by the State Corporation Commission for the five successive 12-month test periods beginning January 1, 2015, and ending December 31, 2019. Such test periods beginning January 1, 2014, and ending December 31, 2017, for a Phase I Utility, and beginning January 1, 2015, and ending December 31, 2019, for a Phase II Utility, are collectively referred to herein as the "Transitional Rate Period." Review of recovery of fuel and purchase power costs shall continue during the Transitional Rate Period in accordance with § [56-249.6](#). Any biennial review of the rates, terms, and conditions for any service of a Phase II Utility occurring in 2015 during the Transitional Rate Period shall be solely a review of the utility's earnings on its rates for generation and distribution services for the two 12-month test periods ending December 31, 2014, and a determination of whether any credits to customers are due for such test periods pursuant to subdivision A 8 b of § [56-585.1](#). After the conclusion of the Transitional Rate Period, biennial reviews shall resume for a Phase I

Utility in 2020, with the first such proceeding utilizing the two successive 12-month test periods beginning January 1, 2018, and ending December 31, 2019. After the conclusion of the Transitional Rate Period, biennial reviews shall resume for a Phase II Utility, as defined in § [56-585.1](#), in 2022, with the first such proceeding utilizing the two successive 12-month test periods beginning January 1, 2020, and ending December 31, 2021. Consistent with this provision, (i) no biennial review filings shall be made by an investor-owned incumbent electric utility in the years 2016 through 2019, inclusive, and (ii) no adjustment to an investor-owned incumbent electric utility's existing tariff rates, including any rates adopted pursuant to § [56-235.2](#), shall be made between the beginning of the Transitional Rate Period and the conclusion of the first biennial review after the conclusion of the Transitional Rate Period, except as may be provided pursuant to § [56-245](#) or [56-249.6](#) or subdivisions A 4, 5, or 6 of § [56-585.1](#).

B. During the Transitional Rate Period, pursuant to § [56-36](#), the Commission shall have the right at all times to inspect the books, papers and documents of any investor-owned incumbent electric utility and to require from such companies, from time to time, special reports and statements, under oath, concerning their business.

C. 1. Commencing in 2016 and concluding in 2018, the State Corporation Commission, after notice and opportunity for a hearing, shall conduct a proceeding every two years to determine the fair rate of return on common equity to be used by a Phase I Utility as the general rate of return applicable to rate adjustment clauses under subdivisions A 5 or A 6 of § [56-585.1](#). A Phase I Utility's filing in such proceedings shall be made on or before March 31 of 2016, and 2018.

2. Commencing in 2017 and concluding in 2019, the State Corporation Commission, after notice and opportunity for a hearing, shall conduct a proceeding every two years to determine the fair rate of return on common equity to be used by a Phase II Utility as the general rate of return applicable to rate adjustment clauses under subdivisions A 5 or A 6 of § [56-585.1](#). A Phase II utility's filing in such proceedings shall be made on or before March 31 of 2017 and 2019.

3. Such fair rate of return shall be calculated pursuant to the methodology set forth in subdivisions A 2 a and b of § [56-585.1](#) and shall utilize the utility's actual end-of-test-period capital structure and cost of capital, as well as a 12-month test period ending December 31 immediately preceding the year in which the proceeding is conducted. The Commission's final order in such a proceeding shall be entered no later

than eight months after the date of filing, with any adjustment to the fair rate of return for applicable rate adjustment clauses under subdivisions A 5 and 6 of § [56-585.1](#) taking effect on the date of the Commission's final order in the proceeding, utilizing rate adjustment clause true-up protocols as the Commission may in its discretion determine. Such proceeding shall concern only the issue of the determination of such fair rate of return to be used for rate adjustment clauses under subdivisions A 5 and 6 of § [56-585.1](#), and such determination shall have no effect on rates other than those applicable to such rate adjustment clauses; however, after the final such proceeding for a utility has been concluded, the fair combined rate of return on common equity so determined therein shall also be deemed equal to the fair combined rate of return on common equity to be used in such utility's first biennial review proceeding conducted after the end of the utility's Transitional Rate Period to review such utility's earnings on its rates for generation and distribution services for the historic test periods.

D. In furtherance of rate stability during the Transitional Rate Period, any Phase II Utility carrying a prior period deferred fuel expense recovery balance on its books and records as of December 31, 2014, shall not recover from customers 50 percent of any such balance outstanding as of December 31, 2014, and the State Corporation Commission shall implement as soon as practicable reductions in the fuel factor rate of any such Phase II Utility to reflect the nonrecovery of any such fuel expense as well as any reduction in the fuel factor associated with the Phase II Utility's current period forecasted fuel expense over recovery for the 2014-2015 fuel year and projected fuel expense for the 2015-2016 fuel year.

E. Except for early retirement plans identified by the utility in an integrated resource plan filed with the State Corporation Commission by September 1, 2014, for utility generation plants, an investor-owned incumbent electric utility shall not permanently retire an electric power generation facility from service during the Transitional Rate Period without first obtaining the approval of the State Corporation Commission, upon petition from such investor-owned incumbent electric utility, and a finding by the State Corporation Commission that the retirement determination is reasonable and prudent. During the Transitional Rate Period, an investor-owned incumbent electric utility shall recover the following costs, as recorded per books by the utility for financial reporting purposes and accrued against income, only through its existing tariff rates for generation or distribution services, except such costs as may be recovered pursuant to § [56-245](#), § [56-249.6](#) or subdivisions A 4, A 5, or A 6

of § [56-585.1](#): (i) costs associated with asset impairments related to early retirement determinations for utility generation facilities resulting from the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the Clean Air Act; (ii) costs associated with severe weather events; and (iii) costs associated with natural disasters.

F. During the Transitional Rate Period:

1. The State Corporation Commission shall submit a report and make recommendations to the Governor and the General Assembly annually on or before December 1 of each year assessing the updated integrated resource plan of any investor-owned incumbent electric utility. The report shall include an analysis of, among other matters, the amount, reliability, and type of generation facilities needed to serve Virginia native load compared to what is then available to serve such load and what may be available to serve such load in the future in view of market conditions and current and pending state and federal environmental regulations. As a part of such report, the State Corporation Commission shall update its estimate of the impact upon electric rates in Virginia of the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the federal Clean Air Act. The State Corporation Commission shall submit copies of such annual reports to the Chairmen of the House and Senate Committees on Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation; and
2. The Department of Environmental Quality shall submit a report and make recommendations to the Governor and the General Assembly annually on or before December 1 of each year concerning the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the federal Clean Air Act. The report shall include an analysis of, among other matters, the impact of such federal regulations on the operation of any investor-owned incumbent electric utility's electric power generation facilities and any changes, interdiction, or suspension of such regulations. The Department of Environmental Quality shall submit copies of such annual reports to the Chairmen of the House and Senate Committees on Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation.

G. The construction or purchase by an investor-owned incumbent utility of one or more generation facilities with at least one megawatt of generating capacity, and with an aggregate rated capacity that does not exceed 500 megawatts, that use energy derived from sunlight and are located in the Commonwealth, regardless of whether any of such facilities are located within or without such utility's service territory, is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this section. Such utility shall utilize goods or services sourced, in whole or in part, from one or more Virginia businesses. The utility may propose a rate adjustment clause based on a market index in lieu of a cost of service model for such facility. An investor-owned incumbent utility may enter into short-term or long-term power purchase contracts for the power derived from sunlight generated by such generation facility prior to purchasing the generation facility.

2015, c. [6](#).

§56-585.1:2. Pilot program for energy assistance and weatherization.

Notwithstanding the provisions of §§ [56-249.6](#) and [56-585.1](#):

Each Phase I and II Utility shall conduct a pilot program for energy assistance and weatherization for low income, elderly, and disabled individuals in their respective service territories in the Commonwealth. Each pilot program shall be funded by the utility and shall commence September 1, 2015. Each such utility shall report on the status of its pilot program, including the number of individuals served thereby, to the Governor, the State Corporation Commission, and the Chairmen of the House and Senate Commerce and Labor Committees by July 1, 2016, and each year thereafter.

2015, c. [6](#).

§56-585.1:3. Pilot programs for community solar development.

A. As used in this section:

"Eligible generation facility" means an electrical generation facility that:

1. Exclusively uses energy derived from sunlight;
2. Is placed in service on or after July 1, 2017;
3. Is not constructed by an investor-owned utility and either (i) is acquired by an investor-owned utility through an asset purchase agreement or (ii) is subject to a

power purchase agreement under which an investor-owned utility purchases the facility's output from a third party; and

4. Has a generating capacity of:

a. Not more than two megawatts; or

b. More than two megawatts if not more than two megawatts of the output from the electrical generation facility is selected in an investor-owned utility's RFP for dedication to its pilot program.

"Generating capacity" means an electrical generation facility's nameplate rated capacity measured in direct current megawatts.

"Investor-owned utility" means an electric utility that is a Phase I Utility or a Phase II Utility.

"Participating generating facility" means an eligible generation facility that is selected by an investor-owned utility through its RFP for inclusion in its pilot program.

"Participating third party" means, for investor-owned utilities, a Virginia non-residential-class customer, an affiliate, a solar development entity, or a non-jurisdictional customer that takes on the obligation, as part of a variable-output contract, of pilot program costs not recovered through the voluntary companion rate schedule as specified in subdivision B 8.

"Participating utility" means (i) each investor-owned utility and (ii) any utility consumer services cooperative that elects to conduct a pilot program under subsection C.

"Phase I Utility" means an investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002.

"Phase II Utility" means an investor-owned incumbent electric utility that was, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002.

"Pilot program" means a community solar pilot program conducted by a participating utility pursuant to this section following approval by the Commission, under which the participating utility sells electric power to subscribing customers under a voluntary companion rate schedule and the participating utility generates or purchases electric power from participating generation facilities selected by the participating utility.

"Pilot program costs" means all of a participating utility's identified, projected, and actual costs of its pilot program, including costs for (i) purchased power; (ii) renewable and other environmental attributes; (iii) transmission and distribution services; (iv) generating capacity and energy balancing; (v) RFP process costs; (vi) administrative and marketing charges; (vii) capital costs and operations and maintenance expenses related to building, owning, and operating eligible generating facilities; and (viii) a reasonable margin, which margin shall be the weighted average cost of capital.

"Pilot program period" means the three-year period ending three years following the date the first subscription is entered into by a customer.

"RFP" means the request for proposal process conducted by an investor-owned utility.

"Small eligible generation facility" means an eligible generation facility with a generating capacity of less than 0.5 megawatt.

"Solar development entity" means a business entity organized primarily for the purpose of proposing, developing, constructing, purchasing, or selling at wholesale all or part of the output of an eligible generation facility. A solar development entity may be organized in any form and may be a special purpose entity.

"Utility aggregation cooperative" has the same meaning ascribed to "cooperative" in § [56-231.38](#).

"Utility consumer services cooperative" has the same meaning ascribed to "cooperative" in § [56-231.15](#).

"Voluntary companion rate schedule" means a rate schedule approved by the Commission upon application by a participating utility that provides for the recovery of the pilot program costs by the participating utility.

B. Notwithstanding the provisions of subsection B of § [56-234](#) and §§ [56-249.6](#) and [56-585.1](#), each investor-owned utility shall conduct a pilot program for retail customers as follows:

1. Each investor-owned utility shall design its own pilot program and within six months of receiving Commission approval shall make subscriptions for participation in its pilot program available to its retail customers on a voluntary basis.

2. An investor-owned utility shall select eligible generating facilities for dedication to its pilot program through an RFP process, under which process:

a. Each investor-owned utility shall have issued one or more public RFPs for eligible generating facilities and the purchase of all energy output and associated renewable energy certificates and other environmental attributes.

b. Each RFP shall:

(1) State the price and non-price criteria used by the investor-owned utility in selecting proposals for dedication to its pilot program; and

(2) Require as a criterion for selection that eligible generating facilities with a combined generating capacity of not less than two megawatts, and any eligible generating facility with a generating capacity of more than two megawatts, be first placed in service on or after July 1, 2017.

c. Each investor-owned utility is authorized to select, under an asset purchase or power purchase agreement, small eligible generating facilities for dedication to its pilot program without regard to whether price criteria are satisfied by their selection if the selection of the small eligible generating facilities materially advances non-price criteria, including a criterion favoring geographic distribution of eligible generating facilities, provided that the generating capacity of small eligible generating facilities does not exceed 25 percent of the utility's pilot program's minimum generating capacity specified in subdivision 3.

d. An investor-owned utility shall not select through its RFP an electrical generation facility with a generating capacity of more than two megawatts for its pilot program unless (i) the costs can be appropriately documented for the portion of the facility's output, which portion shall not exceed two megawatts, that is dedicated to the pilot program and (ii) for a Phase II Utility only, the portion of the facility's generating capacity selected pursuant to this subdivision does not exceed 50 percent of the investor-owned utility's pilot program's minimum generating capacity specified in subdivision 3. The portion of the facility's generating capacity that exceeds the portion of the facility's generating capacity that is selected pursuant to this subdivision shall not be applied in determining whether the pilot program satisfies requirements of subdivision 3 regarding a pilot program's minimum generating capacity.

e. In selecting eligible generating facilities for dedication to its pilot program, an investor-owned utility shall give due consideration to relative costs, economic development benefits, and geographic diversity of eligible generating facilities.

f. The investor-owned utility's application to the Commission shall include a description of the application of the price and non-price criteria in the investor-owned utility's selection of participating generating facilities from among the proposals submitted in response to the RFP.

3. The amount of generating capacity of the eligible generating facilities in an investor-owned utility's pilot program shall not be less than (i) 0.5 megawatt if the pilot program is conducted by a Phase I Utility or (ii) 10 megawatts if the pilot program is conducted by a Phase II Utility.

4. The amount of generating capacity of the eligible generating facilities in an investor-owned utility's pilot program shall not exceed (i) 10 megawatts if the pilot program is conducted by a Phase I Utility or (ii) 40 megawatts if the pilot program is conducted by a Phase II Utility.

5. An investor-owned utility shall have the option of increasing the amount of generating capacity of the eligible generating facilities in its pilot program above the amount most recently approved by the Commission, in such increments as the investor-owned utility elects, as follows:

a. Any such increase shall not result in an amount of generating capacity that exceeds the cap specified for the investor-owned utility's pilot program under subdivision 4;

b. No such increase shall be authorized until such time that 90 percent of the amount of generating capacity of the eligible generating facilities then approved for its pilot program has been subscribed by customers through the investor-owned utility's voluntary companion rate schedule;

c. An investor-owned utility may seek any number of increases in the amount of generating capacity of the eligible generating facilities in its pilot program, subject to the conditions in subdivisions a and b; and

d. The investor-owned utility shall select eligible generating facilities for any increase in the generating capacity of its pilot program through an RFP process that complies with the requirements of subdivision 2.

6. Each pilot program shall expire at the end of its pilot program period, unless renewed or made permanent by appropriate legislation.

7. The renewable energy certificates and other environmental attributes associated with the voluntary companion rate schedule shall be retired by the investor-owned utility on the subscribing customer's behalf.

8. An investor-owned utility shall recover all its pilot program costs primarily through its voluntary companion rate schedule. However, pilot program costs that are not recovered through the voluntary companion rate schedule shall be recoverable from a participating third party and not from the investor-owned utility's Virginia jurisdictional customers. To the extent participating third parties are obligated for pilot program costs not recovered through the voluntary companion rate schedule, variable-output contracts between participating third parties other than affiliates and investor-owned utilities shall be negotiated at arm's length and shall not be reviewable by the Commission and shall require no further Commission approvals pursuant to Chapter 4 (§ [56-76](#) et seq.) or other applicable law.

9. At the conclusion of the pilot program period, to the extent that the pilot program is not made permanent or extended, each participating generating facility shall cease to be part of the pilot program and shall return to operation under the variable-output contract with a participating third party.

10. Any fixed generation costs and fixed purchased power costs shall remain fixed for subscribing customers throughout the duration of the subscribing customers' continuous and uninterrupted participation in the voluntary companion rate schedule. A subscribing customer's participation in the voluntary companion rate schedule shall be deemed to be continuous and uninterrupted notwithstanding a change in the location where the customer receives service if the new location continues to be within the investor-owned utility's service territory and the customer provides the investor-owned utility with notice of the change prior to or within 90 days following the change. Investor-owned utilities are authorized to decrease the generation or purchased power rate, or both, at any time to reflect cost reductions, if any, subject to Commission review. If, pursuant to subdivision 9, the pilot program is not made permanent or continued, the subscribing customers' subscriptions to the voluntary companion rate schedule shall survive the termination of the pilot program.

11. A subscribing customer's usage that exceeds the amount subscribed for under the voluntary companion rate schedule shall be billed under the customer's applicable standard rate.

12. An investor-owned utility shall not require a subscribing customer to enter an agreement or subscription for participation in a pilot program of more than 12 months' duration unless the subscribing customer's subscription exceeds 100 kW, or its equivalent in kWh, at the time the customer initially enters into the agreement or subscription.

13. As part of an arrangement with a solar development entity, a utility may enter into an agreement that provides for risk sharing and collaboration in marketing a utility's pilot program if the solar development entity is a participating third party.

14. An investor-owned utility shall have the ability to close its pilot program to new subscribers according to the terms of the voluntary companion rate schedule upon notice to the Commission. This option shall be exercisable once per year, upon the anniversary date of the Commission's order approving the voluntary companion rate schedule.

C. Notwithstanding the provisions of subsection B of § [56-234](#) and §§ [56-249.6](#) and [56-585.1](#), upon application of a utility consumer services cooperative the Commission shall review a proposal submitted by the cooperative for a voluntary companion rate schedule. If the Commission finds that the proposal is reasonable and prudent, it shall approve the voluntary companion rate schedule for the cooperative to conduct a pilot program pursuant to this section. No utility consumer services cooperative shall be required to conduct a pilot program pursuant to this section. In making an application to the Commission pursuant to this subsection, a utility consumer services cooperative shall have flexibility to design its voluntary companion rate schedule in a manner that, notwithstanding anything to the contrary in this section, provides the cooperative the ability to:

1. Construct or purchase its generating facilities, or dedicate a portion of its existing power supply portfolio, for its community solar pilot program along with one or more other utility consumer services cooperatives, one or both Phase I or Phase II Utilities, or a utility aggregation cooperative, through requests for proposal or through a contract with a third party or a utility aggregation cooperative;

2. If constructing or purchasing its generating facilities, or dedicating a portion of its existing power supply portfolio, for its pilot program through a utility aggregation cooperative, include generating facilities that may be already in service or may be first placed into service at any time;

3. Utilize generating facilities of any generating capacity for its pilot program;

4. Physically locate the generating facilities used for the pilot program inside or outside of its certificated service territory;
5. Design its voluntary companion rate schedule in coordination with one or more utility consumer services cooperatives, such that participating subscribers from both cooperatives subscribe to an identical rate schedule;
6. Permanently end its pilot program for all subscribers according to the terms of the voluntary companion rate schedule; and
7. Recover pilot program costs that are not recovered through the voluntary companion rate schedule by including unrecovered purchased power expense in the cooperative's cost of purchased power and through a regulatory asset for unrecovered costs that are not purchased power expense, subject to the oversight of the cooperative's board of directors, which regulatory asset shall be approved by the Commission.

D. The participation of retail customers in a pilot program administered by a participating utility in the Commonwealth is in the public interest. Voluntary companion rate schedules approved by the Commission pursuant to this section are necessary in order to acquire information which is in furtherance of the public interest. The Commission shall approve the recovery of pilot program costs that it deems to be reasonable and prudent. The Commission shall also approve the pilot program design, the voluntary companion rate schedule, and the portfolio of participating generating facilities. No Commission review or approval of individual participating generating facilities, agreements, sites, or RFPs shall be required pursuant to this section or any other section of the Code.

E. Any voluntary companion rate schedule approved by the Commission pursuant to this section shall not be considered a tariff for electric energy provided 100 percent from renewable energy pursuant to § [56-577](#).

F. Each participating utility shall report on the status of its pilot program, including the number of subscribing customers, to the Governor, the Commission, and the Chairmen of the House and Senate Commerce and Labor Committees. The report shall be filed the earlier of (i) three years after the date a customer of the participating utility first subscribes to its pilot program or (ii) July 1, 2022. If a participating utility closes its pilot program to new subscribers pursuant to subdivision B 14, it shall notify the Governor, the Commission, and the Chairmen of the House

and Senate Commerce and Labor Committees not later than three months after such closure, which notification shall (a) describe the reasons for the closure and (b) be provided in lieu of the status report otherwise required by this subsection.

2017, c. [580](#).

§56-585.2. Sale of electricity from renewable sources through a renewable energy portfolio standard program.

A. As used in this section:

"Qualified investment" means an expense incurred in the Commonwealth by a participating utility in conducting, either by itself or in partnership with institutions of higher education in the Commonwealth or with industrial or commercial customers that have established renewable energy research and development programs in the Commonwealth, research and development activities related to renewable or alternative energy sources, which expense (i) is designed to enhance the participating utility's understanding of emerging energy technologies and their potential impact on and value to the utility's system and customers within the Commonwealth; (ii) promotes economic development within the Commonwealth; (iii) supplements customer-driven alternative energy or energy efficiency initiatives; (iv) supplements alternative energy and energy efficiency initiatives at state or local governmental facilities in the Commonwealth; or (v) is designed to mitigate the environmental impacts of renewable energy projects.

"Renewable energy" shall have the same meaning ascribed to it in § [56-576](#), provided such renewable energy is (i) generated in the Commonwealth or in the interconnection region of the regional transmission entity of which the participating utility is a member, as it may change from time to time, and purchased by a participating utility under a power purchase agreement; provided, however, that if such agreement was executed on or after July 1, 2013, the agreement shall expressly transfer ownership of renewable attributes, in addition to ownership of the energy, to the participating utility; (ii) generated by a public utility providing electric service in the Commonwealth from a facility in which the public utility owns at least a 49 percent interest and that is located in the Commonwealth, in the interconnection region of the regional transmission entity of which the participating utility is a member, or in a control area adjacent to such interconnection region; or (iii) represented by renewable energy certificates. "Renewable energy" shall not include electricity gen-

erated from pumped storage, but shall include run-of-river generation from a combined pumped-storage and run-of-river facility.

"Renewable energy certificate" means either (i) a certificate issued by an affiliate of the regional transmission entity of which the participating utility is a member, as it may change from time to time, or any successor to such affiliate, and held or acquired by such utility, that validates the generation of renewable energy by eligible sources in the interconnection region of the regional transmission entity or (ii) a certificate issued by the Commission pursuant to subsection J and held or acquired by a participating utility, that validates a qualified investment made by the participating utility.

"Total electric energy sold in the base year" means total electric energy sold to Virginia jurisdictional retail customers by a participating utility in calendar year 2007, excluding an amount equivalent to the average of the annual percentages of the electric energy that was supplied to such customers from nuclear generating plants for the calendar years 2004 through 2006.

B. Any investor-owned incumbent electric utility may apply to the Commission for approval to participate in a renewable energy portfolio standard program, as defined in this section. The Commission shall approve such application if the applicant demonstrates that it has a reasonable expectation of achieving 12 percent of its base year electric energy sales from renewable energy sources during calendar year 2022, and 15 percent of its base year electric energy sales from renewable energy sources during calendar year 2025, as provided in subsection D.

C. It is in the public interest for utilities that seek to have a renewable energy portfolio standard program to achieve the goals set forth in subsection D, such goals being referred to herein as "RPS Goals." A utility shall receive double credit toward meeting the renewable energy portfolio standard for energy derived from sunlight, from onshore wind, or from facilities in the Commonwealth fueled primarily by animal waste, and triple credit toward meeting the renewable energy portfolio standard for energy derived from offshore wind.

D. Regarding any renewable energy portfolio standard program, the total electric energy sold by a utility to meet the RPS Goals shall be composed of the following amounts of electric energy or renewable thermal energy equivalent from renewable energy sources, as adjusted for any sales volumes lost through operation of the customer choice provisions of subdivision A 3 or A 4 of § 56-577:

RPS Goal I: In calendar year 2010, 4 percent of total electric energy sold in the base year.

RPS Goal II: For calendar years 2011 through 2015, inclusive, an average of 4 percent of total electric energy sold in the base year, and in calendar year 2016, 7 percent of total electric energy sold in the base year.

RPS Goal III: For calendar years 2017 through 2021, inclusive, an average of 7 percent of total electric energy sold in the base year, and in calendar year 2022, 12 percent of total electric energy sold in the base year.

RPS Goal IV: For calendar years 2023 and 2024, inclusive, an average of 12 percent of total electric energy sold in the base year, and in calendar year 2025, 15 percent of total electric energy sold in the base year.

A utility may not apply renewable energy certificates issued pursuant to subsection J to meet more than 20 percent of the sales requirement for the RPS Goal in any year.

A utility may apply renewable energy sales achieved or renewable energy certificates acquired during the periods covered by any such RPS Goal that are in excess of the sales requirement for that RPS Goal to the sales requirements for any future RPS Goals in the five calendar years after the renewable energy was generated or the renewable energy certificates were created, except that a utility shall be able to apply renewable energy certificates acquired by the utility prior to January 1, 2014.

E. A utility participating in such program shall have the right to recover all incremental costs incurred for the purpose of such participation in such program, as accrued against income, through rate adjustment clauses as provided in subdivisions A 5 and A 6 of § [56-585.1](#), including, but not limited to, administrative costs, ancillary costs, capacity costs, costs of energy represented by certificates described in subsection A, and, in the case of construction of renewable energy generation facilities, allowance for funds used during construction until such time as an enhanced rate of return, as determined pursuant to subdivision A 6 of § [56-585.1](#), on construction work in progress is included in rates, projected construction work in progress, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to subdivision A 6 of § [56-585.1](#). This subsection shall not apply to qualified investments as provided in subsection K. All incremental costs of the RPS program shall be allocated to and recovered from the utility's customer classes based on the demand

created by the class and within the class based on energy used by the individual customer in the class, except that the incremental costs of the RPS program shall not be allocated to or recovered from customers that are served within the large industrial rate classes of the participating utilities and that are served at primary or transmission voltage.

F. A utility participating in such program shall apply towards meeting its RPS Goals any renewable energy from existing renewable energy sources owned by the participating utility or purchased as allowed by contract at no additional cost to customers to the extent feasible. A utility participating in such program shall not apply towards meeting its RPS Goals renewable energy certificates attributable to any renewable energy generated at a renewable energy generation source in operation as of July 1, 2007, that is operated by a person that is served within a utility's large industrial rate class and that is served at primary or transmission voltage, except for those persons providing renewable thermal energy equivalents to the utility. A participating utility shall be required to fulfill any remaining deficit needed to fulfill its RPS Goals from new renewable energy supplies at reasonable cost and in a prudent manner to be determined by the Commission at the time of approval of any application made pursuant to subsection B. A participating utility may sell renewable energy certificates produced at its own generation facilities located in the Commonwealth or, if located outside the Commonwealth, owned by such utility and in operation as of January 1, 2010, or renewable energy certificates acquired as part of a purchase power agreement, to another entity and purchase lower cost renewable energy certificates and the net difference in price between the renewable energy certificates shall be credited to customers. Utilities participating in such program shall collectively, either through the installation of new generating facilities, through retrofit of existing facilities or through purchases of electricity from new facilities located in Virginia, use or cause to be used no more than a total of 1.5 million tons per year of green wood chips, bark, sawdust, a tree or any portion of a tree which is used or can be used for lumber and pulp manufacturing by facilities located in Virginia, towards meeting RPS goals, excluding such fuel used at electric generating facilities using wood as fuel prior to January 1, 2007. A utility with an approved application shall be allocated a portion of the 1.5 million tons per year in proportion to its share of the total electric energy sold in the base year, as defined in subsection A, for all utilities participating in the RPS program. A utility may use in meeting RPS goals, without limitation, the following sustainable biomass and biomass based waste to

energy resources: mill residue, except wood chips, sawdust and bark; pre-commercial soft wood thinning; slash; logging and construction debris; brush; yard waste; shipping crates; dunnage; non-merchantable waste paper; landscape or right-of-way tree trimmings; agricultural and vineyard materials; grain; legumes; sugar; and gas produced from the anaerobic decomposition of animal waste.

G. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this section including a requirement that participants verify whether the RPS goals are met in accordance with this section.

H. Each investor-owned incumbent electric utility shall report to the Commission annually by November 1 identifying:

1. The utility's efforts, if any, to meet the RPS Goals, specifically identifying:
 - a. A list of all states where the purchased or owned renewable energy was generated, specifying the number of megawatt hours or renewable energy certificates originating from each state;
 - b. A list of the decades in which the purchased or owned renewable energy generating units were placed in service, specifying the number of megawatt hours or renewable energy certificates originating from those units; and
 - c. A list of fuel types used to generate the purchased or owned renewable energy, specifying the number of megawatt hours or renewable energy certificates originating from each fuel type;
2. The utility's overall generation of renewable energy; and
3. Advances in renewable generation technology that affect activities described in subdivisions 1 and 2.

I. The Commission shall post on its website the reports submitted by each investor-owned incumbent electric utility pursuant to subsection H.

J. The Commission shall issue to a participating utility a number of renewable energy certificates for qualified investments, upon request by a participating utility, if it finds that an expense satisfies the conditions set forth in this section for a qualified investment, as follows:

1. By March 31 of each year, the participating utility shall provide an analysis, as reasonably determined by a qualified independent broker, of the average for the preceding year of the publicly available prices for Tier 1 renewable energy certificates

and Tier 2 renewable energy certificates, validating the generation of renewable energy by eligible sources, that were issued in the interconnection region of the regional transmission entity of which the participating utility is a member;

2. In the same annual analysis provided to the Commission, the participating utility shall divide the amount of the participating utility's qualified investments in the applicable period by the average price determined pursuant to subdivision 1;

3. The number of renewable energy certificates to be issued to the participating utility shall equal the product obtained pursuant to subdivision 2; and

4. The Commission shall review and validate the analysis provided by the participating utility within 90 days of submittal of its analysis to the Commission. If no corrections are made by the Commission, then the analysis shall be deemed correct and the renewable energy certificates shall be deemed issued to the participating utility.

Each renewable energy certificate issued to a participating utility pursuant to this subsection shall represent the equivalent of one megawatt hour of renewable energy sales achieved when applied to an RPS Goal.

K. Qualified investments shall constitute reasonable and prudent operating expenses of a participating utility. Notwithstanding subsection E, a participating utility shall not be authorized to recover the costs associated with qualified investments through rate adjustment clauses as provided in subdivisions A 5 and A 6 of § [56-585.1](#). In any proceeding conducted pursuant to § [56-585.1](#) or other provision of this title in which a participating utility seeks recovery of its qualified investments as an operating expense, the participating utility shall not be authorized to earn a return on its qualified investments.

L. A participating utility shall not be eligible for a research and development tax credit pursuant to § [58.1-439.12:08](#) or [58.1-439.12:11](#) with regard to any expense incurred or investment made by the participating utility that constitutes a qualified investment pursuant to this section.

2007, cc. [888](#), [933](#); 2008, c. [651](#); 2009, c. [744](#); 2010, c. [850](#); 2012, cc. [46](#), [67](#), [200](#), [274](#), [348](#), [717](#); 2013, cc. [2](#), [308](#), [403](#); 2014, cc. [420](#), [465](#); 2016, cc. [300](#), [661](#).

§56-585.3. Regulation of cooperative rates after rate caps.

A. After the expiration or termination of capped rates, the rates, terms and conditions of distribution electric cooperatives subject to Article 1 (§ [56-231.15](#) et seq.)

of Chapter 9.1 of this title shall be regulated in accordance with the provisions of Chapters 9.1 (§ [56-231.15](#) et seq.) and 10 (§ [56-232](#) et seq.) of this title, as modified by the following provisions:

1. Except for energy related cost (fuel cost), the Commission shall not require any cooperative to adjust, modify, or revise its rates, by means of riders or otherwise, to reflect changes in wholesale power cost which occurred during the capped rate period, other than in a general rate proceeding;
2. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, increase or decrease all classes of its rates for distribution services at any time, provided, however, that such adjustments will not effect a cumulative net increase or decrease in excess of 5 percent in such rates in any three year period. Such adjustments will not affect or be limited by any existing fuel or wholesale power cost adjustment provisions. The cooperative will promptly file any such revised rates with the Commission for informational purposes;
3. Each cooperative may, without Commission approval, upon an affirmative resolution of its board of directors, make any adjustment to its terms and conditions that does not affect the cooperative's revenues from the distribution or supply of electric energy. In addition, a cooperative may make such adjustments to any pass-through of third-party service charges and fees, and to any fees, charges and deposits set out in Schedule F of such cooperative's Terms and Conditions filed as of January 1, 2007. The cooperative will promptly file any such amended terms and conditions with the Commission for informational purposes;
4. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, make any adjustment to its rates reasonably calculated to collect any or all of the fixed costs of owning and operating its electric distribution system, including without limitation, such costs as are identified as customer-related costs in a cost of service study, through a new or modified fixed monthly charge, rather than through volumetric charges associated with the use of electric energy; however, such adjustments shall be revenue neutral based on the cooperative's determination of the proper intra-class allocation of the revenues produced by its then current rates. The cooperative may elect, but is not required, to implement such adjustments through incremental changes over the course of up to three years. The cooperative shall file

promptly revised tariffs reflecting any such adjustments with the Commission for informational purposes; and

5. A cooperative may, at any time after the expiration or termination of capped rates, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of the costs described in subdivisions A 5 b and e of § [56-585.1](#).

B. None of the adjustments described in subdivisions A 2 through A 5 will apply to the rates paid by any customer that takes service by means of dedicated distribution facilities and had noncoincident peak demand in excess of 90 megawatts in calendar year 2006.

C. Nothing in this section shall be deemed to grant to a cooperative any authority to amend or adjust any terms and conditions of service or agreements regarding pole attachments or the use of the cooperative's poles or conduits.

2007, cc. [888](#), [933](#); 2009, cc. [401](#), [824](#).

§56-586. Emergency service provider.

On and after January 1, 2001, if any supplier fails to fulfill an obligation, resulting in the failure of retail electric energy to be delivered into the control area serving the supplier's retail customer, the entity fulfilling the control area function, or, if applicable, the regional transmission entity or other entity as designated by the Commission, shall be responsible for charging the defaulting supplier for the full cost of replacement energy, including the cost of energy, the cost incurred by others as a result of the default, and the assessment of penalties as may be approved either by the Commission, to the extent not precluded by federal law, or by the Federal Energy Regulatory Commission. The Commission, as part of the rules established under § [56-587](#), shall determine the circumstances under which failures to deliver electricity will result in the revocation of the supplier's license.

1999, c. [411](#).

§56-586.1. Electric energy emergencies.

A. As used in this section, "electric energy emergency" means an unplanned interruption in the generation or transmission of electricity resulting from a hurricane, ice storm, windstorm, earthquake or similar natural phenomena, or from a criminal act affecting such generation or transmission, act of war or act of terrorism, which interruption is (i) of such severity that minimum levels of reliable service cannot be

maintained using resources practicably obtainable from the market and (ii) so imminently and substantially threatening to the health, safety or welfare of residents of this Commonwealth that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.

B. The Governor is authorized, after finding that an electric energy emergency exists and that appropriate federal and state agencies and appropriate reliability councils cannot adequately address such emergency, to declare an electric energy emergency by filing a written declaration with the Secretary of the Commonwealth. The declaration shall state the counties and cities or utility service areas of the Commonwealth in which the declaration is applicable, or its statewide application. A declared electric energy emergency shall go into immediate effect upon filing and continue in effect for the period prescribed in the declaration, but not more than thirty days. At the end of the prescribed period, the Governor may issue another declaration extending the emergency. The Governor shall terminate such declaration as soon as the basis for such declaration no longer exists.

C. During a declared electric energy emergency, the Governor is authorized, in compliance with guidelines of the Department of Emergency Services promulgated as provided in subsection G, to require any generator or any municipal electric utility that is capable of generating but (i) is not generating or (ii) is not generating at its full potential during such declared electric emergency, to generate, dispatch or sell electricity from a facility that it operates within the Commonwealth, to the Commonwealth for distribution within the areas of the Commonwealth designated in the declaration. The quantity of electricity required to be generated, dispatched or sold, and the duration of such requirements, shall be as determined by the Governor to be necessary to alleviate the electric energy emergency hardship. The Commonwealth shall compensate an entity required to generate, dispatch, or sell electricity pursuant to this subsection, and the operator of any transmission facilities over which the electricity is transmitted, in the manner provided in § [56-522](#), mutatis mutandis, unless otherwise provided by federal law. The Department of Environmental Quality, the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board shall issue any temporary or emergency permit, order, or variance necessary to authorize any permit amendments or other changes needed to meet the requirements imposed under this section and the Governor may petition the President to declare a regional energy emergency under 42 U.S.C. § 7410 (f) as

necessary to suspend enforcement of any provision of the federal Clean Air Act. Any increased operation required during such declared emergency shall not be counted towards the number of hours of operation allowed during the year. No civil charges or penalties shall be imposed for any violation that occurs as a result of actions taken that are necessary for the required generation, dispatch or sale during the declared electric energy emergency. The foregoing provisions shall apply to all actions the entity takes in connection with such required generation, dispatch or sale during the period of the declared emergency.

D. During a declared electric energy emergency, the Governor may use the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the Commonwealth, and of the political subdivisions thereof, to the maximum extent practicable and necessary to meet the electric energy emergency. The officers and personnel of all such departments, offices, and agencies shall cooperate with and extend such services and facilities to the Governor upon request.

E. During a declared electric energy emergency, the Governor is authorized to request the Secretary of the United States Department of Energy to invoke section 202(C) of the Federal Power Act, 16 U.S.C. § 824a (1935).

F. The General Assembly is authorized by joint resolution to terminate any declaration of an electric energy emergency. The emergency shall be terminated at the time of filing of the joint resolution with the Secretary of the Commonwealth.

G. The Department of Emergency Services, in consultation with the Commission and the Secretary of Commerce and Trade, shall establish guidelines for the implementation of the Governor's powers pursuant to subsection C that protect the public health and safety and prevent unnecessary or avoidable damage to property with a minimum of economic disruption to generators, transmitters and distributors of electricity. Such guidelines shall:

1. Define various foreseeable levels of electric energy emergencies and specify appropriate measures to be taken for each type of electric energy emergency as necessary to protect the public health or safety or prevent unnecessary or avoidable damage to property;
2. Prescribe appropriate response measures for each level of electric energy emergency; and

3. Equitably distribute the burdens and benefits resulting from the implementation of this section among other members of the affected class of persons within all geographic regions of the Commonwealth.

H. During a declared electric energy emergency, the attorney general may bring an action for injunctive or other appropriate relief in the Circuit Court of the City of Richmond to secure prompt compliance. The court may issue an ex parte temporary order without notice that shall enforce the prohibitions, restrictions or actions that are necessary to secure compliance with the guideline, order or declaration.

I. During a declared electric energy emergency, no person shall intentionally violate any guideline adopted or declaration issued pursuant to this section. Any person who violates this section is guilty of a Class 1 misdemeanor.

2002, c. [609](#).

§56-587. Licensure of retail electric energy suppliers and persons providing other competitive services.

A. As a condition of doing business in the Commonwealth, each person except a default service provider seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth, on and after January 1, 2002, shall obtain a license from the Commission to do so. A license shall not be required solely for the leasing or financing of property used in the sale of electricity to any retail customer in the Commonwealth.

The license shall authorize that person to engage in the activities authorized by such license until the license expires or is otherwise terminated, suspended or revoked.

B. 1. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (ii) post a bond as deemed adequate by the Commission to ensure that financial responsibility; (iii) pay an annual license fee to be determined by the Commission; and (iv) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including but not limited to requirements that

such person demonstrate (i) technical capabilities as the Commission may deem appropriate; (ii) in the case of a person seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth, access to generation and generation reserves; and (iii) adherence to minimum market conduct standards.

2. Any license issued by the Commission pursuant to this section to a person seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth may be conditioned upon the licensee furnishing to the Commission prior to the provision of electric energy to consumers proof of adequate access to generation and generation reserves.

C. 1. The Commission shall establish a reasonable period within which any retail customer may cancel, without penalty or cost, any contract entered into with any person licensed pursuant to this section.

2. The Commission may adopt other rules and regulations governing the requirements for obtaining, retaining, and renewing a license issued pursuant to this section, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those requirements.

D. Notwithstanding the provisions of § [13.1-620](#), a public service company may, through an affiliate or subsidiary, conduct one or more of the following businesses, even if such business is not related to or incidental to its stated business as a public service company: (i) become licensed as a retail electric energy supplier pursuant to this section, or for purposes of participation in an approved pilot program encompassing retail customer choice of electric energy suppliers; (ii) become licensed as an aggregator pursuant to § [56-588](#), or for purposes of participation in an approved pilot program encompassing retail customer choice of electric energy suppliers; or (iii) own, manage or control any plant or equipment or any part of a plant or equipment used for the generation of electric energy.

1999, c. [411](#); 2000, c. [991](#); 2007, cc. [888](#), [933](#).

§56-588. Licensing of aggregators.

A. As a condition of doing business in the Commonwealth, each person seeking to act as an aggregator within this Commonwealth on and after January 1, 2002, shall obtain a license from the Commission to do so. The license shall authorize that person to act as an aggregator until the license expires or is otherwise terminated, suspended or revoked. Licensing pursuant to this section, however, shall not relieve any

person seeking to act as a supplier of electric energy from their obligation to obtain a license as a supplier pursuant to § [56-587](#).

B. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) provide background information; (ii) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (iii) post a bond as deemed adequate by the Commission to ensure that financial responsibility; (iv) pay an annual license fee to be determined by the Commission; and (v) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including, but not limited to, requirements that such person demonstrate technical capabilities as the Commission may deem appropriate. Any license issued by the Commission pursuant to this section may be conditioned upon the licensee, if acting as a supplier, furnishing to the Commission prior to the provision of electricity to consumers proof of adequate access to generation and generation reserves.

C. In establishing aggregator licensing schemes and requirements applicable to the same, the Commission may differentiate between (i) those aggregators representing retail customers only, (ii) those aggregators representing suppliers only, and (iii) those aggregators representing both retail customers and suppliers.

D.1. The Commission shall establish a reasonable period within which any retail customer may cancel, without penalty or cost, any contract entered into with an aggregator licensed pursuant to this section.

2. The Commission may adopt other rules and regulations governing the requirements for obtaining, retaining, and renewing a license to aggregate electric energy to retail customers, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those requirements.

1999, c. [411](#); 2000, c. [991](#).

§56-589. Municipal and state aggregation.

A. Subject to the provisions of subdivision A 3 of § [56-577](#), counties, cities, and towns (hereafter municipalities) and other political subdivisions of the Commonwealth may, at their election and upon authorization by majority votes of their governing bodies, aggregate electrical energy and demand requirements for the purpose of negotiating the purchase of electrical energy requirements from any licensed supplier within this Commonwealth, as follows:

1. Any municipality or other political subdivision of the Commonwealth may aggregate the electric energy load of residential, commercial, and industrial retail customers within its boundaries on an opt-in or opt-out basis.
2. Any municipality or other political subdivision of the Commonwealth may aggregate the electric energy load of its governmental buildings, facilities, and any other governmental operations requiring the consumption of electric energy. Aggregation pursuant to this subdivision shall not require licensure pursuant to § [56-588](#).
3. Two or more municipalities or other political subdivisions within the Commonwealth may aggregate the electric energy load of their governmental buildings, facilities, and any other governmental operations requiring the consumption of electric energy. Aggregation pursuant to this subdivision shall not require licensure pursuant to § [56-588](#) when such municipalities or other political subdivisions are acting jointly to negotiate or arrange for themselves agreements for their energy needs directly with licensed suppliers or aggregators.

Nothing in this subsection shall prohibit the Commission's development and implementation of pilot programs for opt-in, opt-out, or any other type of municipal aggregation, as provided in § [56-577](#).

B. The Commonwealth, at its election, may aggregate the electric energy load of its governmental buildings, facilities, and any other government operations requiring the consumption of electric energy for the purpose of negotiating the purchase of electricity from any licensed supplier within the Commonwealth. Aggregation pursuant to this subsection shall not require licensure pursuant to § [56-588](#).

C. Nothing in this section shall preclude municipalities from aggregating the electric energy load of their governmental buildings, facilities and any other governmental operations requiring the consumption of electric energy for the purpose of negotiating rates and terms, and conditions of service from the electric utility certificated by the Commission to serve the territory in which such buildings, facilities and

operations are located, provided, however, that no such electric energy load shall be aggregated for this purpose unless all such buildings, facilities and operations to be aggregated are served by the same electric utility.

1999, c. [411](#); 2000, c. [991](#); 2003, c. [795](#); 2004, c. [827](#); 2007, cc. [888](#), [933](#).

§56-590. Divestiture, functional separation and other corporate relationships.

A. The Commission shall not require any incumbent electric utility to divest itself of any generation, transmission or distribution assets pursuant to any provision of this chapter.

B.1. The Commission shall, however, direct the functional separation of generation, retail transmission and distribution of all incumbent electric utilities in connection with the provisions of this chapter to be completed by January 1, 2002.

2. By January 1, 2001, each incumbent electric utility shall submit to the Commission a plan for such functional separation which may be accomplished through the creation of affiliates, or through such other means as may be acceptable to the Commission.

3. Consistent with this chapter, the Commission may impose conditions, as the public interest requires, upon its approval of any incumbent electric utility's plan for functional separation, including requirements that (i) the incumbent electric utility's generation assets or, at the election of the incumbent electric utility and if approved by the Commission pursuant to subdivision 4 of this subsection, their equivalent are made available for electric service during the capped rate period as provided in § [56-582](#) and, if applicable, during any period the distributor serves as a default provider as provided for in § [56-585](#); (ii) the incumbent electric utility receive Commission approval for the sale, transfer or other disposition of generation assets during the capped rate period and, if applicable, during any period the distributor serves as a default provider; and (iii) any such generation asset sold, transferred, or otherwise disposed of by the incumbent electric utility with Commission approval shall not be further sold, transferred, or otherwise disposed of during the capped rate period and, if applicable, during any period the distributor serves as default provider, without additional Commission approval.

4. If an incumbent electric utility proposes that the equivalent to its generation assets be made available pursuant to subdivision 3 of this subsection, the Com-

mission shall determine the adequacy of such proposal and shall approve or reject such proposal based on the public interest.

5. In exercising its authority under the provisions of this section and under § [56-90](#), the Commission shall have no authority to regulate, on a cost-of-service basis or other basis, the price at which generation assets or their equivalent are made available for default service purposes. Such restriction on the Commission's authority to regulate, on a cost-of-service basis or other basis, prices for default service shall not affect the ability of a distributor to offer to provide, and of the Commission to approve if appropriate the provision of, such services on a cost plus basis or any other basis. The Commission's authority to regulate the price of default service shall be consistent with the pricing provisions applicable to a distributor pursuant to § [56-585](#). In addition, the Commission shall, in exercising its responsibilities under this section and under § [56-90](#), consider, among other factors, the potential effects of any such transfer on: (i) rates and reliability of capped rate service under § [56-582](#), and of default service under § [56-585](#), and (ii) the development of a competitive market in the Commonwealth for retail generation services. However, the Commission may not deny approval of a transfer proposed by an incumbent electric utility, pursuant to subdivisions 2 and 4 of this subsection, due to an inability to determine, at the time of consideration of the transfer, default service prices under § [56-585](#).

C. The Commission shall, to the extent necessary to promote effective competition in the Commonwealth, promulgate rules and regulations to carry out the provisions of this section, which rules and regulations shall include provisions:

1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;
2. Prohibiting functionally separate units from engaging in anticompetitive behavior or self-dealing;
3. Prohibiting affiliated entities from engaging in discriminatory behavior towards nonaffiliated units; and
4. Establishing codes of conduct detailing permissible relations between functionally separate units.

D. Neither a covered entity nor an affiliate thereof may be a party to a covered transaction without the prior approval of the Commission. Any such person proposing to be a party to such transaction shall file an application with the Commission. The Commission shall approve or disapprove such transaction within sixty days after the

filing of a completed application; however, the sixty-day period may be extended by Commission order for a period not to exceed an additional 120 days. The application shall be deemed approved if the Commission fails to act within such initial or extended period. The Commission shall approve such application if it finds, after notice and opportunity for hearing, that the transaction will comply with the requirements of subsection E, and may, as a part of its approval, establish such conditions or limitations on such transaction as it finds necessary to ensure compliance with subsection E.

E. A transaction described in subsection D shall not:

1. Substantially lessen competition among the actual or prospective providers of non-competitive electric service or of a service which is, or is likely to become, a competitive electric service; or
2. Jeopardize or impair the safety or reliability of electric service in the Commonwealth, or the provision of any noncompetitive electric service at just and reasonable rates.

F. Except as provided in subdivision B 5, nothing in this chapter shall be deemed to abrogate or modify the Commission's authority under Chapter 3 (§ [56-55](#) et seq.), 4 (§ [56-76](#) et seq.) or 5 (§ [56-88](#) et seq.) of this title. However, any person subject to the requirements of subsection D that is also subject to the requirements of Chapter 5 of this title may be exempted from compliance with the requirements of Chapter 5 of this title.

1999, c. [411](#); 2000, c. [991](#); 2001, c. [748](#); 2007, cc. [888](#), [933](#).

§56-591. Application of antitrust laws.

Nothing in this chapter shall be construed to exempt or immunize from punishment or prosecution, conduct violative of federal antitrust laws, or the antitrust laws of this Commonwealth.

1999, c. [411](#).

§56-592. Consumer education and marketing practices.

A. The Commission shall develop an electric energy consumer education program designed to provide the following information to retail customers:

1. Information regarding energy conservation, energy efficiency, demand-side management, demand response, and renewable energy;

2. Information concerning demand-side management and demand response programs offered in the Commonwealth to retail customers;
3. Information regarding the matters described in subdivisions 1 and 2 that are specifically designed for the industrial, commercial, residential, and government sectors; and
4. Such other information as the Commission may deem necessary and appropriate in the public interest.

B. The Commission shall complete the development of the consumer education program described in subsection A, and report its findings and recommendations to the Commission on Electric Utility Regulation as frequently as may be required by such Commission concerning:

1. The scope of such recommended program consistent with the requirements of subsection A;
2. Materials and media required to effectuate any such program;
3. State agency and nongovernmental entity participation;
4. Program duration;
5. Funding requirements and mechanisms for any such program; and
6. Such other findings and recommendations the Commission deems appropriate in the public interest.

C. The Commission shall develop regulations governing marketing practices by public service companies, licensed suppliers, aggregators or any other providers of services made competitive by this chapter, including regulations to prevent unauthorized switching of suppliers, unauthorized charges, and improper solicitation activities. The Commission shall also establish standards for marketing information to be furnished by licensed suppliers, aggregators or any other providers of services made competitive by this chapter, which information shall include standards concerning:

1. Pricing and other key contract terms and conditions;
2. To the extent feasible, fuel mix and emissions data on at least an annualized basis;
3. Customer's rights of cancellation following execution of any contract;
4. Toll-free telephone number for customer assistance; and

5. Such other and further marketing information as the Commission may deem necessary and appropriate in the public interest.

D. The Commission shall also establish standards for billing information to be furnished by public service companies, suppliers, aggregators or any other providers of services made competitive by this chapter. Such billing information standards shall require that billing formation:

1. Distinguishes between charges for regulated services and unregulated services;
2. Is presented in a format that complies with standards to be established by the Commission;
3. Discloses, to the extent feasible, fuel mix and emissions data on at least an annualized basis; and
4. Includes such other billing information as the Commission deems necessary and appropriate in the public interest.

E. The Commission shall establish or maintain a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against public service companies, licensed suppliers, aggregators and other providers of any services made competitive under this chapter. Upon the request of any interested person or the Attorney General, or upon its own motion, the Commission shall be authorized to inquire into possible violations of this chapter and to enjoin or punish any violations thereof pursuant to its authority under this chapter, this title, and under Title 12.1. The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.

F. The Commission shall establish reasonable limits on customer security deposits required by public service companies, suppliers, aggregators or any other persons providing competitive services pursuant to this chapter.

1999, c. [411](#); 2003, c. [885](#); 2008, c. [883](#).

§56-592.1. Consumer education program; scope and funding.

A. The Commission shall establish and implement the consumer education program developed pursuant to subsection A of § [56-592](#). In establishing such a program, the Commission shall take into account the findings and recommendations of the subgroup on Information/Consumer Education that was established in conjunction with

the Commission's proceeding in Case PUE-2007-00049, that implemented the third enactment of Chapters 888 and 933 of the Acts of Assembly of 2007 .

B. The program shall be designed to (i) enable consumers to make rational and informed choices about the matters described in subsection A of § [56-592](#), including but not limited to demand side management, energy conservation, and energy efficiency, (ii) help consumers reduce transaction costs in making decisions regarding such matters, and (iii) foster compliance with the consumer protection provisions of this chapter.

C. The Commission shall regularly consult with representatives of consumer organizations, community-based groups, state agencies, incumbent utilities, and other interested parties throughout the program's implementation and operation.

D. Pursuant to the provisions of § [30-205](#), the Commission shall provide periodic updates to the Commission on Electric Utility Regulation concerning the program's implementation and operation.

E. The Commission shall fund the establishment and operation of such consumer education program through the special regulatory revenue tax currently authorized by § [58.1-2660](#) and the special regulatory tax authorized by Chapter 29 (§ [58.1-2900](#) et seq.) of Title 58.1.

2000, c. [991](#); 2003, c. [885](#); 2008, c. [883](#).

§56-593. Retail customers' private right of action; marketing practices.

A. No entity subject to this chapter shall use any deception, fraud, false pretense, misrepresentation, or any deceptive or unfair practices in providing, distributing or marketing electric service.

B.1. Any person who suffers loss (i) as the result of marketing practices, including telemarketing practices, engaged in by any public service company, licensed supplier, aggregator or any other provider of any service made competitive under this chapter, and in violation of subsection C of § [56-592](#), including any rule or regulation adopted by the Commission pursuant thereto, or (ii) as the result of any violation of subsection A, shall be entitled to initiate an action to recover actual damages, or \$500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or \$1,000, whichever is greater.

2. Upon referral from the Commission, the Attorney General, the attorney for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought in the appropriate circuit court for relief of violations within the scope of (i) subsection C of § [56-592](#), including any rule or regulation adopted by the Commission pursuant thereto or (ii) subsection A.

C. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person, or any governmental agency initiating such action, also may be awarded reasonable attorney's fees and court costs.

D. Any action pursuant to this section shall be commenced within two years after its accrual. The cause of action shall accrue as provided in § [8.01-230](#). However, if the Commission initiates proceedings, or any other governmental agency files suit for the purpose of enforcing subsection A of this section or the provisions of subsection C of § [56-592](#), the time during which such proceeding or governmental suit and all appeals therefrom is pending shall not be counted as any part of the period within which an action under this section shall be brought.

E. The circuit court may make such additional orders or decrees as may be necessary to restore to any identifiable person any money or property, real, personal, or mixed, tangible or intangible, which may have been acquired from such person by means of any act or practice violative of subsection A of this section or subsection C of § [56-592](#), provided, that such person shall be identified by order of the court within 180 days from the date of any order permanently enjoining the unlawful act or practice.

F. In any case arising under this section, no liability shall be imposed upon any licensed supplier, aggregator or any other provider of any service made competitive under this chapter, who shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of subsection A of this section or subsection C of § [56-592](#) was an act or practice over which the same had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subsection C to individuals aggrieved as a result of an unintentional violation of subsection A of this section or subsection C of § [56-592](#).

1999, c. [411](#); 2000, c. [991](#).

§56-594. Net energy metering provisions.

A. The Commission shall establish by regulation a program that affords eligible customer-generators the opportunity to participate in net energy metering, and a program, to begin no later than July 1, 2014, for customers of investor-owned utilities and no later than July 1, 2015, for customers of electric cooperatives, to afford eligible agricultural customer-generators the opportunity to participate in net energy metering. The regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners or operators of distribution or transmission facilities; (iii) providers of default service; (iv) eligible customer-generators; (v) eligible agricultural customer-generators; or (vi) any combination of the foregoing, as the Commission determines will facilitate the provision of net energy metering, provided that the Commission determines that such requirements do not adversely affect the public interest. On and after July 1, 2017, small agricultural generators or eligible agricultural customer-generators may elect to interconnect pursuant to the provisions of this section or as small agricultural generators pursuant to § [56-594.2](#), but not both. Existing eligible agricultural customer-generators may elect to become small agricultural generators, but may not revert to being eligible agricultural customer-generators after such election. On and after July 1, 2019, interconnection of eligible agricultural customer-generators shall cease for electric cooperatives only, and such facilities shall interconnect solely as small agricultural generators. For electric cooperatives, eligible agricultural customer-generators whose renewable energy generating facilities were interconnected before July 1, 2019, may continue to participate in net energy metering pursuant to this section for a period not to exceed 25 years from the date of their renewable energy generating facility's original interconnection.

B. For the purpose of this section:

"Eligible agricultural customer-generator" means a customer that operates a renewable energy generating facility as part of an agricultural business, which generating facility (i) uses as its sole energy source solar power, wind power, or aerobic or anaerobic digester gas, (ii) does not have an aggregate generation capacity of more than 500 kilowatts, (iii) is located on land owned or controlled by the agricultural business, (iv) is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (v) is interconnected and operated in parallel with an electric company's transmission and distribution facilities, and (vi) is used primarily to provide energy to metered accounts of the agricultural business. An eligible agricultural customer-generator may be served by multiple meters that are located at separate but contiguous sites, such that the eligible agricultural customer-generator

may aggregate in a single account the electricity consumption and generation measured by the meters, provided that the same utility serves all such meters. The aggregated load shall be served under the appropriate tariff.

"Eligible customer-generator" means a customer that owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than 20 kilowatts for residential customers and not more than one megawatt for nonresidential customers on an electrical generating facility placed in service after July 1, 2015; (ii) uses as its total source of fuel renewable energy, as defined in § [56-576](#); (iii) is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements. In addition to the electrical generating facility size limitations in clause (i), the capacity of any generating facility installed under this section after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

"Net energy metering" means measuring the difference, over the net metering period, between (i) electricity supplied to an eligible customer-generator or eligible agricultural customer-generator from the electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible customer-generator or eligible agricultural customer-generator.

"Net metering period" means the 12-month period following the date of final interconnection of the eligible customer-generator's or eligible agricultural customer-generator's system with an electric service provider, and each 12-month period thereafter.

"Small agricultural generator" has the same meaning that is ascribed to that term in § [56-594.2](#).

C. The Commission's regulations shall ensure that (i) the metering equipment installed for net metering shall be capable of measuring the flow of electricity in two directions and (ii) any eligible customer-generator seeking to participate in net energy metering shall notify its supplier and receive approval to interconnect prior to installation of an electrical generating facility. The electric distribution company shall have 30 days from the date of notification for residential facilities, and 60 days

from the date of notification for nonresidential facilities, to determine whether the interconnection requirements have been met. Such regulations shall allocate fairly the cost of such equipment and any necessary interconnection. An eligible customer-generator's electrical generating system, and each electrical generating system of an eligible agricultural customer-generator, shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the requirements set forth in this section and to ensure public safety, power quality, and reliability of the supplier's electric distribution system, an eligible customer-generator or eligible agricultural customer-generator whose electrical generating system meets those standards and rules shall bear all reasonable costs of equipment required for the interconnection to the supplier's electric distribution system, including costs, if any, to (a) install additional controls, (b) perform or pay for additional tests, and (c) purchase additional liability insurance.

D. The Commission shall establish minimum requirements for contracts to be entered into by the parties to net metering arrangements. Such requirements shall protect the eligible customer-generator or eligible agricultural customer-generator against discrimination by virtue of its status as an eligible customer-generator or eligible agricultural customer-generator, and permit customers that are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariffs to participate as an eligible customer-generator or eligible agricultural customer-generator. Notwithstanding the cost allocation provisions of subsection C, eligible customer-generators or eligible agricultural customer-generators served on demand charge-based time-of-use tariffs shall bear the incremental metering costs required to net meter such customers.

E. If electricity generated by an eligible customer-generator or eligible agricultural customer-generator over the net metering period exceeds the electricity consumed by the eligible customer-generator or eligible agricultural customer-generator, the customer-generator or eligible agricultural customer-generator shall be compensated for the excess electricity if the entity contracting to receive such electric energy and the eligible customer-generator or eligible agricultural customer-generator enter into a power purchase agreement for such excess electricity. Upon the written request of the eligible customer-generator or eligible agricultural customer-generator, the supplier that serves the eligible customer-generator or eligible agricultural customer-generator shall enter into a power purchase agreement with the requesting eligible customer-

generator or eligible agricultural customer-generator that is consistent with the minimum requirements for contracts established by the Commission pursuant to subsection D. The power purchase agreement shall obligate the supplier to purchase such excess electricity at the rate that is provided for such purchases in a net metering standard contract or tariff approved by the Commission, unless the parties agree to a higher rate. The eligible customer-generator or eligible agricultural customer-generator owns any renewable energy certificates associated with its electrical generating facility; however, at the time that the eligible customer-generator or eligible agricultural customer-generator enters into a power purchase agreement with its supplier, the eligible customer-generator or eligible agricultural customer-generator shall have a one-time option to sell the renewable energy certificates associated with such electrical generating facility to its supplier and be compensated at an amount that is established by the Commission to reflect the value of such renewable energy certificates. Nothing in this section shall prevent the eligible customer-generator or eligible agricultural customer-generator and the supplier from voluntarily entering into an agreement for the sale and purchase of excess electricity or renewable energy certificates at mutually-agreed upon prices if the eligible customer-generator or eligible agricultural customer-generator does not exercise its option to sell its renewable energy certificates to its supplier at Commission-approved prices at the time that the eligible customer-generator or eligible agricultural customer-generator enters into a power purchase agreement with its supplier. All costs incurred by the supplier to purchase excess electricity and renewable energy certificates from eligible customer-generators or eligible agricultural customer-generators shall be recoverable through its Renewable Energy Portfolio Standard (RPS) rate adjustment clause, if the supplier has a Commission-approved RPS plan. If not, then all costs shall be recoverable through the supplier's fuel adjustment clause. For purposes of this section, "all costs" shall be defined as the rates paid to the eligible customer-generator or eligible agricultural customer-generator for the purchase of excess electricity and renewable energy certificates and any administrative costs incurred to manage the eligible customer-generator's or eligible agricultural customer-generator's power purchase arrangements. The net metering standard contract or tariff shall be available to eligible customer-generators or eligible agricultural customer-generators on a first-come, first-served basis in each electric distribution company's Virginia service area until the rated generating capacity owned and operated by eligible customer-generators, eligible agricultural customer-generators, and small agricultural generators in the state

reaches one percent of each electric distribution company's adjusted Virginia peak-load forecast for the previous year, and shall require the supplier to pay the eligible customer-generator or eligible agricultural customer-generator for such excess electricity in a timely manner at a rate to be established by the Commission.

F. Any residential eligible customer-generator or eligible agricultural customer-generator who owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility with a capacity that exceeds 10 kilowatts shall pay to its supplier, in addition to any other charges authorized by law, a monthly standby charge. The amount of the standby charge and the terms and conditions under which it is assessed shall be in accordance with a methodology developed by the supplier and approved by the Commission. The Commission shall approve a supplier's proposed standby charge methodology if it finds that the standby charges collected from all such eligible customer-generators and eligible agricultural customer-generators allow the supplier to recover only the portion of the supplier's infrastructure costs that are properly associated with serving such eligible customer-generators or eligible agricultural customer-generators. Such an eligible customer-generator or eligible agricultural customer-generator shall not be liable for a standby charge until the date specified in an order of the Commission approving its supplier's methodology.

1999, c. [411](#); 2004, c. [827](#); 2006, c. [470](#); 2007, cc. [877](#), [888](#), [933](#); 2009, c. [804](#); 2011, c. [239](#); 2013, c. [268](#); 2015, cc. [431](#), [432](#); 2017, cc. [565](#), [581](#).

§56-594.1. Interconnection by farms.

A. As used in this section, "eligible farm" means an entity that owns or operates facilities within the Commonwealth for the generation of electric energy, which entity is described in subdivision (b)(10) of § [56-265.1](#).

B. Eligible farms shall be permitted to connect to the electrical grid in order to feed into the grid electricity generated by the eligible farm from its facilities that generate electricity from a waste-to-energy technology.

C. The Commission shall adopt regulations to implement this section pursuant to § [56-578](#).

2009, c. [746](#).

§56-594.2. Small agricultural generators.

A. As used in this section:

"Small agricultural generating facility" means an electrical generating facility that:

1. Has a capacity:

a. Of not more than 1.5 megawatts; and

b. That does not exceed 150 percent of the customer's expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available;

2. Uses as its total source of fuel renewable energy;

3. Is located on the customer's premises and is interconnected with its utility through a separate meter;

4. Is interconnected and operated in parallel with an electric utility's distribution but not transmission facilities;

5. Is designed so that the electricity generated by the facility is expected to remain on the utility's distribution system; and

6. Is a qualifying small power production facility pursuant to the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

"Small agricultural generator" means a customer that:

1. Is not an eligible agricultural customer-generator pursuant to § [56-594](#);

2. Operates a small agricultural generating facility as part of an agricultural business;

3. May be served by multiple meters that are located at separate but contiguous sites;

4. May aggregate the electricity consumption measured by the meters, solely for purposes of calculating 150 percent of the customer's expected annual energy consumption, but not for billing or retail service purposes, provided that the same utility serves all of its meters;

5. Uses not more than 25 percent of contiguous land owned or controlled by the agricultural business for purposes of the renewable energy generating facility; and

6. Issues a certification under oath as to the amount of land being used for renewable generation.

"Utility" includes supplier or distributor, as applicable.

B. A small agricultural generator electing to interconnect pursuant to this section shall:

1. Enter into a power purchase agreement with its utility to sell all of the electricity generated from its small agricultural generating facility, which power purchase agreement obligates the utility to purchase all the electricity generated, at a rate agreed upon by the parties, but at a rate not less than the utility's Commission-approved avoided cost tariff for energy and capacity;
2. Have the rights described in subsection E of § [56-594](#) pertaining to an eligible agricultural customer-generator as to the renewable energy certificates or other environmental attributes generated by the renewable energy generating facility;
3. Abide by the appropriate small generator interconnection process as described in 20VAC5-314; and
4. Pay to its utility any necessary additional expenses as required by this section.

C. Utilities:

1. Shall purchase, through the power purchase agreement described in subdivision B 1, all of the output of the small agricultural generator;
2. Shall recover the cost for its distribution facilities to the generating meter either through a proportional cost-sharing agreement with the small agricultural generator or through metering the total capacity and energy placed on the distribution system by the small agricultural generator;
3. Shall recover all costs incurred by the utility to purchase electricity, capacity, and renewable energy certificates from the small agricultural generator:
 - a. If the utility has a Commission-approved Renewable Energy Portfolio Standard (RPS) plan and rate adjustment clause, through the utility's RPS rate adjustment clause; or
 - b. If the utility does not have a Commission-approved RPS rate adjustment clause, through the utility's fuel adjustment clause or through the utility's cost of purchased power;
4. May conduct settlement transactions for purchased power in dollars on the small agricultural generator's electric bill or through other means of settlement, in the utility's sole discretion;
5. Shall bill the small agricultural generator eligible costs for small generator interconnection studies required pursuant to the appropriate small generator interconnection process described in subdivision B 3; and

6. Shall bill its expenses, at cost, for any additional engineering studies that a small agricultural generator is required to pay prior to interconnection.

2017, cc. [565](#), [581](#).

§56-595. Repealed.

Repealed by Acts 2003, c. [885](#).

§56-596. Consideration of economic development; report.

A. In all relevant proceedings pursuant to this Act, the Commission shall take into consideration, among other things, the goal of economic development in the Commonwealth.

B. By September 1 of each year, the Commission shall report to the Commission on Electric Utility Regulation and the Governor on the status of the implementation of this chapter and its recommendations regarding the implementation of the provisions of this chapter. This report shall include the Commission's recommendations for any actions by the General Assembly, the Commission, electric utilities, or any other entity that the Commission considers to be in the public interest.

2001, c. [748](#); 2003, c. [885](#); 2008, c. [883](#).

Virginia Estate Tax

§58.1-900. Title.

This chapter shall be known and may be cited as the "Virginia Estate Tax Act."

Code 1950, § 58-238.1; 1978, c. 838; 1984, c. 675.

§58.1-901. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Decedent" means a deceased person.

"Federal credit" means the maximum amount of the credit for state death taxes allowable by § 2011 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision, in respect to a decedent's taxable estate. The term "maximum amount" shall be construed as to take full advantage of such credit as the laws of the United States may allow.

"Gross estate" means "gross estate" as defined in § 2031 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Nonresident" means a decedent who was domiciled outside of the Commonwealth of Virginia at his death.

"Personal representative" means the personal representative of the estate of the decedent, appointed, qualified and acting within the Commonwealth, or, if there is no personal representative appointed, qualified and acting within the Commonwealth, then any person in actual or constructive possession of the Virginia gross estate of the decedent.

"Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

"State" means any state, territory or possession of the United States and the District of Columbia.

"Taxable estate" means "taxable estate" as defined in § 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Value" means "value" as finally determined for federal estate tax purposes under the laws of the United States relating to federal estate taxes.

Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes means the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be or become effective at any time or from time to time.

Code 1950, § 58-238.2; 1978, c. 838; 1981, c. 94; 1984, c. 675; 2006, Sp. Sess. I, cc. [4](#), [5](#).

§58.1-902. Tax on transfer of taxable estate of residents; amounts; credit; property of resident defined.

A. A tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident, subject, where applicable, to the credit provided for in subsection B.

B. If the real and tangible personal property of a resident is located outside of the Commonwealth and is subject to a death tax imposed by another state for which a credit is allowed under § 2011 of the Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States relating to federal estate taxes, the amount of tax due under this section shall be credited with the lesser of:

1. The amount of the death tax paid the other state and credited against the federal estate tax; or
2. An amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which another state or states have jurisdiction to the same extent to which Virginia would exert jurisdiction under this chapter with respect to the residents of such other state or states and the denominator of which is the value of the decedent's gross estate.

C. Property of a resident includes:

1. Real property situated in the Commonwealth of Virginia;
2. Tangible personal property having an actual situs in the Commonwealth of Virginia; and
3. Intangible personal property owned by the resident regardless of where it is located.

Code 1950, § 58-238.3; 1978, c. 838; 1984, c. 675.

§58.1-903. Tax on transfer of taxable estate of nonresidents; property of non-resident defined.

A. A tax in an amount computed as provided in this section is imposed on the transfer of every nonresident's taxable estate located in the Commonwealth of Virginia.

The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which Virginia has jurisdiction for estate tax purposes and the denominator of which is the value of the decedent's gross estate.

B. For purposes of this section, property located in the Commonwealth of Virginia which is taxable to a nonresident shall include:

1. Real property and real property interests located in the Commonwealth of Virginia including mineral interests, royalties, production payments, leasehold interests, or working interests in oil, gas, coal, or any other minerals; and
2. Tangible personal property having an actual situs in the Commonwealth of Virginia.

Code 1950, § 58-238.4; 1978, c. 838; 1984, c. 675.

§58.1-904. Tax upon estates of alien decedents.

A. A tax in an amount computed as provided in this section is imposed upon the transfer of real property and tangible personal property having an actual situs in the Commonwealth of Virginia and upon intangible personal property physically present within the Commonwealth of every person who at the time of death was not a resident of the United States.

The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which Virginia has jurisdiction for estate tax purposes and the denominator of which is the decedent's gross estate taxable by the United States wherever situated.

B. Resident aliens of the United States shall be subject to the tax imposed by this chapter under § [58.1-903](#) when the decedent, at the time of death, was not a resident of Virginia but was a resident of the United States. A resident alien who, at the time of death, was a resident of Virginia and a resident of the United States shall be subject to the tax imposed by this chapter under § [58.1-902](#).

C. For purposes of this section, stock in a corporation organized under the laws of the Commonwealth shall be deemed physically present within the Commonwealth.

Code 1950, § 58-238.5; 1978, c. 838; 1984, c. 675.

§58.1-905. Filing returns; payment of tax due thereon.

A. The personal representative of every estate subject to the tax imposed by this chapter who is required by the laws of the United States to file a federal estate tax return shall file with the Department, on or before the date the federal estate tax return is required to be filed: (i) a return for the tax due under this chapter; and (ii) a copy of the federal estate tax return.

B. If the personal representative has obtained an extension of time for filing the federal estate tax return or paying the federal estate tax or any portion thereof, the filing

required by subsection A or payment required by subsection C shall be similarly extended until the end of the time period granted in the federal extension. Upon obtaining an extension of time for filing the federal estate tax return, or paying the federal estate tax or any portion thereof, the personal representative shall provide the Department with a true copy of the instrument providing for this extension.

C. The tax due under this chapter shall be paid by the personal representative to the Department not later than the date specified under subsection A or B. If such tax is paid pursuant to subsection B, interest, at a rate equal to the rate of interest established pursuant to § [58.1-15](#), shall be added for the period between the date when such tax would have been due had no extension been granted and the date of full payment.

D. Notwithstanding any other provision of this section, the extensions provided to individual taxpayers under subdivisions 1 and 2 of subsections F and G of § [58.1-344](#) shall be applicable in the same manner to the tax imposed by this chapter.

Code 1950, § 58-238.6; 1978, c. 838; 1984, c. 675; 1990, c. 700; 1991, cc. 346, 361; 1996, c. [401](#).

§58.1-906. Amended returns.

A. If the personal representative files an amended federal estate tax return, he shall immediately file with the Department an amended return covering the tax imposed by this chapter, accompanying the same with a copy of the amended federal estate tax return. If the personal representative is required to pay an additional tax under this chapter pursuant to such amended return, he shall pay such tax, together with interest as provided in § [58.1-15](#), at the time of filing the amended return.

B. If, upon final determination of the federal estate tax due, a deficiency is assessed, the personal representative shall within ninety days after this determination give written notice of such deficiency to the Department. If any additional tax is due under this chapter by reason of this determination, the personal representative shall file an amended return, or such other form as the Department may prescribe, and pay such additional tax, together with interest as provided in § [58.1-15](#), at the same time he files the notice; however, if the department has sufficient information from which to compute the proper additional tax and the taxpayer has paid such tax, then the taxpayer is not required to file an amended estate tax return.

Code 1950, § 58-238.7; 1978, c. 838; 1984, c. 675; 1992, c. 678 .

§58.1-907. Certification of payment by Department.

Upon the payment of the estate tax, or if no tax is due pursuant to a filing under § [58.1-905](#) or § [58.1-906](#), upon the ascertainment of that fact, the Department shall certify such fact to the personal representative.

Code 1950, § 58-238.8; 1978, c. 838; 1984, c. 675.

§58.1-908. Nonpayment of tax; lien for unpaid taxes; certificate of release from lien.

A. A lien shall arise as follows upon all property, real or personal, located in the Commonwealth of Virginia, of every decedent having a taxable estate who fails to pay the tax imposed by this chapter:

1. In the case of a nonresident decedent having a taxable estate a lien shall not arise automatically upon the death of the decedent.
2. In the case of a resident or nonresident decedent, such lien shall attach to the personal estate of the decedent only upon the Department's filing a memorandum in the clerk's office of the county or city wherein the decedent resided, and to the real estate only upon the filing of a memorandum in the clerk's office of the county or city wherein such real estate is located.

Such lien, once it attaches, shall be enforceable for a period not to exceed ten years from the date of death of the decedent.

B. Such part of the property of a decedent as may at the time be subject to the lien provided for under subsection A shall be divested of such lien to the extent used for payment of charges against the estate or expenses of its administration allowed by the court having jurisdiction thereof.

C. Such part of the personal property of a decedent as may at the time be subject to the lien provided for under subsection A shall be divested of such lien upon the conveyance or transfer of such property to a purchaser or holder of a security interest for an adequate and full consideration and such lien shall then attach to the proceeds received for such property from such purchaser or holder of a security interest. Real property shall not be divested of such lien except as provided in subsections B and D of this section.

D. When any lien under this section has attached and the Department is satisfied that the tax liability, if any, of the estate has been fully discharged, the Department shall issue a certificate releasing all property of such estate from the lien herein imposed;

or, if the Department is satisfied that the tax liability of the estate has been provided for, it shall issue a certificate releasing any surplus property of such estate from the lien herein imposed.

Code 1950, § 58-238.9; 1978, c. 838; 1979, c. 567; 1984, c. 675; 1987, c. 373.

§58.1-909. Liability of personal representative.

The tax and interest imposed by this chapter shall be paid by the personal representative. If any personal representative distributes either in whole or in part any of the property of an estate to the heirs, next of kin, distributees, legatees or devisees without having paid or secured the tax due pursuant to this chapter, he shall be personally liable for the tax so due, or so much thereof as may remain due and unpaid, to the full extent of any property belonging to such person or estate which may come into his custody or control.

Code 1950, § 58-238.10; 1978, c. 838; 1984, c. 675.

§58.1-910. Duty of resident representative of a nonresident decedent.

A resident personal representative holding personal property of a deceased nonresident subject to the tax shall deduct the tax or collect it from the personal representative in the state of the decedent's domicile and shall not deliver such property to him or any other person until he has collected the tax and paid the same into the state treasury. When the transfer of such personal property is subject to a tax under the provisions of this chapter and the personal representative in the state of domicile neglects or refuses to pay the tax upon demand or if for any reason the tax is not paid within nine months after the decedent's death, the resident personal representative may, upon such notice as the circuit court of the county or city where such resident personal representative qualified may direct, be authorized to sell such property or, if the same can be divided, such portion as may be necessary. He shall then deduct the tax from the proceeds of such sale and account for the balance, if any, in lieu of the property.

Code 1950, § 58-238.11; 1978, c. 838; 1984, c. 675.

§58.1-911. Final account.

No final account of a personal representative shall be approved by a commissioner of accounts unless the commissioner finds that all state, county or city taxes assessed and chargeable upon property in the hands of a personal representative have been paid. No final account of a personal representative who is required to file a federal

estate tax return shall be approved by the commissioner of accounts unless the commissioner finds that the tax imposed on the property by this chapter, including applicable interest, has been paid in full or that no such tax is due.

Code 1950, § 58-238.12; 1978, c. 838; 1984, c. 675; 2002, c. [35](#).

§58.1-912. Deposit of funds.

All moneys collected pursuant to this chapter shall be paid into the general fund of the state treasury.

Code 1950, § 58-238.15; 1978, c. 838; 1984, c. 675.

§58.1-913. Proof of payment of death taxes to state of domicile.

At any time before the expiration of eighteen months after the qualification in this Commonwealth of any executor of the will or administrator of the estate of any non-resident decedent, such executor or administrator shall file with the clerk of the court in which he qualified proof that all death taxes, together with interest or penalties thereon, which are due to the state of domicile of such decedent, or to any political subdivision thereof, have been paid or secured or that no such taxes, interest or penalties are due, unless it appears that letters have been issued in the state of domicile. Such proof may be in the form of a certificate issued by the official or body charged with the administration of the death tax laws of the domiciliary state.

Code 1950, §§ 58-238.17, 58-238.18; 1978, c. 838; 1984, c. 675.

§58.1-914. Notice to domiciliary state if proof not filed.

If such proof is not filed within the time limit set out in § [58.1-913](#), then the clerk of the court shall forthwith notify by mail the official or body of the domiciliary state charged with the administration of the death tax laws thereof with respect to such estate and shall state in such notice so far as is known to him:

1. The name, date of death and last domicile of such decedent;
2. The name and address of each executor or administrator;
3. A summary of the values of the real estate, tangible personalty and intangible personalty, wherever situated, belonging to such decedent at the time of his death; and
4. The fact that such executor or administrator has not filed the proof required in § [58.1-913](#).

The clerk shall attach to such notice a plain copy of the will and codicils of the decedent, if he died testate, or, if he died intestate, a list of his heirs and next of kin, so far as is known to the clerk.

Code 1950, § 58-238.19; 1978, c. 838; 1979, c. 559; 1984, c. 675.

§58.1-915. Petition of domiciliary state for accounting.

Within sixty days after the mailing of such notice, the official or body charged with the administration of the death tax laws of the domiciliary state may file with such court in this Commonwealth a petition for an accounting in such estate. Such official body of the domiciliary state shall, for the purpose of this article, be a party interested for the purpose of petitioning the court for such accounting. If such petition be filed within the period of sixty days, the court shall decree such accounting and upon such accounting being filed and approved shall decree the remission of the fiduciary appointed by the domiciliary probate court of the balance of the intangible personally after the payment of creditors and expenses of administration in the Commonwealth.

Code 1950, § 58-238.20; 1978, c. 838; 1984, c. 675.

§58.1-916. Final accounting not granted without compliance.

Unless the provisions of either § [58.1-914](#) or § [58.1-915](#) have been complied with, no such executor or administrator shall be entitled to a final accounting or discharge in any court in this Commonwealth.

Code 1950, § 58-238.21; 1978, c. 838; 1984, c. 675.

§58.1-917. To what nonresident estates article applies.

The provisions of this article shall apply to the estate of any nonresident decedent if the laws of the state of his domicile contain a provision, of any nature or however expressed, whereby this Commonwealth is given reasonable assurance of the collection of its inheritance or death taxes, interest and penalties, from the estates of decedents dying domiciled in this Commonwealth when the estates of such decedents are being administered by the probate courts of such other state, or if the state of domicile does not grant letters in nonresident estates until after letters have been issued by the state of domicile.

Code 1950, § 58-238.22; 1978, c. 838; 1984, c. 675.

§58.1-918. How article construed.

The provisions of this article shall be liberally construed in order to ensure that the state of domicile of any decedent shall receive any death taxes, together with interest and penalties thereon, due to it.

Code 1950, § 58-238.23; 1978, c. 838; 1984, c. 675.

§58.1-919. Meaning of "state."

For the purpose of this article the word "state" shall be construed to include any territory of the United States, the District of Columbia and any foreign country.

Code 1950, § 58-238.24; 1978, c. 838; 1984, c. 675.

§58.1-920. Title of article.

This article shall be known and may be cited as the "Uniform Act on Interstate Compromise and Arbitration of Death Taxes."

Code 1950, § 58-238.25; 1978, c. 838; 1984, c. 675.

§58.1-921. Interpretation.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Code 1950, § 58-238.26; 1978, c. 838; 1984, c. 675.

§58.1-922. Dispute as to domicile; compromise agreement.

When the Tax Commissioner claims that a decedent was domiciled in this Commonwealth at the time of his death and the taxing authorities of other states make a like claim on behalf of their states, the Commissioner may make a written agreement of compromise with the other taxing authorities and the executor or administrator of such decedent that a certain sum shall be accepted in full satisfaction of any death taxes imposed by this Commonwealth, including any interest or penalties to the date of signing of the agreement. The agreement shall also fix the amount to be accepted by the other states in full satisfaction of death taxes. The executor or administrator of such decedent is hereby authorized to make such agreement. Unless the tax so agreed upon is paid within sixty days after the signing of such agreement, interest or penalties shall accrue upon the amount fixed in the agreement, but the time between the decedent's death and the signing of such agreement shall not be included in computing the interest or penalties.

Code 1950, § 58-238.27; 1978, c. 838; 1984, c. 675.

§58.1-923. Arbitration agreement; board of arbitrators.

When the Tax Commissioner claims that a decedent was domiciled in this Commonwealth at the time of his death and the taxing authorities of another state make a like claim on behalf of their state, the Commissioner may with the approval of the Attorney General make a written agreement with the other taxing authorities and with the executor or administrator of the decedent to submit the controversy to the decision of a board consisting of one or any uneven number of arbitrators. The executor or administrator of such decedent is hereby authorized to make the agreement. The parties to the agreement shall select the arbitrator or arbitrators.

Code 1950, § 58-238.28; 1978, c. 838; 1984, c. 675.

§58.1-924. Hearings by board; testimony and witnesses; production of documents.

The board shall hold hearings at such times and places as it may determine, upon reasonable notice to the parties to the agreement, all of whom shall be entitled to be heard, to present evidence and to examine and cross-examine witnesses.

The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of books, papers and documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, any judge of a court of record of this Commonwealth, upon application by the board, may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. All questions arising in the course of the proceedings, other than the issuance of subpoenas, shall be decided by a majority vote of the board.

Code 1950, §§ 58-238.19, 58-238.31; 1978, c. 838; 1984, c. 675.

§58.1-925. Determination of domicile of decedent.

The board shall determine the domicile of the decedent at the time of his death. This determination shall be final for purposes of imposing and collecting death taxes but for no other purpose.

Code 1950, § 58-238.30; 1978, c. 838; 1984, c. 675.

§58.1-926. Record of proceedings, agreement, etc., to be filed with taxing authorities.

The Tax Commissioner, the board or the executor or administrator of such decedent shall file the determination of the board as to domicile, the record of the board's proceedings, and the agreement or a duplicate, made pursuant to § [58.1-923](#), with the

authority having jurisdiction to assess or determine the death taxes in the state determined by the board to be the domicile of the decedent and shall file copies of such documents with the authorities that would have been empowered to assess or determine the death taxes in each of the other states involved.

Code 1950, § 58-238.32; 1978, c. 838; 1984, c. 675.

§58.1-927. When penalties and interest not imposed.

In any case where it is determined by the board that the decedent died domiciled in Virginia, interest or penalties, if otherwise imposed by law, for nonpayment of death taxes shall not be imposed between the date of the agreement and of filing the determination of the board as to domicile.

Code 1950, § 58-238.33; 1978, c. 838; 1984, c. 675.

§58.1-928. Nothing in article to prevent compromise.

Nothing contained in this article shall prevent at any time a written compromise, if otherwise lawful, by all parties to the agreement made pursuant to § [58.1-923](#) fixing the amounts to be accepted by this and any other state involved, in full satisfaction of death taxes.

Code 1950, § 58-238.34; 1978, c. 838; 1984, c. 675.

§58.1-929. Compensation and expenses of board members and employees.

The compensation and expenses of the members of the board and its employees may be agreed upon by such members and the executor or administrator and if they cannot agree shall be fixed by any court having jurisdiction over probate matters of the state determined by the board to be the domicile of the decedent. The amounts so agreed upon or fixed shall be deemed an administration expense and shall be payable by the executor or administrator.

Code 1950, § 58-238.35; 1978, c. 838; 1984, c. 675.

§58.1-930. Reciprocal application of arbitration provisions.

The provisions of this article relative to arbitration shall apply only to cases in which and so far as each of the states involved has a law identical or substantially similar to this article.

Code 1950, § 58-238.36; 1978, c. 838; 1984, c. 675.

§58.1-931. Imposition of tax.

A. When the gross estate of a decedent at the date of death is of such value as to require filing a federal estate tax return and such estate contains certain farm or business real property which qualified for valuation under § 2032A of the Internal Revenue Code, and such property has been valued in the manner provided in § 2032A for the tax imposed under this chapter, a copy of the election made at the time of filing the federal estate tax return shall be attached to the Virginia estate tax return when filed. Such return shall also include an agreement signed by each person in being having an interest, whether or not in possession, in such property and consent to the application of § 2032A of the Internal Revenue Code .

B. If, within fifteen years after the decedent's death and before the death of the qualified heir, as defined in § 2032A(e)(1) of the Internal Revenue Code, a qualified heir disposes of any interest in the property, other than to a member of his family, as defined in subsection (e)(2) of such section, or ceases to use such property for qualified uses as defined in subsection (b) (2) of such section, there is hereby imposed an additional Virginia estate tax, computed as provided in subsection (c) of § 2032A of the Internal Revenue Code .

Code 1950, § 58-238.38; 1981, c. 399; 1984, c. 675.

§58.1-932. Qualified heir personally liable.

The qualified heir shall be personally liable for the additional tax imposed under § [58.1-931](#). The amount of the adjusted tax difference attributable to an interest in any qualified property, computed in the same manner as provided in subsection (c)(2)(C) of § 2032A of the Internal Revenue Code, shall be a lien on such interest in the property in favor of the Commonwealth. Such lien shall arise at the time the election is filed hereunder and shall continue until:

1. The liability for tax under § [58.1-931](#) attributable to such interest has been satisfied or has become unenforceable by lapse of time; or
2. It is established to the satisfaction of the Commissioner that no further tax liability attributable to such interest may arise under § [58.1-931](#).

Code 1950, § 58-238.38; 1981, c. 399; 1984, c. 675.

§58.1-933. Notice of disposition or change in use of property.

Any qualified heir is required to notify the Commissioner, on a form prescribed by the Commissioner, of any disposition or change in use of the property and pay any additional Virginia estate tax resulting from such disposition or change, within six

months of such disposition or change. Notwithstanding any other provision of law prescribing limitations, any tax imposed under § [58.1-931](#) may be assessed until the expiration of three years from the date of such notification.

Code 1950, § 58-238.38; 1981, c. 399; 1984, c. 675.

§58.1-934. Purpose.

The purpose of this article is to recapture the excess of the estate tax liability which would have been incurred had the special use valuation procedure not been used; in other words, the maximum additional recapture tax is the amount that the special valuation has saved the estate.

Code 1950, § 58-238.38; 1981, c. 399; 1984, c. 675.

§58.1-935. Definitions.

A. Terms, phrases, and words used in this article, except for those defined in subsection B of this section, shall be defined as they are defined under Chapter 13 of subchapter B of the Internal Revenue Code of 1954, as amended.

B. As used in this article the term or phrase:

"Federal generation skipping transfer tax" means the tax imposed by Chapter 13 of subchapter A of the Internal Revenue Code of 1954, as amended.

"Generation skipping transfer" includes every transfer subject to the tax imposed under Chapter 13 of subchapter A of the Internal Revenue Code of 1954, as amended, where the original transferor is a resident of the Commonwealth of Virginia at the date of original transfer, or the property transferred is real or personal property having a situs in Virginia.

"Original transferor" means any grantor, donor, trustor, or testator who by grant, gift, trust or will makes a transfer of real or personal property that results in a federal generation skipping transfer tax under applicable provisions of the Internal Revenue Code.

Code 1950, § 58-238.37; 1979, c. 559; 1984, c. 675.

§58.1-936. Imposition of tax.

A. A tax is hereby imposed upon every generation skipping transfer, where the original transferor is a resident of the Commonwealth of Virginia at the date of original transfer, in an amount equal to the amount allowable as credit for state legacy taxes under § 2604 of the Internal Revenue Code, to the extent such credit exceeds the

aggregate amount of all taxes on the same transfer actually paid to the several states of the United States, other than the Commonwealth of Virginia.

B. A tax is hereby imposed upon every generation skipping transfer where the original transferor is not a resident of Virginia at the date of the original transfer, but where the generation skipping transfer includes real or personal property having a situs in Virginia, in an amount equal to the amount allowable as a credit for state legacy taxes under § 2604 of the Internal Revenue Code, reduced by an amount which bears the same ratio to the total state tax credit allowable for federal generation skipping transfer tax purposes as the value of the transferred property taxable by all other states bears to the value of the gross generation skipping transfer for federal generation skipping transfer tax purposes. In any case in which a tax is imposed on a generation skipping transfer by Virginia and by one or more other states or the District of Columbia, the Commissioner shall negotiate with the taxing authorities of such other state, states, or District of Columbia so that the aggregate amount of taxes imposed by Virginia and such other state, states or the District of Columbia on a generation skipping transfer does not exceed 100 percent of the amount allowable as credit for state legacy taxes under § 2604 of the Internal Revenue Code .

Code 1950, § 58-238.37; 1979, c. 559; 1984, c. 675; 1987, c. 484.

§58.1-937. Filing of return; payment of tax.

A. Every person required to file a return reporting a generation skipping transfer under applicable federal statutes and regulations shall file a return with the Department on or before the last day prescribed for filing the federal return. For purposes of this article the requirements for filing a return shall be satisfied by filing a duplicate copy of the federal return.

B. The tax imposed by this section shall be due upon a taxable distribution or taxable termination as determined under applicable provisions of the federal generation skipping transfer tax. The person liable for payment of the federal generation skipping transfer tax shall be liable for the tax imposed by this article. Such tax shall be paid to the Department on or before the last day allowed for filing a return hereunder. Interest computed as provided in § [58.1-15](#) shall accrue on the amount of unpaid tax from the day after such last day until paid.

Code 1950, § 58-238.37; 1979, c. 559; 1984, c. 675.

§58.1-938. Amended return; additional tax.

If, after the filing of a duplicate federal generation skipping tax return, the federal authorities increase or decrease the amount of the federal generation skipping transfer tax, an amended return shall be filed with the Department showing all changes made in the original return and the amount of increase or decrease in the federal generation skipping transfer tax.

If, based upon such deficiency and the ground therefor, it appears that the amount of tax previously paid is less than the amount of tax owing, the difference together with interest, as computed under § [58.1-15](#), shall be paid upon notice and demand by the Department. In the event that the person required to file a return and pay such tax fails to file the return required by this section, any additional tax which is owing may be assessed, or a proceeding in court for such tax may be begun without assessment, at any time prior to the filing of such return or within thirty days after the delinquent filing of such return, notwithstanding any other provision of law.

Code 1950, § 58-238.37; 1979, c. 559; 1984, c. 675.

Virginia Fair Housing Law

§36-96.1. Declaration of policy.

A. This chapter shall be known and referred to as the Virginia Fair Housing Law.

B. It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, or handicap, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and insured. This law shall be deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people of the Commonwealth.

1972, c. 591, §§ 36-86, 36-87; 1973, c. 358; 1978, c. 138; 1989, c. 88; 1991, c. 557 .

§36-96.1:1. Definitions.

For the purposes of this chapter, unless the context clearly indicates otherwise:

"Aggrieved person" means any person who (i) claims to have been injured by a discriminatory housing practice or (ii) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Assistance animal" means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. An assistance animal is not required to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals. An assistance animal is not a pet.

"Complainant" means a person, including the Fair Housing Board, who files a complaint under § [36-96.9](#).

"Conciliation" means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, their respective authorized representatives and the Fair Housing Board.

"Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

"Discriminatory housing practices" means an act that is unlawful under § [36-96.3](#), [36-96.4](#), [36-96.5](#), or [36-96.6](#).

"Dwelling" means any building, structure, or portion thereof, that is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

"Elderliness" means an individual who has attained his fifty-fifth birthday.

"Familial status" means one or more individuals who have not attained the age of 18 years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term "familial status" also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. For purposes of this section, "in the process of securing legal custody" means having filed

an appropriate petition to obtain legal custody of such minor in a court of competent jurisdiction.

"Family" includes a single individual, whether male or female.

"Handicap" means, with respect to a person, (i) a physical or mental impairment that substantially limits one or more of such person's major life activities; (ii) a record of having such an impairment; or (iii) being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance as defined in Virginia or federal law. For the purposes of this chapter, the terms "handicap" and "disability" shall be interchangeable.

"Lending institution" includes any bank, savings institution, credit union, insurance company or mortgage lender.

"Major life activities" means, but shall not be limited to, any the following functions: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"Person" means one or more individuals, whether male or female, corporations, partnerships, associations, labor organizations, fair housing organizations, civil rights organizations, organizations, governmental entities, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

"Physical or mental impairment" means, but shall not be limited to, any of the following: (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine or (ii) any mental or psychological disorder, such as an intellectual or developmental disability, organic brain syndrome, emotional or mental illness, or specific learning disability. "Physical or mental impairment" includes such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; autism; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; human immunodeficiency virus infection; intellectual and developmental disabilities; emotional illness; drug addiction other than addiction caused by current, illegal use of a controlled substance; and alcoholism.

"Respondent" means any person or other entity alleged to have violated the provisions of this chapter, as stated in a complaint filed under the provisions of this chapter and any other person joined pursuant to the provisions of § [36-96.9](#).

"Restrictive covenant" means any specification in any instrument affecting title to real property that purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color, religion, national origin, sex, elderliness, familial status, or handicap.

"To rent" means to lease, to sublease, to let, or otherwise to grant for consideration the right to occupy premises not owned by the occupant.

1972, c. 591, § 36-87; 1973, c. 358; 1978, c. 138; 1989, c. 88; 1991, c. 557; 1992, c. 322; 1996, c. [77](#); 2003, c. [575](#); 2017, cc. [575](#), [729](#).

§36-96.2. Exemptions.

A. Except as provided in subdivision A 3 of § [36-96.3](#) and subsections A, B, and C of § [36-96.6](#), this chapter shall not apply to any single-family house sold or rented by an owner, provided that such private individual does not own more than three single-family houses at any one time. In the case of the sale of any single-family house by a private individual-owner not residing in the house at the time of the sale or who was not the most recent resident of the house prior to sale, the exemption granted shall apply only with respect to one such sale within any 24-month period; provided that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time. The sale or rental of any such single-family house shall be exempt from the application of this chapter only if the house is sold or rented (i) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, salesperson, or of the facilities or the services of any person in the business of selling or renting dwellings, or of any employee, independent contractor, or agent of any broker, agent, salesperson, or person and (ii) without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this chapter. However, nothing herein shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as necessary to perfect or transfer the title. This exemption shall not apply to or inure to the benefit of any

licensee of the Real Estate Board or regulant of the Fair Housing Board, regardless of whether the licensee is acting in his personal or professional capacity.

B. Except for subdivision A 3 of § [36-96.3](#), this chapter shall not apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

C. Nothing in this chapter shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preferences to such persons, unless membership in such religion is restricted on account of race, color, national origin, sex, elderliness, familial status, or handicap. Nor shall anything in this chapter apply to a private membership club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members. Nor, where matters of personal privacy are involved, shall anything in this chapter be construed to prohibit any private, state-owned or state-supported educational institution, hospital, nursing home, religious or correctional institution, from requiring that persons of both sexes not occupy any single-family residence or room or unit of dwellings or other buildings, or restrooms in such room or unit in dwellings or other buildings, which it owns or operates.

D. Nothing in this chapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in federal law.

E. It shall not be unlawful under this chapter for any owner to deny or limit the rental of housing to persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.

F. A rental application may require disclosure by the applicant of any criminal convictions and the owner or managing agent may require as a condition of acceptance of the rental application that applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the rental application. The owner or managing agent may collect from the applicant moneys to reimburse the owner or

managing agent for the exact amount of the out-of-pocket costs for such criminal record checks. Nothing in this chapter shall require an owner or managing agent to rent a dwelling to an individual who, based on a prior record of criminal convictions involving harm to persons or property, would constitute a clear and present threat to the health or safety of other individuals.

G. Nothing in this chapter limits the applicability of any reasonable local, state or federal restriction regarding the maximum number of occupants permitted to occupy a dwelling. Owners or managing agents of dwellings may develop and implement reasonable occupancy and safety standards based on factors such as the number and size of sleeping areas or bedrooms and overall size of a dwelling unit so long as the standards do not violate local, state or federal restrictions. Nothing in this chapter prohibits the rental application or similar document from requiring information concerning the number, ages, sex and familial relationship of the applicants and the dwelling's intended occupants.

1972, c. 591, §§ 36-87, 36-92; 1973, c. 358; 1978, c. 138; 1989, c. 88; 1991, c. 557; 1992, c. 322; 2003, c. [575](#); 2006, c. [693](#).

§36-96.3. Unlawful discriminatory housing practices.

A. It shall be an unlawful discriminatory housing practice for any person:

1. To refuse to sell or rent after the making of a bona fide offer or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, sex, elderliness, or familial status;
2. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in the connection therewith to any person because of race, color, religion, national origin, sex, elderliness, or familial status;
3. To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation or discrimination based on race, color, religion, national origin, sex, elderliness, familial status, or handicap. The use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima facie evidence of an illegal preference under this chapter which shall not be overcome by a

general disclaimer. However, reference alone to places of worship including, but not limited to, churches, synagogues, temples, or mosques in any such notice, statement or advertisement shall not be prima facie evidence of an illegal preference;

4. To represent to any person because of race, color, religion, national origin, sex, elderliness, familial status, or handicap that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

5. To deny any person access to membership in or participation in any multiple listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, sex, elderliness, familial status, or handicap;

6. To include in any transfer, sale, rental, or lease of housing, any restrictive covenant that discriminates because of race, color, religion, national origin, sex, elderliness, familial status, or handicap or for any person to honor or exercise, or attempt to honor or exercise any such discriminatory covenant pertaining to housing;

7. To induce or attempt to induce to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, sex, elderliness, familial status, or handicap;

8. To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise discriminate or make unavailable or deny a dwelling because of a handicap of (i) the buyer or renter, (ii) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available, or (iii) any person associated with the buyer or renter;

9. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of a handicap of (i) that person, (ii) a person residing in or intending to reside in that dwelling after it was so sold, rented or made available, or (iii) any person associated with that buyer or renter.

B. For the purposes of this section, discrimination includes: (i) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by any person if such modifications may be

necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make reasonable accommodations in rules, practices, policies, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection with the design and construction of covered multi-family dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that:

1. The public use and common use areas of the dwellings are readily accessible to and usable by handicapped persons;
2. All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
3. All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. As used in this subdivision the term "covered multi-family dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

C. Compliance with the appropriate requirements of the American National Standards for Building and Facilities (commonly cited as "ANSI A117.1") or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically handicapped people shall be deemed to satisfy the requirements of subdivision B 3.

D. Nothing in this chapter shall be construed to invalidate or limit any Virginia law or regulation which requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this chapter.

1972, c. 591, § 36-88; 1973, c. 358; 1978, c. 138; 1984, c. 685; 1985, c. 344; 1989, c. 88; 1991, c. 557; 1992, c. 322; 1996, c. [327](#).

§36-96.3:1. Rights and responsibilities with respect to the use of an assistance animal in a dwelling.

A. A person with a disability, or a person associated with such person, who maintains an assistance animal in a dwelling shall comply with the rental agreement or any rules and regulations of the property owner applicable to all residents that do not interfere with an equal opportunity to use and enjoy the dwelling and any common areas of the premises. Such person shall not be required to pay a pet fee or deposit or any additional rent to maintain an assistance animal in a dwelling, but shall be responsible for any physical damages to the dwelling if residents who maintain pets are responsible for such damages in accordance with such documents or state law. Nothing herein shall be construed to affect any cause of action against any resident for other damages under the laws of the Commonwealth.

B. If a person's disability is obvious or otherwise known to the person receiving a request, or if the need for a requested accommodation is readily apparent or known to the person receiving a request, the person receiving a request for reasonable accommodation may not request any additional verification about the requester's disability. If a person's disability is readily apparent or known to the person receiving the request but the disability-related need is not readily apparent or known, the person receiving the request may ask for additional verification to evaluate the requester's disability-related need.

C. A person with a disability, or a person associated with such person, may submit a request for a reasonable accommodation to maintain an assistance animal in a dwelling. Subject to subsection B, the person receiving the request may ask the requester to provide reliable documentation of the disability and the disability-related need for an assistance animal, including documentation from any person with whom the person with a disability has or has had a therapeutic relationship.

D. Subject to subsection B, a person receiving a request for a reasonable accommodation to maintain an assistance animal in a dwelling shall evaluate the request and any reliable supporting documentation to verify the disability and the disability-related need for the reasonable accommodation regarding an assistance animal.

E. For purposes of this section, "therapeutic relationship" means the provision of medical care, program care, or personal care services, in good faith, to the person with a disability by (i) a mental health service provider as defined in § [54.1-2400.1](#); (ii) an individual or entity with a valid, unrestricted state license, certification, or

registration to serve persons with disabilities; (iii) a person from a peer support or similar group that does not charge service recipients a fee or impose any actual or implied financial requirement and who has actual knowledge about the requester's disability; or (iv) a caregiver, reliable third party, or government entity with actual knowledge of the requester's disability.

2017, cc. [575](#), [729](#).

§36-96.3:2. Reasonable accommodations; interactive process.

A. When a request for a reasonable accommodation establishes that such accommodation is necessary to afford a person with a disability, and who has a disability-related need, an equal opportunity to use and enjoy a dwelling and does not impose either (i) an undue financial and administrative burden or (ii) a fundamental alteration to the nature of the operations of the person receiving the request, the request for the accommodation is reasonable and shall be granted.

B. When a request for a reasonable accommodation may impose either (i) an undue financial and administrative burden or (ii) a fundamental alteration to the nature of the operations of the person receiving the request, the person receiving the request shall offer to engage in a good-faith interactive process to determine if there is an alternative accommodation that would effectively address the disability-related needs of the requester. An interactive process is not required when the requester does not have a disability and a disability-related need for the requested accommodation. As part of the interactive process, unless the reasonableness and necessity for the accommodation has been established by the requester, a request may be made for additional supporting documentation to evaluate the reasonableness of either the requested accommodation or any identified alternative accommodations. If an alternative accommodation is identified that effectively meets the requester's disability-related needs and is reasonable, the person receiving the reasonable accommodation request shall make the effective alternative accommodation. However, the requester shall not be required to accept an alternative accommodation if the requested accommodation is also reasonable. The various factors to be considered for determining whether an accommodation imposes an undue financial and administrative burden include (a) the cost of the requested accommodation, including any substantial increase in the cost of the owner's insurance policy; (b) the financial resources of the person receiving the request; (c) the benefits that the accommodation would provide

to the person with a disability; and (d) the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

C. A request for a reasonable accommodation shall be determined on a case-by-case basis and may be denied if (i) the person on whose behalf the request for an accommodation was submitted is not disabled; (ii) there is no disability-related need for the accommodation; (iii) the accommodation imposes an undue financial and administrative burden on the person receiving the request; or (iv) the accommodation would fundamentally alter the nature of the operations of the person receiving the request. With respect to a request for reasonable accommodation to maintain an assistance animal in a dwelling, the requested assistance animal shall (a) work, provide assistance, or perform tasks or services for the benefit of the requester or (b) provide emotional support that alleviates one or more of the identified symptoms or effects of such requester's existing disability. In addition, as determined by the person receiving the request, the requested assistance animal shall not pose a clear and present threat of substantial harm to others or to the dwelling itself that is not solely based on breed, size, or type or cannot be reduced or eliminated by another reasonable accommodation.

2017, cc. [575](#), [729](#).

§36-96.4. Discrimination in residential real estate-related transactions; unlawful practices by lenders, insurers, appraisers, etc.; deposit of state funds in such institutions.

A. It shall be unlawful for any person or other entity, including any lending institution, whose business includes engaging in residential real estate-related transactions, to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, or in the manner of providing such a transaction, because of race, color, religion, national origin, sex, elderliness, familial status, or handicap. It shall not be unlawful, however, for any person or other entity whose business includes engaging in residential real estate transactions to require any applicant to qualify financially for the loan or loans for which such person is making application.

B. As used in this section, the term "residential real estate-related transaction" means any of the following:

1. The making or purchasing of loans or providing other financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling or (ii) secured by residential real estate; or
2. The selling, brokering, insuring or appraising of residential real property. However, nothing in this chapter shall prohibit a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, elderliness, familial status, or handicap.

C. It shall be unlawful for any state, county, city, or municipal treasurer or governmental official whose responsibility it is to account for, to invest, or manage public funds to deposit or cause to be deposited any public funds in any lending institution provided for herein which is found to be committing discriminatory practices, where such findings were upheld by any court of competent jurisdiction. Upon such a court's judicial enforcement of any order to restrain a practice of such lending institution or for said institution to cease or desist in a discriminatory practice, the appropriate fiscal officer or treasurer of the Commonwealth or any political subdivision thereof which has funds deposited in any lending institution which is practicing discrimination, as set forth herein, shall take immediate steps to have the said funds withdrawn and redeposited in another lending institution. If for reasons of sound economic management, this action will result in a financial loss to the Commonwealth or any of its political subdivisions, the action may be deferred for a period not longer than one year. If the lending institution in question has corrected its discriminatory practices, any prohibition set forth in this section shall not apply.

1972, c. 591, § 36-90; 1973, c. 358; 1989, c. 88; 1991, c. 557 .

§36-96.5. Interference with enjoyment of rights of others under this chapter.

It shall be an unlawful discriminatory housing practice for any person to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on the account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this chapter.

1972, c. 591, § 36-93; 1973, c. 358; 1991, c. 557 .

§36-96.6. Certain restrictive covenants void; instruments containing such covenants.

A. Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or ownership of property on the basis of race, color, religion, national origin, sex, elderliness, familial status, or handicap, whether heretofore or hereafter included in an instrument affecting the title to real or leasehold property, are declared to be void and contrary to the public policy of the Commonwealth.

B. Any person who is asked to accept a document affecting title to real or leasehold property may decline to accept the same if it includes such a covenant or reversionary interest until the covenant or reversionary interest has been removed from the document. Refusal to accept delivery of an instrument for this reason shall not be deemed a breach of a contract to purchase, lease, mortgage, or otherwise deal with such property.

C. No person shall solicit or accept compensation of any kind for the release or removal of any covenant or reversionary interest described in subsection A. Any person violating this subsection shall be liable to any person injured thereby in an amount equal to the greater of three times the compensation solicited or received, or \$500, plus reasonable attorneys' fees and costs incurred.

D. A family care home, foster home, or group home in which individuals with physical handicaps, mental illness, intellectual disability, or developmental disability reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single family when construing any restrictive covenant which purports to restrict occupancy or ownership of real or leasehold property to members of a single family or to residential use or structure.

1972, c. 591, § 36-91; 1973, c. 358; 1986, c. 574; 1989, c. 88; 1991, c. 557; 1998, c. [873](#); 2012, cc. [476](#), [507](#).

§36-96.7. Familial status protection not applicable to housing for older persons.

A. Nothing in this chapter regarding unlawful discrimination because of familial status shall apply to housing for older persons. As used in this section, "housing for older persons" means housing: (i) provided under any state or federal program that is specifically designed and operated to assist elderly persons, as defined in the state or federal program; or (ii) intended for, and solely occupied by, persons sixty-two years of age or older; or (iii) intended for, and solely occupied by, at least one person fifty-five years of age or older per unit. The following criteria shall be met in determining whether housing qualifies as housing for older persons under clause (iii) of this subsection:

1. At least eighty percent of the occupied units are occupied by at least one person fifty-five years of age or older per unit; and
2. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

B. Housing shall not fail to meet the requirements for housing for older persons by reason of:

1. Persons residing in such housing as of September 13, 1988, who do not meet the age requirements of clauses (ii) and (iii) of subsection A, provided that new occupants of such housing meet the age requirements of those clauses; or
2. Unoccupied units, provided that such units are reserved for occupancy by persons who meet the provisions of clauses (ii) and (iii) of subsection A.

1991, c. 557; 1992, c. 322; 2000, c. [30](#).

§36-96.8. Powers of Real Estate Board and Fair Housing Board.

A. The Real Estate Board and the Fair Housing Board, as provided in this chapter, have the power for the purposes of this chapter to initiate and receive complaints, conduct investigations of any violation of this chapter, attempt resolution of complaints by conference and conciliation, and, upon failure of such efforts, issue a charge and refer it to the Attorney General for action.

B. The Real Estate Board and the Fair Housing Board shall perform all acts necessary and proper to carry out the provisions of this chapter and may promulgate and amend necessary regulations.

1972, c. 591, § 36-94; 1973, c. 372; 1975, c. 566; 1984, c. 271; 1987, c. 167; 1991, c. 557; 2003, c. [575](#).

§36-96.9. Procedures for receipt or initiation of complaint; notice to parties; filing of answer.

A. A complaint under § [36-96.8](#) shall be filed with the Board in writing within one year after the alleged discriminatory housing practice occurred or terminated.

B. Any person not named in the complaint and who is identified as a respondent in the course of the investigation may be joined as an additional or substitute respondent upon written notice to such person by the Board explaining the basis for the Board's belief that such person is properly joined as a respondent.

C. Any respondent may file an answer to a complaint. Complaints and answers must be made in writing, under oath or affirmation, and in such form as the Board requires. Complaints and answers may be reasonably and fairly amended at any time.

D. Upon the filing of a complaint or initiation of a complaint by the Board or its designee, the Board shall provide written notice to the parties as follows:

1. To the aggrieved person acknowledging the filing and advising such person of the time limits and choice of forums under this chapter; and
2. To the respondent, not later than ten days after such filing or the identification of an additional respondent under subsection B, identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this chapter with a copy of the original complaint and copies of any supporting documentation referenced in the complaint.

1991, c. 557 .

§36-96.10. Procedures for investigation.

A. The Board shall commence proceedings with respect to a complaint within thirty days after receipt of the complaint, and shall complete the investigation within 100 days thereof unless it is impracticable to do so. If the Board is unable to complete the investigation within 100 days after the receipt of the complaint, the aggrieved person and the respondent shall be notified in writing of the reasons for not doing so.

B. When conducting an investigation of a complaint filed under this chapter, the Board shall have the right to interview any person who may have any information which may further its investigation and to request production of any records or documents for inspection and copying in the possession of any person which may further the investigation. Such persons shall be interviewed under oath. The Board or its designated subordinates shall have the power to issue and serve a subpoena to any such person to appear and testify and to produce any such records or documents for inspection and copying. Said subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served as part of a civil action in the Commonwealth of Virginia. In case of refusal or neglect to obey a subpoena, the Board may petition for its enforcement in the Circuit Court for the City of Richmond. The hearing on such petition shall be given priority on the court docket over all cases which are not otherwise given priority on the court docket by law.

C. At the end of each investigation under this section, the Board shall prepare a final investigative report containing:

1. The names and dates of contacts with witnesses;
2. A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
3. A summary description of other pertinent records;
4. A summary of witness statements; and
5. Answers to interrogatories.

A final report under this subsection may be amended if additional evidence is later discovered.

D. The Board shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Board's investigation, information derived from an investigation and any final investigative report relating to that investigation.

1975, c. 566, § 36-94.1; 1991, c. 557; 1998, c. [634](#).

§36-96.11. Reasonable cause determination and effect.

The Board shall, within 100 days after the filing of a complaint, determine, based on the facts and after consultation with the Office of the Attorney General, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so or unless the Board has approved a conciliation agreement with respect to the complaint. If the Board is unable to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur within 100 days after receipt of the complaint, the aggrieved person and the respondent shall be notified in writing of the reasons therefor.

1991, c. 557; 1998, c. [634](#).

§36-96.12. No reasonable cause determination and effect.

If the Board determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Board shall promptly dismiss the complaint notifying the parties within thirty days of such determination. The Board shall make public disclosure of each dismissal.

1991, c. 557 .

§36-96.13. Conciliation.

During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Board, the Board shall, to the extent feasible, engage in conciliation with respect to such complaint.

A. A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Board.

B. A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

C. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Board determines that disclosure is not required to further the purposes of this chapter.

D. Whenever the Board has reasonable cause to believe that a respondent has breached a conciliation agreement, the Board may refer the matter to the Attorney General with a recommendation that a civil action be filed under § [36-96.17](#) for the enforcement of such agreement.

1991, c. 557; 1992, c. 322 .

§36-96.14. Issuance of a charge.

Upon failure to resolve a complaint by conciliation and after consultation with the Office of the Attorney General, the Board shall issue a charge on behalf of the aggrieved person or persons and shall immediately refer the charge to the Attorney General, who shall proceed with the charge as directed by § [36-96.16](#). The Board may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of a trial of a civil action commenced by the aggrieved party under an Act of Congress or a state law seeking relief with respect to that discriminatory housing practice.

1. Such charge:

a. Shall consist of a short and plain statement of the facts upon which the Board has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

b. Shall be based on the final investigative report; and

c. Need not be limited to the acts or grounds alleged in the complaint filed under § [36-96.9](#).

2. After the Board issues a charge under this section, the Board shall cause a copy thereof to be served on each respondent named in such charge and on each aggrieved person on whose behalf the complaint was filed.

1991, c. 557 .

§36-96.15. Prompt judicial action.

If the Board concludes at any time following the filing of a complaint and after consultation with the Office of the Attorney General, that prompt judicial action is necessary to carry out the purposes of this chapter, the Board may authorize a civil action by the Attorney General for appropriate temporary or preliminary relief. Upon receipt of such authorization, the Attorney General shall promptly commence and maintain such action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Virginia Rules of Civil Procedure. The commencement of a civil action under this section shall not affect the initiation or continuation of administrative proceedings by the Board under § [36-96.8](#).

1991, c. 557 .

§36-96.16. Civil action by Attorney General upon referral of charge by the Real Estate Board.

A. Not later than thirty days after a charge is referred by the Board to the Attorney General under § [36-96.14](#), the Attorney General shall commence and maintain a civil action seeking relief on behalf of the complainant in the circuit court for the city, county, or town in which the unlawful discriminatory housing practice has occurred or is about to occur.

B. Any aggrieved person with respect to the issues to be determined in a civil action pursuant to subsection A may intervene as of right.

C. In a civil action under this section, if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may grant, as relief, any relief which a court could grant with respect to such discriminatory housing practice in a civil action under § [36-96.18](#). Any relief so granted that would accrue to an aggrieved person under § [36-96.18](#) shall also accrue to the aggrieved person in a civil action under this section. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not

award such relief if that aggrieved person has not complied with discovery orders entered by the court in the course of the action brought under this section.

D. In any court proceeding arising under this section, the court, in its discretion, may allow the prevailing party reasonable attorney's fees and costs.

1991, c. 557; 1994, c. [814](#).

§36-96.17. Civil action by Attorney General; matters involving the legality of any local zoning or other land use ordinance; pattern or practice cases; or referral of conciliation agreement for enforcement.

A. If the Board determines, after consultation with the Office of the Attorney General, that an alleged discriminatory housing practice involves the legality of any local zoning or land use ordinance, instead of issuing a charge, the Board shall immediately refer the matter to the Attorney General for civil action in the appropriate circuit court for appropriate relief. A civil action under this subsection shall be commenced no later than the expiration of eighteen months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

B. Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this chapter, or that any group of persons has been denied any of the rights granted by this chapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in the appropriate circuit court for appropriate relief.

C. In the event of a breach of a conciliation agreement by a respondent, the Board may authorize a civil action by the Attorney General. The Attorney General may commence a civil action in any appropriate circuit court for appropriate relief. A civil action under this subsection shall be commenced no later than the expiration of ninety days after the referral of such alleged breach.

D. The Attorney General, on behalf of the Board, or other party at whose request a subpoena is issued, under this chapter, may enforce such subpoena in appropriate proceedings in the appropriate circuit court.

E. In a civil action under subsections A, B, and C, the court may:

1. Award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this

chapter as is necessary to assure the full enjoyment of the rights granted by this chapter.

2. Assess a civil penalty against the respondent (i) in an amount not exceeding \$50,000 for a first violation; and (ii) in an amount not exceeding \$100,000 for any subsequent violation.
3. Award the prevailing party reasonable attorney's fees and costs. The Commonwealth shall be liable for such fees and costs to the extent provided by the Code of Virginia.

The court or jury may award such other relief to the aggrieved person, as the court deems appropriate, including compensatory damages, and punitive damages without limitation otherwise imposed by state law.

F. Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection A, B or C which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a party to a conciliation agreement. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under § [36-96.18](#).

1991, c. 557; 1994, c. [814](#).

§36-96.18. Civil action; enforcement by private parties.

A. An aggrieved person may commence a civil action in an appropriate United States district court or state court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this chapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

B. An aggrieved person may commence a civil action under § [36-96.18](#) A no later than 180 days after the conclusion of the administrative process with respect to a complaint or charge, or not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, whichever is later. This subsection shall not apply to actions arising from a breach of a conciliation agreement. An aggrieved person may commence a civil action under this section whether or not a complaint has been filed under § [36-96.9](#) and without regard to the status of any such complaint. If the Board or a federal agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this

section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

C. In a civil action under subsection A, if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may award to the plaintiff, as the prevailing party, compensatory and punitive damages, without limitation otherwise imposed by state law, and the court may award reasonable attorney's fees and costs, and subject to subsection D, may grant as relief, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or order such affirmative action as may be appropriate.

D. Relief granted under subsection C shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving bona fide purchasers, encumbrancer or tenant, without actual notice of the filing of a complaint with the Board or civil action under this chapter.

E. Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon intervention, the Attorney General may obtain such relief as would be available to the private party under subsection C.

1972, c. 591, § 36-94; 1973, c. 372; 1975, c. 566; 1984, c. 271; 1987, c. 167; 1991, c. 557; 1994, c. [814](#).

§36-96.19. Witness fees.

Witnesses summoned by a subpoena under this chapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in the courts of the Commonwealth. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Board.

1991, c. 557 .

§36-96.20. Additional powers of the Real Estate Board; action on real estate licenses.

A. In any case in which the Board has received or initiated a complaint and conducted an investigation of any violation of this chapter and determined that there exists reasonable cause to believe that a real estate broker, real estate salesperson,

real estate brokerage firm licensed in accordance with Chapter 21 (§ [54.1-2100](#) et seq.), or their agents or employees have engaged in discriminatory housing practices prohibited by the Virginia Fair Housing Law (§ [36-96.1](#) et seq.) or Chapter 5 (§ [6.2-500](#) et seq.) of Title 6.2, the Board shall immediately attempt to resolve the matter by conference and conciliation, and upon failure to resolve the matter in such manner, may initiate an administrative hearing to determine whether to revoke, suspend or fail to renew the license or licenses in question. Not less than 10 days prior to the initial conference hereunder, the Board shall prepare and deliver to the respondent or respondents a written report setting forth the scope, findings and conclusions of the investigation conducted under this section.

B. If any person operating under a real estate license issued by the Board, pursuant to the provisions of Chapter 21 (§ [54.1-2100](#) et seq.) of Title 54.1, is found by a court to have violated any provision of this chapter and this fact is so certified to the Board, the Board, after notification to the licensee, shall take appropriate action to consider suspension or revocation of the license of the licensee.

1972, c. 591, §§ 36-94, 36-95.2; 1973, c. 372; 1975, c. 566; 1984, c. 271; 1987, c. 167; 1991, c. 557; 1992, c. 84; 2003, c. [575](#); 2010, c. [794](#).

§36-96.21. Powers of counties, cities and towns.

A. Any county, city or town which has any ordinance in effect on January 1, 1991, enacted under the Virginia Fair Housing Law (§ [36-86](#) et seq.), the Virginia Human Rights Act (§ [2.2-3900](#) et seq.), or any other applicable state law may continue to enforce such ordinance and may amend the ordinance, provided the amendment is not inconsistent with this chapter. Nothing herein shall be construed to prohibit any county, city or town under this subsection from submitting amended ordinances to the U.S. Department of Housing and Urban Development for substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604-3606), as amended.

B. The governing body of any county, city or town may enact ordinances in accordance with the provisions of this chapter provided that (i) such ordinances conform to this chapter and are enacted prior to September 30, 1992, and (ii) such amended ordinances are submitted to the U.S. Department of Housing and Urban Development for a determination of substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604-3606), as amended.

1972, c. 591, § 36-96; 1975, c. 345; 1982, c. 113; 1991, c. 557; 1996, cc. [173](#), [369](#).

§36-96.22. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2

§36-96.23. Construction of law.

Nothing in this chapter shall abridge the federal Fair Housing Act of 1968 (42 U.S.C. § 3601 et seq.) as amended.

1991, c. 557 .

Virginia Freedom of Information Act

§2.2-3700. Short title; policy.

A. This chapter may be cited as "The Virginia Freedom of Information Act."

B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.

Any ordinance adopted by a local governing body that conflicts with the provisions of this chapter shall be void.

1968, c. 479, § 2.1-340; 1976, c. 467, § 2.1-340.1; 1989, c. 358; 1990, c. 538; 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2002, c. [393](#).

§2.2-3701. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means any audio or combined audio and visual communication method.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Information" as used in the exclusions established by §§ [2.2-3705.1](#) through [2.2-3705.7](#), means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § [2.2-3708](#) or [2.2-3708.1](#), as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; governing boards of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ [38.2-5000](#) et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § [9.1-101](#) shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, which unit includes two or more localities.

"Scholastic records" means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

1968, c. 479, § 2.1-341; 1970, c. 456; 1974, c. 332; 1975, c. 307; 1977, c. 677; 1978, cc. 573, 826; 1979, cc. 369, 687; 1980, c. 754; 1984, c. 252; 1989, c. 358; 1990, c. 538; 1993, cc. 270, 720; 1994, cc. [845](#), [931](#); 1996, c. [609](#); 1997, c. [641](#); 1999, cc. [703](#),

[726](#); 2001, c. [844](#); 2002, c. [393](#); 2003, c. [897](#); 2007, c. [945](#); 2008, cc. [233](#), [789](#); 2010, c. [706](#); 2011, c. [242](#); 2015, cc. [131](#), [195](#), [224](#); 2016, cc. [620](#), [716](#); 2017, cc. [616](#), [778](#).

§2.2-3702. Notice of chapter.

Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall (i) be furnished by the public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment or reappointment and (ii) read and become familiar with the provisions of this chapter.

1976, c. 467, § 2.1-341.1; 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2002, c. [393](#).

§2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records; access by persons incarcerated in a state, local, or federal correctional facility.

A. The provisions of this chapter shall not apply to:

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by the Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by the Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § [2.2-3704](#); (ii) all guidance documents, as defined in § [2.2-4001](#), shall be public records and subject to the provisions of this chapter; and (iii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information. The information required by clause (ii) shall include all documents establishing the policy of the Board or any change in or clarification of such policy with respect to grant, denial, deferral, revocation, or supervision of parole or geriatric release or the process for consideration thereof, and shall be clearly and conspicuously posted on the Board's website. However, such information shall not include any portion of any document reflecting the application of any policy or policy change or clarification of such policy to an individual inmate;
2. Petit juries and grand juries;
3. Family assessment and planning teams established pursuant to § [2.2-5207](#);

4. The Virginia State Crime Commission; and

5. The records required by law to be maintained by the clerks of the courts of record, as defined in § [1-212](#), and courts not of record, as defined in § [16.1-69.5](#). However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter.

B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

C. No provision of this chapter or Chapter 21 (§ [30-178](#) et seq.) of Title 30 shall be construed to afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private Management Act (§ [53.1-261](#) et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators Act (§ [37.2-900](#) et seq.). However, this subsection shall not be construed to prevent such persons from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution.

1999, cc. [703](#), [726](#), § 2.1-341.2; 2001, c. [844](#); 2003, cc. [989](#), [1018](#); 2004, cc. [398](#), [690](#); 2007, cc. [438](#), [548](#), [626](#); 2017, c. [620](#).

§2.2-3703.1. Disclosure pursuant to court order or subpoena.

Nothing contained in this chapter shall have any bearing upon disclosures required to be made pursuant to any court order or subpoena. No discretionary exemption from mandatory disclosure shall be construed to make records covered by such discretionary exemption privileged under the rules of discovery, unless disclosure is otherwise prohibited by law.

2014, c. [319](#).

§2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.

A. Except as otherwise specifically provided by law, all public records shall be open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall be provided by the custodian in accordance with this chapter by inspection or by providing copies of the requested

records, at the option of the requester. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being entirely withheld. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
2. The requested records are being provided in part and are being withheld in part. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.
4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the four preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsection G, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to

provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a successor to the transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ [42.1-76](#) et seq.). In accordance with § [42.1-79](#), the Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records made pursuant to this chapter.

1968, c. 479, § 2.1-342; 1973, c. 461; 1974, c. 332; 1975, cc. 307, 312; 1976, cc. 640, 709; 1977, c. 677; 1978, c. 810; 1979, cc. 682, 684, 686, 689; 1980, cc. 678, 754; 1981, cc. 456, 464, 466, 589; 1982, cc. 225, 449, 452, 560, 635; 1983, cc. 372, 462, 607; 1984, cc. 85, 395, 433, 513, 532; 1985, cc. 81, 155, 502, 618; 1986, cc. 273, 291, 383, 469, 592; 1987, cc. 401, 491, 581; 1988, cc. 39, 151, 395, 411, 891, 902; 1989, cc. 56, 358, 478; 1990, cc. 217, 538, 721, 819, 968; 1991, cc. 213, 561; 1992, cc. 40, 150, 167, 200, 203, 207, 593, 612; 1993, cc. 205, 270, 296, 537, 552, 638, 750, 883; 1994, cc. [485](#), [532](#), [606](#), [839](#), [853](#), [918](#); 1995, cc. [299](#), [362](#), [499](#), [562](#), [638](#), [722](#), [812](#), [837](#); 1996, cc. [168](#), [469](#), [589](#), [599](#), [783](#), [786](#), [794](#), [855](#), [862](#), [902](#), [905](#), [1001](#), [1046](#); 1997, cc. [198](#), [295](#), [439](#), [567](#), [636](#), [641](#), [777](#), [782](#), [785](#), [838](#), [861](#); 1998, cc. [427](#), [891](#); 1999, cc. [438](#), [703](#), [726](#); 2001, c. [844](#); 2002, cc. [715](#), [830](#); 2003, cc. [275](#), [981](#), [1021](#); 2007, c. [439](#); 2009, c. [626](#); 2010, c. [627](#); 2011, c. [604](#); 2016, cc. [620](#), [716](#); 2017, c. [778](#).

§2.2-3704.01. Records containing both excluded and nonexcluded information; duty to redact.

No provision of this chapter is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by this chapter or by any other provision of law. A public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under this chapter or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed.

2016, cc. [620](#), [716](#).

§2.2-3704.1. Posting of notice of rights and responsibilities by state and local public bodies; assistance by the Freedom of Information Advisory Council.

A. All state public bodies subject to the provisions of this chapter, any county or city, any town with a population of more than 250, and any school board shall make available the following information to the public upon request and shall post a link to such information on the homepage of their respective official public government websites:

1. A plain English explanation of the rights of a requester under this chapter, the procedures to obtain public records from the public body, and the responsibilities of the

public body in complying with this chapter. For purposes of this section, "plain English" means written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession;

2. Contact information for the FOIA officer designated by the public body pursuant to § [2.2-3704.2](#) to (i) assist a requester in making a request for records or (ii) respond to requests for public records;

3. A general description, summary, list, or index of the types of public records maintained by such public body;

4. A general description, summary, list, or index of any exemptions in law that permit or require such public records to be withheld from release;

5. Any policy the public body has concerning the type of public records it routinely withholds from release as permitted by this chapter or other law; and

6. The following statement: "A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen as set forth in subsection F of § [2.2-3704](#) of the Code of Virginia."

B. Any state public body subject to the provisions of this chapter and any county or city, and any town with a population of more than 250, shall post a link on its official public government website to the online public comment form on the Freedom of Information Advisory Council's website to enable any requester to comment on the quality of assistance provided to the requester by the public body.

C. The Freedom of Information Advisory Council, created pursuant to § [30-178](#), shall assist in the development and implementation of the provisions of subsection A, upon request.

2004, c. [730](#); 2009, c. [626](#); 2014, c. [421](#); 2016, c. [748](#); 2017, cc. [645](#), [778](#).

§2.2-3704.2. Public bodies to designate FOIA officer.

A. All state public bodies, including state authorities, that are subject to the provisions of this chapter and all local public bodies that are subject to the provisions of this chapter, shall designate and publicly identify one or more Freedom of Information Act officers (FOIA officer) whose responsibility is to serve as a point of contact for members of the public in requesting public records and to coordinate the public body's compliance with the provisions of this chapter.

B. For such state public bodies, the name and contact information of the public body's FOIA officer to whom members of the public may direct requests for public records and who will oversee the public body's compliance with the provisions of this chapter shall be made available to the public upon request and be posted on the respective public body's official public government website at the time of designation and maintained thereafter on such website for the duration of the designation.

C. For such local public bodies, the name and contact information of the public body's FOIA officer to whom members of the public may direct requests for public records and who will oversee the public body's compliance with the provisions of this chapter shall be made available in a way reasonably calculated to provide notice to the public, including posting at the public body's place of business, posting on its official public government website, or including such information in its publications.

D. For the purposes of this section, local public bodies shall include constitutional officers.

E. Any such FOIA officer shall possess specific knowledge of the provisions of this chapter and be trained at least annually by legal counsel for the public body or the Virginia Freedom of Information Advisory Council (the Council) or through an online course offered by the Council. Any such training shall document that the training required by this subsection has been fulfilled.

F. The name and contact information of a FOIA officer trained by legal counsel of a public body shall be (i) submitted to the Council by July 1 of each year on a form developed by the Council for that purpose and (ii) updated in a timely manner in the event of any changes to such information.

G. The Council shall maintain on its website a listing of all FOIA officers, including name, contact information, and the name of the public body such FOIA officers serve.

2016, c. [748](#); 2017, cc. [290](#), [778](#).

§2.2-3705. Repealed.

Repealed by Acts 2004, c. [690](#).

§2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. Personnel information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of such information and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such information shall be disclosed. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § [2.2-106](#) or [2.2-107](#).

No provision of this chapter or any provision of Chapter 38 (§ [2.2-3800](#) et seq.) shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under § [2.2-3705.1](#); (ii) records of the name, position, job classification, official salary, or rate of pay of, and records of the allowances or reimbursements for expenses paid to, any officer, official, or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subdivision, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

2. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other information protected by the attorney-client privilege.

3. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § [2.2-3711](#).

4. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

As used in this subdivision, "test or examination" shall include (a) any scoring key for any such test or examination and (b) any other document that would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § [2.2-3711](#). However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

6. Vendor proprietary information software that may be in the public records of a public body. For the purpose of this subdivision, "vendor proprietary information software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

7. Computer software developed by or for a state agency, public institution of higher education in the Commonwealth, or political subdivision of the Commonwealth.

8. Appraisals and cost estimates of real property subject to a proposed purchase, sale, or lease, prior to the completion of such purchase, sale, or lease.

9. Information concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ [2.2-1832](#) et seq.) of Chapter 18, or by any county, city, or town; and

investigative notes, correspondence and information furnished in confidence with respect to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision shall prevent the disclosure of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.

10. Personal contact information furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record. As used in this subdivision, "personal contact information" means the information provided to the public body for the purpose of receiving electronic mail from the public body and includes home or business (i) address, (ii) email address, or (iii) telephone number or comparable number assigned to any other electronic communication device.

11. Communications and materials required to be kept confidential pursuant to § [2.2-4119](#) of the Virginia Administrative Dispute Resolution Act (§ [2.2-4115](#) et seq.).

12. Information relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such information would adversely affect the bargaining position or negotiating strategy of the public body. Such information shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.), the provisions of this subdivision shall not apply, and any release of information relating to such transactions shall be governed by the Virginia Public Procurement Act.

13. Account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. However, access shall not be denied to the person who is the subject of the information. For the purposes of this subdivision, "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, savings and loan companies or associations, and credit unions.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#),

[499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, c. [690](#); 2010, c. [553](#); 2016, cc. [620](#), [716](#), [729](#); 2017, cc. [140](#), [778](#).

§2.2-3705.2. Exclusions to application of chapter; records relating to public safety.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. Confidential information, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.
2. Information that describes the design, function, operation, or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.
3. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.
4. Information concerning security plans and specific assessment components of school safety audits, as provided in § [22.1-279.8](#).

Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster, or other catastrophic event or (ii) any person on school property has suffered or been threatened with any personal injury.

5. Information concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ [37.2-900](#) et seq.) of Title 37.2 held by the Commitment Review Committee; except that in no case shall information identifying the victims of a sexually violent predator be disclosed.
6. Subscriber data provided directly or indirectly by a communications services provider to a public body that operates a 911 or E-911 emergency dispatch system or an

emergency notification or reverse 911 system if the data is in a form not made available by the communications services provider to the public generally. Nothing in this subdivision shall prevent the disclosure of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

For the purposes of this subdivision:

"Communications services provider" means the same as that term is defined in § [58.1-647](#).

"Subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a communications services provider.

7. Subscriber data collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ [56-484.12](#) et seq.) and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system if such records are not otherwise publicly available.

Nothing in this subdivision shall prevent the disclosure of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

For the purposes of this subdivision:

"Communications services provider" means the same as that term is defined in § [58.1-647](#).

"Subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a communications services provider.

8. Information held by the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, that would (i) reveal strategies under consideration or development by

the Council or such commission or organizations to prevent the closure or realignment of federal military installations located in Virginia or the relocation of national security facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant activity growth from the Department of Defense or federal government or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), provided to the Council or such commission or organizations in connection with their work.

In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall, in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed to prevent the disclosure of all or part of any record, other than a trade secret that has been specifically identified as required by this subdivision, after the Department of Defense or federal agency has issued a final, unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or expansion of the military installation or tenant activities, or the relocation of the national security facility, for which records are sought.

9. Information, as determined by the State Comptroller, that describes the design, function, operation, or implementation of internal controls over the Commonwealth's financial processes and systems, and the assessment of risks and vulnerabilities of those controls, including the annual assessment of internal controls mandated by the State Comptroller, if disclosure of such information would jeopardize the security of the Commonwealth's financial assets. However, records relating to the investigation of and findings concerning the soundness of any fiscal process shall be disclosed in a form that does not compromise internal controls. Nothing in this subdivision shall be construed to prohibit the Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting internal control deficiencies discovered during the course of an audit.

10. Information relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to

radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, or programming maintained by or utilized by STARS or any other similar local or regional public safety communications system.

11. Information concerning a salaried or volunteer Fire/EMS company or Fire/EMS department if disclosure of such information would reveal the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.

12. Information concerning the disaster recovery plans or the evacuation plans in the event of fire, explosion, natural disaster, or other catastrophic event for hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ [32.1-123](#) et seq.) of Title 32.1 provided to the Department of Health. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the effectiveness of executed evacuation plans after the occurrence of fire, explosion, natural disaster, or other catastrophic event.

13. Records received by the Department of Criminal Justice Services pursuant to §§ [9.1-184](#), [22.1-79.4](#), and [22.1-279.8](#) or for purposes of evaluating threat assessment teams established by a public institution of higher education pursuant to § [23.1-805](#) or by a private nonprofit institution of higher education, to the extent such records reveal security plans, walk-through checklists, or vulnerability and threat assessment components.

14. Information contained in (i) engineering, architectural, or construction drawings; (ii) operational, procedural, tactical planning, or training manuals; (iii) staff meeting minutes; or (iv) other records that reveal any of the following, the disclosure of which would jeopardize the safety or security of any person; governmental facility, building, or structure or persons using such facility, building, or structure; or public or private commercial office, multifamily residential, or retail building or its occupants:

a. Critical infrastructure information or the location or operation of security equipment and systems of any public building, structure, or information storage facility, including ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, or utility equipment and systems;

- b. Vulnerability assessments, information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities, or security plans and measures of an entity, facility, building structure, information technology system, or software program;
- c. Surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational or transportation plans or protocols; or
- d. Interconnectivity, network monitoring, network operation centers, master sites, or systems related to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system.

The same categories of records of any person or entity submitted to a public body for the purpose of antiterrorism response planning or cybersecurity planning or protection may be withheld from disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records from public disclosure is necessary to meet the objective of antiterrorism, cybersecurity planning or protection, or critical infrastructure information security and resilience. Such statement shall be a public record and shall be disclosed upon request.

Any public body receiving a request for records excluded under clauses (a) and (b) of this subdivision 14 shall notify the Secretary of Public Safety and Homeland Security or his designee of such request and the response made by the public body in accordance with § [2.2-3704](#).

Nothing in this subdivision 14 shall prevent the disclosure of records relating to (1) the structural or environmental soundness of any such facility, building, or structure or (2) an inquiry into the performance of such facility, building, or structure after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.

As used in this subdivision, "critical infrastructure information" means the same as that term is defined in 6 U.S.C. § 131.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [398](#), [482](#), [690](#), [770](#); 2005, c. [410](#); 2008, c.

[721](#); 2009, c. [418](#); 2010, c. [672](#); 2011, cc. [111](#), [536](#); 2012, cc. [617](#), [803](#), [835](#); 2013, c. [600](#); 2015, c. [183](#); 2016, cc. [554](#), [620](#), [716](#), [717](#); 2017, c. [778](#).

§2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. (Effective until January 15, 2018) Information relating to investigations of applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

1. (Effective January 15, 2018) Information relating to investigations of applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth pursuant to § [54.1-108](#).

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management, to such personnel of any local public body, including local school boards, as are responsible for conducting such investigations in confidence, or to any public institution of higher education. However, nothing in this subdivision shall prevent the disclosure of information taken from inactive reports in a form that does not reveal the identity of

charging parties, persons supplying the information, or other individuals involved in the investigation.

4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ [32.1-323](#) et seq.) of Title 32.1.

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ [2.2-3900](#) et seq.) or under any local ordinance adopted in accordance with the authority specified in § [2.2-524](#), or adopted pursuant to § [15.2-965](#), or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this subdivision shall prevent the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. Information relating to studies and investigations by the Virginia Lottery of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ [58.1-4014](#) through [58.1-4018](#), (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such information has not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § [2.2-3010](#) with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ [2.2-3009](#) et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ [2.2-307](#) et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § [15.2-825](#); or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any

officer, department, or program of such body. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is excluded by this subdivision, the information disclosed shall include the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. The names, addresses, and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ [36-97](#) et seq.) or the Statewide Fire Prevention Code (§ [27-94](#) et seq.) made to a local governing body.

9. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ [9.1-138](#) et seq.), Article 4.1 (§ [9.1-150.1](#) et seq.), Article 11 (§ [9.1-185](#) et seq.), and Article 12 (§ [9.1-186](#) et seq.) of Chapter 1 of Title 9.1.

10. Information furnished to or prepared by the Board of Education pursuant to subsection D of § [22.1-253.13:3](#) in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of such information to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

11. Information contained in (i) an application for licensure or renewal of a license for teachers and other school personnel, including transcripts or other documents submitted in support of an application, and (ii) an active investigation conducted by or for the Board of Education related to the denial, suspension, cancellation, revocation, or reinstatement of teacher and other school personnel licenses including

investigator notes and other correspondence and information, furnished in confidence with respect to such investigation. However, this subdivision shall not prohibit the disclosure of such (a) application information to the applicant at his own expense or (b) investigation information to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The completed investigation information disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information regarding a current or former student shall be released except as permitted by state or federal law.

12. Information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ [3.2-4200](#) et seq.) or Article 3 (§ [3.2-4204](#) et seq.) of Chapter 42 of Title 3.2, Article 10 (§ [18.2-246.6](#) et seq.) of Chapter 6 or Chapter 13 (§ [18.2-512](#) et seq.) of Title 18.2, or Article 1 (§ [58.1-1000](#)) of Chapter 10 of Title 58.1. However, information related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses, or other individuals involved in the investigation.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [605](#), [690](#), [766](#); 2005, c. [601](#); 2006, cc. [25](#), [95](#); 2008, cc. [387](#), [668](#), [689](#), [758](#); 2009, cc. [237](#), [326](#), [340](#); 2011, cc. [798](#), [871](#); 2012, cc. [476](#), [507](#), [803](#), [835](#); 2013, cc. [571](#), [572](#), [690](#), [717](#), [723](#); 2014, cc. [225](#), [414](#), [609](#), [788](#); 2015, cc. [38](#), [730](#); 2016, cc. [272](#), [620](#), [716](#); 2017, c. [778](#).

§2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 18 years. For scholastic records of students under the age of 18 years, the right of access may be asserted only by his legal guardian or parent, including a non-custodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a public institution of higher education in the Commonwealth, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such records shall be disclosed.

2. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment or promotion, or (iii) receipt of an honor or honorary recognition.

3. Information held by the Brown v. Board of Education Scholarship Committee that would reveal personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

4. Information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or

administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such information has not been publicly released, published, copyrighted or patented.

5. Information held by the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be.

6. Personal information, as defined in § [2.2-3801](#), provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ [23.1-700](#) et seq.) of Title 23.1, including personal information related to (i) qualified beneficiaries as that term is defined in § [23.1-700](#), (ii) designated survivors, or (iii) authorized individuals. Nothing in this subdivision shall be construed to prevent disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

For purposes of this subdivision:

"Authorized individual" means an individual who may be named by the account owner to receive information regarding the account but who does not have any control or authority over the account.

"Designated survivor" means the person who will assume account ownership in the event of the account owner's death.

7. Information maintained in connection with fundraising activities by or for a public institution of higher education that would reveal (i) personal fundraising strategies relating to identifiable donors or prospective donors or (ii) wealth assessments;

estate, financial, or tax planning information; health-related information; employment, familial, or marital status information; electronic mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or prospective donors. Nothing in this subdivision, however, shall be construed to prevent the disclosure of information relating to the amount, date, purpose, and terms of the pledge or donation, or the identity of the donor unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the performance of research services or other work or (ii) the terms and conditions of such grants or contracts.

8. Information held by a threat assessment team established by a local school board pursuant to § [22.1-79.4](#) or by a public institution of higher education pursuant to § [23.1-805](#) relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, such information of the threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to § [19.2-389](#) or [19.2-389.1](#), health records obtained pursuant to § [32.1-127.1:03](#), or scholastic records as defined in § [22.1-289](#). The public body providing such information shall remove personally identifying information of any person who provided information to the threat assessment team under a promise of confidentiality.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, c. [690](#); 2006, c. [518](#); 2008, cc. [561](#), [665](#); 2010, cc. [456](#), [524](#); 2014, c. [313](#); 2016, cc. [554](#), [620](#), [716](#); 2017, c. [778](#).

§2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in

his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § [32.1-127.1:03](#).

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a non-custodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § [20-124.6](#). In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § [16.1-338](#) or [54.1-2969](#), the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be disclosed. No such summaries or data shall include any information that identifies specific individuals receiving services.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants; information required to be provided to the Department of Health Professions by certain licensees pursuant to § [54.1-2506.1](#);

information held by the Health Practitioners' Monitoring Program Committee within the Department of Health Professions that identifies any practitioner who may be, or who is actually, impaired to the extent that disclosure is prohibited by § [54.1-2517](#); and information relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such information that are in the possession of the Prescription Monitoring Program (Program) pursuant to Chapter 25.2 (§ [54.1-2519](#) et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

3. Reports, documentary evidence, and other information as specified in §§ [51.5-122](#) and [51.5-141](#) and Chapter 1 (§ [63.2-100](#) et seq.) of Title 63.2 and information and statistical registries required to be kept confidential pursuant to Chapter 1 (§ [63.2-100](#) et seq.) of Title 63.2.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ [63.2-1700](#) et seq.) and 18 (§ [63.2-1800](#) et seq.) of Title 63.2; and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§ [8.01-216.1](#) et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ [32.1-310](#) et seq.) of Title 32.1. However, nothing in this subdivision shall prevent the disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ [32.1-111.1](#) et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § [37.2-818](#).

7. Information acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § [32.1-283.1](#) or by a local or regional child fatality review team to the extent that such information is made confidential by § [32.1-283.2](#); (ii) during a review of any death conducted by a family

violence fatality review team to the extent that such information is made confidential by § [32.1-283.3](#); or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § [32.1-283.5](#) or by a local or regional adult fatality review team to the extent that such information is made confidential by § [32.1-283.6](#).

8. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § [32.1-276.9](#), to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § [32.1-276.4](#).

9. Information relating to a grant application, or accompanying a grant application, submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ [51.5-178](#) et seq.) of Chapter 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data identifying individual patients or (b) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

10. Any information copied, recorded, or received by the Commissioner of Health in the course of an examination, investigation, or review of a managed care health insurance plan licensee pursuant to §§ [32.1-137.4](#) and [32.1-137.5](#), including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

11. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § [38.2-5002.2](#).

12. Information held by the State Health Commissioner relating to the health of any person subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ [32.1-48.05](#) et seq.) of Chapter 2 of Title 32.1. However, nothing in this subdivision shall be construed to prevent the disclosure of statistical summaries, abstracts, or other information in aggregate form.

13. The names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § [63.2-600](#).

14. Information held by certain health care committees and entities that may be withheld from discovery as privileged communications pursuant to § [8.01-581.17](#).

15. Data and information specified in § [37.2-308.01](#) relating to proceedings provided for in Article 16 (§ [16.1-335](#) et seq.) of Chapter 11 of Title 16.1 and Chapter 8 (§ [37.2-800](#) et seq.) of Title 37.2.

16. (For contingent effective date, see Editor's note.) Records of and information held by the Emergency Department Care Coordination Program required to be kept confidential pursuant to § [32.1-372](#).

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [65](#), [666](#), [690](#), [773](#), [1014](#), [1021](#); 2005, cc. [181](#), [227](#), [716](#); 2008, c. [539](#); 2009, cc. [472](#), [813](#), [840](#); 2011, cc. [110](#), [175](#), [535](#); 2012, cc. [476](#), [479](#), [507](#), [803](#), [835](#); 2015, cc. [22](#), [108](#), [127](#); 2016, cc. [620](#), [716](#); 2017, cc. [188](#), [475](#), [600](#), [719](#), [778](#).

§2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § [62.1-132.4](#) or [62.1-134.1](#).

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ [15.2-4900](#) et seq.) of Title 15.2.

3. Proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and

where disclosure of such information would adversely affect the financial interest of the public body.

4. Information that was filed as confidential under the Toxic Substances Information Act (§ [32.1-239](#) et seq.), as such Act existed prior to July 1, 1992.

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § [28.2-204](#).

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

7. Proprietary information related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ [32.1-331.12](#) et seq.) of Chapter 10 of Title 32.1.

9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection F of § [2.2-4342](#) as trade secrets or proprietary information by any person in connection with a procurement transaction or by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § [2.2-4317](#).

11. a. Memoranda, staff evaluations, or other information prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) where (i) if such information was made public prior to or after the execution of an interim or a comprehensive agreement, § [33.2-1820](#) or [56-575.17](#) notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.); (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if such information was made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

- (1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- (2) Identifying with specificity the data or other materials for which protection is sought; and
- (3) Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the private entity. To protect other information submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public entity, the information afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § [33.2-1820](#) or [56-575.17](#); (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.).

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected.

13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), or confidential proprietary information that is not generally available to the public through regulatory disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under Chapter 21 (§ [15.2-2100](#) et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the information relates to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies, or improvements have not been implemented by the franchisee on a non-experimental scale in the franchise area, and where, if such information were made public, the competitive advantage or financial interests of the franchisee would be adversely affected.

In order for trade secrets or confidential proprietary information to be excluded from the provisions of this chapter, the bidder, applicant, or franchisee shall (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reason why protection is necessary.

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

14. Information of a proprietary or confidential nature furnished by a supplier or manufacturer of charitable gaming supplies to the Department of Agriculture and Consumer Services (i) pursuant to subsection E of § [18.2-340.34](#) and (ii) pursuant to regulations promulgated by the Charitable Gaming Board related to approval of electronic and mechanical equipment.

15. Information related to Virginia apple producer sales provided to the Virginia StateApple Board pursuant to § [3.2-1215](#).

16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.) of Title 59.1, submitted by CMRS providers as defined in § [56-484.12](#) to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § [56-484.15](#), relating to the provision of wireless E-911 service.

17. Information relating to a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ [2.2-2233.1](#) et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 5.3 (§ [32.1-162.23](#) et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

18. Confidential proprietary information and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § [56-265.4:4](#) and (ii) providing cable television services pursuant to Article 1.1 (§ [15.2-2108.2](#) et seq.) of Chapter 21 of Title 15.2 if disclosure of such information would be harmful to the competitive position of the locality.

In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the information for which protection is sought, and (c) state the reasons why protection is necessary. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ [15.2-7200](#) et seq.).

19. Confidential proprietary information and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ [15.2-5431.1](#) et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ [56-484.7:1](#) et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that information required to be maintained in accordance with § [15.2-2160](#) shall be released.

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.) or financial information of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Small Business and Supplier Diversity as part of an application for certification as a small, women-owned, or minority-owned business in accordance with Chapter 16.1 (§ [2.2-1603](#) et seq.). In order for such trade

secrets or financial information to be excluded from the provisions of this chapter, the business shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary.

21. Information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ [32.1-276.5:1](#) and [32.1-276.7:1](#).

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), including, but not limited to, financial information, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

In order for the information specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the State Inspector General:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

The State Inspector General shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the private entity. The State Inspector General shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

23. Information relating to a grant application, or accompanying a grant application, submitted to the Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), (b) financial information of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (c) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on

medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § [3.2-3103](#).

In order for the information specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Commission:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data, information or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

The Commission shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets, financial information, or research-related information of the applicant. The Commission shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

24. a. Information held by the Commercial Space Flight Authority relating to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority if disclosure of such information would adversely affect the financial interest or bargaining position of the Authority or a private entity providing the information to the Authority; or

b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of such information would (i) reveal (a) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.); (b) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial interest or bargaining position of the Authority or private entity.

In order for the information specified in clauses (a), (b), and (c) of subdivision 24 b to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

- (1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- (2) Identifying with specificity the data or other materials for which protection is sought; and
- (3) Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the private entity. To protect other information submitted by the private entity from disclosure, the Authority shall determine whether public disclosure would adversely affect the financial interest or bargaining position of the Authority or private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

25. Information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the Commonwealth pursuant to §§ [10.1-104.7](#), [10.1-104.8](#), and [10.1-104.9](#), other than when required as part of a state or federal regulatory enforcement action.

26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), provided to the Department of Environmental Quality pursuant to the provisions of § [10.1-1458](#). In order for such trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii) identify the data or materials for which protection is sought, and (iii) state the reasons why protection is necessary.

27. Information of a proprietary nature furnished by a licensed public-use airport to the Department of Aviation for funding from programs administered by the Department of Aviation or the Virginia Aviation Board, where if such information was made public, the financial interest of the public-use airport would be adversely affected.

In order for the information specified in this subdivision to be excluded from the provisions of this chapter, the public-use airport shall make a written request to the Department of Aviation:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

28. Information relating to a grant or loan application, or accompanying a grant or loan application, submitted to the Virginia Research Investment Committee established pursuant to Article 8 (§ [23.1-3130](#) et seq.) of Chapter 31 of Title 23.1, to the extent that such records would (i) reveal (a) trade secrets as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.); (b) financial information of a party to a grant or loan application that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) research-related information produced or collected by a party to the application in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of a party to a grant or loan application; and memoranda, staff evaluations, or other information prepared by the Committee or its staff, or a reviewing entity pursuant to subsection D of § [23.1-3133](#), exclusively for the evaluation of grant or loan applications, including any scoring or prioritization documents prepared for and forwarded to the Committee pursuant to subsection D of § [23.1-3133](#).

In order for the information submitted by the applicant and specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Committee:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data, information, or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

The Virginia Research Investment Committee shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets, financial information, or research-related information of the party to the application. The Committee shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

29. Proprietary information, voluntarily provided by a private business pursuant to a promise of confidentiality from a public body, used by the public body for a solar services agreement, where disclosure of such information would (i) reveal (a) trade secrets of the private business as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.); (b) financial information of the private business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private business and (ii) adversely affect the financial interest or bargaining position of the public body or private business.

In order for the information specified in clauses (i)(a), (b), and (c) to be excluded from the provisions of this chapter, the private business shall make a written request to the public body:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

30. Information contained in engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such information would identify specific trade secrets or other information that would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#),

[801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [593](#), [690](#); 2005, cc. [258](#), [411](#); 2006, cc. [73](#), [76](#), [467](#), [831](#), [921](#), [936](#); 2006, Sp. Sess. I, c. [1](#); 2007, cc. [374](#), [693](#); 2008, cc. [71](#), [102](#), [266](#), [387](#), [633](#), [689](#), [736](#), [743](#); 2009, cc. [246](#), [311](#), [325](#), [765](#), [810](#), [869](#); 2010, cc. [310](#), [808](#); 2011, cc. [541](#), [781](#), [798](#), [871](#); 2012, cc. [693](#), [709](#); 2013, cc. [54](#), [482](#), [574](#); 2015, cc. [696](#), [697](#); 2016, cc. [620](#), [716](#), [724](#), [725](#), [775](#); 2017, cc. [662](#), [737](#), [778](#), [796](#), [816](#).

§2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exclusions.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § [2.2-3704.01](#).

1. State income, business, and estate tax returns, personal property tax returns, and confidential records held pursuant to § [58.1-3](#).

2. Working papers and correspondence of the Office of the Governor, the Lieutenant Governor, or the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates or the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in the Commonwealth. However, no information that is otherwise open to inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. Further, information publicly available or not otherwise subject to an exclusion under this chapter or other provision of law that has been aggregated, combined, or changed in format without substantive analysis or revision shall not be deemed working papers. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § [2.2-106](#) or [2.2-107](#).

As used in this subdivision:

"Members of the General Assembly" means each member of the Senate of Virginia and the House of Delegates and their legislative aides when working on behalf of such member.

"Office of the Governor" means the Governor; the Governor's chief of staff, counsel, director of policy, and Cabinet Secretaries; the Assistant to the Governor for Inter-governmental Affairs; and those individuals to whom the Governor has delegated his authority pursuant to § [2.2-104](#).

"Working papers" means those records prepared by or for a public official identified in this subdivision for his personal or deliberative use.

3. Information contained in library records that can be used to identify (i) both (a) any library patron who has borrowed material from a library and (b) the material such patron borrowed or (ii) any library patron under 18 years of age. For the purposes of clause (ii), access shall not be denied to the parent, including a noncustodial parent, or guardian of such library patron.

4. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

6. Information furnished by a member of the General Assembly to a meeting of a standing committee, special committee, or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § [30-110](#) or of formulating advisory opinions to members on standards of conduct, or both.

7. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money charged or paid for such utility service.

8. Personal information, as defined in § [2.2-3801](#), (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment

and housing authority created pursuant to § [36-4](#) concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § [36-4](#) or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § [15.2-2304](#) or [15.2-2305](#). However, access to one's own information shall not be denied.

9. Information regarding the siting of hazardous waste facilities, except as provided in § [10.1-1441](#), if disclosure of such information would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions, and provisions of the siting agreement.

10. Information on the site-specific location of rare, threatened, endangered, or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exclusion shall not apply to requests from the owner of the land upon which the resource is located.

11. Memoranda, graphics, video or audio tapes, production models, data, and information of a proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such information not been publicly released, published, copyrighted, or patented. Whether released, published, or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. Information held by the Virginia Retirement System, acting pursuant to § [51.1-124.30](#), or a local retirement system, acting pursuant to § [51.1-803](#), or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for post-retirement benefits other than pensions, acting pursuant to Article 8 (§ [15.2-1544](#) et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § [23.1-2210](#), or by the Virginia College Savings Plan, acting pursuant to § [23.1-704](#), relating to the acquisition,

holding, or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, if disclosure of such information would (i) reveal confidential analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan, or provided to the retirement system, a local finance board or board of trustees, or the Virginia College Savings Plan under a promise of confidentiality of the future value of such ownership interest or the future financial performance of the entity and (ii) have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Financial, medical, rehabilitative, and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ [51.5-53](#) et seq.) of Title 51.5.

14. Information held by the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts, or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical, or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such information has not been publicly released,

published, copyrighted, or patented. This exclusion shall also apply when such information is in the possession of Virginia Commonwealth University.

15. Information held by the Department of Environmental Quality, the State Water Control Board, the State Air Pollution Control Board, or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such information shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prevent the disclosure of information related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

16. Information related to the operation of toll facilities that identifies an individual, vehicle, or travel itinerary, including vehicle identification data or vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

17. Information held by the Virginia Lottery pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

18. Information held by the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

19. Information pertaining to the planning, scheduling, and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ [55-210.1](#) et seq.) prepared by or for the State Treasurer or his agents or employees or persons employed to perform an audit or examination of holder records.

20. Information held by the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body that reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

21. Information held by state or local park and recreation departments and local and regional park authorities concerning identifiable individuals under the age of 18 years. However, nothing in this subdivision shall operate to prevent the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For such information of persons who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the information may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such information for inspection and copying.

22. Information submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management that reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

23. Information held by the Judicial Inquiry and Review Commission made confidential by § [17.1-913](#).

24. Information held by the Virginia Retirement System acting pursuant to § [51.1-124.30](#), a local retirement system acting pursuant to § [51.1-803](#) (hereinafter collectively referred to as the retirement system), or the Virginia College Savings Plan, acting pursuant to § [23.1-704](#) relating to:

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection

or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, if disclosure of such information would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), provided by a private entity to the retirement system or the Virginia College Savings Plan if disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

- (1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;
- (2) Identifying with specificity the data or other materials for which protection is sought; and
- (3) Stating the reasons why protection is necessary.

The retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to prevent the disclosure of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

25. Information held by the Department of Corrections made confidential by § [53.1-233](#).

26. Information maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ [2.2-4600](#) et seq.) and required to be provided by such participants to the Department to establish accounts in accordance with § [2.2-4602](#).

27. Personal information, as defined in § [2.2-3801](#), contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that access shall not be denied to the person who is the subject of the information.

28. Information maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § [2.2-2716](#) that reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the information. Nothing in this subdivision, however, shall be construed to prevent the disclosure of information relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor, unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

29. Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such information is not otherwise available to the public and the disclosure of such information would reveal confidential strategies, methods, or procedures to be employed in law-enforcement activities or materials created for the investigation and prosecution of a criminal case.

30. Information provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft where the information would not be subject to disclosure by the entity providing the information. The entity providing the information to the Department of Aviation shall identify the specific information to be protected and the applicable provision of this chapter that excludes the information from mandatory disclosure.

31. Information created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § [17.1-100](#).

32. Information reflecting the substance of meetings in which (i) individual sexual assault cases are discussed by any sexual assault team established pursuant to § [15.2-1627.4](#) or (ii) individual child abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child abuse teams established pursuant to § [15.2-1627.5](#). The findings of any such team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals.

33. Information contained in the strategic plan, marketing plan, or operational plan prepared by the Virginia Economic Development Partnership Authority pursuant to § [2.2-2237.1](#) regarding target companies, specific allocation of resources and staff for marketing activities, and specific marketing activities that would reveal to the Commonwealth's competitors for economic development projects the strategies intended to be deployed by the Commonwealth, thereby adversely affecting the financial interest of the Commonwealth. The executive summaries of the strategic plan, marketing plan, and operational plan shall not be redacted or withheld pursuant to this subdivision.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, cc. [426](#), [690](#), [832](#); 2005, cc. [165](#), [508](#); 2007, cc. [406](#), [652](#), [660](#), [737](#), [739](#); 2008, cc. [16](#), [739](#); 2009, cc. [223](#), [827](#), [845](#); 2010, c. [300](#); 2011, cc. [827](#), [867](#); 2012, c. [726](#); 2013, cc. [199](#), [481](#), [554](#), [574](#); 2014, cc. [225](#), [808](#); 2015, cc. [38](#), [137](#), [549](#), [730](#); 2016, cc. [550](#), [620](#), [716](#), [729](#); 2017, cc. [587](#), [642](#), [778](#), [804](#), [824](#).

§2.2-3705.8. Limitation on record exclusions.

Nothing in this chapter shall be construed as denying public access to the nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant's report.

1999, cc. [485](#), [518](#), [703](#), [726](#), [793](#), [849](#), [852](#), [867](#), [868](#), [881](#), § 2.1-342.01; 2000, cc. [66](#), [237](#), [382](#), [400](#), [430](#), [583](#), [589](#), [592](#), [594](#), [618](#), [632](#), [657](#), [720](#), [932](#), [933](#), [947](#), [1006](#), [1064](#); 2001, cc. [288](#), [518](#), [844](#), § 2.2-3705; 2002, cc. [87](#), [155](#), [242](#), [393](#), [478](#), [481](#), [499](#), [522](#), [571](#), [572](#), [633](#), [655](#), [715](#), [798](#), [830](#); 2003, cc. [274](#), [307](#), [327](#), [332](#), [358](#), [704](#), [801](#), [884](#), [891](#), [893](#), [897](#), [968](#); 2004, c. [690](#); 2017, c. [778](#).

§2.2-3706. Disclosure of criminal records; limitations.

A. All public bodies engaged in criminal law-enforcement activities shall provide requested records in accordance with this chapter as follows:

1. Records required to be released:

a. Criminal incident information relating to felony offenses, which shall include:

- (1) A general description of the criminal activity reported;
- (2) The date the alleged crime was committed;
- (3) The general location where the alleged crime was committed;
- (4) The identity of the investigating officer or other point of contact; and
- (5) A general description of any injuries suffered or property damaged or stolen.

A verbal response as agreed to by the requester and the public body is sufficient to satisfy the requirements of subdivision a.

Where the release of criminal incident information, however, is likely to jeopardize an ongoing investigation or prosecution or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in subdivision a shall be construed to authorize the withholding of those portions of such information that are not likely to cause the above-referenced damage;

b. Adult arrestee photographs taken during the initial intake following the arrest and as part of the routine booking procedure, except when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;

c. Information relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest; and

d. Records of completed unattended death investigations to the parent or spouse of the decedent or, if there is no living parent or spouse, to the most immediate family member of the decedent, provided the person is not a person of interest or a suspect. For the purposes of this subdivision, "unattended death" means a death determined to be a suicide, accidental or natural death where no criminal charges will be initiated, and "immediate family" means the decedent's personal representative or, if no personal representative has qualified, the decedent's next of kin in order of intestate succession as set forth in § [64.2-200](#).

2. Discretionary releases. The following records are excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:

- a. Criminal investigative files, defined as any documents and information, including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information subject to release in accordance with subdivision 1 a;
- b. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to Chapter 3.2 (§ [2.2-307](#) et seq.), and (iii) campus police departments of public institutions of higher education established pursuant to Article 3 (§ [23.1-809](#) et seq.) of Chapter 8 of Title 23.1;
- c. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity;
- d. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;
- e. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public;
- f. All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ [19.2-152.2](#) et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision, or monitoring by a local community-based probation services agency in accordance with Article 9 (§ [9.1-173](#) et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ [53.1-141](#) et seq.) of Chapter 4 of Title 53.1;
- g. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties;
- h. Those portions of any records containing information related to undercover operations or protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations or protective details. Nothing in this subdivision shall operate to allow the withholding of information concerning the overall costs or expenses associated with undercover operations or protective details;

i. Records of (i) background investigations of applicants for law-enforcement agency employment, (ii) administrative investigations relating to allegations of wrongdoing by employees of a law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement agencies that are made confidential by law;

j. The identity of any victim, witness, or undercover officer, or investigative techniques or procedures. However, the identity of any victim or witness shall be withheld if disclosure is prohibited or restricted under § [19.2-11.2](#); and

k. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1, including information obtained from state, local, and regional officials, except to the extent that information is required to be posted on the Internet pursuant to § [9.1-913](#); and

3. Prohibited releases. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

B. Noncriminal records. Those portions of noncriminal incident or other noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature may be withheld where the release of such information would jeopardize the safety or privacy of any person. Access to personnel records of persons employed by a law-enforcement agency shall be governed by the provisions of subdivision A 2 i of this section and subdivision 1 of § [2.2-3705.1](#), as applicable.

C. Records of any call for service or other communication to an emergency 911 system or communicated with any other equivalent reporting system shall be subject to the provisions of this chapter.

D. Conflict resolution. In the event of conflict between this section as it relates to requests made under this section and other provisions of law, this section shall control.

1999, cc. [703](#), [726](#), § 2.1-342.2; 2000, c. [227](#); 2001, c. [844](#); 2002, cc. [393](#), [715](#), [769](#), [830](#); 2004, cc. [685](#), [735](#); 2006, cc. [857](#), [914](#); 2007, c. [133](#); 2010, c. [627](#); 2011, cc. [798](#), [871](#); 2013, c. [695](#); 2016, cc. [184](#), [546](#); 2017, c. [828](#).

§2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.

A. All meetings of public bodies shall be open, except as provided in §§ [2.2-3707.01](#) and [2.2-3711](#).

B. No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business, except as provided in § [2.2-3708](#), [2.2-3708.1](#) or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.

C. Every public body shall give notice of the date, time, and location of its meetings by:

1. Posting such notice on its official public government website, if any;
2. Placing such notice in a prominent public location at which notices are regularly posted; and
3. Placing such notice at the office of the clerk of the public body or, in the case of a public body that has no clerk, at the office of the chief administrator.

All state public bodies subject to the provisions of this chapter shall also post notice of their meetings on a central, publicly available electronic calendar maintained by the Commonwealth. Publication of meeting notices by electronic means by other public bodies shall be encouraged.

The notice shall be posted at least three working days prior to the meeting.

D. Notice, reasonable under the circumstance, of special, emergency, or continued meetings shall be given contemporaneously with the notice provided to the members of the public body conducting the meeting.

E. Any person may annually file a written request for notification with a public body. The request shall include the requester's name, address, zip code, daytime telephone number, electronic mail address, if available, and organization, if any. The public body receiving such request shall provide notice of all meetings directly to each such person. Without objection by the person, the public body may provide electronic notice of all meetings in response to such requests.

F. At least one copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body. The proposed agendas for meetings of state public bodies where at least one member has been appointed by the Governor shall state

whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

G. Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open. No public body shall conduct a meeting required to be open in any building or facility where such recording devices are prohibited.

H. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative interim study commissions and committees, including the Virginia Code Commission; (iii) study committees or commissions appointed by the Governor; or (iv) study commissions or study committees, or any other committees or subcommittees appointed by the governing bodies or school boards of counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board.

Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records shall be deemed public records and subject to the provisions of this chapter.

Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii) the members of the public body recorded as present and absent; and (iii) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with § [2.2-3708](#), minutes of state public bodies shall include (a) the identity of the members of the public body at each remote location identified in the notice who participated in the meeting through electronic communications means, (b) the identity of the members of the public body who were physically assembled at the primary or central meeting location, and (c) the identity of the members of the public body who were not present at the locations identified in clauses (a) and (b), but who monitored such meeting through electronic communications means.

1968, c. 479, § 2.1-343; 1973, c. 461; 1976, c. 467; 1977, c. 677; 1982, c. 333; 1989, c. 358; 1990, c. 538; 1993, c. 720; 1995, c. [562](#); 1999, cc. [696](#), [703](#), [726](#); 2000, c. [227](#); 2001, c. [844](#); 2004, cc. [730](#), [768](#); 2005, c. [352](#); 2007, c. [300](#); 2009, c. [628](#); 2010, c. [309](#); 2015, c. [131](#); 2017, c. [616](#).

§2.2-3707.01. Meetings of the General Assembly.

A. Except as provided in subsection B, public access to any meeting of the General Assembly or a portion thereof shall be governed by rules established by the Joint Rules Committee and approved by a majority vote of each house at the next regular session of the General Assembly. At least 60 days before the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such proposed rules and (ii) provide a copy of such proposed rules to the Virginia Freedom of Information Advisory Council.

B. Floor sessions of either house of the General Assembly; meetings, including work sessions, of any standing or interim study committee of the General Assembly; meetings, including work sessions, of any subcommittee of such standing or interim study committee; and joint committees of conference of the General Assembly; or a quorum of any such committees or subcommittees, shall be open and governed by this chapter.

C. Meetings of the respective political party caucuses of either house of the General Assembly, including meetings conducted by telephonic or other electronic communication means, without regard to (i) whether the General Assembly is in or out of regular or special session or (ii) whether such caucuses invite staff or guests to participate in their deliberations, shall not be deemed meetings for the purposes of this chapter.

D. No regular, special, or reconvened session of the General Assembly held pursuant to Article IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means pursuant § [2.2-3708](#).

2004, c. [768](#); 2005, c. [352](#).

§2.2-3707.1. Posting of minutes for state boards and commissions.

All boards, commissions, councils, and other public bodies created in the executive branch of state government and subject to the provisions of this chapter shall post minutes of their meetings on such body's official public government website and on a central electronic calendar maintained by the Commonwealth. Draft minutes of

meetings shall be posted as soon as possible but no later than 10 working days after the conclusion of the meeting. Final approved meeting minutes shall be posted within three working days of final approval of the minutes.

2002, cc. [580](#), [618](#); 2006, cc. [474](#), [595](#); 2007, c. [300](#); 2017, c. [616](#).

§2.2-3708. Electronic communication meetings; applicability; physical quorum required; exceptions; notice; report.

A. Except as expressly provided in subsection G of this section or § [2.2-3708.1](#), no local governing body, school board, or any authority, board, bureau, commission, district or agency of local government, any committee thereof, or any entity created by a local governing body, school board, or any local authority, board, or commission shall conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.

B. Except as provided in subsection G or H of this section or subsection D of § [2.2-3707.01](#), state public bodies may conduct any meeting wherein the public business is discussed or transacted through electronic communication means, provided (i) a quorum of the public body is physically assembled at one primary or central meeting location, (ii) notice of the meeting has been given in accordance with subsection C, and (iii) the remote locations, from which additional members of the public body participate through electronic communication means, are open to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location.

If an authorized public body holds an electronic meeting pursuant to this section, it shall also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means.

C. Notice of any regular meeting held pursuant to this section shall be provided at least three working days in advance of the date scheduled for the meeting. Notice, reasonable under the circumstance, of special, emergency, or continued meetings held pursuant to this section shall be given contemporaneously with the notice provided to members of the public body conducting the meeting. For the purposes of this subsection, "continued meeting" means a meeting that is continued to address

an emergency or to conclude the agenda of a meeting for which proper notice was given.

The notice shall include the date, time, place, and purpose for the meeting; shall identify the locations for the meeting; and shall include a telephone number that may be used at remote locations to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting to the remote locations. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

D. A copy of the proposed agenda and agenda packets and, unless exempt, all materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by electronic communication means shall be recorded as required by § [2.2-3707](#). Votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes.

E. Three working days' notice shall not be required for meetings authorized under this section held in accordance with subsection G. Public bodies conducting emergency meetings through electronic communication means shall comply with the provisions of subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the minutes.

F. Any authorized public body that meets by electronic communication means shall make a written report of the following to the Virginia Freedom of Information Advisory Council by December 15 of each year:

1. The total number of electronic communication meetings held that year;
2. The dates and purposes of the meetings;
3. A copy of the agenda for the meeting;
4. The number of sites for each meeting;
5. The types of electronic communication means by which the meetings were held;
6. The number of participants, including members of the public, at each meeting location;

7. The identity of the members of the public body recorded as absent and those recorded as present at each meeting location;
8. A summary of any public comment received about the electronic communication meetings; and
9. A written summary of the public body's experience using electronic communication meetings, including its logistical and technical experience.

In addition, any authorized public body shall make available to the public at any meeting conducted in accordance with this section a public comment form prepared by the Virginia Freedom of Information Advisory Council in accordance with § [30-179](#).

G. Any public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § [44-146.17](#), provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency. The public body convening a meeting in accordance with this subsection shall (a) give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided members of the public body conducting the meeting; (b) make arrangements for public access to such meeting; and (c) otherwise comply with the provisions of this section. The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes.

1984, c. 252, § 2.1-343.1; 1989, c. 358; 1991, c. 473; 1992, c. 153; 1993, c. 270; 1995, c. [278](#); 1996, c. [289](#); 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2003, cc. [981](#), [1021](#); 2005, c. [352](#); 2007, cc. [512](#), [945](#); 2008, cc. [233](#), [789](#); 2013, c. [694](#); 2017, c. [616](#).

§2.2-3708.1. Participation in meetings due to personal matter; certain disabilities; distance from meeting location for certain public bodies.

A. A member of a public body may participate in a meeting governed by this chapter through electronic communication means from a remote location that is not open to the public only as follows and subject to the requirements of subsection B:

1. If, on or before the day of a meeting, a member of the public body holding the meeting notifies the chair of the public body that such member is unable to attend

the meeting due to a personal matter and identifies with specificity the nature of the personal matter, and the public body holding the meeting records in its minutes the specific nature of the personal matter and the remote location from which the member participated. If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded in the minutes with specificity.

Such participation by the member shall be limited each calendar year to two meetings;

2. If a member of a public body notifies the chair of the public body that such member is unable to attend a meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the public body records this fact and the remote location from which the member participated in its minutes; or

3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public body that such member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting and the public body holding the meeting records in its minutes the remote location from which the member participated. If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded in the minutes with specificity.

B. Participation by a member of a public body as authorized under subsection A shall be only under the following conditions:

1. The public body has adopted a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation, subject to the express limitations imposed by this section. Once adopted, the policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting;

2. A quorum of the public body is physically assembled at the primary or central meeting location; and

3. The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

2007, c. [945](#); 2013, cc. [119](#), [694](#); 2014, cc. [492](#), [524](#); 2017, c. [616](#).

§2.2-3709. Expired.

Expired.

§2.2-3710. Transaction of public business other than by votes at meetings prohibited.

A. Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter. No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means.

B. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit (i) separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business, whether such contact is done in person, by telephone or by electronic communication, provided the contact is done on a basis that does not constitute a meeting as defined in this chapter or (ii) the House of Delegates or the Senate of Virginia from adopting rules relating to the casting of votes by members of standing committees. Nothing in this subsection shall operate to exclude any public record from the provisions of this chapter.

1987, c. 71, § 2.1-343.2; 1999, cc. [703](#), [726](#); 2000, c. [932](#); 2001, cc. [710](#), [844](#); 2002, c. [491](#).

§2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the

presiding officer of the appropriate board. Nothing in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any public institution of higher education in the Commonwealth or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely

because an attorney representing the public body is in attendance or is consulted on a matter.

8. Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

9. Discussion or consideration by governing boards of public institutions of higher education of matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in the Commonwealth shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity (a) created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities or (b) created under the laws of a foreign government, and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

10 Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from private sources.

11. Discussion or consideration of honorary degrees or special awards.

12. Discussion or consideration of tests, examinations, or other information used, administered, or prepared by a public body and subject to the exclusion in subdivision 4 of § [2.2-3705.1](#).

13. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible

inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

16. Discussion or consideration of medical and mental health records subject to the exclusion in subdivision 1 of § [2.2-3705.5](#).

17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to subsection D of § [58.1-4007](#) regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game information and studies or investigations excluded from disclosure under subdivision 6 of § [2.2-3705.3](#) and subdivision 11 of § [2.2-3705.7](#).

18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

19. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § [2.2-3705.2](#), where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system, or software

program; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § [51.1-124.30](#), or of any local retirement system, acting pursuant to § [51.1-803](#), or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ [15.2-1544](#) et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § [23.1-2210](#), or by the Board of the Virginia College Savings Plan, acting pursuant to § [23.1-706](#), regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Virginia College Savings Plan or provided to the retirement system a local finance board or board of trustees, or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § [32.1-283.1](#), those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § [32.1-283.2](#), those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § [32.1-283.3](#), those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § [32.1-283.5](#), and those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § [32.1-283.6](#).

22. Those portions of meetings of the board of visitors of the University of Virginia or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint ventures, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. Discussion or consideration by the Virginia Commonwealth University Health System Authority or the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or disposition by the Authority of real property, equipment, or technology software or hardware and related goods or services, where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies plans of the Authority where disclosure of such strategies or plans would adversely affect the competitive position of the Authority; and members of the Authority's medical and teaching staffs and qualifications for appointments thereto.

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § [2.2-3801](#), which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ [23.1-700](#) et seq.) of Title 23.1 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § [56-484.15](#), of trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), submitted by CMRS providers as defined in § [56-484.12](#), related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § [2.2-4019](#) or [2.2-4020](#) during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of information subject to the exclusion in subdivision 11 of § [2.2-3705.6](#) by a responsible public entity or an affected locality or public entity, as those terms are defined in § [33.2-1800](#), or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application information subject to the exclusion in subdivision 17 of § [2.2-3705.6](#) by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of information subject to the exclusion in subdivision 5 of § [2.2-3705.2](#) relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ [37.2-900](#) et seq.) of Title 37.2.

32. Discussion or consideration of confidential proprietary information and trade secrets developed and held by a local public body providing certain telecommunications services or cable television services and subject to the exclusion in subdivision 18 of § [2.2-3705.6](#). However, the exemption provided by this subdivision

shall not apply to any authority created pursuant to the BVU Authority Act (§ [15.2-7200](#) et seq.).

33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ [15.2-5431.1](#) et seq.) of confidential proprietary information and trade secrets subject to the exclusion in subdivision 19 of § [2.2-3705.6](#).

34. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § [24.2-625.1](#).

35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ [9.1-1109](#) et seq.) of Chapter 11 of Title 9.1 of criminal investigative files subject to the exclusion in subdivision A 2 a of § [2.2-3706](#).

36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of information or confidential matters subject to the exclusion in subdivision 3 of § [2.2-3705.4](#), and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion in subdivision 1 of § [2.2-3705.6](#) related to certain proprietary information gathered by or for the Virginia Port Authority.

38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § [51.1-124.30](#), by the Investment Advisory Committee appointed pursuant to § [51.1-124.26](#), by any local retirement system, acting pursuant to § [51.1-803](#), by the Board of the Virginia College Savings Plan acting pursuant to § [23.1-706](#), or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § [23.1-702](#) of information subject to the exclusion in subdivision 24 of § [2.2-3705.7](#).

39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § [2.2-3705.6](#) related to economic development.

40. Discussion or consideration by the Board of Education of information relating to the denial, suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § [2.2-3705.3](#).

41. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of information subject to the exclusion in subdivision 8 of § [2.2-3705.2](#).

42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of information subject to the exclusion in subdivision 28 of § [2.2-3705.7](#) related to personally identifiable information of donors.

43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of information subject to the exclusion in subdivision 23 of § [2.2-3705.6](#) related to certain information contained in grant applications.

44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of information subject to the exclusion in subdivision 24 of § [2.2-3705.6](#) related to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority and certain proprietary information of a private entity provided to the Authority.

45. Discussion or consideration of personal and proprietary information related to the resource management plan program and subject to the exclusion in (i) subdivision 25 of § [2.2-3705.6](#) or (ii) subsection E of § [10.1-104.7](#). This exclusion shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

46. (Effective January 15, 2018) Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of information subject to the exclusion in subdivision 1 of § [2.2-3705.3](#) related to investigations of applicants for licenses and permits and of licensees and permittees.

47. Discussion or consideration of grant or loan application records subject to the exclusion in subdivision 28 of § [2.2-3705.6](#) related to the submission of an application for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ [23.1-3130](#) et seq.) of Chapter 31 of Title 23.1 or interviews of parties to an

application by a reviewing entity pursuant to subsection D of § [23.1-3133](#) or by the Virginia Research Investment Committee.

48. Discussion or development of grant proposals by a regional council established pursuant to Article 26 (§ [2.2-2484](#) et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity Board.

49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault team established pursuant to § [15.2-1627.4](#) or (ii) individual child abuse or neglect cases or sex offenses involving a child by a child abuse team established pursuant to § [15.2-1627.5](#).

50. Discussion or consideration by the Board of the Virginia Economic Development Partnership Authority, or any subcommittee thereof, of the portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to subdivision 33 of § [2.2-3705.7](#).

51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic Development Partnership Authority established pursuant to subsection F of § [2.2-2237.3](#) to review and discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of § [60.2-114](#).

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development

and Revenue Bond Act (§ [15.2-4900](#) et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

1968, c. 479, § 2.1-344; 1970, c. 456; 1973, c. 461; 1974, c. 332; 1976, cc. 467, 709; 1979, cc. 369, 684; 1980, cc. 221, 475, 476, 754; 1981, cc. 35, 471; 1982, cc. 497, 516; 1984, cc. 473, 513; 1985, c. 277; 1988, c. 891; 1989, cc. 56, 358, 478; 1990, cc. 435, 538; 1991, c. 708; 1992, c. 444; 1993, cc. 270, 499; 1995, c. [499](#); 1996, cc. [855](#), [862](#), [902](#), [905](#), [1046](#); 1997, cc. [439](#), [641](#), [785](#), [861](#); 1999, cc. [485](#), [518](#), [703](#), [726](#), [849](#), [867](#), [868](#); 2000, cc. [382](#), [400](#), [720](#), [1064](#); 2001, cc. [231](#), [844](#); 2002, cc. [87](#), [393](#), [455](#), [478](#), [499](#), [655](#), [715](#), [830](#); 2003, cc. [274](#), [291](#), [332](#), [618](#), [703](#); 2004, cc. [398](#), [690](#), [770](#); 2005, cc. [258](#), [411](#), [568](#); 2006, cc. [430](#), [499](#), [518](#), [560](#); 2007, cc. [133](#), [374](#), [566](#), [739](#); 2008, cc. [626](#), [633](#), [668](#), [721](#), [743](#); 2009, cc. [223](#), [325](#), [472](#), [765](#), [810](#), [827](#), [845](#); 2010, cc. [310](#), [630](#), [808](#); 2011, cc. [89](#), [111](#), [147](#), [536](#), [541](#), [816](#), [874](#); 2012, cc. [476](#), [507](#), [803](#), [835](#); 2013, cc. [571](#), [580](#), [695](#); 2014, c. [225](#); 2015, cc. [27](#), [38](#), [108](#), [169](#), [182](#), [549](#), [730](#); 2016, cc. [544](#), [620](#), [716](#), [724](#), [725](#), [775](#), [778](#), [779](#); 2017, cc. [587](#), [616](#), [778](#), [796](#), [804](#), [816](#), [824](#).

§2.2-3712. Closed meetings procedures; certification of proceedings.

A. No closed meeting shall be held unless the public body proposing to convene such meeting has taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the subject matter, (ii) states the purpose of the meeting as authorized in subsection A of § [2.2-3711](#) or other provision of law and (iii) cites the applicable exemption from open meeting requirements provided in subsection A of § [2.2-3711](#) or other provision of law. The matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A general reference to the provisions of this chapter, the authorized exemptions from open meeting requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the requirements for holding a closed meeting.

B. The notice provisions of this chapter shall not apply to closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to any such closed meeting for the purpose of interviewing candidates, the public body shall announce in an open meeting that such

closed meeting shall be held at a disclosed or undisclosed location within 15 days thereafter.

C. The public body holding a closed meeting shall restrict its discussion during the closed meeting only to those matters specifically exempted from the provisions of this chapter and identified in the motion required by subsection A.

D. At the conclusion of any closed meeting, the public body holding such meeting shall immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Any member of the public body who believes that there was a departure from the requirements of clauses (i) and (ii), shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body.

E. Failure of the certification required by subsection D to receive the affirmative vote of a majority of the members of the public body present during a meeting shall not affect the validity or confidentiality of such meeting with respect to matters considered therein in compliance with the provisions of this chapter. The recorded vote and any statement made in connection therewith, shall upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of this chapter.

F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a subject of the meeting.

G. A member of a public body shall be permitted to attend a closed meeting held by any committee or subcommittee of that public body, or a closed meeting of any entity, however designated, created to perform the delegated functions of or to advise that public body. Such member shall in all cases be permitted to observe the closed meeting of the committee, subcommittee or entity. In addition to the requirements of § [2.2-3707](#), the minutes of the committee or other entity shall include the identity of the member of the parent public body who attended the closed meeting.

H. Except as specifically authorized by law, in no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by § [2.2-3707](#).

I. Minutes may be taken during closed meetings of a public body, but shall not be required. Such minutes shall not be subject to mandatory public disclosure.

1989, c. 358, § 2.1-344.1; 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2012, c. [428](#); 2017, c. [616](#).

§2.2-3713. Proceedings for enforcement of chapter.

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;
2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and
3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § [8.01-644](#), the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a

judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

F. Failure by any person to request and receive notice of the time and place of meetings as provided in § [2.2-3707](#) shall not preclude any person from enforcing his rights and privileges conferred by this chapter.

1968, c. 479, § 2.1-346; 1976, c. 709; 1978, c. 826; 1989, c. 358; 1990, c. 217; 1996, c. [578](#); 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2007, c. [560](#); 2009, c. [634](#); 2010, c. [299](#); 2011, cc. [133](#), [783](#); 2016, cc. [620](#), [716](#).

§2.2-3714. Violations and penalties.

In a proceeding commenced against any officer, employee, or member of a public body under § [2.2-3713](#) for a violation of § [2.2-3704](#), [2.2-3705.1](#) through [2.2-3705.7](#), [2.2-3706](#), [2.2-3707](#), [2.2-3708](#), [2.2-3708.1](#), [2.2-3710](#), [2.2-3711](#) or [2.2-3712](#), the court, if it finds that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

1976, c. 467, § 2.1-346.1; 1978, c. 826; 1984, c. 252; 1989, c. 358; 1996, c. [578](#); 1999, cc. [703](#), [726](#); 2001, c. [844](#); 2003, c. [319](#); 2004, c. [690](#); 2008, cc. [233](#), [789](#); 2011, c. [327](#); 2017, c. [778](#).

Virginia Fuels Tax Act

§58.1-2200. Title; nature of tax.

A. This chapter shall be known and may be cited as the "Virginia Fuels Tax Act."

B. All taxes levied under this chapter are imposed upon the ultimate consumer but are precollected as prescribed in this chapter. The levies and assessments imposed on licensees as provided in this chapter are imposed on them as agents of the Commonwealth for the precollection of the tax. The taxes levied under this chapter shall be collected and paid at those times, in the manner, and by those persons specified in this chapter.

2000, cc. [729](#), [758](#).

§58.1-2201. Definitions.

As used in this chapter, unless the context requires otherwise:

"Alternative fuel" means a combustible gas, liquid or other energy source that can be used to generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to recharge an electric motor vehicle or a hybrid electric motor vehicle.

"Alternative fuel vehicle" means a vehicle equipped to be powered by a combustible gas, liquid, or other source of energy that can be used to generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to recharge an electric motor vehicle or a hybrid electric motor vehicle.

"Assessment" means a written determination by the Department of the amount of taxes owed by a taxpayer. Assessments made by the Department shall be deemed to be made when a written notice of assessment is delivered to the taxpayer by the Department or is mailed to the taxpayer at the last known address appearing in the Commissioner's files.

"Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation jet fuel in any fiscal year and is licensed pursuant to Article 2 (§ [58.1-2204](#) et seq.) of this chapter.

"Aviation fuel" means aviation gasoline or aviation jet fuel.

"Aviation gasoline" means fuel designed for use in the operation of aircraft other than jet aircraft, and sold or used for that purpose.

"Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft, and sold or used for that purpose.

"Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

"Blender" means a person who produces blended fuel outside the terminal transfer system.

"Bonded aviation jet fuel" means aviation jet fuel held in bonded storage under United States Customs Law and delivered into a fuel tank of aircraft operated by certificated air carriers on international flights.

"Bonded importer" means a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in which (i) the state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state; (ii) the supplier of the fuel is not an elective supplier; or (iii) the supplier of the fuel is not a permissive supplier.

"Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

"Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle, watercraft, or aircraft.

"Bulk user of alternative fuel" means a person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.

"Commercial watercraft" means a watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire, or any other trade or business unless the watercraft is used in an activity of a type generally considered

entertainment, amusement, or recreation. The definition shall include a watercraft owned by a private business and used in the conduct of its own business or operations, including but not limited to the transport of persons or property.

"Commissioner" means the Commissioner of the Department of Motor Vehicles.

"Corporate or partnership officer" means an officer or director of a corporation, partner of a partnership, or member of a limited liability company, who as such officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax collection, accounting, or remitting obligations.

"Department" means the Department of Motor Vehicles, acting directly or through its duly authorized officers and agents.

"Designated inspection site" means any state highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Commissioner or his designee to be used as a fuel inspection site.

"Destination state" means the state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use. The term shall not include a tribal reservation of any recognized Native American tribe.

"Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle or watercraft. The term shall include undyed #1 fuel oil and undyed #2 fuel oil, but shall not include gasoline or aviation jet fuel.

"Distributor" means a person who acquires motor fuel from a supplier or from another distributor for subsequent sale.

"Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C. § 4082.

"Elective supplier" means a supplier who (i) is required to be licensed in the Commonwealth and (ii) elects to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in another state and has Virginia as its destination state.

"Electric motor vehicle" means a motor vehicle that uses electricity as its only source of motive power.

"End seller" means the person who sells fuel to the ultimate user of the fuel.

"Export" means to obtain motor fuel in Virginia for sale or distribution in another state, territory, or foreign country. Motor fuel delivered out-of-state by or for the seller constitutes an export by the seller, and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

"Exporter" means a person who obtains motor fuel in Virginia for sale or distribution in another state, territory, or foreign country.

"Fuel" includes motor fuel and alternative fuel.

"Fuel alcohol" means methanol or fuel grade ethanol.

"Fuel alcohol provider" means a person who (i) produces fuel alcohol or (ii) imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, a tank wagon, or a railroad tank car.

"Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.

"Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method; (ii) a petroleum product component of gasoline, such as naphtha, reformat, or toluene; (iii) gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an aircraft engine.

"Governmental entity" means (i) the Commonwealth or any political subdivision thereof or (ii) the United States or its departments, agencies, and instrumentalities.

"Gross gallons" means an amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

"Heating oil" means any combustible liquid, including but not limited to dyed #1 fuel oil, dyed #2 fuel oil, and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial processing purposes.

"Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.

"Highway vehicle" means a self-propelled vehicle designed for use on a highway.

"Hybrid electric motor vehicle" means a motor vehicle that uses electricity and another source of motive power.

"Import" means to bring motor fuel into Virginia by any means of conveyance other than in the fuel supply tank of a highway vehicle. Motor fuel delivered into Virginia from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into Virginia from out-of-state by or for the purchaser constitutes an import by the purchaser.

"Importer" means a person who obtains motor fuel outside of Virginia and brings that motor fuel into Virginia by any means of conveyance other than in the fuel tank of a highway vehicle. For purposes of this chapter, a motor fuel transporter shall not be considered an importer.

"In-state-only supplier" means (i) a supplier who is required to have a license and who elects not to collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a terminal located in another state and has Virginia as its destination state or (ii) a supplier who does business only in Virginia.

"Licensee" means any person licensed by the Commissioner pursuant to Article 2 (§ [58.1-2204](#) et seq.) of this chapter or § [58.1-2244](#).

"Liquid" means any substance that is liquid above its freezing point.

"Motor fuel" means gasoline, diesel fuel, blended fuel, and aviation fuel.

"Motor fuel transporter" means a person who transports motor fuel for hire by means of a pipeline, a tank wagon, a transport truck, a railroad tank car, or a marine vessel.

"Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch.

"Occasional importer" means any person who (i) imports motor fuel by any means outside the terminal transfer system and (ii) is not required to be licensed as a bonded importer.

"Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a supplier's license under this chapter.

"Person" means any individual; firm; cooperative; association; corporation; limited liability company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy; club, society or other group or

combination acting as a unit; or public body, including but not limited to the Commonwealth, any other state, and any agency, department, institution, political subdivision or instrumentality of the Commonwealth or any other state.

"Position holder" means a person who holds an inventory position of motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds an "inventory position of motor fuel" when he has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

"Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors, and controlling direct or indirect owners; (iii) if a limited liability company, all its members; and (iv) or an individual.

"Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to a bulk user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the person sells to someone other than a bulk user or a retailer to operate a highway vehicle; (iii) sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.

"Rack" means a facility that contains a mechanism for delivering motor fuel from a refinery, terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is outside the terminal transfer system.

"Refiner" means any person who owns, operates, or otherwise controls a refinery.

"Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

"Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or other means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

"Retailer" means a person who (i) maintains storage facilities for motor fuel and (ii) sells the fuel at retail or dispenses the fuel at a retail location.

"Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel and (ii) sells or dispenses the fuel at retail, to be used to generate power to operate a highway vehicle.

"Supplier" means (i) a position holder, or (ii) a person who receives motor fuel pursuant to a two-party exchange. A licensed supplier includes a licensed elective supplier and licensed permissive supplier.

"System transfer" means a transfer (i) of motor fuel within the terminal transfer system or (ii) of fuel grade ethanol by transport truck or railroad tank car.

"Tank wagon" means a straight truck or straight truck/trailer combination designed or used to carry fuel and having a capacity of less than 6,000 gallons.

"Terminal" means a motor fuel storage and distribution facility (i) to which a terminal control number has been assigned by the Internal Revenue Service, (ii) to which motor fuel is supplied by pipeline or marine vessel, and (iii) from which motor fuel may be removed at a rack.

"Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

"Terminal transfer system" means a motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals, and which is a "bulk transfer/terminal system" under 26 C.F.R. Part 48.4081-1.

"Transmix" means (i) the buffer or interface between two different products in a pipeline shipment or (ii) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

"Transport truck" means a tractor truck/semitrailer combination designed or used to transport cargoes of motor fuel over a highway.

"Trustee" means a person who (i) is licensed as a supplier, an elective supplier, or a permissive supplier and receives tax payments from and on behalf of a licensed or unlicensed distributor, or other person pursuant to § [58.1-2231](#) or (ii) is licensed as a provider of alternative fuel and receives tax payments from and on behalf of a bulk user of alternative fuel, retailer of alternative fuel or other person pursuant to § [58.1-2252](#).

"Two-party exchange" means a transaction in which fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement,

which transaction (i) includes a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator and (ii) is completed prior to removal of the product from the terminal by the receiving exchange partner.

"Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental Protection Agency or Internal Revenue Service fuel-dyeing requirements.

"Use" means the actual consumption or receipt of motor fuel by any person into a highway vehicle, aircraft, or watercraft.

"Watercraft" means any vehicle used on waterways.

"Wholesale price" means the price at the rack.

2000, cc. [729](#), [758](#); 2001, c. [802](#); 2002, cc. [4](#), [7](#); 2003, c. [781](#); 2004, c. [340](#); 2006, cc. [594](#), [912](#); 2011, c. [165](#); 2012, cc. [729](#), [733](#); 2013, c. [766](#).

§58.1-2202. Regulations; forms.

The Commissioner may promulgate regulations and shall prescribe forms as shall be necessary to effectuate and enforce this chapter.

2000, cc. [729](#), [758](#).

§58.1-2203. Exchange of information; penalties.

A. The Commissioner may, upon request from the officials entrusted with enforcing the fuels tax laws of any other state, forward to such officials any information that the Commissioner may have relative to the production, manufacture, refining, compounding, receipt, sale, use, transportation, or shipment by any person of such fuel.

B. The Commissioner may enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to taxes administered by the Department pursuant to this chapter.

C. The Commissioner may divulge tax information to the Tax Commissioner, any commissioner of the revenue, director of finance or other authorized collector of county, city, or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request.

D. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed in § [58.1-3](#) as though that person were a tax official as defined in that section.

2000, cc. [729](#), [758](#).

§58.1-2204. Persons required to be licensed.

A. A person shall obtain a license issued by the Commissioner before conducting the activities of:

1. A refiner, who shall be licensed as a supplier;
2. A supplier;
3. A terminal operator;
4. An importer;
5. An exporter;
6. A blender;
7. A motor fuel transporter;
8. An aviation consumer;
9. A bonded importer;
10. An elective supplier; or
11. A fuel alcohol provider.

B. A person who is engaged in more than one activity for which a license is required shall have a separate license for each activity, except as provided in subsection C.

C.1. A person who is licensed as a supplier shall not be required to obtain a separate license for any other activity for which a license is required and shall be considered to have a license as a distributor.

2. A person who is licensed as an occasional importer shall not be required to obtain a license as a distributor.

3. A person who is licensed as a distributor shall not be required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or permissive supplier. Such licensed distributor shall not be required to obtain a separate license as an exporter.

4. A person who is licensed as a distributor or a blender shall not be required to obtain a separate license as a motor fuel transporter if he does not transport motor fuel for others for hire.

2000, cc. [729](#), [758](#); 2003, c. [781](#); 2004, c. [340](#); 2012, c. [363](#).

§58.1-2205. Types of importers; qualification for license as an importer.

A. An applicant for a license as an importer shall indicate whether he is applying for a license as a bonded importer or an occasional importer.

B. A person shall not be licensed as more than one type of importer. A bulk user who imports motor fuel from a terminal of a supplier who is not an elective or a permissive supplier shall be licensed as a bonded importer. A bulk user who imports motor fuel from a bulk plant and is not required to be licensed as a bonded importer shall be licensed as an occasional importer. A bulk user who imports motor fuel only from a terminal of an elective or a permissive supplier shall not be required to be licensed as an importer.

2000, cc. [729](#), [758](#).

§58.1-2206. Persons who may obtain a license.

A person who conducts the activities of a distributor or a permissive supplier may obtain a license issued by the Commissioner for that activity.

2000, cc. [729](#), [758](#).

§58.1-2207. Restrictions on qualification for license as a distributor.

A bulk user of motor fuel shall not be licensed as a distributor.

2000, cc. [729](#), [758](#).

§58.1-2208. License application procedure.

A. To obtain a license under this article, an applicant shall file an application with the Commissioner on a form provided by the Commissioner. An application shall include the applicant's name, address, federal employer identification number, and any other information required by the Commissioner.

B. An applicant for a license as a motor fuel transporter, supplier, terminal operator, importer, blender, distributor, or aviation consumer shall satisfy the following requirements:

1. If the applicant is a corporation, the applicant shall either be incorporated in the Commonwealth or authorized to transact business in the Commonwealth;
2. If the applicant is a limited liability company, the applicant shall be organized in the Commonwealth or authorized to transact business in the Commonwealth;

3. If the applicant is a limited liability partnership, the applicant shall either be formed in the Commonwealth or authorized to transact business in the Commonwealth; or

4. If the applicant is an individual or a general partnership, the applicant shall designate an agent for service of process and provide the agent's name and address.

C. An applicant for a license as a supplier, terminal operator, blender, or permissive supplier shall have a federal certificate of registry issued under 26 U.S.C. § 4101 that authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant who is required to have a federal certificate of registry shall include the registration number of the certificate on the application for a license under this section. An applicant for a license as an importer, an exporter, or a distributor who has a federal certificate of registry issued under 26 U.S.C. § 4101 shall include the registration number of the certificate on the application for a license under this section.

D. An applicant for a license as an importer or distributor shall list on the application each state from which the applicant intends to import motor fuel and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or registration number of that state. A licensee who intends to import motor fuel from a state not listed on his application for an importer's license or a distributor's license shall provide the Commissioner written notice of such action before importing motor fuel from that state. The notice shall include the information that is required on the license application.

E. An applicant for a license as an exporter shall designate an agent located in Virginia for service of process and provide the agent's name and address. An applicant for a license as an exporter or distributor shall list on the application each state to which the applicant intends to export motor fuel received in Virginia by means of a transfer that is outside the terminal transfer system and, if required by a state listed, shall be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant shall provide the applicant's license or registration number of that state. A licensee who intends to export motor fuel to a state not listed on his application for an exporter's license or a distributor's license shall provide the Commissioner written notice of such action

before exporting motor fuel to that state. The notice shall include the information required on the license application.

2000, cc. [729](#), [758](#); 2002, c. [7](#); 2012, c. [363](#).

§58.1-2209. Supplier election to collect tax on out-of-state removals.

A. An applicant for a license as a supplier may elect on the application to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in another state and has Virginia as its destination state. The Commissioner shall provide for this election on the application form. A supplier who makes the election allowed by this section shall be an elective supplier. A supplier who does not make the election allowed by this section shall be an in-state-only supplier. A supplier who does not make the election on the application for a supplier's license may make the election later by completing an election form provided by the Commissioner. A supplier who has not made the election shall not act as an elective supplier for purposes of this chapter.

B. A supplier who makes the election allowed by this section shall comply with all of the following with respect to motor fuel that is removed at a terminal located in another state and has Virginia as its destination state:

1. Collect the tax due the Commonwealth on the fuel;
2. Waive any defense that the Commonwealth lacks jurisdiction to require the supplier to collect the tax due the Commonwealth on the fuel under this chapter;
3. Report and pay the tax due on the fuel in the same manner as if the removal had occurred at a terminal located in Virginia;
4. Keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal had occurred at a terminal located in Virginia; and
5. Report sales by the supplier to a person who is not licensed in the state where the removal occurred if the destination state is Virginia.

C. A supplier who makes the election allowed by this section (i) acknowledges that the Commonwealth imposes the requirements listed in subsection B of this section on the supplier under its general police power and (ii) submits to the jurisdiction of the Commonwealth only for purposes related to the administration of this chapter.

2000, cc. [729](#), [758](#).

§58.1-2210. Permissive supplier election to collect tax on out-of-state removals.

A. An out-of-state supplier who is not required to be licensed under this chapter may elect to obtain a license and thereby become a permissive supplier. An out-of-state supplier who does not make this election shall not act as a permissive supplier for motor fuel that is removed at a terminal in another state and has Virginia as its destination state.

B. An out-of-state supplier who elects to be licensed as a permissive supplier shall comply with (i) the same requirements imposed on a supplier and (ii) all of the following with respect to motor fuel that is removed by the permissive supplier at a terminal located in another state and has Virginia as its destination state:

1. Collect the tax due the Commonwealth on the fuel;
2. Waive any defense that the Commonwealth lacks jurisdiction to require the supplier to collect the tax due the Commonwealth on the motor fuel under this chapter;
3. Report and pay the tax due on the fuel in the same manner as if the removal had occurred at a terminal located in Virginia;
4. Keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal had occurred at a terminal located in Virginia; and
5. Report sales by the supplier to a person who is not licensed in the state where the removal occurred if the destination state is Virginia.

C. An out-of-state supplier who makes the election allowed by this section (i) acknowledges that the Commonwealth imposes the requirements listed in subsection B on the supplier under its general police power and (ii) submits to the jurisdiction of the Commonwealth only for purposes related to the administration of this chapter.

2000, cc. [729](#), [758](#).

§58.1-2211. Bond or certificate of deposit requirements.

A. An applicant for a license as a terminal operator, supplier, importer, blender, permissive supplier, distributor, or aviation consumer shall file with the Commissioner a bond or certificate of deposit. The bond or certificate of deposit shall be conditioned upon compliance with the requirements of this chapter, be payable to the Commonwealth, and be in the form required by the Commissioner. The amount of the bond or certificate of deposit shall be as follows:

1. For an applicant for a license as a (i) terminal operator, (ii) supplier who is a position holder or a person who receives motor fuel pursuant to a two-party exchange,

(iii) bonded importer, or (iv) permissive supplier, the amount shall be \$2,000,000; and

2. For an applicant for a license as (i) a supplier who is a fuel alcohol provider but is neither a position holder nor a person who receives motor fuel pursuant to a two-party exchange; (ii) an occasional importer; (iii) a distributor; (iv) a blender; or (v) an aviation consumer, the amount shall be three times the applicant's average expected monthly tax liability under this chapter, as determined by the Commissioner. The amount shall not be less than \$2,000 nor more than \$300,000.

B. An applicant for a license both as a distributor and as a bonded importer shall file only the bond or certificate of deposit required of a bonded importer. An applicant for two or more of the licenses listed in subdivision A 2 may file one bond or certificate of deposit that covers the combined liabilities of the applicant under all the activities, in which event the amount of the bond or certificate of deposit for the combined activities shall not exceed \$300,000.

C. When notified to do so by the Commissioner, a person who has filed a bond or certificate of deposit and who holds a license listed in subdivision A 2 shall file an additional bond or certificate of deposit in the amount required by the Commissioner. The person shall file the additional bond or certificate of deposit within thirty days after receiving the notice from the Commissioner. However, the amount of the initial bond or certificate of deposit and any additional bond or certificate of deposit filed by the licensee shall not exceed \$300,000.

Any licensee who disagrees with the Commissioner's decision requiring new or additional security shall be entitled to a hearing. Such matter shall, within thirty days, be scheduled for a prompt hearing before the Commissioner after written request for such hearing is received by the Commissioner.

2000, cc. [729](#), [758](#); 2006, c. [594](#).

§58.1-2212. Grounds for denial of license.

A. The Commissioner may refuse to issue a license under this article to an applicant if (i) the applicant or (ii) any principal of the applicant has:

1. Had a license or registration issued under prior law or this chapter canceled by the Commissioner for cause;
2. Had a motor fuel license or registration issued by another state canceled for cause;

3. Had a federal Certificate of Registry issued under § 4101 of the Internal Revenue Code, or a similar federal authorization, revoked;
4. Been convicted of any offense involving fraud or misrepresentation; or
5. Been convicted of any other offense that indicates that the applicant may not comply with this chapter if issued a license.

B. For purposes of subdivisions 1, 2 and 3 of subsection A, it shall be sufficient cause for the Commissioner to refuse to issue a license if the canceled or revoked license, registration or Certificate of Registry was held by a business entity of which the applicant, or any principal of the applicant, was a principal.

2000, cc. [729](#), [758](#); 2003, c. [781](#).

§58.1-2213. Issuance of license.

Upon approval of an application, the Commissioner shall issue to the applicant a license and a duplicate copy of the license for each place of business of the applicant. A supplier's license shall indicate the category of the supplier. A licensee shall display the license issued under this chapter in a conspicuous place at each place of business of the licensee. A license shall not be transferable and shall remain in effect until surrendered or canceled.

2000, cc. [729](#), [758](#).

§58.1-2214. Notice of discontinuance, sale or transfer of business.

A. A licensee who discontinues in the Commonwealth the business for which the license was issued shall notify the Commissioner in writing of such discontinuance and shall surrender the license to the Commissioner. The notice shall state the effective date of the discontinuance and, if the licensee has transferred the business or otherwise relinquished control to another person by sale or otherwise, the date of the sale or transfer and the name and address of the person to whom the business is transferred or relinquished. The notice shall also include any other information required by the Commissioner.

B. If the licensee is a supplier, all taxes for which the supplier is liable under this chapter but are not yet due shall be due on the date of the discontinuance. If the supplier has transferred the business to another person and does not give the notice required by this section, the person to whom the business was transferred shall be liable for the amount of any tax owed by the supplier to the Commonwealth on the

date the business was transferred. The liability of the person to whom the business was transferred shall not exceed the value of the property acquired from the supplier. 2000, cc. [729](#), [758](#).

§58.1-2215. License cancellation.

A. The Commissioner may cancel the license of any person licensed under this article, upon written notice sent by certified mail to the licensee's last known address appearing in the Commissioner's files, for any of the following reasons:

1. Filing by the licensee of a false report of the data or information required by this chapter;
2. Failure, refusal, or neglect of the licensee to file a report required by this chapter;
3. Failure of the licensee to pay the full amount of the tax due or pay any penalties or interest due as required by this chapter;
4. Failure of the licensee to keep accurate records of the quantities of motor fuel received, produced, refined, manufactured, compounded, sold, or used in Virginia;
5. Failure to file a new or additional bond or certificate of deposit upon request of the Commissioner pursuant to § [58.1-2211](#);
6. Conviction of the licensee or a principal of the licensee for any act prohibited under this chapter;
7. Failure, refusal, or neglect of a licensee to comply with any other provision of this chapter or any regulation promulgated pursuant to this chapter; or
8. A change in the ownership or control of the business.

B. Upon cancellation of any license for any cause listed in subsection A, the tax levied under this chapter shall become due and payable on (i) all untaxed motor fuel held in storage or otherwise in the possession of the licensee and (ii) all motor fuel sold, delivered, or used prior to the cancellation on which the tax has not been paid.

C. The Commissioner may cancel any license upon the written request of the licensee.

D. Upon cancellation of any license and payment by the licensee of all taxes due, including all penalties accruing due to any failure by the licensee to comply with the provisions of this chapter, the Commissioner shall cancel and surrender the bond or certificate of deposit filed by such licensee.

2000, cc. [729](#), [758](#); 2006, c. [594](#).

§58.1-2216. Records and lists of license applicants and licensees.

A. The Commissioner shall keep a record of (i) applicants for a license under this chapter; (ii) persons to whom a license has been issued under this chapter; and (iii) persons holding a current license issued under this chapter, by license category.

B. The Commissioner shall provide a list of licensees to any licensee, as well as to any unlicensed distributor who requests a copy. The list shall state the name and business address of each licensee on the list and may include other information determined appropriate by the Commissioner.

2000, cc. [729](#), [758](#); 2004, c. [340](#).

§58.1-2217. (Contingent expiration date -- see notes) Taxes levied; rate.

A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline and gasohol. Beginning January 1, 2015, the tax rate shall be 5.1 percent of the statewide average wholesale price of a gallon of unleaded regular gasoline for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.

In computing the average wholesale price of a gallon of gasoline, the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of unleaded regular gasoline on February 20, 2013.

B. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on diesel fuel. Beginning January 1, 2015, the tax rate shall be six percent of the statewide average wholesale price of a gallon of diesel fuel for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.

In computing the average wholesale price of a gallon of diesel fuel, the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and

ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of diesel fuel on February 20, 2013.

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the rate levied on gasoline and gasohol, along with any penalties and interest that may accrue.

E. There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate levied on diesel fuel, along with any penalties and interest that may accrue.

F. In accordance with § [62.1-44.34:13](#), a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth.

2000, cc. [729](#), [758](#); 2007, c. [896](#); 2013, c. [766](#).

§58.1-2217. (Contingent effective date -- see notes) Taxes levied; rate.

A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline and gasohol. Beginning July 1, 2013, the seventeen and one-half cents per gallon tax shall be replaced with a tax at a rate of 3.5 percent of the statewide average wholesale price of a gallon of unleaded regular gasoline for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.

In computing the average wholesale price of a gallon of unleaded regular gasoline, the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of unleaded regular gasoline on February 20, 2013.

B. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on diesel fuel. Beginning July 1, 2013, the seventeen and one-half cents per gallon tax shall be replaced with a tax at a rate of six percent of the statewide average wholesale price of a gallon of diesel fuel for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.

In computing the average wholesale price of a gallon of diesel fuel the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of diesel fuel on February 20, 2013.

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the rate levied on gasoline and gasohol, along with any penalties and interest that may accrue.

E. There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded

aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate levied on diesel fuel, along with any penalties and interest that may accrue.

F. In accordance with § [62.1-44.34:13](#), a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth.

2000, cc. [729](#), [758](#); 2007, c. [896](#); 2013, c. [766](#).

§58.1-2218. Point of imposition of motor fuels tax.

The tax levied pursuant to § [58.1-2217](#) is imposed at the point that the motor fuel is:

1. Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by 26 U.S.C. § 4081;
2. Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by 26 U.S.C. § 4081;
3. Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in Virginia and would have been subject to the federal excise tax imposed by 26 U.S.C. § 4081 if it had been removed at a terminal or bulk plant rack in Virginia instead of being imported;
4. If the motor fuel is gasohol, (i) removed from a terminal or distribution facility, unless the removed fuel is received by a supplier for subsequent sale or (ii) imported into Virginia outside the terminal transfer system by a means other than a marine vessel, a transport truck, or a railroad tank car;
5. If the motor fuel is blended fuel, made within Virginia or imported into Virginia; or
6. Transferred within the terminal transfer system and, upon transfer, is subject to the federal excise tax imposed by 26 U.S.C. § 4081.

2000, cc. [729](#), [758](#); 2003, c. [781](#).

§58.1-2219. Liability for tax on removals from a terminal.

A. The tax imposed pursuant to § [58.1-2217](#) at the point that motor fuel is removed by a system transfer from a terminal in Virginia shall be paid by the position holder

of the fuel; however, if the position holder is not the terminal operator, the terminal operator and position holder shall be jointly and severally liable for the tax.

B. The tax imposed pursuant to § [58.1-2217](#) at the point that motor fuel is removed at a terminal rack in Virginia shall be payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is first received by an unlicensed distributor, the supplier of the fuel shall be liable for payment of the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, then (i) the terminal operator and (ii) the person selling the fuel shall be jointly and severally liable for payment of the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel shall be jointly and severally liable for payment of the tax due on the fuel.

2000, cc. [729](#), [758](#).

§58.1-2220. Liability for tax on imports.

A. The tax imposed pursuant to § [58.1-2217](#) at the point that motor fuel is imported by a system transfer (i) to a refinery shall be payable by the refiner or (ii) to a terminal shall be jointly and severally payable by the person importing the fuel and by the terminal operator.

B. The tax imposed pursuant to § [58.1-2217](#) at the point that motor fuel is removed from a terminal rack located in another state and has Virginia as its destination state shall be payable:

1. If the importer of the fuel is a licensed supplier in Virginia and the fuel is removed for the supplier's own account for use in Virginia, by the supplier;
2. If the supplier of the fuel is licensed in Virginia as an elective supplier or a permissive supplier, by the importer of the fuel to the supplier as trustee; or
3. If subdivisions 1 and 2 do not apply, by the importer of the fuel when filing a return with the Commissioner.

C. The tax imposed pursuant to § [58.1-2217](#) at the point that motor fuel is removed from a bulk plant located in another state shall be payable by the person that imports the fuel.

2000, cc. [729](#), [758](#).

§58.1-2221. Repealed.

Repealed by Acts 2003, c. [781](#), cl. 2.

§58.1-2222. Liability for tax on blended fuel.

A. The tax imposed pursuant to § [58.1-2217](#) at the point that blended fuel is made in Virginia shall be payable by the blender. The number of gallons of blended fuel on which the tax is payable is the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed motor fuel used to make the blended fuel.

B. The tax imposed pursuant to § [58.1-2217](#) at the point that blended fuel is imported to Virginia shall be payable by the importer.

C. The following blended fuel shall be considered to have been made by the supplier of gasoline or undyed diesel fuel used in the blend:

1. An in-line-blend made by combining a liquid with gasoline or undyed diesel fuel as the fuel is delivered at a terminal rack into the motor fuel storage compartment of a transport truck or a tank wagon; and

2. A kerosene splash-blend made when kerosene is delivered into a motor fuel storage compartment of a transport truck or a tank wagon and undyed diesel fuel is also delivered into the same storage compartment, if the buyer of the kerosene notified the supplier before or at the time of delivery that the kerosene would be used to make a splash-blend.

2000, cc. [729](#), [758](#).

§58.1-2223. Liability for tax on fuel transferred within terminal transfer system.

The tax imposed pursuant to § [58.1-2217](#) at the point that motor fuel is transferred within the terminal transfer system shall be jointly and severally payable by the supplier of the fuel, the person receiving the fuel, and the terminal operator of the terminal at which the fuel was transferred.

2000, cc. [729](#), [758](#).

§58.1-2224. Tax on unaccounted for motor fuel losses; liability.

A. There is hereby levied a tax at the rate specified by § [58.1-2217](#) annually on taxable unaccounted for motor fuel losses at a terminal. "Taxable unaccounted for motor fuel losses" means the number of gallons of unaccounted for motor fuel losses that exceed one-half of one percent of the number of net gallons removed from the terminal during the year by a system transfer or at the terminal rack. "Unaccounted for

motor fuel losses" means the difference between (i) the amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year and (ii) the amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year. Accounted for motor fuel losses which have been approved by the Commissioner or motor fuel losses constituting part of a transmix shall not constitute unaccounted for motor fuel losses.

B. The terminal operator whose motor fuel is unaccounted for shall be liable for the tax imposed by this section, together with a penalty equal to the amount of tax payable. Motor fuel received by a terminal operator and not shown on an informational return filed by the terminal operator with the Commissioner as having been removed from the terminal shall be presumed to be unaccounted for motor fuel losses. A terminal operator may rebut this presumption by establishing that motor fuel received at a terminal, but not shown on an informational return as having been removed from the terminal, was an accounted for loss or constitutes part of a transmix.

2000, cc. [729](#), [758](#).

§58.1-2225. Backup tax; liability.

A. There is hereby levied a tax at the rate specified in § [58.1-2217](#) on the following:

1. Dyed diesel fuel that is used to operate a highway vehicle for a taxable use other than a use allowed under 26 U.S.C. § 4082;

2. Motor fuel that was allowed an exemption from the motor fuel tax and was then used for a taxable purpose; and

3. Motor fuel that is used to operate a highway vehicle after an application for a refund of tax paid on the motor fuel is made or allowed on the basis that the motor fuel was used for an off-highway purpose.

B. The operator of a highway vehicle that uses motor fuel that is taxable under this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the operator of the highway vehicle and the motor carrier shall be jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the operator of the highway vehicle and the end seller shall be jointly and severally liable for the tax.

C. The tax liability imposed by this section shall be in addition to any other penalty imposed pursuant to this chapter.

D. Persons diverting motor fuel into Virginia that had an original destination outside of Virginia shall incur liability for the tax levied for such motor fuel, as specified in § [58.1-2217](#), and shall be subject to the reporting and payment requirements set forth in subsection E of § [58.1-2230](#).

2000, cc. [729](#), [758](#); 2003, c. [781](#).

§58.1-2226. Exemptions from tax.

No tax shall be levied or collected pursuant to this chapter on:

1. Motor fuel sold and delivered to a governmental entity for the exclusive use by the governmental entity. This exemption shall not apply with respect to fuel sold or delivered to any person operating under contract with the governmental entity;
2. Motor fuel sold and delivered to a nonprofit charitable organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air transportation services using emergency medical services vehicles for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft;
3. Bonded aviation jet fuel;
4. Dyed diesel fuel, except as provided in subdivision A 1 of § [58.1-2225](#);
5. Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on the fuel at the rate of the motor fuel's destination state; or
6. Heating oil, as defined in § [58.1-2201](#).

2000, cc. [729](#), [758](#); 2015, cc. [502](#), [503](#).

§58.1-2227. Sales of aviation jet fuel to licensed aviation consumers.

A licensed aviation consumer required to file a monthly return and remit taxes to the Department pursuant to § [58.1-2230](#) shall not be required to remit tax to a supplier or distributor for purchases of aviation jet fuel.

2000, cc. [729](#), [758](#).

§58.1-2228. Exempt access cards; exempt access codes.

A. A licensed distributor, licensed importer or, in the case of aviation jet fuel, a licensed aviation consumer shall only remove motor fuel from a terminal by means of a supplier-issued exempt access card or exempt access code if (i) the motor fuel will be resold to a governmental entity or an organization exempt from tax under subdivision 2 of § [58.1-2226](#) for a purpose that is exempt from the tax or (ii) the aviation jet fuel will be used by the aviation consumer or resold to a licensed aviation consumer. The use of such exempt access card or exempt access code shall constitute a representation by the licensed distributor, licensed importer or licensed aviation consumer that the removal of the motor fuel is permitted. A supplier shall be authorized to rely on this representation. A licensed distributor or licensed importer who does not resell motor fuel removed from a terminal by means of an exempt access card or exempt access code to an exempt governmental unit or an organization exempt from tax under subdivision 2 of § [58.1-2226](#) is liable for any tax due on the fuel. A licensed distributor or licensed importer who does not resell aviation jet fuel removed from a terminal by means of an exempt access card or exempt access code to a licensed aviation consumer is liable for any tax due on the aviation jet fuel.

B. A supplier who issues to, or authorizes another person to issue to, another person an exempt access card or an exempt access code that enables the person to buy motor fuel without paying the tax on the fuel shall determine if the person is exempt from the tax or, in the case of aviation jet fuel, is a licensed aviation consumer allowed to purchase aviation jet fuel without payment of tax. A supplier is liable for tax due on motor fuel purchased at retail by use of an exempt access card or an exempt access code issued to a person who is not exempt from the tax or, in the case of aviation jet fuel, is not a licensed aviation consumer allowed to purchase aviation jet fuel without payment of tax.

C. A person to whom an exempt access card or exempt access code is issued for use at a terminal is liable for any tax due on fuel purchased with the exempt access card or exempt access code for a purpose that is not exempt. A person who misuses an exempt access card or exempt access code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel. The provisions of this subsection shall apply to the misuse of a card or code that allows a person to purchase aviation jet fuel without paying the tax.

D. The tax liability imposed by this section shall be in addition to any other penalty imposed pursuant to this chapter.

2000, cc. [729](#), [758](#).

§58.1-2229. Removals by out-of-state bulk user.

An out-of-state bulk user shall not remove motor fuel from a terminal in the Commonwealth for use in the state in which the bulk user is located unless the bulk user is licensed under this chapter as an exporter.

2000, cc. [729](#), [758](#).

§58.1-2230. When tax return and payment are due.

A. A return for the tax on motor fuel and gasohol levied by this chapter shall be filed with the Commissioner and be in the form and contain the information required by the Commissioner. The return and the payment for the tax on motor fuel levied by this chapter shall be due for each full month in a calendar year. Any return and payment required under this section shall be deemed timely filed if received by the Commissioner by midnight of the twentieth day of the second month succeeding the month for which the return and payment are due. Each return shall report tax liabilities that accrue in the month for which the return is due.

B. Returns and payments shall be (i) postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or (ii) received by the Department by the twentieth day of the second month succeeding the month for which the return and payment are due. However, a monthly return of the tax for the month of May shall be (i) postmarked by June 25 or (ii) received by the Commissioner by the last business day the Department is open for business in June.

If a tax return and payment due date falls on a Saturday, Sunday, or a state or banking holiday, the return shall be postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or received by the Department by midnight of the next business day the Department is open for business. This provision shall not apply to a return of the tax for the month of May.

A return and payment shall be deemed postmarked if it carries the official cancellation mark of the United States Postal Service or other postal or delivery services.

C. The following shall file a monthly return as required by this section:

1. A refiner;
2. A terminal operator;

3. A supplier;
4. A distributor;
5. An importer to include a bonded importer;
6. A blender;
7. An aviation consumer;
8. An elective supplier; and
9. A fuel alcohol provider.

D. Notwithstanding the provisions of any other section in this chapter, the Commissioner may require all or certain licensees to file tax returns and payments electronically.

E. Persons incurring liability under § [58.1-2225](#) for the backup tax on motor fuel shall file a return together with a payment of tax due within 30 calendar days of incurring such liability.

2000, cc. [729](#), [758](#); 2002, c. [7](#); 2003, c. [781](#).

§58.1-2231. Remittance of tax to supplier.

A. A distributor shall remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. A licensed distributor shall not be required to remit the tax to the supplier until the date the supplier is required to pay the tax to the Commonwealth or to another state. All tax payments received by a supplier shall be held in trust by the supplier until the supplier remits the tax payment to the Commonwealth or to another state, and the supplier shall constitute the trustee for such tax payments. The date by which an unlicensed distributor is required to remit the tax to a supplier shall be governed by agreement between the supplier and the unlicensed distributor.

B. A licensed exporter shall remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. The date by which an exporter shall remit tax shall be governed by the law of the destination state of the exported motor fuel.

C. A licensed importer shall remit tax due on motor fuel removed at a terminal rack of a permissive or an elective supplier to the supplier of the fuel. A licensed importer who removes fuel from a terminal rack of a permissive or an elective supplier shall

not be required to remit the tax to the supplier until the date the supplier is required to pay the tax to the Commonwealth.

D. The license of a licensed distributor, exporter or importer who fails to pay the full amount of tax required by this chapter is subject to cancellation as provided in § [58.1-2215](#).

2000, cc. [729](#), [758](#).

§58.1-2232. Notice of cancellation or reissuance of licenses; effect of notice.

A. If the Commissioner cancels the license of a distributor, importer, or aviation consumer, the Commissioner shall notify all suppliers of the cancellation. If the Commissioner issues a license to a distributor, importer or aviation consumer whose license was previously canceled, the Commissioner shall notify all suppliers of the issuance.

B. A supplier who sells motor fuel to a distributor, importer or aviation consumer after receiving notice from the Commissioner that the Commissioner has canceled the distributor's, importer's or aviation consumer's license shall be jointly and severally liable with the distributor, importer or aviation consumer for any tax due on motor fuel the supplier sells to the distributor, importer or aviation consumer after receiving the notice; however, the supplier shall not be liable for tax due on motor fuel sold to a previously unlicensed distributor, importer or aviation consumer after the supplier receives notice from the Commissioner that the Commissioner has issued another license to the distributor, importer or aviation consumer.

C. If the Commissioner cancels the license of a supplier, the Commissioner shall notify all licensed distributors, exporters, importers and aviation consumers of the cancellation. If the Commissioner issues a license to a supplier whose license was previously canceled, the Commissioner shall notify all licensed distributors, exporters, importers and aviation consumers of the issuance.

D. A licensed distributor, exporter, importer, or aviation consumer who purchases motor fuel from a supplier after receiving notice from the Commissioner that the Commissioner has canceled the supplier's license shall be jointly and severally liable with the supplier for any tax due on motor fuel purchased from the supplier after receiving the notice; however, the licensed distributor, exporter, importer, or aviation consumer shall not be liable for tax due on motor fuel purchased from a previously

unlicensed supplier after the licensee receives notice from the Commissioner that the Commissioner has issued another license to the supplier.

2000, cc. [729](#), [758](#); 2002, c. [7](#).

§58.1-2233. Deductions; percentage discount.

A. A licensed importer who removes motor fuel from a terminal rack of a permissive or an elective supplier or licensed distributor may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel that the licensee received from the supplier and resold to a governmental entity, or resold to an organization described in subdivision 2 of § [58.1-2226](#) for use in the operation of an aircraft if, when removing the fuel, the licensee used an exempt access card or exempt access code specified by the supplier to notify the supplier of the licensee's intent to resell the fuel in an exempt sale.

B. A licensed importer who removes motor fuel from a terminal rack of a permissive supplier, an elective supplier, or a licensed distributor may deduct from the amount of tax otherwise payable to a supplier the amount calculated on aviation jet fuel that the licensee received from the supplier and resold to a licensed aviation consumer if, when removing the fuel, the licensee used an exempt access card or exempt access code specified by the supplier to notify the supplier of the licensee's intent to resell the aviation jet fuel to a licensed aviation consumer.

C. A licensed distributor who pays the tax due a supplier by the date the supplier is required to remit the tax to this Commonwealth may deduct from the amount due a discount of one percent of the amount of tax payable. A licensed importer who (i) removes motor fuel from a terminal rack of a permissive or an elective supplier and (ii) pays the tax due to the supplier by the date the supplier is required to remit the tax to the Commonwealth may deduct from the amount due a discount of one percent of the amount of tax payable. A supplier shall not directly or indirectly deny this discount to a licensed distributor or licensed importer who pays the tax due the supplier by the date the supplier is required to remit the tax to the Commonwealth.

2000, cc. [729](#), [758](#).

§58.1-2234. Monthly reconciling returns.

A. A licensed distributor or a licensed importer who deducts exempt sales under subsection A of § [58.1-2233](#) or sales of aviation jet fuel to a licensed aviation consumer under subsection B of § [58.1-2233](#) when paying tax to a supplier shall file a monthly

reconciling return for the exempt sales and sales to a licensed aviation consumer. The return shall list the following information and any other information required by the Commissioner:

1. The number of gallons for which a deduction was taken during the month, by supplier;
2. The number of gallons sold in exempt sales during the month, by type of sale, and the purchasers of the fuel in the exempt sales; and
3. The number of gallons of aviation jet fuel sold without collection of the tax during the month, and the purchasers of the fuel.

B. If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a month exceeds the number of exempt gallons sold or, in the case of aviation jet fuel, the number of gallons sold without collection of the tax, the licensed distributor or licensed importer shall pay tax on the difference at the rate imposed by § [58.1-2217](#). The licensed distributor or licensed importer shall not be allowed a percentage discount on any tax payable under this subsection.

C. If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a month is less than the number of exempt gallons sold or, in the case of aviation jet fuel, is less than the number of gallons sold without collection of the tax, the Commissioner shall refund the amount of tax paid on the difference. The Commissioner shall reduce the amount of the refund by the amount of the percentage discount received on the fuel.

2000, cc. [729](#), [758](#).

§58.1-2235. Information required on return filed by supplier.

A. A return of a supplier shall list all of the following information and any other information required by the Commissioner:

1. The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of fuel, seller, point of origin, destination state, and carrier;
2. The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of fuel, person receiving the fuel, terminal code, and carrier;

3. The number of gallons of motor fuel removed during the month for export, sorted by type of fuel, person receiving the fuel, terminal code, destination state, and carrier;
4. The number of gallons of motor fuel removed during the month from a terminal located in another state for conveyance to Virginia, as indicated on the shipping document for the fuel, sorted by type of fuel, person receiving the fuel, terminal code, and carrier;
5. The number of gallons of motor fuel the supplier sold during the month to the following, sorted by type of fuel, exempt entity, person receiving the fuel, terminal code, and carrier:
 - a. A governmental entity whose use of fuel is exempt from the tax;
 - b. A licensed aviation consumer purchasing aviation jet fuel;
 - c. A licensed distributor or importer who resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as indicated by the distributor or importer;
 - d. A licensed distributor or importer who resold aviation jet fuel to a licensed aviation consumer as indicated by the distributor or importer;
 - e. A licensed exporter who resold the motor fuel to a person whose use of the fuel is exempt from tax in the destination state, as indicated by the exporter;
 - f. A nonprofit charitable organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air transportation services using emergency medical services vehicles for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft; and
 - g. A licensed distributor or importer who resold the motor fuel to a nonprofit charitable organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air transportation services using emergency medical services vehicles for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft; and

6. The amount of discounts allowed under subsection C of § [58.1-2233](#) on motor fuel sold during the month to licensed distributors or licensed importers.

B. Suppliers shall not require information identifying who purchased exempt fuel from persons licensed under this chapter.

2000, cc. [729](#), [758](#); 2015, cc. [502](#), [503](#).

§58.1-2236. Deductions and discounts allowed a supplier when filing a return.

A. The supplier may deduct from the next monthly return those tax payments that were not remitted for the previous month to the supplier by (i) a licensed distributor or (ii) a licensed importer who removed the motor fuel on which the tax is due from a terminal of an elective or a permissive supplier. A supplier shall not be liable for the tax such a licensee owes the supplier but fails to pay. If such licensee pays the tax owed to a supplier after the supplier deducts the amount of such tax on a return, the supplier shall remit the payment to the Commissioner with the next monthly return filed subsequent to receipt of the tax.

B. A supplier who timely files a return with the payment due may deduct, from the amount of tax payable with the return, an administrative discount of one-tenth of one percent of the amount of tax payable to the Commonwealth, not to exceed \$5,000 per month.

C. A supplier who sells motor fuel directly to an unlicensed distributor or to a bulk user, retailer, or user of the fuel may take one-half of the same percentage discount on the fuel that a licensed distributor may take under subsection C of § [58.1-2233](#) when making deferred payments of tax to the supplier.

D. When filing a return, a supplier who issues or authorizes the issuance of an exempt access card or an exempt access code to a person that enables the person to buy motor fuel at retail without paying tax on the fuel may deduct the amount of tax imposed on fuel purchased with the exempt access card or exempt access code. The amount of tax imposed on fuel purchased at retail with an exempt access card or exempt access code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel.

2000, cc. [729](#), [758](#).

§58.1-2237. Duties of supplier as trustee.

A. All tax payments due to the Commonwealth received by a supplier pursuant to § [58.1-2231](#) shall be held by the supplier as trustee in trust for the Commonwealth,

and a supplier has a fiduciary duty to remit to the Commissioner the amount of tax received by the supplier. A supplier shall be liable for the taxes paid to him.

B. A supplier shall notify a licensed distributor, licensed exporter, or licensed importer who received motor fuel from the supplier during a reporting period of the number of taxable gallons received. The supplier shall give this notice after the end of each reporting period and before the licensee is required to remit to the supplier the amount of tax due on the fuel.

C. A supplier of motor fuel at a terminal shall notify the Commissioner within 10 business days after a return is due of any licensed distributor or licensed importer who did not pay the tax due the supplier when the supplier filed his return. The notice shall be transmitted to the Commissioner in the form required by the Commissioner.

D. A supplier who receives a payment of tax shall not apply the payment to a debt that the person making the payment owes the supplier for motor fuel purchased from the supplier.

2000, cc. [729](#), [758](#); 2004, c. [340](#).

§58.1-2238. Returns and discounts of importers.

A. A monthly return of a bonded importer or an occasional importer shall contain the following information concerning motor fuel imported during the period covered by the return and any other information required by the Commissioner:

1. The number of gallons of imported motor fuel acquired from a supplier who collected the tax due the Commonwealth on the fuel;
2. The number of gallons of imported motor fuel acquired from a supplier who did not collect the tax due the Commonwealth on the fuel, listed by source state, supplier, and terminal; and
3. If he is an occasional importer, the number of gallons of imported motor fuel acquired from a bulk plant, listed by bulk plant.

B. An importer shall not deduct an administrative discount under subsection C of § [58.1-2233](#) from the amount remitted with a return. An importer who imports motor fuel received from an elective supplier or a permissive supplier may deduct the percentage discount allowed by subsection C of § [58.1-2233](#) when remitting tax to the supplier, as trustee, for payment to the Commonwealth. An importer who imports

motor fuel received from a supplier who is not an elective supplier or a permissive supplier shall not deduct the percentage discount allowed by subsection C of § [58.1-2233](#) when filing a return for the tax due.

2000, cc. [729](#), [758](#); 2003, c. [781](#).

§58.1-2239. Returns and discounts of aviation consumers.

A. A monthly return of an aviation consumer shall state the number of gallons of aviation jet fuel acquired from a supplier or distributor who did not collect the tax due the Commonwealth on the fuel, listed by source state, supplier or distributor, and terminal or other source, with respect to aviation jet fuel purchased during the period covered by the return and any other information required by the Commissioner.

B. An aviation consumer shall be allowed a credit for aviation jet fuel purchased, on which tax has already been paid. The amount of such credit shall not exceed the amount of fuel taxes due from such aviation consumer, nor shall the credit be carried forward to the next fiscal year.

2000, cc. [729](#), [758](#).

§58.1-2240. Informational returns of terminal operators.

A terminal operator shall file a monthly informational return with the Commissioner that shows the amount of motor fuel received or removed from the terminal during the month. The return is due by the twentieth day of the second month following the month covered by the return. The return shall contain the following information and any other information required by the Commissioner:

1. The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel;
2. The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel; and
3. The number of gallons of motor fuel gained or lost at the terminal during the month.

2000, cc. [729](#), [758](#).

§58.1-2241. Informational returns of motor fuel transporters.

A motor fuel transporter shall file a monthly informational return with the Commissioner.

The return required by this section is due by the twentieth day of the second month following the month covered by the return. The return shall contain the following information and any other information required by the Commissioner:

1. The name and address of each person from whom the transporter received motor fuel outside Virginia for delivery in Virginia, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel; and
2. The name and address of each person from whom the transporter received motor fuel in Virginia for delivery outside Virginia, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

2000, cc. [729](#), [758](#); 2006, c. [594](#).

§58.1-2242. Return of distributors and certain other licensees; exports.

A. A distributor or any other licensee required to make monthly reports who exports motor fuel from a bulk plant located in Virginia shall file a monthly return with the Commissioner identifying the exports. The return is due by the twentieth day of the second month following the month covered by the return. The return shall serve as a claim for a refund by the distributor or such other licensee for tax paid to the Commonwealth on the exported motor fuel.

B. The return shall contain the following information and any other information required by the Commissioner:

1. The number of gallons of motor fuel exported during the month;
2. The destination state of the motor fuel exported during the month; and
3. A certification that the distributor or such other licensee has paid to the destination state of the motor fuel exported during the month, or will timely pay, the amount of tax due that state on the fuel.

2000, cc. [729](#), [758](#); 2003, c. [781](#).

§58.1-2243. Use of name and account number on return.

When a transaction with a person licensed under this chapter is required to be reported on a return, the return must state the licensee's name and account number as stated on the lists compiled by the Commissioner under § [58.1-2216](#).

2000, cc. [729](#), [758](#).

§58.1-2244. Persons required to be licensed.

A person shall obtain a license before conducting the activities of:

1. A provider of alternative fuel;
2. A bulk user of alternative fuel;
3. A retailer of alternative fuel; or
4. A person who fuels his highway vehicle from his private source, if the alternative fuels tax on alternative fuel used in the vehicle has not been paid.

2000, cc. [729](#), [758](#).

§58.1-2245. License application procedure.

To obtain a license under this article, an applicant shall file an application with the Commissioner on a form provided by the Commissioner. The application shall include the applicant's name, address, federal employer identification number, and any other information required by the Commissioner.

2000, cc. [729](#), [758](#).

§58.1-2246. Bond or certificate of deposit requirements.

A. An applicant for a license as a (i) provider of alternative fuel, (ii) retailer of alternative fuel or bulk user of alternative fuel who stores highway and nonhighway alternative fuel in the same storage tank, or (iii) retailer of alternative fuel or a bulk user of alternative fuel who wishes to defer the remittance of tax to the provider until the date the provider of alternative fuel is required to pay the tax to the Commonwealth, shall file with the Commissioner a bond or certificate of deposit.

B. The amount of the bond or certificate of deposit shall be three times the applicant's average expected monthly tax liability under this article, as determined by the Commissioner. The amount shall not be less than \$2,000 nor more than \$300,000. An applicant who is also required to file a bond or a certificate of deposit under § [58.1-2211](#) to obtain a license as a distributor of motor fuel may file a single bond or certificate of deposit under § [58.1-2211](#) for the combined amount and shall not be required to file a bond or certificate of deposit for more than \$300,000 for the combined amount.

C. A bond or certificate of deposit filed under this section shall be conditioned upon compliance with this chapter, be payable to the Commonwealth, and be in the form required by the Commissioner. The Commissioner may require a bond or a certificate of deposit issued under this section to be adjusted in accordance with the procedure

set out in subsection C of § [58.1-2211](#) for adjusting a bond or certificate of deposit filed by a distributor of motor fuel.

2000, cc. [729](#), [758](#); 2006, c. [594](#).

§58.1-2247. Issuance, denial or cancellation of license.

A. The Commissioner shall issue a license to each applicant whose application is approved. A license shall not be transferable and remains in effect until surrendered or canceled.

B. The Commissioner may refuse to issue a license under this article to an applicant if (i) the applicant or (ii) any principal of the applicant that is a business entity has:

1. Had a license or registration issued under prior law or this chapter canceled by the Commissioner for cause;
2. Had an alternative fuel license or registration issued by another state canceled for cause;
3. Had a federal Certificate of Registry issued under § 4101 of the Internal Revenue Code, or a similar federal authorization, revoked;
4. Been convicted of any offense involving fraud or misrepresentation; or
5. Been convicted of any other offense that indicates that the applicant may not comply with this chapter if issued a license.

C. The Commissioner may cancel the license of any person licensed under this article, upon written notice sent by certified mail to the licensee's last known address appearing in the Commissioner's files, for any of the following reasons:

1. Filing by the licensee of a false report of the data or information required by this article;
2. Failure, refusal, or neglect of the licensee to comply with any provision of this chapter or any regulation promulgated pursuant to this chapter;
3. Failure of the licensee to pay the full amount of the tax required by this article;
4. Failure of the licensee to keep accurate records of the quantities of alternative fuel received, produced, refined, manufactured, compounded, sold, or used in the Commonwealth;
5. Failure to file a new or additional bond or certificate of deposit upon request of the Commissioner pursuant to § [58.1-2246](#); or

6. Conviction of the licensee or a principal of the licensee for any prohibited act listed under this article.

D. Upon cancellation of any license for any cause listed in subsection C, the tax levied under this chapter shall become due and payable on (i) all untaxed alternative fuel held in storage or otherwise in the possession of the licensee and (ii) all alternative fuel sold, delivered, or used prior to the cancellation on which the tax has not been paid.

E. The Commissioner may cancel any license upon the written request of the licensee.

F. Upon cancellation of any license and payment by the licensee of all taxes due, including all penalties accruing due to any failure by the licensee to comply with the provisions of this article, the Commissioner shall cancel and surrender the bond or certificate of deposit filed by such licensee.

2000, cc. [729](#), [758](#); 2006, c. [594](#).

§58.1-2248. Notice of discontinuance, sale or transfer of business.

A. A licensee who discontinues in the Commonwealth the business for which the license was issued shall notify the Commissioner in writing of such discontinuance and shall surrender the license to the Commissioner. The notice shall state the effective date of the discontinuance and, if the license holder has transferred the business or otherwise relinquished control to another person by sale or otherwise, the date of the sale or transfer and the name and address of the person to whom the business is transferred or relinquished. The notice shall also include any other information required by the Commissioner.

B. All taxes for which the license holder is liable under this article but are not yet due shall be due on the date of the discontinuance. If the license holder has transferred the business to another person and does not give the notice required by this section, the person to whom the business was transferred shall be liable for the amount of any tax owed by the license holder to the Commonwealth on the date the business was transferred. The liability of the person to whom the business was transferred shall not exceed the value of the property acquired from the license holder.

2000, cc. [729](#), [758](#).

§58.1-2249. Tax on alternative fuel.

A. There is hereby levied a tax at the rate levied on gasoline and gasohol on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at a rate equivalent to that levied on gasoline and gasohol on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

B. (Contingent expiration date -- see note*) In addition to any tax imposed by this article, there is hereby levied an annual license tax of \$64 per vehicle on each highway vehicle registered in Virginia that is an electric motor vehicle or an alternative fuel vehicle. However, no license tax shall be levied on any vehicle that (i) is subject to the tax on fuels levied pursuant to subsection A, (ii) is subject to the federal excise tax levied under § 4041 of the Internal Revenue Code, (iii) is a moped as defined in § [46.2-100](#), or (iv) is registered under the International Registration Plan. If such a highway vehicle is registered for a period other than one year as provided under § [46.2-646](#), the license tax shall be multiplied by the number of years or fraction thereof that the vehicle will be registered. The revenues generated by this subsection shall be deposited in the Highway Maintenance and Operating Fund established pursuant to § [33.2-1530](#).

B. (Contingent effective date -- see note*) In addition to any tax imposed by this article, there is hereby levied an annual license tax of \$50 per vehicle on each highway vehicle registered in Virginia that is an electric motor vehicle. If such a highway vehicle is registered for a period other than one year as provided under § [46.2-646](#), the license tax shall be multiplied by the number of years or fraction thereof that the vehicle will be registered.

2000, cc. [729](#), [758](#); 2007, c. [896](#); 2012, cc. [729](#), [733](#); 2013, c. [766](#); 2014, cc. [14](#), [43](#).

*Subsection B is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any sub-

fund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§58.1-2250. Exemptions from tax.

No tax shall be levied or collected pursuant to this article on:

1. Alternative fuel sold and delivered to a governmental entity for the exclusive use by the governmental entity. This exemption shall not apply with respect to alternative fuel sold or delivered to any person operating under contract with the governmental entity;
2. Alternative fuel sold and delivered to a nonprofit charitable organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and that is organized and operated exclusively for the purpose of providing charitable, long-distance, advanced life-support, air transportation services using emergency medical services vehicles for low-income medical patients in the Commonwealth, for the exclusive use of such organization in the operation of an aircraft; or
3. Alternative fuel produced by the owner or lessee of an agricultural operation, as defined in § [3.2-300](#), and used (i) exclusively for farm use by the owner or lessee or (ii) in any motor vehicles operated by the producer of such fuel.

2000, cc. [729](#), [758](#); 2009, c. [530](#); 2015, cc. [502](#), [503](#).

§58.1-2251. Liability for tax; filing returns; payment of tax.

A. A bulk user of alternative fuel or retailer of alternative fuel who stores highway and nonhighway alternative fuel in the same storage tank shall be liable for the tax imposed by this article, and shall file tax returns and remit taxes in accordance with subsection D. The tax payable by a bulk user of alternative fuel or retailer of alternative fuel is imposed at the point that alternative fuel is withdrawn from the storage tank.

B. A provider of alternative fuel who sells or delivers alternative fuel shall be liable for the tax imposed by this article (i) on sales to a bulk user of alternative fuel or retailer of alternative fuel who stores highway product in a separate storage tank or

(ii) if the alternative fuel is sold or used by the provider of alternative fuel for highway use.

C. The owner of a highway vehicle subject to an annual license tax pursuant to subsection B of § [58.1-2249](#) shall be liable for such annual license tax. The annual license tax shall be due when the highway vehicle is first registered in Virginia and upon each subsequent renewal of registration.

D.1. Each (i) bulk user of alternative fuel or retailer of alternative fuel liable for tax pursuant to subsection A and (ii) provider of alternative fuel liable for the tax pursuant to subsection B shall file a monthly tax return with the Department. The tax on alternative fuel levied by this article, except for the annual license tax imposed under subsection B of § [58.1-2249](#), that is required to be remitted to the Commonwealth shall be payable to the Commonwealth not later than the date on which the return is due. A return and payment shall be (i) postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or (ii) received by the Department by the twentieth day of the second month succeeding the month for which the return and payment are due. However, a monthly return of the tax for the month of May shall be (i) postmarked by June 25 or (ii) received by the Commissioner by the last business day the Department is open for business in June.

2. If a tax return and payment due date falls on a Saturday, Sunday, or a state or banking holiday, the return shall be postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or received by the Department by midnight of the next business day the Department is open for business. This provision shall not apply to a return of the tax for the month of May.

3. A return and payment shall be deemed postmarked if it carries the official cancellation mark of the United States Postal Service or other postal or delivery service.

4. A return shall be filed with the Commissioner and shall be in the form and contain the information required by the Commissioner.

2000, cc. [729](#), [758](#); 2002, c. [7](#); 2013, c. [766](#).

§58.1-2252. Remittance of tax to provider of alternative fuel.

A purchaser of alternative fuel, other than a bulk user of alternative fuel or a retailer of alternative fuel who is liable for the tax pursuant to subsection A of § [58.1-2251](#), shall remit the tax due on the fuel to the provider of the fuel. A bulk user of

alternative fuel or retailer of alternative fuel who has posted a bond in accordance with § [58.1-2246](#) shall not be required to remit the tax to the provider until the date the provider is required to pay the tax to the Commonwealth. All tax payments received by a provider of alternative fuel from a bulk user of alternative fuel or retailer of alternative fuel shall be held in trust by the provider until the provider remits the tax payments to the Commonwealth, and the provider shall constitute the trustee for such tax payments. The date by which other purchasers of alternative fuel are required to remit tax to a provider shall be determined by agreement between the provider and the purchaser.

2000, cc. [729](#), [758](#).

§58.1-2253. Notice to providers of alternative fuel of cancellation or reissuance of certain licenses; effect of notice.

A. If the Commissioner cancels the license of a bulk user of alternative fuel or retailer of alternative fuel who has posted a bond in accordance with § [58.1-2246](#), the Commissioner shall notify all providers of alternative fuel of the cancellation. If the Commissioner issues a license to a bulk user of alternative fuel or retailer of alternative fuel whose license was previously canceled, the Commissioner shall notify all providers of alternative fuel of the issuance.

B. A provider of alternative fuel who sells alternative fuel to a bulk user of alternative fuel or retailer of alternative fuel who has posted a bond in accordance with § [58.1-2246](#), after receiving notice from the Commissioner that the Commissioner has canceled the license of a bulk user of alternative fuel or of a retailer of alternative fuel, is jointly and severally liable with the bulk user of alternative fuel or retailer of alternative fuel for any tax due on the alternative fuel that the provider of alternative fuel sells to the bulk user of alternative fuel or retailer of alternative fuel after receiving the notice; however, the provider of alternative fuel shall not be liable for tax due on alternative fuel sold to a previously unlicensed bulk user of alternative fuel or retailer of alternative fuel after the provider of alternative fuel receives notice from the Commissioner that the Commissioner has issued another license to the bulk user of alternative fuel or retailer of alternative fuel.

2000, cc. [729](#), [758](#).

§58.1-2254. Exempt sale deduction.

A licensed retailer of alternative fuel who has posted a bond in accordance with § [58.1-2246](#) may deduct from the amount of tax otherwise payable to a provider of

alternative fuel the amount calculated on alternative fuel that the licensee received from the provider and resold to a governmental entity, or resold to an organization described in subdivision 2 of § [58.1-2250](#) for use in the operation of an aircraft, whose purchases of alternative fuel are exempt from the tax under such section if, when purchasing the fuel, the retailer notified the provider of the retailer's intent to resell the fuel in an exempt sale.

2000, cc. [729](#), [758](#).

§58.1-2255. Returns and payments by bulk users and retailers of alternative fuel; storage.

A. Each bulk user of alternative fuel and retailer of alternative fuel shall file a monthly informational return with the Commissioner. A monthly return covers a calendar month and is due by the twentieth day of the second month that follows such month.

The return shall include the following information and any other information required by the Commissioner:

1. The amount of alternative fuel received during the month;
2. The amount of alternative fuel sold or used during the month;
3. The number of gallons for which a deduction was taken during the month pursuant to § [58.1-2254](#), by provider, if applicable; and
4. The number of gallons sold in exempt sales during the month, by type of sale, and the purchaser of the fuel in the exempt sales, if applicable.

B. If the number of gallons for which an eligible retailer of alternative fuel takes a deduction during a month exceeds the number of exempt gallons or gallon equivalent sold, the retailer of alternative fuel shall pay tax on the difference at the rate imposed by subsection A of § [58.1-2249](#). The tax shall be payable when the informational return is due.

C. A bulk user of alternative fuel or a retailer of alternative fuel may store highway and nonhighway alternative fuel in separate storage tanks or in the same storage tank. If highway and nonhighway alternative fuel are stored in separate storage tanks, the tank for the nonhighway fuel shall be marked in accordance with the requirements set by § [58.1-2279](#) for dyed diesel storage facilities. If highway and non-highway alternative fuel are stored in the same storage tank, the storage tank shall be

equipped with separate metering devices for the highway fuel and the nonhighway fuel. If the Commissioner determines that a bulk user of alternative fuel or retailer of alternative fuel used or sold alternative fuel to operate a highway vehicle when the fuel was dispensed from a storage tank or through a meter marked for nonhighway use, all fuel delivered into that storage tank shall be presumed to have been used to operate a highway vehicle.

2000, cc. [729](#), [758](#); 2002, c. [7](#).

§58.1-2256. Deductions and discounts for providers of alternative fuel filing returns.

A. When a provider of alternative fuel files a return, the provider of alternative fuel may deduct from the amount of tax payable with the return the amount of tax any of the following licensees owes the provider of alternative fuel but failed to remit to the provider of alternative fuel:

1. A licensed bulk user of alternative fuel who has posted a bond in accordance with § [58.1-2246](#); and
2. A licensed retailer of alternative fuel who has posted a bond in accordance with § [58.1-2246](#).

A provider of alternative fuel shall not be liable for tax that such a licensee owes the provider of alternative fuel but fails to pay. If such licensee pays the tax owed to a provider of alternative fuel after the provider of alternative fuel deducts the amount of such tax on a return, the provider of alternative fuel shall remit the payment to the Commissioner with the next monthly return filed subsequent to receipt of the tax.

B. A provider of alternative fuel who timely files a return with the payment due may deduct, from the amount of tax payable with the return, an administrative discount of one-tenth of one percent of the amount of tax payable to this Commonwealth, not to exceed a total of \$5,000 per month. The administrative discount allowed a provider of alternative fuel who is also licensed as a supplier under Article 2 (§ [58.1-2204](#) et seq.) of this chapter shall not exceed \$5,000 per month for both licenses.

2000, cc. [729](#), [758](#).

§58.1-2257. Duties of provider of alternative fuel as trustee.

A. All tax payments due to the Commonwealth received by a provider of alternative fuel pursuant to § [58.1-2252](#) shall be held by the provider of alternative fuel as trustee in trust for the Commonwealth, and a provider of alternative fuel has a

fiduciary duty to remit to the Commissioner the amount of tax received by the provider of alternative fuel. A provider of alternative fuel shall be liable for the taxes paid to him.

B. A provider of alternative fuel shall notify a bulk user of alternative fuel or retailer of alternative fuel who has posted a bond in accordance with § [58.1-2246](#) and who received alternative fuel from the provider of alternative fuel during a reporting period of the number of taxable gallons or equivalent taxable gallons received. The provider of alternative fuel shall give this notice after the end of each reporting period and before the licensee is required to remit to the provider of alternative fuel the amount of tax due on the fuel.

C. A provider of alternative fuel shall notify the Commissioner within ten business days after a return is due of any licensed bulk user of alternative fuel or retailer of alternative fuel who (i) has posted a bond in accordance with § [58.1-2246](#) and (ii) did not pay the tax due the provider of alternative fuel when the provider filed his return. The notice shall be transmitted to the Commissioner in the form required by the Commissioner.

D. A provider of alternative fuel who receives a payment of tax shall not apply the payment to a debt that the person making the tax payment owes to the provider of alternative fuel for alternative fuel purchased from the provider of alternative fuel.

2000, cc. [729](#), [758](#).

§58.1-2258. Use of name and account number on return.

When a transaction with a person licensed under this article is required to be reported on a return, the return shall state the licensee's name and account number as stated on the lists compiled by the Commissioner under § [58.1-2216](#).

2000, cc. [729](#), [758](#).

§58.1-2259. Fuel uses eligible for refund of taxes paid for motor fuels.

A. A refund of the tax paid for the purchase of fuel in quantities of five gallons or more at any time shall be granted in accordance with the provisions of § [58.1-2261](#) to any person who establishes to the satisfaction of the Commissioner that such person has paid the tax levied pursuant to this chapter upon any fuel:

1. Sold and delivered to a governmental entity for its exclusive use;

2. Used by a governmental entity, provided persons operating under contract with a governmental entity shall not be eligible for such refund;
3. Sold and delivered to an organization described in subdivision 2 of § [58.1-2226](#) or subdivision 2 of § [58.1-2250](#) for its exclusive use in the operation of an aircraft;
4. Used by an organization described in subdivision 2 of § [58.1-2226](#) or subdivision 2 of § [58.1-2250](#) for its exclusive use in the operation of an aircraft, provided persons operating under contract with such an organization shall not be eligible for such refund;
5. Purchased by a licensed exporter and subsequently transported and delivered by such licensed exporter to another state for sales or use outside the boundaries of the Commonwealth if the tax applicable in the destination state has been paid, provided a refund shall not be granted pursuant to this section on any fuel which is transported and delivered outside of the Commonwealth in the fuel supply tank of a highway vehicle or an aircraft;
6. Used by any person performing transportation under contract or lease with any transportation district for use in a highway vehicle controlled by a transportation district created under the Transportation District Act of 1964 (§ [33.2-1900](#) et seq.) and used in providing transit service by the transportation district by contract or lease, provided the refund shall be paid to the person performing such transportation;
7. Used by any private, nonprofit agency on aging, designated by the Department for Aging and Rehabilitative Services, providing transportation services to citizens in highway vehicles owned, operated or under contract with such agency;
8. Used in operating or propelling highway vehicles owned by a nonprofit organization that provides specialized transportation to various locations for elderly or disabled individuals to secure essential services and to participate in community life according to the individual's interest and abilities;
9. Used in operating or propelling buses owned and operated by a county or the school board thereof while being used to transport children to and from public school or from school to and from educational or athletic activities;
10. Used by buses owned or solely used by a private, nonprofit, nonreligious school while being used to transport children to and from such school or from such school to and from educational or athletic activities;

11. Used by any county or city school board or any private, nonprofit, nonreligious school contracting with a private carrier to transport children to and from public schools or any private, nonprofit, nonreligious school, provided the tax shall be refunded to the private carrier performing such transportation;
12. Used in operating or propelling the equipment of volunteer firefighting companies and of volunteer emergency medical services agencies within the Commonwealth used actually and necessarily for firefighting and emergency medical services purposes;
13. Used in operating or propelling motor equipment belonging to counties, cities and towns, if actually used in public activities;
14. Used for a purpose other than in operating or propelling highway vehicles, watercraft or aircraft;
15. Used off-highway in self-propelled equipment manufactured for a specific off-road purpose, which is used on a job site and the movement of which on any highway is incidental to the purpose for which it was designed and manufactured;
16. Proven to be lost by accident, including the accidental mixing of (i) dyed diesel fuel with tax-paid motor fuel, (ii) gasoline with diesel fuel, or (iii) undyed diesel fuel with dyed kerosene, but excluding fuel lost through personal negligence or theft;
17. Used in operating or propelling vehicles used solely for racing other vehicles on a racetrack;
18. Used in operating or propelling unlicensed highway vehicles and other unlicensed equipment used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or lessee of such vehicles and not operated on or over any highway for any purpose other than to move it in the manner and for the purpose mentioned. The amount of refund shall be equal to the amount of the taxes paid less one-half cent per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to the credit of the Virginia Agricultural Foundation Fund;
19. Used in operating or propelling commercial watercraft. The amount of refund shall be equal to the amount of the taxes paid less one and one-half cents per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to be credited as provided in subsection D of § [58.1-2289](#). If any applicant so requests, the Commissioner shall pay into the state treasury, to the credit of the

Game Protection Fund, the entire tax paid by such applicant for the purposes specified in subsection D of § [58.1-2289](#). If any applicant who is an operator of commercial watercraft so requests, the Commissioner shall pay into the state treasury, to the credit of the Marine Fishing Improvement Fund, the entire tax paid by such applicant for the purposes specified in § [28.2-208](#);

20. Used in operating stationary engines, or pumping or mixing equipment on a highway vehicle if the fuel used to operate such equipment is stored in an auxiliary tank separate from the fuel tank used to propel the highway vehicle, and the highway vehicle is mechanically incapable of self-propulsion while fuel is being used from the auxiliary tank;

21. Used in operating or propelling recreational and pleasure watercraft; or

22. Used in operating or propelling highway vehicles owned by any entity that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code, as amended or renumbered, and organized with a principal purpose of providing hunger relief services or food to the needy, if such vehicle is used solely for the purpose of providing hunger relief services or food to the needy.

B.1. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete highway vehicle, or a bulk feed delivery truck, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 35 percent of the tax paid on such fuel. For purposes of this section, a "bulk feed delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or air feed discharge systems for off-road deliveries of animal feed.

2. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

C. Any person purchasing any fuel on which tax imposed pursuant to this chapter has been paid may apply for a refund of the tax if such fuel was consumed by a highway vehicle used in operating an urban or suburban bus line or a taxicab service. This refund also applies to a common carrier of passengers which has been issued a certificate pursuant to § [46.2-2075](#) or [46.2-2099.4](#) providing regular route service over

the highways of the Commonwealth. No refund shall be granted unless the majority of the passengers using such bus line, taxicab service or common carrier of passengers do so for travel of a distance of not more than 40 miles, one way, in a single day between their place of abode and their place of employment, shopping areas or schools.

If the applicant for a refund is a taxicab service, he shall hold a valid permit from the Department to engage in the business of a taxicab service. No applicant shall be denied a refund by reason of the fee arrangement between the holder of the permit and the driver or drivers, if all other conditions of this section have been met.

Under no circumstances shall a refund be granted more than once for the same fuel. The amount of refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less \$0.01 per gallon on the fuel used.

Any refunds made under this subsection shall be deducted from the urban highway funds allocated to the highway construction district, pursuant to Article 5 (§ [33.2-351](#) et seq.) of Chapter 3 of Title 33.2, in which the recipient has its principal place of business.

Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any county having withdrawn its roads from the secondary system of state highways under provisions of § 11 of Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is now provided by law with respect to other fuel tax receipts.

D. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

E. Any person purchasing diesel fuel used in operating or propelling a passenger car, a pickup or panel truck, or a truck having a gross vehicle weight rating of 10,000 pounds or less is entitled to a refund of a portion of the taxes paid in an amount equal to the difference between the rate of tax on diesel fuel and the rate of tax on gasoline and gasohol pursuant to § [58.1-2217](#). For purposes of this subsection,

"passenger car," "pickup or panel truck," and "truck" shall have the meaning given in § [46.2-100](#). Notwithstanding any other provision of law, diesel fuel used in a vehicle upon which the fuels tax has been refunded pursuant to this subsection shall be exempt from the tax imposed under Chapter 6 (§ [58.1-600](#) et seq.).

F. Refunds resulting from any fuel shipments diverted from Virginia shall be based on the amount of tax paid for the fuel less discounts allowed by § [58.1-2233](#).

G. Any person who is required to be licensed under this chapter and is applying for a refund shall not be eligible for such refund if the applicant was not licensed at the time the refundable transaction was conducted.

2000, cc. [247](#), [347](#), [729](#), [758](#); 2001, c. [167](#); 2003, c. [781](#); 2005, cc. [243](#), [782](#), [928](#); 2011, cc. [881](#), [889](#); 2012, cc. [803](#), [835](#); 2013, c. [766](#); 2015, cc. [502](#), [503](#); 2016, c. [34](#).

§58.1-2260. Refund of taxes erroneously or illegally collected.

If it appears to the satisfaction of the Commissioner that any taxes or penalties imposed by this chapter have been erroneously or illegally collected from any person, such person shall be entitled to a refund upon proper application to the Commissioner. No refund shall be made under the provisions of this section unless a written statement, setting forth the circumstances and reasons why such refund is claimed, is filed with the Commissioner within one year of the date of payment of the tax for which the refund is claimed. The claim shall be in such form as the Commissioner shall prescribe and shall be sworn to by the claimant.

2000, cc. [729](#), [758](#).

§58.1-2261. Refund procedure; investigations.

A. Any person entitled to a refund pursuant to § [58.1-2259](#) shall file with the Commissioner an application on a form prepared and furnished by the Commissioner. Such application shall contain the information and certifications required by the Commissioner. The applicant shall set forth the basis for the claimed refund, the total amount of such fuel purchased and used by such applicant, and how such fuel was used. The applicant shall retain the paid ticket, invoice, or other document from the seller documenting the purchase of the fuel on which a refund is claimed for a period of time to be determined by the Commissioner. The Commissioner, upon the presentation of such application shall refund to the claimant the proper amount of the tax paid as provided in this chapter, subject to the provisions of subsection D. A ticket issued to the holder of a credit card as evidence of the delivery to such holder of tax-

paid fuel shall, for the purpose of this section, be a paid ticket or invoice. Tickets or invoices marked "duplicate" shall not be acceptable.

B. The application for a refund shall be filed within one year from the date of the sale as shown on the paid ticket or invoice. For those that pay the motor fuels tax in accordance with § [58.1-2200](#), if the refund amount certified by the Commissioner is different from the amount requested by the applicant, the Commissioner shall provide an explanation to the applicant of why the refund amount differs from the amount requested.

C. In the event an assessment is rendered for failure to report and pay the tax imposed as provided in § [58.1-2217](#) or § [58.1-2249](#) and such fuel is subject to refund under the provisions of § [58.1-2259](#), the application for a refund shall be filed with the Commissioner by the person entitled to such refund within one year from the date such assessment is paid and shall be accompanied by invoices covering the sale of the fuel and billing of tax to such person.

D. The Department may make any investigation it considers necessary before refunding the fuels tax to a person, and may investigate a refund after the refund has been issued and within the time frame for adjusting tax under this chapter. As a part of such investigation, the Department may require that the person provide the paid ticket, invoice, or other document from the seller documenting the purchase of the fuel on which a refund is claimed. Failure to provide a ticket, invoice, or other document evidencing the purchase of such fuel on which a refund is requested or was previously granted will result in the denial or reversal of that refund.

E. In accordance with § [58.1-609.1](#), any person who is refunded tax pursuant to § [58.1-2259](#) shall be subject to the taxes imposed by Chapter 6 (§ [58.1-600](#) et seq.) of this title, unless such transaction is specifically exempted pursuant to § [58.1-609.1](#). 2000, cc. [729](#), [758](#); 2003, c. [325](#); 2009, c. [419](#).

§58.1-2262. Payment of refund.

Whenever it appears to the satisfaction of the Commissioner that any person is entitled to a refund for taxes paid pursuant to this chapter, the Commissioner shall forthwith certify the amount of the refund to the Comptroller and shall send to the applicant an explanation of the basis of such refund. The amount of the refund shall be paid by check issued by the State Treasurer on warrant of the Comptroller.

2000, cc. [729](#), [758](#); 2003, c. [325](#).

§58.1-2263. Shipping documents; transportation of motor fuel loaded at a terminal rack or bulk plant rack; civil penalty.

A. A person shall not transport motor fuel loaded at a terminal rack or bulk plant rack unless the person has a shipping document for its transportation that complies with this section. A terminal operator or operator of a bulk plant shall give a shipping document to the person who operates the means of conveyance into which motor fuel is loaded at the terminal rack or bulk plant rack.

B. The shipping document issued by the terminal operator shall be machine-printed and that issued by the operator of a bulk plant shall be on a printed form and both shall contain the following information and any other information required by the Commissioner:

1. Identification, including address, of the terminal or bulk plant from which the motor fuel was received;
2. Date the motor fuel was loaded;
3. Gross gallons loaded;
4. Destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent;
5. In the case of aviation jet fuel sold to an aviation consumer, the shipping document shall be marked with the phrase "Aviation Jet Fuel, Not for On-road Use" or a similar phrase; and
6. If the document is issued by a terminal operator, (i) net gallons loaded and (ii) tax responsibility statement indicating the name of the supplier who is responsible for the tax due on the motor fuel.

C. A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser shall be liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

D. A person to whom a shipping document was issued shall:

1. Carry the shipping document in the means of conveyance for which it was issued when transporting the motor fuel described;
2. Show the shipping document to a law-enforcement officer upon request when transporting the motor fuel described;

3. Deliver motor fuel described in the shipping document to the destination state printed on it unless the person:

a. Notifies the Commissioner before transporting the motor fuel into a state other than the printed destination state that the person has received instructions after the shipping document was issued to deliver the motor fuel to a different destination state;

b. Receives from the Commissioner a confirmation number authorizing the diversion; and

c. Writes on the shipping document the change in destination state and the confirmation number for the diversion; and

4. Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

E. The person to whom motor fuel is delivered shall not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than Virginia. To determine if the shipping document shows Virginia as the destination state, the person to whom the fuel is delivered shall examine the shipping document and keep a copy of the shipping document (i) at the place of business where the motor fuel was delivered for 90 days following the date of delivery and (ii) at such place or another place for at least three years following the date of delivery. The person who accepts delivery of motor fuel in violation of this subsection and any person liable for the tax on the motor fuel pursuant to Article 3 (§ [58.1-2217](#) et seq.) shall be jointly and severally liable for any tax due on the fuel.

F. Any person who (i) transports motor fuel loaded at a terminal rack or bulk plant rack without a shipping document or with a false or an incomplete shipping document or (ii) delivers motor fuel to a destination state other than that shown on the shipping document, shall be subject to a civil penalty. If the fuel is transported in a railroad tank car, the civil penalty imposed under this subsection shall be payable by the person responsible for the movement of the motor fuel in the railroad tank car. If the fuel is transported by any other means of conveyance, the civil penalty imposed under this subsection shall be payable by the person in whose name the means of conveyance is registered. The amount of the civil penalty assessed against a person for his first violation shall be \$5,000. The amount of the civil penalty assessed against a person for his second or subsequent violation shall be \$10,000.

2000, cc. [729](#), [758](#); 2001, c. [167](#); 2012, c. [363](#).

§58.1-2264. Repealed.

Repealed by Acts 2003, c. [781](#), cl. 2.

§58.1-2265. Improper sale or use of untaxed fuel; civil penalty.

A. Any person committing any of the following acts shall be subject to the civil penalty specified in subsection B:

1. Selling or storing any dyed diesel fuel for use in a highway vehicle that is licensed or required to be licensed, unless that use is allowed under 26 U.S.C. § 4082;
2. Willfully altering or attempting to alter the strength or composition of any dye or marker in any dyed diesel fuel;
3. Using dyed diesel fuel in a highway vehicle unless that use is allowed under 26 U.S.C. § 4082;
4. Acquiring, selling or storing any fuel for use in a watercraft, aircraft, or highway vehicle that is licensed or required to be licensed unless the tax levied by this chapter has been paid; or
5. Using any fuel in a watercraft, aircraft, or highway vehicle that is licensed or required to be licensed unless the tax levied by this chapter has been paid.

B. The amount of the civil penalty for any act described in subsection A shall be the greater of \$1,000 or ten dollars per gallon of fuel, based on the maximum storage capacity of the storage tank, container or storage tank of the highway vehicle, watercraft or aircraft.

C. The Commissioner is authorized to reduce or waive any civil penalties under this section if the violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.

2000, cc. [729](#), [758](#).

§58.1-2266. Late filing or payment; civil penalty.

A. Any person committing any of the following acts shall be subject to the civil penalty specified in subsections B and C:

1. Failure to submit a report required by this chapter on a timely basis;
2. Failure to submit the data required by this chapter; or

3. Failure to pay to the Commissioner or to a trustee on a timely basis the amount of taxes due under this chapter.

B. The amount of the civil penalty for any act described in subdivision A 1 or 2 shall be as follows:

1. \$50 for the first violation;
2. \$200 for the second violation;
3. \$500 for the third violation; and
4. \$1,000 for the fourth and subsequent violations.

After imposition of the penalty under this subsection, the amount of the penalty, if not paid within 30 days of receipt of notice of such penalty, shall bear interest at the rate of one percent per month until the penalty is paid.

C. The amount of the civil penalty for any act described in subdivision A 3 shall be equal to 10 percent of the tax due or \$50, whichever is greater; however, penalties resulting from an audit shall be equal to 10 percent of the tax due. After imposition of the penalty under this subsection, the amount of the tax and the penalty, if not paid within 30 days of receipt of notice of such penalty, shall bear interest at the rate of one percent per month until the tax and penalty are paid.

D. The Commissioner is authorized to reduce or waive any penalties under this section if the violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner.

2000, cc. [729](#), [758](#); 2004, c. [340](#).

§58.1-2267. Refusal to allow inspection or taking of fuel sample; civil penalty.

Any person who refuses to allow an inspection or allow the taking of a fuel sample authorized by § [58.1-2276](#) or § [58.1-2277](#) shall be subject to a civil penalty of \$5,000 for each refusal. If the refusal is for a sample to be taken from a vehicle, the penalty shall be payable by the person in whose name the vehicle is registered. If the refusal is for a sample to be taken from any other storage tank or container, the penalty shall be payable by the owner of such storage tank or container.

2000, cc. [729](#), [758](#).

§58.1-2268. Engaging in business without a license; civil penalty.

Any person who engages in any business activity within the Commonwealth for which a license is required by this chapter without a valid license shall be subject to a civil penalty. The amount of the civil penalty assessed against a person for his first violation shall be \$5,000. The amount of the civil penalty assessed against a person for his second or subsequent violation shall be \$10,000.

2000, cc. [729](#), [758](#).

§58.1-2268.1. Preventing a person from obtaining a license; civil penalty.

Any terminal operator, supplier, or position holder in the terminal who, by use of coercion, threat, intimidation or any other means of interference, intentionally prevents any person from applying for and obtaining a license issued under this chapter shall be subject to a civil penalty. The amount of the civil penalty assessed against a person for his (i) first violation shall be \$5,000 and (ii) second and subsequent violations shall be \$10,000.

2000, cc. [729](#), [758](#).

§58.1-2269. False or fraudulent return; civil penalty.

Any person liable for a tax levied under this chapter who files a false or fraudulent return with the intent to evade the tax shall be subject to a civil penalty. The amount of the civil penalty shall be equal to fifty percent of the amount of the tax intended to be evaded by the filing of such return. The civil penalty shall be in addition to the amount of the tax intended to be evaded.

2000, cc. [729](#), [758](#).

§58.1-2270. Failure to keep or retain records; civil penalty.

Any person who fails to keep or retain records as required by this chapter shall be subject to a civil penalty. The amount of the civil penalty assessed against a person for his first violation shall be \$1,000. The amount of the civil penalty assessed against a person for each subsequent violation shall be \$1,000 more than the amount of the civil penalty for the preceding violation.

2000, cc. [729](#), [758](#).

§58.1-2271. Payment of civil penalties; disposition; waiver.

Any civil penalty assessed pursuant to this chapter shall be payable to the Department, shall be in addition to any other penalty or tax that may be imposed as provided in this chapter, and shall be collectible by the Commissioner in the same manner as if it were part of the tax levied. The amount of any civil penalty imposed

under this chapter shall bear interest at the rate of one percent per month until paid. All civil penalties imposed under this chapter shall be deposited as provided in § [58.1-2289](#). Notwithstanding any other provisions of this chapter, the Commissioner is authorized to reduce or waive any civil penalties under this chapter if the violation is due to a reasonable or good cause shown to the satisfaction of the Commissioner. 2000, cc. [729](#), [758](#); 2004, c. [340](#).

§58.1-2272. Prohibited acts; criminal penalties.

A. Any person who commits any of the following acts shall be guilty of a Class 1 misdemeanor:

1. Failing to obtain a license required by this chapter;
2. Failing to file a return required by this chapter;
3. Failing to pay a tax when due under this chapter;
4. Failing to pay a tax collected on behalf of a destination state to that state when it is due;
5. Making a false statement in an application, return, ticket, invoice, statement, or any other document required under this chapter;
6. Making a false statement in an application for a refund;
7. Failing to keep records as required under this chapter;
8. Refusing to allow the Commissioner or a representative of the Commissioner to examine the person's books and records concerning fuel;
9. Failing to make a required disclosure of the correct amount of fuel sold or used in the Commonwealth;
10. Failing to file a replacement or additional bond or certificate of deposit as required under this chapter;
11. Failing to show or give a shipping document as required under this chapter;
12. Refusing to allow a licensed distributor, licensed exporter, or licensed importer to defer payment of tax to the supplier, as required by § [58.1-2231](#);
13. Refusing to allow a bulk user of alternative fuel or a retailer of alternative fuel who has posted a bond in accordance with § [58.1-2246](#) to defer payment of tax to the provider of alternative fuel, as required by § [58.1-2252](#);

14. Refusing to allow a licensed distributor or a licensed importer to take a deduction or discount allowed by § [58.1-2233](#) when remitting the tax to the supplier, or to allow a licensed retailer of alternative fuel to take a deduction or discount allowed by § [58.1-2254](#) when remitting the tax to the provider of alternative fuel;

15. Using, delivering, or selling any aviation fuel for use or intended for use in highway vehicles or watercraft;

16. Violating the provisions of § [58.1-2278](#);

17. Interfering with or refusing to permit seizures authorized under § [58.1-2274](#); or

18. Delivering fuel from a transport truck or tank wagon to the fuel tank of a highway vehicle, except in an emergency.

B. A person who knowingly commits any of the following acts shall be guilty of a Class 1 misdemeanor:

1. Dispenses any fuel on which tax levied pursuant to this chapter has not been paid into the supply tank of a highway vehicle, watercraft, or aircraft; or

2. Allows any fuel on which tax levied pursuant to this chapter has not been paid to be dispensed into the supply tank of a highway vehicle, watercraft, or aircraft.

2000, cc. [729](#), [758](#); 2006, c. [594](#).

§58.1-2273. Willful commission of prohibited acts; criminal penalties.

Any person who willfully commits any of the following acts, with the intent to (i) evade or circumvent the Commonwealth's fuels tax laws or (ii) assist any other person in efforts to evade or circumvent such laws, shall be guilty of a Class 6 felony, if he:

1. Alters, manipulates, replaces, or in any other manner tampers or interferes with, or causes to be altered, manipulated, replaced, tampered or interfered with, a totalizer attached to fuel pumps to measure the dispensing of fuel;

2. Does not pay fuels taxes and diverts such tax proceeds for other purposes;

3. Is a licensee or the agent or representative of a licensee, converts or attempts to convert fuel tax proceeds for the use of the licensee or the licensee's agent or representative, with the intent to defraud the Commonwealth;

4. Illegally collects fuel taxes when not authorized or licensed by the Commissioner to do so;

5. Illegally imports fuel into the Commonwealth;
6. Conspires with any other person or persons to engage in an act, plan, or scheme to defraud the Commonwealth of fuels tax proceeds;
7. Uses any dyed diesel fuel for a use that the user knows or has reason to know is a taxable use of the fuel, or sells any dyed diesel fuel to a person who the seller knows or has reason to know will use the fuel for a taxable purpose; however, if the amount of fuel involved is not more than twenty gallons, such person shall be guilty of a Class 1 misdemeanor;
8. Alters or attempts to alter the strength or composition of any dye or marker in any dyed diesel fuel intended to be used for a taxable purpose;
9. Fails to remit to the Commissioner any tax levied pursuant to this chapter, if he (i) has added, or represented that he has added, the tax to the sales price for the fuel and (ii) has collected the amount of the tax;
10. Applies for or collects from the Department a refund for fuels tax when the person knows or has reason to know that fuel for which the refund is claimed has been or will be used for a taxable purpose; however, if the amount of fuel involved is not more than 20 gallons, such person shall be guilty of a Class 1 misdemeanor; or
11. Uses any fuel for a taxable purpose for which the person knows or has reason to know that a refund of fuels tax has been issued; however, if the amount of fuel involved is not more than 20 gallons, such person shall be guilty of a Class 1 misdemeanor.

2000, cc. [729](#), [758](#); 2006, c. [594](#).

§58.1-2274. Unlawful importing, transportation, delivery, storage, acquiring or sale of fuel; sale to enforce assessment.

A. Upon the discovery of any fuel illegally imported into, or illegally transported, delivered, stored, acquired, or sold in, the Commonwealth, the Commissioner may order the tank or other storage receptacle in which the fuel is located to be seized and locked or sealed until the tax, penalties and interest levied under this chapter are assessed and paid.

B. If the assessment for such tax is not paid within 30 days, the Commissioner is hereby authorized, in addition to the other remedies authorized in this chapter, to sell such fuel and use the proceeds of such sale to satisfy the assessment due, with

any funds which exceed the assessment and costs of the sale being returned to the owner of the fuel.

C. All fuel and any property, tangible or intangible, which may be found upon the person or in any vehicle which such person is using, including the vehicle itself, to aid the person in the transportation or sale of illegally transported, delivered, stored, sold, imported or acquired fuel, and any property found in the immediate vicinity of any place where such illegally transported, delivered, stored, sold, imported or acquired fuel may be located, including motor vehicles, tanks, and other storage devices, used to aid in the illegal transportation or sale of such fuel, shall be deemed contraband and shall be forfeited to the Commonwealth.

D. Any efforts by the Department to effect the forfeiture allowed under the authority of this section shall be governed by Chapter 22.1 (§ [19.2-386.1](#) et seq.) of Title 19.2, mutatis mutandis. However, such procedures shall not be applicable to the Department's tax collection powers and the use of such powers to enforce a tax liability against the illegally transported, delivered, stored, sold, imported or acquired fuel.

2000, cc. [729](#), [758](#); 2012, cc. [283](#), [363](#), [756](#).

§58.1-2275. Record-keeping requirements.

Each (i) person required or electing to be licensed under Article 2 (§ [58.1-2204](#) et seq.) of this chapter, (ii) distributor, retailer and bulk user not licensed under this chapter, and (iii) person required to be licensed under § [58.1-2244](#), shall keep and maintain all records pertaining to fuel received, produced, manufactured, refined, compounded, used, sold or delivered, together with delivery tickets, invoices, bills of lading, and such other pertinent records and papers as may be required by the Commissioner for the reasonable administration of this chapter. Such records shall be kept and maintained for a period to include the Department's current fiscal year and the previous three fiscal years.

2000, cc. [729](#), [758](#); 2002, c. [7](#).

§58.1-2276. Inspection of records.

A. The Commissioner or any deputy, employee or agent authorized by the Commissioner may examine, during the usual business hours of the day, records, books, papers, storage tanks and any other equipment of any person required to maintain records as provided in § [58.1-2275](#) for the purpose of ascertaining the quantity of fuel received, produced, manufactured, refined, compounded, used, sold, shipped, or

delivered, to verify the truth and accuracy of any statement, report or return or to ascertain whether or not the tax levied by this chapter has been paid.

B. If a person required to maintain records as provided in § [58.1-2275](#) is open for business during hours of the day which might not be considered usual business hours for the Department, the Commissioner may examine the person's books and records during the person's normal business hours, which shall be those hours when the person is open for business.

2000, cc. [729](#), [758](#); 2001, c. [167](#).

§58.1-2277. Administrative authority.

A. Employees of the Department designated by the Commissioner, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized to enter any place and to conduct inspections in accordance with this section. Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be inspected.

B. Inspections may be conducted at any place where taxable fuel or fuel dyes or markers are, or may be, produced, altered, or stored, or at any inspection site where evidence of production, alteration, or storage may be discovered. These places may include, but shall not be limited to any: (i) terminal, (ii) fuel storage facility that is not a terminal, (iii) retail fuel facility, and (iv) designated inspection site.

C. Employees of the Department designated by the Commissioner may physically inspect, examine, and otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of fuel, fuel dyes or markers. Inspection may also be made of any equipment used for, or in connection with, the production, storage, or transportation of fuel, fuel dyes or markers, including equipment used for the dyeing or marking of fuel. Such employees may also inspect the books and records kept to determine fuel tax liability under this chapter.

D. Employees of the Department designated by the Commissioner may, on the premises or at a designated inspection site, take and remove samples of fuel in such reasonable quantities as are necessary to determine its composition.

2000, cc. [729](#), [758](#).

§58.1-2278. Equipment requirements.

A. All fuel dispensed at retail shall be dispensed from metered pumps that indicate the total amount of fuel measured through the pumps. Each pump shall be marked to indicate the type of fuel dispensed.

B. A highway vehicle that transports fuel in a tank that is separate from the fuel supply tank of the vehicle shall not have a connection from the transporting tank to the motor or to the supply tank of the vehicle.

2000, cc. [729](#), [758](#).

§58.1-2279. Marking requirements for dyed diesel fuel storage facilities.

A. A person who is a retailer of dyed diesel fuel or who stores dyed diesel fuel for use by that person or another person shall mark, with the phrase "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use," or a similar phrase that clearly indicates that the diesel fuel is not to be used to operate a highway vehicle, each storage facility or pump from which dyed diesel fuel is dispensed, as follows:

1. The storage tank of the storage facility, if the storage tank is visible; and
2. The dispensing device that serves the storage facility.

B. The marking requirements of this section shall not apply to a storage facility that contains fuel used only in a heating, crop-drying, or manufacturing process, and is installed in a manner that makes use of the fuel for any other purpose improbable.

2000, cc. [729](#), [758](#).

§58.1-2280. Estimates of fuel subject to tax; assessments; notice of assessment.

When any licensee neglects, fails or refuses to make and file any report as required by this chapter or files an incorrect or fraudulent report, the Commissioner shall determine, from any information obtainable, the number of gallons of fuel with respect to which the licensee has incurred liability under this chapter. The Commissioner is authorized to make an assessment for the tax and any penalty and interest properly due against such licensee. The notice of assessment shall be sent to the licensee or delivered by the Department to the last known address appearing in the Commissioner's files. Such notice, when sent or delivered in accordance with these requirements, shall be sufficient regardless of whether or not it was ever received.

2000, cc. [729](#), [758](#); 2006, c. [594](#).

§58.1-2281. Application to Commissioner for correction.

A. Any person assessed with any tax administered by the Department may, within thirty days from the date of such assessment, apply for relief to the Commissioner. Such application shall be in the form prescribed by the Department, and shall fully set forth the grounds upon which the taxpayer relies and all facts relevant to the taxpayer's contention. The Commissioner may also require such additional information, testimony or documentary evidence as he deems necessary to a fair determination of the application.

B. On receipt of a written notice of intent to file under this section, the Commissioner shall refrain from collecting the tax until the time for filing hereunder has expired, unless he determines that collection is in jeopardy.

2000, cc. [729](#), [758](#).

§58.1-2282. Appeal of Commissioner's decisions.

A. Any person against whom an assessment, order or decision of the Commissioner has been adversely rendered, which assessment, order, or decision relates to the collection of unreported, incorrectly or fraudulently reported taxes, the granting or canceling of a license, the filing of a bond, an increase in the amount of a bond, a change of surety on a bond, the filing of reports, the examination of records, or any other matter wherein the findings are in the discretion of the Commissioner, may, within thirty days from the date thereof, file a petition of appeal from such assessment, order, or decision, in the circuit court in the city or county wherein such person resides, provided that any petition for a refund for taxes timely paid shall be filed within one year of the date of payment. A copy of the petition shall be sent to the Commissioner at the time of the filing with the court. The original shall show, by certificate, the date of mailing such copy to the Commissioner.

B. In any proceeding under this section, the assessments by the Commissioner shall be presumed correct. The burden of proof shall be upon the petitioner to show that the assessment was incorrect and contrary to law. The circuit court is authorized to enter judgment against such person for the taxes, penalty, and interest due. The failure by any such person to appeal under the provisions of this section within the time period specified shall render the assessment, order, or decision of the Commissioner conclusively valid and binding upon such person. Such person or the Commissioner may petition the Court of Appeals from the final decision of the circuit court.

2000, cc. [729](#), [758](#).

§58.1-2283. Jeopardy assessment.

If the Commissioner (i) receives notice from a supplier pursuant to subsection C of § [58.1-2237](#) of any licensed distributor or licensed importer who did not pay the tax due the supplier, or (ii) is of the opinion that the collection of any tax or any amount of tax required to be collected and paid under this chapter will be jeopardized by delay, the Commissioner shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy, including penalties and interest. In the case of a tax for a current period, the Commissioner may declare the taxable period of the taxpayer immediately terminated and shall mail or issue the notice of such finding and declaration to the taxpayer with a demand for immediate payment of the tax based on the period declared terminated, and such tax shall be immediately due and payable. Assessments provided for in this section shall become immediately due and payable. If any such tax, penalty or interest is not paid upon demand, the Commissioner may proceed to (i) collect the same by legal process, including but not limited to filing a memorandum of lien pursuant to § [58.1-2284](#) or (ii) accept a surety bond or other security deemed to sufficiently ensure full payment of the amount of tax, penalty and interest assessed against the taxpayer.

2000, cc. [729](#), [758](#); 2004, c. [340](#).

§58.1-2284. Memorandum of lien for collection of taxes.

A. If any taxes or fees, including penalties and interest, due under this chapter become delinquent or are past due, the Commissioner may file a memorandum of lien in the circuit court clerk's office of the county or city in which the taxpayer's place of business is located, or in which the taxpayer resides. If the taxpayer has no place of business or residence within the Commonwealth, such memorandum may be filed in the Circuit Court of the City of Richmond. A copy of such memorandum may also be filed in the clerk's office of all counties and cities in which the taxpayer owns real estate. Such memorandum shall be recorded in the judgment docket book and shall have the effect of a judgment in favor of the Commonwealth, to be enforced as provided in Article 19 (§ [8.01-196](#) et seq.) of Chapter 3 of Title 8.01, mutatis mutandis, except that a writ of fieri facias may be issued any time after the memorandum is filed. The lien on real estate shall become effective at the time the memorandum is filed in the jurisdiction in which the real estate is located.

B. Recordation of a memorandum of lien hereunder shall not affect the right to a refund or exoneration under this chapter nor shall an application for correction pursuant to § [58.1-2281](#) affect the power of the Commissioner to collect the tax, except as specifically provided in this chapter.

2000, cc. [729](#), [758](#).

§58.1-2285. Period of limitations.

The taxes imposed by this chapter shall be assessed within three years from the date on which such taxes became due and payable. In the case of a false or fraudulent return with intent to evade payment of the taxes imposed by this chapter, or a failure to file a return, the taxes may be assessed, or a proceeding in court for the collection of such taxes may be begun without assessment, at any time. The Commissioner shall not examine any person's records beyond the three-year period of limitations unless he has reasonable evidence of fraud, or reasonable cause to believe that such person was required by law to file a return and failed to do so.

2000, cc. [729](#), [758](#).

§58.1-2286. Waiver of time limitation on assessment of taxes.

If, before the expiration of the time prescribed for assessment of any tax levied pursuant to this title and assessable by the Department, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

2000, cc. [729](#), [758](#).

§58.1-2287. Suits to recover taxes.

If any person fails to pay the tax or any civil penalty levied under this chapter, including accrued penalties and interest, when due, the Attorney General or the Commissioner may bring an appropriate action for the recovery of such tax, penalty and interest, provided that if it is found that such failure to pay was willful, judgment shall be rendered for double the amount of the tax or civil penalty found to be due, with costs.

2000, cc. [729](#), [758](#).

§58.1-2288. Liability of corporate or partnership officer; penalty.

Any corporate or partnership officer who directs or causes the business of which he is a corporate or partnership officer to fail to pay, collect, or truthfully account for and pay over any fuels tax for which the business is liable to the Commonwealth or to a trustee, shall, in addition to other penalties provided by law, be liable for a penalty in the amount of the tax evaded, or not paid, collected, or accounted for and paid over. The penalty shall be assessed and collected in the same manner as such taxes are assessed and collected. However, this penalty shall be dischargeable in bankruptcy proceedings.

2000, cc. [729](#), [758](#).

§58.1-2289. (For contingent expiration, see note) Disposition of tax revenue generally.

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

B. The tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.

C. One-half cent of the tax collected on each gallon of fuel on which a refund has been paid for gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the

research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § [29.1-701](#), including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § [33.2-1510](#), a sum as established by the General Assembly.

E. Of the remaining revenues deposited into the Commonwealth Transportation Fund pursuant to this chapter less refunds authorized by this chapter: (i) 80 percent shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § [33.2-1530](#), (ii) 11.3 percent shall be deposited into the Transportation Trust Fund established pursuant to § [33.2-1524](#), (iii) four percent shall be deposited

into the Priority Transportation Fund, (iv) 3.11 percent shall be deposited into the Commonwealth Transit Capital Fund established pursuant to subdivision A 4 c of § [58.1-638](#), (v) one percent shall be transferred to a special fund within the Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, (vi) 0.35 of one percent shall be deposited into the Commonwealth Mass Transit Fund established pursuant to subdivision A 4 of § [58.1-638](#) and allocated to subdivision A 4 b (1)(b), and (vii) 0.24 of one percent shall be deposited into the Commonwealth Mass Transit Fund established pursuant to subdivision A 4 of § [58.1-638](#) and allocated to subdivision A 4 b (1)(a).

2000, cc. [729](#), [758](#); 2007, c. [896](#); 2013, c. [766](#); 2015, c. [684](#).

§58.1-2289. (For contingent effective date, see note) Disposition of tax revenue generally.

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

B. The tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.

C. One-half cent of the tax collected on each gallon of fuel on which a refund has been paid for gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall

be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § [29.1-701](#), including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § [33.2-1510](#), a sum as established by the General Assembly.

E. Of the remaining revenues deposited into the Commonwealth Transportation Fund pursuant to this chapter less refunds authorized by this chapter: (i) 80 percent shall be deposited into the Highway Maintenance and Operating Fund established

pursuant to § [33.2-1530](#), (ii) 15 percent shall be deposited into the Transportation Trust Fund established pursuant to § [33.2-1524](#), (iii) four percent shall be deposited into the Priority Transportation Fund, and (iv) one percent shall be transferred to a special fund within the Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles.

2000, cc. [729](#), [758](#); 2007, c. [896](#); 2013, c. [766](#).

§58.1-2290. Repealed.

Repealed by Acts 2013, c. [766](#), cl. 4.

§58.1-2290.1. Repealed.

Repealed by Acts 2016, c. [305](#), cl. 2.

Virginia Health Spa Act

§59.1-294. Short title.

This chapter shall be known and may be cited as the "Virginia Health Club Act."

1984, c. 738; 2014, c. [459](#).

§59.1-295. Statement of purpose.

The purpose of this chapter is to safeguard the public interest against fraud, deceit, and financial hardship, and to foster and encourage competition, fair dealing and prosperity in the field of health club services by prohibiting false and misleading advertising, and dishonest, deceptive, and unscrupulous practices by which the public has been injured in connection with contracts for health club services.

1984, c. 738; 2014, c. [459](#).

§59.1-296. Definitions.

As used in this chapter:

"Business day" means any day except a Sunday or a legal holiday.

"Buyer" means a natural person who enters into a health club contract.

"Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.

"Comparable alternate facility" means a health club facility that is reasonably of like kind, in nature and quality, to the health club facility originally contracted, whether

such facility is in the same location but owned or operated by a different health club or is at another location of the same health club.

"Contract price" means the sum of the initiation fee, if any, and all monthly fees except interest required by the health club contract.

"Facility" means a location where health club services are offered as designated in a health club contract.

"Health club" means any person, firm, corporation, organization, club or association whose primary purpose is to engage in the sale of memberships in a program consisting primarily of physical exercise with exercise machines or devices, or whose primary purpose is to engage in the sale of the right or privilege to use exercise machines or devices. The term "health club" shall not include the following: (i) bona fide nonprofit organizations, including, but not limited to, the Young Men's Christian Association, Young Women's Christian Association, or similar organizations whose functions as health clubs are only incidental to their overall functions and purposes; (ii) any private club owned and operated by its members; (iii) any organization primarily operated for the purpose of teaching a particular form of self-defense such as judo or karate; (iv) any facility owned or operated by the United States; (v) any facility owned or operated by the Commonwealth of Virginia or any of its political subdivisions; (vi) any nonprofit public or private school or institution of higher education; (vii) any club providing tennis or swimming facilities located in a residential planned community or subdivision, developed in conjunction with the development of such community or subdivision, and deriving at least 80 percent of its membership from residents of such community or subdivision; and (viii) any facility owned and operated by a private employer exclusively for the benefit of its employees, retirees, and family members and which facility is only incidental to the overall functions and purposes of the employer's business and is operated on a nonprofit basis.

"Health club contract" means an agreement whereby the buyer of health club services purchases, or becomes obligated to purchase, health club services.

"Health club services" means and includes services, privileges, or rights offered for sale or provided by a health club.

"Initiation fee" means a nonrecurring fee charged at or near the beginning of a health club membership, and includes all fees or charges not part of the monthly fee.

"Monthly fee" means the total consideration, including but not limited to, equipment or locker rental, credit check, finance, medical and dietary evaluation, class and training fees, and all other similar fees or charges and interest, but excluding any initiation fee, to be paid by a buyer, divided by the total number of months of health club service use allowed by the buyer's contract, including months or time periods called "free" or "bonus" months or time periods and such months or time periods that are described in any other terms suggesting that they are provided free of charge, which months or time periods are given or contemplated when the contract is initially executed.

"Out of business" means the status of a facility that is permanently closed and for which there is no comparable alternate facility.

"Prepayment" means payment of any consideration for services or the use of facilities made prior to the day on which the services or facilities of the health club are fully open and available for regular use by the members.

"Relocation" means the provision of health club services by the health club that entered into the membership contract at a location other than that designated in the member's contract.

1984, c. 738; 1985, c. 585; 1986, c. 187; 1990, cc. 392, 433; 1991, c. 149; 1992, c. 102; 2003, c. [344](#); 2007, c. [683](#); 2010, c. [439](#); 2014, c. [459](#).

§59.1-296.1. Registration; fees.

A. It shall be unlawful for any health club to offer, advertise, or execute or cause to be executed by the buyer any health club contract in this Commonwealth unless each facility of the health club has been properly registered with the Commissioner at the time of the offer, advertisement, sale or execution of a health club contract. The registration shall (i) disclose the address, ownership, date of first sales and date of first opening of the facility and such other information as the Commissioner may require consistent with the purposes of this chapter, (ii) be renewed annually on July 1, and (iii) be accompanied by the appropriate registration fee per each annual registration in the amount indicated below:

Number of unexpired contracts originally written for more than one month	Registration fee
0 to 250	\$200

251 to 500	\$300
501 to 2000	\$700
2001 or more	\$800

Further, it shall be accompanied by a late fee of \$50 if the registration renewal is neither postmarked nor received on or before July 1. In the event that a club operates multiple facilities, a \$50 late fee for the first facility and \$25 for each additional facility shall accompany the registrations. For each successive 30 days after August 1, an additional \$25 shall be added for each facility. Each separate facility where health club services are offered shall be considered a separate facility and shall file a separate registration, even though the separate facilities are owned or operated by the same health club.

B. Any health club that sells a health club contract prior to registering pursuant to this section and, if required, submits the appropriate surety required by § [59.1-306](#) shall pay a late filing fee of \$100 for each 30-day period the registration or surety is late. This fee shall be in addition to all other penalties allowed by law.

C. A registration shall be amended within 21 days if there is a change in the information included in the registration.

D. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

1985, c. 585; 1988, c. 13; 1990, cc. 392, 433; 2010, c. [439](#); 2014, c. [459](#).

§59.1-296.2. Contracts sold on prepayment basis.

A. Each health club selling contracts or health club services on a prepayment basis shall notify the Commissioner of the proposed facility for which prepayments will be solicited and shall deposit all funds received from such prepayment contracts in an account established in a financial institution authorized to transact business in the Commonwealth until the health club has commenced operations in the facility and the facility has remained open for a period of 30 days. The account shall be established and maintained only in a financial institution that agrees in writing with the Commissioner to hold all funds deposited and not to release such funds until receipt of written authorization from the Commissioner. The prepayment funds deposited will be eligible for withdrawal by the health club after the facility has been open and

providing services pursuant to its health club contracts for 30 days and the Commissioner gives written authorization for withdrawal.

B. The provisions of this section shall not apply to any facility duly registered pursuant to the provisions of § [59.1-296.1](#) for which a bond or letter of credit in the amount of \$100,000 has been posted.

1985, c. 585; 1990, cc. 392, 433; 2010, c. [439](#); 2014, c. [459](#).

§59.1-296.2:1. Prepayment contracts; prohibited practices; relocation; refund.

A. No health club shall sell a health club contract on a prepayment basis without disclosing in the contract the date on which the facility shall open. The opening date shall not be later than 12 months from the signing of the contract.

B. No health club shall close or relocate any facility without first giving notice to the Commissioner and conspicuously posting a notice both within and outside each entrance to the facility being closed or relocated of the closing or relocation date. Such notice shall be provided at least 30 days prior to the closing or relocation date. If a relocation is to occur, the Commissioner and the facility's members shall be provided with the address of the specific new facility at the time of this notice.

C. No health club shall knowingly and willfully make any false statement in any registration application, statement, report, or other disclosure required by this chapter.

D. No health club shall refuse or fail, after notice from the Commissioner, to produce for the Commissioner's review any of the health club's books or records required to be maintained by this chapter.

E. Unless it so discloses fully in 10-point bold-faced type or larger on the face of each health club contract, no health club shall sell any health club contract if any owner of the health club, regardless of the extent of his ownership, previously owned in whole or in part a health club that closed for business any facility and failed to:

1. Refund all moneys due to holders of health club contracts; or
2. Provide comparable alternate facilities with another health club that agreed in writing to honor all provisions of the health club contracts or at another facility operated by the originally contracting health club.

F. No health club that has failed to provide the Commissioner the appropriate surety pursuant to § [59.1-306](#) shall sell a health club contract unless that contract contains a statement that reads as follows: "This club is not permitted, pursuant to the

Virginia Health Club Act, to accept any initiation fee in excess of \$125 or any payment for more than the prorated monthly fee for the month when the contract is initially executed plus one full month in advance."

Such disclosure shall be printed in 10-point bold-faced type or larger on the face of each contract.

1990, cc. 392, 433; 1993, c. 686; 2003, c. [344](#); 2004, c. [988](#); 2010, c. [439](#); 2014, c. [459](#).

§59.1-296.3. Initiation fees.

Whenever a refund is due a buyer, any initiation fee charged by a health club shall be prorated over the life of the contract or 12 months, whichever is greater.

1985, c. 585; 1990, cc. 392, 433; 2014, c. [459](#).

§59.1-297. Right of cancellation.

A. Every health club contract for the sale of health club services may be cancelled under the following circumstances:

1. A buyer may cancel the contract without penalty within three business days of its making and, upon notice to the health club of the buyer's intent to cancel, shall be entitled to receive a refund of all moneys paid under the contract.
2. A buyer may cancel the contract if the facility relocates or goes out of business and the health club fails to provide comparable alternate facilities within five driving miles of the location designated in the health club contract. Upon receipt of notice of the buyer's intent to cancel, the health club shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § [59.1-297.1](#).
3. The contract may be cancelled if the buyer dies or becomes physically unable to use a substantial portion of the services for 30 or more consecutive days. If the buyer becomes physically unable to use a substantial portion of the services for 30 or more consecutive days and wishes to cancel his contract, he must provide the health club with a signed statement from his doctor, physician assistant, or nurse practitioner verifying that he is physically unable to use a substantial portion of the health club services for 30 or more consecutive days. Upon receipt of notice of the buyer's intent to cancel, the health club shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § [59.1-297.1](#). In the case of disability, the health club may require the buyer to submit to a physical examination

by a doctor, physician assistant, or nurse practitioner agreeable to the buyer and the health club within 30 days of receipt of notice of the buyer's intent to cancel. The cost of the examination shall be borne by the health club.

B. The buyer shall notify the health club of cancellation in writing, by certified mail, return receipt requested, or personal delivery, to the address of the health club as specified in the health club contract.

C. If the customer has executed any credit or lien agreement with the health club or its representatives or agents to pay for all or part of health club services, any such negotiable instrument executed by the buyer shall be returned to the buyer within 30 days after such cancellation.

D. If the club agrees to allow a consumer to cancel for any other reason not outlined in this section, upon receipt of notice of cancellation by the buyer, the health club shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § [59.1-297.1](#).

1984, c. 738; 1990, cc. 392, 433; 2003, c. [344](#); 2004, c. [855](#); 2006, c. [396](#); 2010, c. [439](#); 2014, c. [459](#).

§59.1-297.1. Payment and calculation of refunds.

A. All refunds for cancellation of membership shall be paid within 30 days of the health club's receipt of written notice of cancellation by the buyer and calculated by:

1. Dividing the contract price by the term of the contract in days;
2. Multiplying the number obtained in subdivision 1 by the number of days between the effective date of the contract and the date of cancellation; and
3. Subtracting the number obtained in subdivision 2 from the total price paid on the health club contract.

B. In the event of the health club going out of business, the date of cancellation shall be the date the health club ceased providing health club services at the facility.

C. A health club issuing a refund to a buyer under this chapter shall do so within 30 days of the health club receiving a notice of cancellation pursuant to § [59.1-297](#), or within 30 days of the permanent closing of the facility designated in the buyer's contract.

2003, c. [344](#); 2010, c. [439](#); 2014, c. [459](#).

§59.1-297.2. Automatic termination of a health club contract.

A health club contract shall be considered terminated automatically if the designated facility closes permanently and the health club does not provide a comparable alternate facility. A facility closes temporarily if it closes for a reasonable period of time (i) for renovations to all or a portion of the facility, (ii) because the lease for the facility has been canceled, or (iii) because of a fire, or a flood or other act of God, or other cause not within the reasonable control of the health club. If a facility closes temporarily, it shall within 14 days from the time of the temporary closing provide notice of the date it expects to reopen, which date shall be within a reasonable period of time from the time the facility temporarily closes, to the Commissioner and shall conspicuously post such notice both within and outside each entrance to the facility.

2003, c. [344](#); 2010, c. [439](#); 2014, c. [459](#).

§59.1-298. Notice to buyer.

A copy of the executed health club contract shall be delivered to the buyer at the time the contract is executed. All health club contracts shall (i) be in writing, (ii) state the name and physical address of the health club, (iii) be signed by the buyer, (iv) designate the date on which the buyer actually signed the contract, (v) state the starting and expiration dates of the initial membership period, (vi) separately identify any initiation fee, (vii) either in the contract itself or in a separate notice provided to the buyer at the time the contract is executed, notify each buyer that the buyer should attempt to resolve with the health club any complaint the buyer has with the health club, and that the Virginia Department of Agriculture and Consumer Services regulates health clubs in the Commonwealth pursuant to the provisions of the Virginia Health Club Act, and (viii) contain the provisions set forth in § [59.1-297](#) under a conspicuous caption: "BUYER'S RIGHT TO CANCEL" that shall read substantially as follows:

If you wish to cancel this contract, you may cancel by making or delivering written notice to this health club. The notice must say that you do not wish to be bound by the contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be delivered or mailed to _____ (Health club shall insert its name and mailing address).

If canceled within three business days, you will be entitled to a refund of all moneys paid. You may also cancel this contract if this club goes out of business or relocates and fails to provide comparable alternate facilities within five driving miles of the facility designated in this contract. You may also cancel if you become physically

unable to use a substantial portion of the health club services for 30 or more consecutive days, and your estate may cancel in the event of your death. You must prove you are unable to use a substantial portion of the health club services by a doctor's, physician assistant's, or nurse practitioner's certificate, and the health club may also require that you submit to a physical examination, within 30 days of the notice of cancellation, by a doctor, physician assistant, or nurse practitioner agreeable to you and the health club. If you cancel after the three business days, the health club may retain or collect a portion of the contract price equal to the proportionate value of the services or use of facilities you have already received. Any refund due to you shall be paid within 30 days of the effective date of cancellation.

1984, c. 738; 1990, cc. 392, 433; 2003, c. [344](#); 2004, c. [855](#); 2006, c. [396](#); 2010, c. [439](#); 2013, c. [24](#); 2014, c. [459](#).

§59.1-299. Duration of contract.

No health club contract shall have a duration for a period longer than thirty-six months, including any renewal period; however, a health club contract may exceed 36 months provided that:

1. Any initiation fee does not exceed 10 times the initial monthly fee;
2. All payments for health club services, other than the initiation fee, are collected as monthly fees on a monthly basis;
3. After an initial term of not more than 12 months, either party may cancel the health club contract upon not more than 30 days' notice; and
4. The monthly fee is never reduced below 80 percent of the monthly fee at the time the contract is initially executed.

1984, c. 738; 1990, cc. 392, 433; 1992, c. 117; 2014, c. [459](#).

§59.1-300. Provisions of this chapter not exclusive.

The provisions of this chapter are not exclusive and do not relieve the parties or the contracts subject thereto from compliance with all other applicable provisions of law.

1984, c. 738.

§59.1-301. Noncomplying contract voidable.

Any health club contract that does not comply with the applicable provisions of this chapter shall be voidable at the option of the buyer.

1984, c. 738; 2014, c. [459](#).

§59.1-302. Fraud rendering contract void.

Any health club contract entered into by the buyer upon any false or misleading information, representation, notice, or advertisement of the health club or the health club's agents shall be void and unenforceable.

1984, c. 738; 2014, c. [459](#).

§59.1-303. Waiver of provisions void and unenforceable.

Any waiver by the buyer of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

1984, c. 738.

§59.1-304. Notice of preservation of buyers' rights.

All health club contracts and any promissory note executed by the buyer in connection therewith shall contain the following provision on the face thereof in at least 10-point, boldface type:

NOTICE

ANY HOLDER OF THIS CONTRACT OR NOTE IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

1984, c. 738; 2014, c. [459](#).

§59.1-305. Prohibition against assignment of health club contract cutting off buyer's right of action or defense against seller; conditions.

Whether or not the health club has complied with the notice requirements of § [59.1-304](#), any right of action or defense arising out of a health club contract which the buyer has against the health club, and which would be cut off by assignment, shall not be cut off by assignment of the contract to any third party holder, whether or not the holder acquires the contract in good faith and for value.

1984, c. 738; 2003, c. [344](#); 2014, c. [459](#).

§59.1-306. Bond or letter of credit required; exception.

A. Every health club, before it enters into a health club contract and accepts any moneys in excess of the prorated monthly fee for the month when the contract is initially executed plus one month's fees or accepts any initiation fee in excess of \$125,

shall file and maintain with the Commissioner, in form and substance satisfactory to him, a bond with corporate surety, from a company authorized to transact business in the Commonwealth or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation in the amounts indicated below:

Number of applicable contracts	Amount of bond or letter of credit
0 to 250	\$10,000
251 to 500	\$20,000
501 to 750	\$30,000
751 to 1000	\$40,000
1001 to 1250	\$50,000
1251 to 1500	\$60,000
1501 to 1750	\$70,000
1751 to 2000	\$80,000
2001 or more	\$100,000

For purposes of calculating the number of applicable unexpired health club contracts when determining the required amount of bond or letter of credit, health club contracts entered into on or after January 1, 2005, with a term that exceeds 13 months shall be counted as multiple health club contracts, such that the number of applicable contracts counted with respect thereto shall equal the total of the number of full years and any partial year in its term. However, this paragraph shall not apply (i) to health club contracts that are payable only on a monthly basis and for which the initiation fee is no more than \$250 or (ii) if the number of the health club's contracts in effect with a term that exceeds 13 months is less than 10 percent of the total of its health club contracts.

The number of applicable unexpired contracts shall be separately calculated for each facility.

A health club shall file a separate bond or letter of credit with respect to each separate facility, even though the separate facilities are owned or operated by the same health club.

However, no health club shall be required to file with the Commissioner bonds or letters of credit in excess of \$300,000. If the \$300,000 limit is applicable, then the

bonds or letters of credit filed by the health club shall apply to all facilities owned or operated by the same health club.

B. A health club may sell health club contracts of up to 36 months' duration for a facility for which a health club has not filed a bond or letter of credit so long as the amount of payment actually charged, due or received under the health club contracts each month by the health club or any holder thereunder does not exceed the monthly fee calculated pursuant to the definition thereof in § [59.1-296](#), with the exception that the payment actually charged may include a maximum initiation fee of \$125 for health club contracts of 13 months or more in duration.

1984, c. 738; 1985, c. 585; 1990, cc. 392, 433; 1992, c. 117; 2004, c. [988](#); 2010, c. [439](#); 2014, c. [459](#).

§59.1-307. Bond or letter of credit; persons protected.

A. The bond or letter of credit required by § [59.1-306](#) shall be in favor of the Commonwealth for the benefit of (i) any buyer injured by having paid money for health club services in a facility that fails to open by the date provided by the contract, which date shall not be in excess of 12 months from the signing of the contract; (ii) any buyer injured by having paid money for health club services in a facility which goes out of business prior to the expiration of the buyer's health club contract; or (iii) any buyer injured as a result of a violation of this chapter.

B. The aggregate liability of the bond or letter of credit to all persons for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be cancelled or terminated except with the consent of the Commissioner.

1984, c. 738; 1987, c. 547; 2014, c. [459](#).

§59.1-308. Change in ownership of health club.

For purposes of this chapter, a health club shall be considered a new health club and subject to the requirements of a bond or letter of credit at the time the health club changes ownership. Any health club that has more than 50 percent ownership by the same person or persons shall be considered as owned by the same owner. A change in ownership shall not release, cancel, or terminate liability under any bond or letter of credit previously filed unless the Commissioner agrees in writing to such release, cancellation, or termination because the new owner has filed a new bond or letter of credit for the benefit of the previous owner's members or because the former owner

has refunded all unearned payments to its members. Every change in ownership shall be reported in writing to the Commissioner at least 10 days prior to the effective date of the change in ownership.

1984, c. 738; 1985, c. 585; 1990, cc. 392, 433; 2014, c. [459](#).

§59.1-308.1. Production of records.

Every health club, upon the written request of the Commissioner, shall make available to the Commissioner its prepayment bank account records and all membership contracts for inspection and copying, to enable the Commissioner reasonably to determine compliance with this chapter. Every health club shall maintain a true copy of each health club contract executed between the health club and a buyer. Each contract shall be maintained for its term, including any renewal. Every health club shall maintain the executed health club contracts at a designated location where the contracts may be inspected by the Commissioner. If the location designated by the health club is outside Virginia, the health club shall pay the reasonable travel costs of an inspection by the Commissioner.

1985, c. 585; 1990, cc. 392, 433; 2014, c. [459](#).

§59.1-308.2. Investigations.

A. The Commissioner may:

1. Make necessary public or private investigations within or without this Commonwealth to determine any violations of the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter; and
2. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter under investigation.

B. For the purpose of any investigation or proceeding under this chapter, the Commissioner may administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

D. If any person fails to obey a subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

E. The Board may adopt reasonable regulations to implement the provisions of this chapter and such regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act, Chapter 40 (§ [2.2-4000](#) et seq.) of Title 2.2.

1990, cc. 392, 433 .

§59.1-309. Enforcement; penalties.

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § [59.1-200](#) and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ [59.1-196](#) et seq.) of this title.

1984, c. 738.

§59.1-310. Applicability.

Sections [59.1-297](#), [59.1-298](#), [59.1-299](#), [59.1-304](#), and [59.1-305](#) shall not apply to health club contracts entered into before September 15, 2004.

1984, c. 738; 2014, c. [459](#).

Virginia Highway Corporation Act of 1988

§56-535. Title.

This chapter may be cited as the "Virginia Highway Corporation Act of 1988."

1988, c. 649.

§56-536. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Commonwealth Transportation Board.

"Certificate" means the certificate of authority awarded pursuant to this chapter which allows operation of a roadway.

"Commission" means the State Corporation Commission.

"Department" means the Virginia Department of Transportation.

"Highway" means the entire width between the boundary lines of every way or place of whatever nature open to the use of the public under the provisions of this chapter for purposes of vehicular travel in this Commonwealth.

"Operation" means all functions and pursuits of the operator of any roadway under this chapter which are directly or indirectly related to acquisition, approval, construction, enlargement, maintenance, patrolling, toll collections, or connections of the roadway or highway with any other highway or with any street, road or alley. This term shall also include, without limitation, management and administrative functions attendant to actual physical operation of the roadway and management of the affairs of the operator.

"Operator" means the person who submits to the Commission an application for authority to construct, operate or enlarge a roadway, and which, after issuance of a certificate of authority, is responsible for operation of any roadway under the provisions of this chapter.

"Person" includes any natural person, corporation, partnership, joint venture, and any other business entity; however, "person" shall not include the state or any local government or agency thereof, or any municipal corporation or other corporate body.

"Roadway" means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder. A highway may include two or more roadways if divided by a physical barrier or barriers or unpaved areas. "Roadway," as used in this chapter, shall include only privately owned or operated highways for use of which a toll or similar single-use charge is imposed.

"Toll" means the fee charged by the operator for a single use of all or a portion of the roadway.

1988, c. 649; 1991, c. 272 .

§56-537. Policy [Not set out].

Not set out. (1988, c. 649; 1993, c. 732 .)

§56-538. Prerequisite for construction and operation.

No person may construct, operate or enlarge any roadway, as defined in § [56-536](#), within the Commonwealth without first having obtained a certificate of authority from the Commission authorizing such construction, operation or enlargement.

1988, c. 649.

§56-539. Certificate of authority.

Any person may apply to the Commission for a certificate of authority to construct or operate a roadway, or to extend or enlarge a roadway for which a certificate has been issued under this chapter. If the Commission determines in writing, after notice and opportunity for a hearing, that the application is complete, that approval of the application is in the public interest, and that the applicant has complied with the provisions of this chapter, it shall approve the application, with or without modification, unless it receives a duly adopted resolution of the governing body of any jurisdiction through which the roadway passes, which requests that the Commission deny the application, in which case the Commission shall do so. If the application is approved the operator shall construct the roadway. Upon completion of construction and the opening of the roadway to the public, the roadway shall be kept at all times open for use by the public and made accessible to the public, upon payment of the toll established by the operator; provided that the roadway may be partially or completely closed, temporarily, with the concurrence of the Department, to protect the public safety or for reasonable construction or maintenance procedures. The certificate of authority may be transferred with the approval of the Commission if the Commission finds the transfer to be in the public interest after consultation with the Board and notice to the governing body of any jurisdiction through which the roadway passes.

1988, c. 649; 1991, c. 272 .

§56-540. Application.

The Commission may charge a reasonable application fee to cover the costs of processing, reviewing, and approving or denying the application. The application for a certificate of authority shall contain the following material and information:

1. The geographic area to be served by the roadway and a topographic map indicating the route of the roadway;
2. A list of the property owners through whose property the roadway or highway will pass or whose property will abut the roadway or highway;

3. The method by which the operator will secure all right-of-way required for the roadway, including a description of the nature of the interest in the lands to be acquired, which shall provide, at a minimum, for permanent dedication for transportation purposes, except that in cases in which the Department would not have authority to condemn land because of the identity of the owner, the interest to be acquired shall be of the same type and duration as that which the Department would obtain under the circumstances;
4. The comprehensive plan or plans for all counties, cities, and towns through which the roadway will pass and an analysis which shows that the roadway conforms to these comprehensive plans. To the extent that the roadway conforms to such plans, the fact that the operator is not the Commonwealth shall not affect the construction and operation of the roadway;
5. The operator's plan for financing the proposed construction or enlargement of the roadway, including proposed tolls to be charged for use of the roadway, projected amounts to be collected from such tolls and anticipated traffic volume and detailed plans for distribution of funds, including the priority in which necessary expenditures will be made. The plan for financing may be structured to include, without limitation, provisions for the issuance of debt, equity, or other securities, lease financing, the pledge of revenues or other assets or rights of the operator, or any combination thereof;
6. The operator's plan for operation of the proposed roadway or enlargement thereof;
7. A list of all permits and approvals required for construction of the roadway from local, state, or federal agencies and a schedule for securing such approvals;
8. An overall description of the project, the project design, and all proposed interconnections with the state highway system, including any interstate highway, or secondary system of highways or the streets or roads of any county, city, or town not within the state highway system, accompanied by a copy of the approval of the project, the roadway design and interconnections from the Board, as well as the county, city, or town for connection with a street or road not under state control;
9. A list of public utility facilities to be crossed and plans for such crossings or relocations of such facilities;
10. A certificate of the operator that the roadway will be designed and constructed to meet Department standards, and substantially in accordance with a proposed

timetable which is agreeable to the Department, and that the operator will provide a design, review, and inspection agreement with the Department which shall provide that the Department shall authorize construction upon review and approval of the plans and specifications for the roadway and its interconnection with other roads, and that it shall inspect periodically the progress of the construction work to ensure its compliance with the Department standards; and

11. Completion and performance bonds in form and amount satisfactory to the Commission, which amounts shall be set after consultation with the Department.

1988, c. 649; 1990, c. 180; 1991, c. 272 .

§56-541. Eminent domain.

The power of eminent domain shall not be exercised by the operator for the purpose of acquiring any lands or estates or interests therein, nor any other property used by the operator for the construction or enlargement of a roadway pursuant to this chapter.

1988, c. 649; 1991, c. 272 .

§56-542. Powers of the Commission.

A. As used in this section:

"CPI" means the Consumer Price Index -- U.S. City Averages for All Urban Consumers, All Items (not seasonally adjusted) as reported by the U.S. Department of Labor, Bureau of Labor Statistics; however, if the CPI is modified such that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics, and if the CPI is discontinued or revised, such other historical index or computation approved by the Commission shall be used for purposes of this section that would obtain substantially the same result as would have been obtained if the CPI had not been discontinued or revised.

"Real GDP" means the Annual Real Gross Domestic Product as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

B. The Commission shall have the power to regulate the operator under this title as a public service corporation. The Commission shall also have the power, and be charged with the duties of reviewing and approving or denying the application, of supervising and controlling the operator in the performance of its duties under this

chapter and title, and of correcting any abuse in the performance of the operator's public duties.

C. Pursuant to § [56-36](#), the Commission shall require annually from the operator a verified report describing the nature of its contractual and other relationships with individuals or entities contracting with the operator for the provision of significant financial, construction, or maintenance services. The Commission shall review the report and such other materials as it shall deem necessary for the purpose of determining improper or excessive costs, and shall exclude from the operator's costs any amounts which it finds are improper or excessive. Included in such review shall be consideration of contractual relationships between the operator and individuals or entities that are closely associated or affiliated with the operator to assure that the terms of such contractual relationships are no less favorable or unfavorable to the operator than what it could obtain in an arm's-length transaction.

D. The Commission also shall have the duty and authority to approve or revise the toll rates charged by the operator. Initial rates shall be approved if they appear reasonable to the user in relation to the benefit obtained, not likely to materially discourage use of the roadway and provide the operator no more than a reasonable rate of return as determined by the Commission. Thereafter, the Commission, upon application, complaint or its own initiative, and after investigation, may order substituted for any toll being charged by the operator, a toll which is set at a level which is reasonable to the user in relation to the benefit obtained and which will not materially discourage use of the roadway by the public and which will provide the operator no more than a reasonable return as determined by the Commission.

E. If a change in the ownership of the facility or change in control of an operator occurs, whether or not accompanied by the issuance of securities as defined in subsection A of § [56-57](#) and § [56-65.1](#), the Commission, in any subsequent proceeding to set the level of a toll charged by the operator, shall ensure that the price paid in connection with the change in ownership or control, and any costs and other factors attributable to or resulting from the change in ownership or control, if they would contribute to an increase in the level of the toll, are excluded from the Commission's determination of the operator's reasonable return, in order to ensure that a change in ownership or control does not increase the level of the toll above that level that would otherwise have been required under subsection D or subdivision I 3 if the

change in ownership or control had not occurred. As used in this subsection, "control" has the same meaning as provided in § [56-88.1](#).

F. Pursuant to § [56-36](#), the Commission shall require an operator to provide copies of annual audited financial statements for the operator, together with a statement of the operator's ownership. The operator shall file such statement within four months from the end of the operator's fiscal year.

G. The proceeds and funding provided to the operator from any future bond indenture or similar credit agreement must be used for the purpose of refinancing existing debt, acquiring, designing, permitting, building, constructing, improving, equipping, modifying, maintaining, reconstructing, restoring, rehabilitating, or renewing the roadway property, and for the purpose of paying reasonable arm's-length fees, development costs, and expenses incurred by the operator or a related individual or entity in executing such financial transaction, unless otherwise authorized by the Commission.

H. The Commission may charge a reasonable annual fee to cover the costs of supervision and controlling the operator in the performance of its duties under this chapter and pursuant to this section.

I. Effective January 1, 2013, through January 1, 2020, and notwithstanding any other provision of law:

1. Upon application of and public notification by the operator, filed not more often than once within any 12-month period, the Commission shall approve to become effective within 45 days any request to increase tolls by a percentage that (i) is equal to the increase in the CPI, as defined in subsection A, from the date the Commission last approved a toll increase, plus one percent, (ii) is equal to the increase in the real GDP, as defined in subsection A, from the date the Commission last approved a toll increase, or (iii) 2.8 percent, whichever is greatest, which increase in the tolls approved by the Commission is hereafter referred to as the "annual percentage increase."

2. The operator additionally may request in an application made pursuant to subdivision I 1, and the Commission shall further approve, an addition to the toll increase to allow the operator to include, in its tolls, the amount by which its local property taxes paid in the immediately preceding calendar year increased by more

than the annual percentage increase above such payments for the previous calendar year.

3. Any request by the operator for an increase in the toll rates by a greater percentage than as provided in subdivision I 1 shall be considered for approval by the Commission only upon presentation of an independent grade traffic and revenue study and a finding by the Commission that (a) toll rates subject to the preceding paragraph will not be sufficient to permit the operator to maintain the minimum coverage ratio set forth in the rate covenant provisions of its bond indenture or similar credit agreement, (b) such greater proposed tolls are reasonable to the user in relation to the benefit obtained and will not materially discourage use of the roadway by the public, and (c) such greater proposed tolls provide the operator no more than a reasonable rate of return as determined by the Commission; however, the Commission shall not approve an increase in the toll rates pursuant to this subdivision that exceeds the percentage increase necessary to permit the operator to maintain the minimum coverage ratio described in clause (a). Such request by an operator shall not be made as a result of a change in control of the operator or the project roadway. As used herein, a "change in control of the operator" means the sale or transfer of 25 percent or more of the assets of the operator or the acquisition or disposal of 25 percent or more of the outstanding shares of stock of the operator, if it is a corporation, or analogous interest if the operator is another form of entity.

1988, c. 649; 1991, c. 272; 2008, cc. [841](#), [844](#).

§56-543. Powers and duties of roadway operator.

A. The operator shall have all power allowed by law generally to persons having the same form of organization as the operator, including, without limitation, the authority to operate the roadway and charge tolls for the use thereof, and may pledge any revenue net of operational expenses realized from tolls charged for the use of the roadway in order to secure repayment of any obligations incurred for the construction, enlargement or operation of such roadway. Any financing of the acquisition, construction, enlargement, or operation of the roadway may be in such amounts and upon such terms and conditions as may be deemed necessary or appropriate by the operator to provide for the acquisition, construction, enlargement, and operation of the roadway, issuance costs, other financing obligations, and reasonable reserves. The Commonwealth shall not obligate its full faith and credit on any financing of the operator. Assumption of operation of the project shall not obligate the

Commonwealth to pay any obligation of the operator whether secured or otherwise, from sources other than toll revenue. Subject to applicable permit requirements, the operator shall have the authority to cross any canal or navigable watercourse so long as the crossing does not unreasonably interfere with navigation and use of the waterway. In operating the roadway, the operator may:

1. Classify traffic according to reasonable categories for assessment of tolls; and
2. With the consent of the Department, make and enforce reasonable regulations, including regulations:
 - a. Which set maximum and minimum speeds that shall conform to Department and state practices;
 - b. Which exclude undesirable vehicles or cargoes or materials from the use of the roadway; or
 - c. Which establish commuter lanes for use during all or any part of a day and limit the use of such lanes to certain traffic.
3. The enumeration of powers in this subsection shall not limit the power of the operator to do anything it deems necessary and appropriate in the operation of the roadway, provided that the practice is reasonable and nondiscriminatory. The powers granted to the operator in this subsection shall not be deemed to limit the authority of the Commission to regulate the operator under this title.

B. The operator shall have the following duties:

1. It shall file and maintain at all times with the Commission an accurate schedule of rates charged to the public for use of all or any portion of the roadway and it shall also file and maintain a statement that such rates will apply uniformly to all users within any such reasonable classification as the operator may elect to implement. These rates shall be neither applied nor collected in a discriminatory fashion, and free vehicular passage shall be permitted to those persons referred to in subsection A of § [33.2-613](#).
2. It shall construct and maintain the roadway for anticipated use according to appropriate standards of the Department for public highways operated and maintained by the Department, and enlarge or expand the road when unsatisfied demand for use of the roadway makes it economically feasible to do so. The operator shall agree with the Department for inspection of construction work by the Department at appropriate

times during any construction or enlargement. In addition, it shall cooperate fully with the Department in establishing any interconnection with the roadway that the Department may make.

3. It shall contract with the Commonwealth for enforcement of the traffic and public safety laws by state authorities, and may similarly contract with appropriate local authorities for those portions of the roadway within the local jurisdiction.

1988, c. 649; 1991, c. 272; 1993, c. 732 .

§56-544. Board approval; inspection agreement with Department.

A. The applicant for a certificate of authority to construct or enlarge a roadway pursuant to this chapter shall first secure the approval of the Board for the project, the project construction costs, the location and design of the roadway, and its connection with any road under the jurisdiction of the Board, at proper and convenient places, in order to provide for the convenience of the public. The Board shall approve or deny approval by the later to occur of (i) sixty days following receipt of a description of the proposed location and design of the roadway and its connection with all other roads, or (ii) forty-five days following the conduct of a hearing contemplated by subsection B of § [33.2-208](#), if such a hearing is held and provided that the notice requirements of that section are fulfilled by the Department within thirty days of receipt of the application, a project design, and a description of the project and the public need for the project. The Board shall approve the project and its interconnections with other roads if there is a public need for a road project of the type proposed and the project and its interconnections are compatible with the existing road network. It shall approve the project construction costs if they are reasonable. If interconnections with an interstate highway or other federal facility are contemplated, the Board's approval shall be conditioned upon ultimate approval of any interconnection if such federal approvals are required and have not been obtained by the time the Board acts. Approval of the roadway design shall not be withheld if it conforms materially with Department practices for toll facilities of similar size and with similar usage patterns. In making its determinations, the Board shall keep in mind the public interest, which may include, without limitation, such considerations as the relative speed of the construction of the project and the allocation of the technical, financial and human resources of the Department. The approval granted by the Board shall be conditioned upon subsequent compliance by the applicant with the agreement contemplated by subsection B of this section. If the roadway is to be built

partially or completely along existing state highway right-of-way, the Board shall grant the applicant authority to use such right-of-way only after approval of this use of the right-of-way by the General Assembly.

B. If approval of the project, project design, and connections of the roadway is granted by the Board, the Department shall thereafter enter into a comprehensive agreement with the operator which provides, inter alia, that the Department shall review and approve plans and specifications for the roadway if they conform to state practices; that the Department will inspect and approve construction of the roadway if it conforms to the plans and specifications or state construction and engineering standards; that the Department will, throughout the life of the roadway project, monitor the maintenance practices of the operator and take such actions as are appropriate to ensure the performance of maintenance obligations; and that the Department shall be reimbursed its direct project costs, by the operator, for the services performed by the Department. The agreement shall also provide, inter alia, that the operator will establish and fund accounts which shall ensure that funds are available to meet the obligations of the operator; including reasonable reserves for contingencies and maintenance replacement activities. The approval of plans and specifications, and construction may be undertaken in phases, but no construction may commence until approval of plans including that phase of construction. The services for which the Department shall be reimbursed include project development costs, such as those attendant to preparation of environmental impact statements, which are necessary for the construction of the roadway by a private operator but have been performed by the Department. The agreement may include a provision that the Department will perform services necessary for project development on behalf of the operator, and in such a case, the Department shall be fully reimbursed by the operator for its direct costs.

1988, c. 649; 1991, c. 272 .

§56-545. Insurance; sovereign immunity.

Any operator who constructs, operates or enlarges a roadway pursuant to this chapter shall secure and maintain a policy or policies of public liability insurance in form and amount satisfactory to the Commission and sufficient to insure coverage of tort liability to the public and employees, and to enable the continued operation of the roadway. Proofs of coverage and copies of policies shall be filed with the Commission. Nothing in this chapter shall be construed as or deemed a waiver of the sovereign

immunity of the Commonwealth with respect to its participation or approval of all or any part of the roadway application or operation, including but not limited to inter-connection of the roadway with the state highway system. Counties, cities and towns through which a roadway passes shall possess sovereign immunity with respect to roadway construction and operation.

1988, c. 649.

§56-546. Local approvals.

A. Prior to the issuance of a certificate of authority by the Commission and contemporaneously with the filing of any application materials with the Commission, the applicant shall provide the local governing body of each jurisdiction through which any part of the roadway passes with the application information and materials required by § [56-540](#) and an overall description of the project and its benefits. The governing body may participate in procedures conducted by the Board or the Commission concerning the application.

B. When the operator wishes to occupy lands owned by any county, city, town, or any agency or instrumentality of the federal government, including the streets or alleys of a city or town, or the roads of any county, it shall first obtain a franchise allowing such occupancy or it may obtain the necessary interests through grant or other appropriate conveyance to the operator for a period of time, in the case of a franchise, not to exceed the term of the certificate.

C. Where the applicant wishes to interconnect with the streets of any city or town, or the road system of any county, and the locality is willing to allow the inter-connection, it shall submit appropriate plans for the connection to the governing body, which shall approve the connection if it determines that the connection meets all appropriate engineering requirements.

D. The operator and the county, city, or town may also agree on any supplemental or related matters in addition to the matters specified in § [15.2-2026](#), according to such terms and conditions as are reasonable, appropriate, and in the public interest, and any such county, city, or town is hereby enabled to enter into such an agreement.

E. Prior to commencement of construction, the operator shall survey and plat the right-of-way in accordance with local requirements.

1988, c. 649; 1990, c. 180 .

§56-547. Utility crossings.

The applicant shall include in the application a list of public utility facilities and rights-of-way to be crossed or otherwise affected in the construction of the roadway and a plan and schedule for such crossings. The operator and each public utility whose works are to be crossed or affected shall each have the duty to cooperate fully with the other in planning and arranging of the manner of the crossing or relocation of the facilities. Any public service corporation possessing the powers of eminent domain is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the roadway or which must be relocated to the extent that such moving or relocation is made necessary by construction of the roadway, which shall be construed to include construction of temporary facilities for the purpose of providing service during the period of construction. Should the applicant or operator and the public utility whose facilities are to be crossed or relocated not be able to agree upon a plan for such crossing or any necessary relocation, either party may request the Commission to inquire into the need for the crossing or relocation and to decide whether such crossing or relocation should be compelled, and if so, the manner in which such crossing or relocation is to be accomplished and any damages due either party arising out of the crossing or relocation. The Commission may in its discretion employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne equally by the applicant and the public utility, unless the Commission determines that it would be unjust, in which case the cost shall be borne as the Commission decides. Railroads shall be included within the scope of the term "public utility" for purposes of this section.

1988, c. 649.

§56-548. Highway and roadway crossings.

No crossing of a railway, highway, street, road or alley shall be at grade, but shall pass above or below the railway, highway, street, road, or alley, and such crossings are hereby permitted, subject to the provisions of this chapter.

1988, c. 649.

§56-549. Default.

In the event of material and continuing default in the performance of the operator's construction or operation duties or failure of the operator to comply with the terms of its agreement with the Department, in either case, after notice thereof and an

opportunity to cure, or in the event that construction has not begun within two years of the issuance of a certificate, the Commission, after a hearing in which the applicant or operator has notice and opportunity to participate, may revoke the certificate of authority for the roadway, declare a default in the construction or operation of the roadway, and make or cause to be made the appropriate claim or claims under any completion or performance bonds, or take such other action as it may deem appropriate under the circumstances. The Department may participate in or initiate such proceedings. In case of revocation of a certificate, the applicant or operator shall thereafter be without any authority to construct or operate the roadway, and the Department may take over construction and operation of the roadway, and may proceed thereafter to take any steps which are in the public interest, including completion of construction or additions to the roadway, closing the roadway, or any intermediate step. The Department shall receive the full proceeds of any payments due to claims against bonding companies or sureties for this purpose. In addition, in such event, the operator shall grant to the Department all of its right, title and interest in the assets of the operator. Nothing herein shall be construed to limit the Department's exercise of the power of eminent domain. In either case, the operator may obtain compensation from the Department for such assets, except that the Department shall first deduct from the value of such assets all of its costs incurred in connection with completion or fulfillment of the unperformed obligations of the operator including the payment of any obligations assumed by the Department, and any other costs associated with the events contemplated in this section. The Department shall take into account moneys received from the proceeds of any payment or completion bond in calculating the amount due the operator.

1988, c. 649; 1991, c. 272 .

§56-550. Police powers; violations of law.

A. The roadways and highways constructed or operated under this chapter may be policed in whole or in part by officers of the Department of State Police, even though all or some portion of any such projects lie within the corporate limits of a municipality or other political subdivision, and just as if the roadway and highway were a part of the state highway system. The operator and the Department of State Police shall agree upon reasonable terms and conditions pursuant to which the activities contemplated in this section may take place. Such officers shall be under the exclusive control and direction of the Superintendent of State Police and shall be responsible for the preservation of public peace, prevention of crime, apprehension of

criminals, protection of the rights of persons and property, and enforcement of the laws of the Commonwealth, within the limits of any highway and roadway. All other police officers of the Commonwealth and of each county, city, town or other political subdivision of the Commonwealth through which any roadway, or portion thereof, extends shall have the same powers and jurisdiction within the limits of such roadways and highways as they have beyond such limits and shall have access to the highway and roadway at any time for the purpose of exercising such powers and jurisdiction. This authority does not extend to the private offices, buildings, garages and other improvements of the operator to any greater degree than the police power extends to any other private buildings and improvements.

B. The traffic and motor vehicle laws of the Commonwealth shall apply to persons and motor vehicles on the roadway or highway, as shall Chapter 8 (§ [33.2-800](#) et seq.) of Title 33.2, and the powers of arrest of police officers shall be the same as those applying to conduct on the state highway system. Punishment for offenses shall be as prescribed by law for conduct occurring on the state highway system.

1988, c. 649.

§56-551. Termination of certificate; dedication of assets.

Within ninety days of the completion and closing of the original permanent financing, the operator shall provide full details of the financing, including the terms of all bonds, to the Commission; and shall certify the term of the original permanent financing and its termination date. The Commission may require that the operator provide copies of any relevant documents, and shall review the financing and determine the date of termination of the original permanent financing. After establishing this date, the Commission shall enter an order terminating the operator's authority pursuant to the certificate of authority on a date which shall be ten years from the end of the term of the original permanent financing. At the request of the operator or the Department, or on its own initiative, the Commission may revise its order to modify the date for termination of the certificate of authority in order to take into account any refinancing of the original permanent financing, where the refinancing or modification is in the public interest, or any refinancing for the purpose of expansion, or early termination of the original permanent financing. Upon the termination of the certificate of authority, the authority and duties of the operator under this chapter shall cease, and the highway assets and improvements of the operator shall be dedicated to the Commonwealth for highway purposes.

1988, c. 649; 1991, c. 272 .

§56-552. Improvement Fund.

There shall be a fund established by the Commonwealth Transportation Board, from the toll revenues described in this section, for the purpose of funding transportation improvements which are related to or affected by the toll road. Toll rates shall be set in multiples of five cents; however, the Commission shall order that that percentage of each toll by which the toll established exceeds that necessary to provide the operator with an amount necessary to meet the operator's obligations under § [56-543](#) and earn a reasonable return shall be committed to the fund. In addition the operator, the Board, and the local governments through which the road passes may jointly petition the Commission to establish an additional toll amount to be committed to this fund.

1988, c. 649.

Virginia Home Solicitation Sales Act

§59.1-21.1. Citation of chapter.

This chapter shall be known, and may be cited, as the "Virginia Home Solicitation Sales Act."

1970, c. 668.

§59.1-21.2. Definitions.

A. "Home solicitation sale" means:

1. A consumer sale or lease of goods or services in which the seller or a person acting for him engages (i) in a personal solicitation of the sale or lease or (ii) in a solicitation of the sale or lease by telephonic or other electronic means at any residence other than that of the seller; and
2. The buyer's agreement or offer to purchase or lease is there given to the seller or a person acting for him.

B. 1. "Home solicitation sale" shall not mean a consumer sale or lease of farm equipment.

2. It does not include cash sales of less than twenty-five dollars, a sale or lease made pursuant to a preexisting revolving charge account, or a sale or lease made pursuant to prior negotiations between the parties.

C. As used in this chapter, "goods" means tangible personal property and also includes a merchandise certificate whereby a writing is issued by the seller which is not redeemable in cash and is usable in lieu of cash in exchange for goods or services; "seller" means seller or lessor and "buyer" means buyer or lessee.

1970, c. 668; 1972, c. 448; 1975, c. 217; 1986, c. 577.

§59.1-21.3. Cancellation of sale.

(1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with § [59.1-21.4](#).

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(3) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and

(a) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and

(b) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer, and

(c) The buyer's emergency request is in a dated writing personally signed by the buyer and which expressly states that the buyer understands that he is waiving his right to cancel the sale under the provisions of this act.

(6) Except as provided in subsection (5), any waiver or modification of a buyer's right to cancel is void and of no effect. In the event the seller obtains from the buyer a waiver or modification of his right to cancel, the buyer's right to cancel shall

commence on the first business day following his learning that the waiver or modification is void and of no effect.

1970, c. 668; 1972, c. 448.

§59.1-21.4. Receipt or written agreement.

(1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer a fully completed receipt if it is a cash or credit card sale or obtain the buyer's signature to a written agreement or offer to purchase, in the case of a credit sale, which designates as the date of the transaction the date on which the buyer actually makes payment in whole or in part or signs, and which contains a statement of the buyer's rights and a notice of cancellation which comply with subsection (2). The seller shall also furnish the buyer with a copy of any contract pertaining to a home solicitation sale at the time of its execution.

(2) The statement shall

(a) Appear on the front side of the receipt or contract, or immediately above the buyer's signature, in bold face type of a minimum size of ten points under the conspicuous caption: "BUYER'S RIGHT TO CANCEL," and

(b) Read as either of the following: (i) "If this agreement was solicited at a residence and you do not want the goods or services, you, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

Notice of Cancellation

(Date of Transaction)

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to _____
_____ (name of seller), at _____ (address of seller's place of business) not later than midnight of _____ (Date).

I hereby cancel this transaction.

(Date)

(Buyer's signature)"; or

(ii) In the form and content of any similar notice requirement for home solicitation sales under federal law; provided that such requirement contains at least the information required in (i) of this subsection and, further provided, that nothing in such notice is in conflict with the provisions of this chapter. Any statement or notice form presented to a buyer prior to the effective date of an amendment to this section shall be deemed sufficient if it satisfied the requirements of this section in effect at the time the statement or notice was presented.

(3) Except as otherwise provided in this section until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

(4) A home solicitation sale shall be deemed to be in compliance with notice requirements of this section if (a) the buyer may at any time (i) cancel the order, or (ii) refuse to accept delivery of the goods without any obligation to pay for them, or (iii) return the goods to the seller and receive a full refund for any amount the buyer has paid; and (b) the buyer's right to cancel the order, refuse delivery or return the goods, together with the name and address of either the selling company or the salesperson, is clearly and conspicuously set forth on the face or reverse side of the sales receipt or contract in a size larger than that used in the body of the receipt or contract.

(5) Any statement or notice form satisfying the requirements of this section as in effect prior to July 1, 1975, may be used until January 1, 1977.

1970, c. 668; 1972, c. 448; 1973, c. 147; 1975, c. 217.

§59.1-21.5. Tender of payments to buyer.

(1) Except as provided in this section, within ten days after a home solicitation sale has been canceled or an offer to purchase revoked the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

1970, c. 668; 1972, c. 448; 1973, c. 147.

§59.1-21.6. Tender of goods to seller.

(1) Except as provided by the provisions of § [59.1-21.5](#) (3), within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within twenty days after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them.

(2) The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(3) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation.

1970, c. 668; 1973, c. 147.

§59.1-21.7. Cancellation of contract when seller has misrepresented nature or purpose of transaction.

Notwithstanding any other provision of law, if at the time of a home solicitation a seller or his agent should fail to immediately identify himself as a seller or lessor, or should he represent or imply that his purpose at the time of solicitation is anything other than selling or leasing if that is not substantially true, the buyer shall have a total of thirty days to cancel any home solicitation sales contract there entered into in the same manner and to the same extent as otherwise provided by this chapter; provided that the goods or merchandise are made available for the seller's repossession and are tendered back to the seller in substantially as good condition as when received by the buyer.

1972, c. 448; 2001, c. [402](#).

§59.1-21.7:1. Enforcement; penalties.

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § [59.1-200](#) and shall be subject to any and all of the

enforcement provisions of the Virginia Consumer Protection Act of 1977, Chapter 17 (§ [59.1-196](#) et seq.) of this title.

1987, cc. 462, 464.

Virginia Housing Development Authority Act

§36-55.24. Short title.

This chapter shall be known and may be cited as the "Virginia Housing Development Authority Act."

1972, c. 830.

§36-55.25. Finding and declaration of necessity.

It is hereby declared: (i) that there exists within the Commonwealth a serious shortage of sanitary and safe residential housing at prices or rentals which persons and families of low and moderate income can afford; that this shortage has contributed to and will contribute to the creation and persistence of substandard living conditions and is inimical to the health, welfare and prosperity of the residents of the Commonwealth; (ii) that it is imperative that the supply of residential housing for such persons and families and for persons and families displaced by public actions or natural disaster be increased; (iii) that private enterprise and investment have been unable, without assistance, to produce the needed construction or rehabilitation of sanitary and safe residential housing at prices or rentals which persons and families of low and moderate income can afford and to provide sufficient long-term mortgage financing for residential housing for occupancy by such persons and families; (iv) that a concentration of persons and families of low and moderate income even in standard structures does not eliminate undesirable social conditions; (v) that the governing body of a city or county may in its discretion determine that it is necessary to the preservation of the financial viability of such city or county and the health, welfare and prosperity of its residents that the population of such city or county be maintained as economically mixed by providing housing for persons and families of other than low and moderate income in order to broaden the tax bases of such areas; (vi) that in providing sanitary and safe residential housing at prices or rentals which persons and families of low and moderate income can afford it may at times be

necessary or desirable to provide housing for persons and families of other than low and moderate income; (vii) that it is critical to the success, prosperity and viability of areas being revitalized that financing be made available for nonhousing buildings that are incidental to residential housing for low and moderate income persons and families and other persons and families in order to provide products and services to those living in residential housing or that are necessary or appropriate for the revitalization of such areas or for the industrial, commercial or other economic development of such areas; (viii) that the financing of residential housing for low and moderate income persons and families and other persons and families may be appropriate to promote the industrial, commercial or other economic development of certain areas in a city or the county by inducing manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; and (ix) that private enterprise and investment be encouraged both to sponsor land development and build and rehabilitate residential housing for such persons and families of low and moderate income and to build housing which will prevent the recurrence of slum conditions by housing persons of varied economic means in the same projects or area, and that private financing be supplemented by financing as provided in this chapter in order to help prevent the creation and recurrence of substandard living conditions and to assist in their permanent elimination throughout Virginia.

It is further declared that in order to provide a fully adequate supply of sanitary and safe dwelling accommodations at rents, prices, or other costs which such persons or families can afford and to stabilize or recover an appropriate economic mix in certain areas of the Commonwealth the legislature finds that it is necessary to create and establish a state housing development authority for the purpose of encouraging the investment of private capital and stimulating the construction and rehabilitation of residential housing to meet the needs of such persons and families or to stabilize such areas through the use of public financing, to provide construction and mortgage loans and to make provision for the purchase of mortgage loans and otherwise.

It is hereby further declared to be necessary and in the public interest that such state housing development authority provide for predevelopment costs, temporary financing, land development expenses and residential housing construction or rehabilitation by private sponsors for sale or rental to persons and families of low and moderate income and others; further, to provide mortgage financing for the purposes of supplying sanitary and safe dwelling accommodations at rents, prices or other

costs which such persons or families can afford or of stabilizing urban areas, including without limitation, long-term federally insured mortgages; further, in revitalization areas designated in or pursuant to § [36-55.30:2](#), to provide financing for nonhousing buildings that are incidental to residential housing financed or to be financed in such areas pursuant to this chapter for low and moderate income persons and families and for other persons and families or that are necessary or appropriate for the revitalization of such areas or the industrial, commercial or other economic development of such areas; further, to increase the construction and rehabilitation of low and moderate income housing through the purchase from mortgage lenders authorized to make loans in the Commonwealth of mortgage loans for residential housing for persons and families of low and moderate income in the Commonwealth; further, to acquire, develop and own multifamily residential housing for occupancy by persons and families of low and moderate income; further, to provide technical, consultative and project assistance services to private sponsors; further, to assist in coordinating federal, state, regional and local public and private efforts and resources; to guarantee to the extent provided herein the repayment of certain loans secured by residential mortgages; further, to promote wise usage of land and other resources in order to preserve the quality of life we value so highly in Virginia; and further, to act as the loan servicer for a housing lender.

It is hereby further declared that all of the foregoing are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted, and that such activities serve a public purpose in improving or otherwise benefiting the people of the Commonwealth; that the necessity of enacting the provisions hereinafter set forth is in the public interest and is hereby so declared as a matter of express legislative determination.

1972, c. 830; 1975, c. 536; 1978, c. 508; 1979, c. 374; 1987, c. 254; 2004, c. [187](#); 2011, c. [690](#).

§36-55.26. Definitions.

As used in this chapter the following words and terms have the following meanings, unless a different meaning clearly appears from the context:

"Bonds," "notes," "bond anticipation notes," and "other obligations" mean any bonds, notes, debentures, interim certificates or other evidences of financial indebtedness issued by HDA pursuant to this chapter.

"City" means any city or town in the Commonwealth.

"County" means any county in the Commonwealth.

"Earned surplus" shall have the same meaning as in generally accepted accounting standards.

"Economically mixed project" means residential housing or housing development, which may consist of one or more buildings located on contiguous or noncontiguous parcels that the HDA determines to finance as a single economically mixed project, to be occupied by persons and families of low and moderate income and by other persons and families as the HDA shall determine.

"Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

"Federal mortgage" means a mortgage loan for land development for residential housing or residential housing made by the United States or an instrumentality thereof or for which there is a commitment by the United States of America or an instrumentality thereof to make such a mortgage loan.

"Federally insured mortgage" means a mortgage loan for land development for residential housing or residential housing insured or guaranteed by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to insure such a mortgage.

"HDA" means the Virginia Housing Development Authority created and established pursuant to § [36-55.27](#) of this chapter.

"Housing development costs" means the sum total of all costs incurred in the development of a housing development, which are approved by the HDA as reasonable and necessary, which costs shall include, but are not necessarily limited to: fair value of land owned by the sponsor, or cost of land acquisition and any buildings thereon, including payments for options, deposits, or contracts to purchase properties on the proposed housing site or payments for the purchase of such properties; cost of site preparation, demolition and development; architecture, engineering, legal, accounting, HDA, and other fees paid or payable in connection with the planning, execution and financing of the housing development; cost of necessary studies, surveys, plans and permits; insurance, interest; financing, tax and assessment costs and other operating and carrying costs during construction; cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery and apparatus related to the real property; cost of land improvements, including without limitation,

landscaping and off-site improvements, whether or not such costs have been paid in cash or in a form other than cash; necessary expenses in connection with initial occupancy of the housing development; a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited profit housing sponsor; an allowance established by HDA for working capital and contingency reserves, and reserves for any anticipated operating deficits during the first two years of occupancy; in the case of an economically mixed project within a revitalization area designated in or pursuant to § [36-55.30:2](#), the costs of any nonhousing buildings that are financed in conjunction with such project and that are incidental to such project or are determined by such governing body to be necessary or appropriate for the revitalization of such area or for the industrial, commercial or other economic development of such area; the cost of such other items, including tenant relocation, if such tenant relocation costs are not otherwise being provided for, as HDA shall determine to be reasonable and necessary for the development of the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during construction.

"Housing development" or "housing project" means any work or undertaking, whether new construction or rehabilitation, which is designed and financed pursuant to the provisions of this chapter for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for persons and families of low or moderate income in need of housing and, in the case of an economically mixed project, other persons and families; such undertaking may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and such offices, and other nonhousing facilities incidental or related to such development or project such as administrative, community, health, nursing care, medical, educational and recreational facilities as HDA determines to be necessary, convenient, or desirable. For the purposes of this chapter, medical and related facilities for the residence and care of the aged shall be deemed to be dwelling accommodations.

"Housing lender" means any bank or trust company, mortgage banker approved by the Federal National Mortgage Association, savings bank, national banking association, savings and loan association or building and loan association, mortgage broker, mortgage company, mortgage lender, life insurance company, credit union, agency or authority of the Commonwealth or any other state, or locality authorized

to finance housing loans on properties located in or outside of the Commonwealth to persons and families of any income.

"Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, public bodies, trusts, firms, associations, or other legal entities or any combination thereof, corporations, cooperatives and condominiums, approved by HDA as qualified either to own, construct, acquire, rehabilitate, operate, manage or maintain a housing development whether nonprofit or organized for limited profit subject to the regulatory powers of HDA and other terms and conditions set forth in this chapter.

"Land development" means the process of acquiring land for residential housing construction, and of making, installing, or constructing nonresidential housing improvements, including, without limitation, waterlines and water supply installations, sewer lines and sewage disposal and treatment installations, steam, gas and electric lines and installations, roads, streets, curbs, gutters, sidewalks, storm drainage facilities, other related pollution control facilities, and other installations or works, whether on or off the site, which HDA deems necessary or desirable to prepare such land primarily for residential housing construction within the Commonwealth.

"Loan servicer" means any person who, on behalf of a housing lender, collects or receives payments, including payments of principal, interest, escrow amounts, and other amounts due, on obligations due and owing to the housing lender pursuant to a residential mortgage loan or who, when the borrower is in default or in foreseeable likelihood of default, works on behalf of the housing lender with the borrower to modify or refinance, either temporarily or permanently, the obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.

"Mortgage" means a mortgage deed, deed of trust, or other security instrument which shall constitute a lien in the Commonwealth on improvements and real property in fee simple, on a leasehold under a lease having a remaining term, which at the time such mortgage is acquired does not expire for at least that number of years beyond the maturity date of the interest-bearing obligation secured by such mortgage as is equal to the number of years remaining until the maturity date of such obligation or on personal property, contract rights or other assets.

"Mortgage lender" means any bank or trust company, mortgage banker approved by the Federal National Mortgage Association, savings bank, national banking association, savings and loan association, or building and loan association, life insurance

company, the federal government or other financial institutions or government agencies which are authorized to and customarily provide service or otherwise aid in the financing of mortgages on residential housing located in the Commonwealth for persons and families of low or moderate income.

"Mortgage loan" means an interest-bearing obligation secured by a mortgage.

"Multifamily residential housing" means residential housing other than single-family residential housing, as hereinafter defined.

"Municipality" means any city, town, county or other political subdivision of the Commonwealth.

"Nonhousing building" means a building or portion thereof and any related improvements and facilities used or to be used for manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings other than residential housing.

"Persons and families of low and moderate income" means persons and families, irrespective of race, creed, national origin or sex, determined by the HDA to require such assistance as is made available by this chapter on account of insufficient personal or family income taking into consideration, without limitation, such factors as follows: (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the family, (iii) the cost and condition of housing facilities available, (iv) the ability of such persons and families to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe housing, and (v) if appropriate, standards established for various federal programs determining eligibility based on income of such persons and families.

"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

"Residential housing" means a specific work or improvement within the Commonwealth, whether multifamily residential housing or single-family residential housing undertaken primarily to provide dwelling accommodations, including the acquisition, construction, rehabilitation, preservation or improvement of land,

buildings and improvements thereto, for residential housing, and such other non-housing facilities as may be incidental, related, or appurtenant thereto. For the purposes of this chapter, medical and related facilities for the residence and care of the aged shall be deemed to be dwelling accommodations.

"Single-family residential housing" means residential housing consisting of four or fewer dwelling units, the person or family owning or intending to acquire such dwelling units, upon completion of the construction, rehabilitation or improvement thereof, also occupying or intending to occupy one of such dwelling units.

1972, c. 830; 1975, c. 536; 1987, c. 363; 1988, c. 218; 1996, c. [498](#); 2004, c. [187](#); 2011, c. [690](#).

§36-55.27. Virginia Housing Development Authority continued; constituted a public instrumentality.

There is hereby continued within the Department of Housing and Community Development, for the purpose of § [36-55.51](#), a political subdivision of the Commonwealth of Virginia with all of the politic and corporate powers as are set forth in this chapter, which are hereby reaffirmed, to be known as the "Virginia Housing Development Authority" to carry out the provisions of this chapter. The HDA is hereby constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the HDA of the powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the Commonwealth.

1972, c. 830; 1977, c. 613; 1979, c. 243.

§36-55.27:1. Programs and regulations to implement the Consolidated Plan.

The HDA shall be responsible for implementing, to the extent and in the manner determined by the HDA to be reasonable and proper and consistent with its legal and financing responsibilities, new and existing programs, policies, and regulations to accomplish the goals, objectives, and strategies set forth in the Consolidated Plan developed in accordance with the provisions of §§ [36-131](#) and [36-139](#).

1992, c. 754; 2002, c. [461](#).

§36-55.28. Appointment and tenure of commissioners; officers; quorum; compensation; liability.

A. The powers of HDA shall be vested in the commissioners of HDA as follows: a representative of the Board of Housing and Community Development, such

representative to be selected by that Board; the Director of the Department of Housing and Community Development as an ex officio voting commissioner; the Treasurer of the Commonwealth; and seven persons appointed by the Governor, subject to confirmation by the General Assembly, for terms of four years. An additional commissioner satisfying the criteria specified by Section 2 (b) of the United States Housing Act of 1937, as amended, and the rules and regulations promulgated thereunder, shall be appointed by the Governor, subject to confirmation by the General Assembly, for a term of four years. If, however, after appointment, the additional commissioner no longer satisfies such criteria, he may be removed by the Governor effective upon the appointment and qualification of his successor, who shall serve for the remainder of the unexpired term. In appointing persons to the commission the Governor shall refrain from appointing more than three persons from any one commercial or industrial field. No commissioner appointed pursuant to this chapter by the Governor shall serve more than two consecutive full terms. Any vacancies in the membership of HDA shall be filled in like manner but only for the remainder of an unexpired term. Except as otherwise provided in this section, each commissioner shall hold office for the term of his appointment and until his successor shall have been appointed and qualified.

B. The commissioners shall elect from among their number a chairman and a vice-chairman annually and such other officers as they may determine. Meetings shall be held at the call of the chairman or whenever two commissioners so request. Five commissioners of the HDA shall constitute a quorum and any action taken by HDA under the provisions of this chapter may be authorized by resolution approved by a majority of the commissioners who are present at any regular or special meeting. No vacancy in the membership of the HDA shall impair the right of a quorum to exercise all the rights and perform all the duties of the HDA.

C. Each commissioner shall be compensated from funds of the HDA at the rate per day specified in § [2.2-2813](#) for each day or portion thereof in which the commissioner is engaged in the business of the HDA. In addition, each commissioner shall be reimbursed for his reasonable expenses incurred in carrying out his duties under this chapter.

D. Commissioners and employees of HDA shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et

seq.) and may be removed from office for inefficiency, neglect of duty or misconduct in the manner set forth therein.

E. Notwithstanding the provisions of any other law, no officer or employee of this Commonwealth shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on HDA or his service thereto.

F. HDA may use its funds, and may obtain liability insurance or provide self-insurance, for the payment or reimbursement of costs and expenses (including, without limitation, amounts paid or to be paid in satisfaction of judgment or settlement, penalties, attorneys' fees and expenses, and court costs) incident to any liability of its commissioners and employees arising from the performance or discharge of their official duties and such other activities as the commissioners of HDA may by resolution approve for the purpose of making such payment or reimbursement or providing such insurance or self-insurance.

1972, c. 830; 1974, c. 668; 1975, c. 536; 1976, c. 117; 1977, c. 613; 1985, c. 70; 1987, Sp. Sess., c. 1; 1988, c. 226; 1992, c. 754; 1993, c. 857; 2002, c. [454](#); 2003, c. [434](#).

§36-55.29. Executive director.

(a) The commissioners shall employ an executive director who shall also be the secretary and who shall administer, manage and direct the affairs and business of the HDA, subject to the policies, control and direction of the commissioners. The commissioners may employ technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The commissioners may delegate to one or more of its agents or employees such administrative duties as it may deem proper.

(b) The secretary shall keep a record of the proceedings of the HDA and shall be custodian of all books, documents and papers filed with the HDA and of its minute book and seal. He shall have authority to cause to be made copies of all minutes and other records and documents of the HDA and to give certificates under the seal of the HDA to the effect that such copies are true copies and all persons dealing with the HDA may rely upon such certificates.

1972, c. 830.

§36-55.30. Powers of HDA generally.

The HDA is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, without limitation, the following:

1. Sue and be sued in its own name;
2. Have an official seal and to alter the same at pleasure;
3. Have perpetual succession;
4. Maintain an office at such place or places within the Commonwealth as it may designate;
5. Adopt and from time to time amend and repeal bylaws, not inconsistent with this chapter, to carry into effect the powers and purposes of HDA and the conduct of its business;
6. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;
7. Acquire real or personal property, or any interest therein, by purchase, exchange, gift, assignment, transfer, foreclosure, lease or otherwise, including rights or easements; to hold, manage, operate, or improve real or personal property; to sell, assign, lease, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or deed of trust or mortgage lien interest owned by it or under its control, custody or in its possession and release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption in property foreclosed by it and to do any of the foregoing by public or private sale, with or without public bidding, notwithstanding the provisions of any other law;
8. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities to effectuate the purposes of this chapter;
9. To enter into agreements or other transactions with the federal government, the Commonwealth of Virginia or any governmental agency thereof or any municipality in furtherance of the purposes of this chapter, including but not limited to the development, maintenance, operation and financing of any housing development or residential housing, or land improvement; to enter into agreements with the federal government or other parties for the provision by the HDA, or any entity or fund owned or sponsored by or related to the HDA, of services and assistance in the

restructuring or modification of debt or subsidy, or in the improvement of the financial or physical condition, of any housing development or residential housing, including without limitation any housing development or residential housing owned, financed or assisted by the federal government or financed by a mortgage loan insured by the federal government, which agreements may provide for the indemnification by the HDA of the federal government or other parties against liabilities and costs in connection with the provision of such services and assistance if such indemnification is determined by the executive director to be in furtherance of the public purposes of this chapter, provided that (i) such indemnification shall be payable solely from the funds of the HDA, excluding any funds appropriated by the Commonwealth which shall be held by the HDA in a separate fund while such indemnification is in effect, (ii) such indemnification shall not constitute a debt or obligation of the Commonwealth and the Commonwealth shall not be liable therefor, and (iii) any such agreement limits the HDA's total liability for the indemnification thereunder to a stated dollar amount and notifies the federal government or other parties that the full faith and credit of the Commonwealth are not pledged or committed to payment of the HDA's obligation to indemnify the federal government or other parties under such agreement; to operate and administer loan programs of the federal government, the Commonwealth of Virginia, or any governmental agency thereof or any municipality involving land development, the planning, development, construction or rehabilitation of housing developments and residential housing, the acquisition, preservation, improvement or financing of existing residential housing or other forms of housing assistance for persons and families of low and moderate income, however funded; and to operate and administer any program of housing assistance for persons and families of low and moderate income, however funded;

10. To receive and accept aid, grants, contributions and cooperation of any kind from any source for the purposes of this chapter subject to such conditions, acceptable to HDA, upon which such aid, grants, contributions and cooperation may be made, including, but not limited to, rent supplement payments made on behalf of eligible persons or families or for the payment in whole or in part of the interest expense for a housing development or for any other purpose consistent with this chapter;

11. To provide, contract or arrange for consolidated processing of any aspect of a housing development in order to avoid duplication thereof by either undertaking the processing in whole or in part for any department, agency, or instrumentality of the

United States or of the Commonwealth, or, in the alternative, to delegate the processing in whole or in part to any such department, agency or instrumentality;

12. To provide advice and technical information, including technical assistance at the state and local levels in the use of both public and private resources to increase low-income housing resources for the disabled;

13. To employ architects, engineers, attorneys, accountants, housing, construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix their compensation;

14. To procure insurance against any loss in connection with its property and other assets, including mortgages and mortgage loans, in such amounts and from such insurers as it deems desirable;

15. To insure mortgage payments of any mortgage loan made for the purpose of constructing, rehabilitating, purchasing, leasing, or refinancing housing developments for persons and families of low and moderate income upon such terms and conditions as HDA may prescribe and to create insurance funds and form corporations for the purpose of providing mortgage guaranty insurance on mortgage loans made or financed by HDA pursuant to this chapter;

16. To invest its funds as provided in this chapter or permitted by applicable law;

17. To borrow money and issue bonds and notes or other evidences of indebtedness thereof as hereinafter provided;

18. Subject to the requirements of any agreements with bondholders or noteholders, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract or agreement of any kind to which HDA is a party;

19. Subject to the requirements of any agreements with bondholders or noteholders, to enter into contracts with any mortgagor containing provisions enabling such mortgagor to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment from any department, agency or instrumentality of the United States or the Commonwealth, such reductions can be made without jeopardizing the economic stability of housing being financed;

20. To procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or notes or any other evidences of indebtedness thereof issued by HDA or an authority, including the power to pay premiums on any such insurance;
21. To make and enter into all contracts and agreements with mortgage lenders for the servicing and processing of mortgage loans pursuant to this chapter;
22. To establish, and revise from time to time and charge and collect fees and charges in connection with any agreements made by HDA under this chapter;
23. To do any act necessary or convenient to the exercise of the powers herein granted or reasonably implied;
24. To invest in, purchase or make commitments to purchase securities or other obligations secured by or payable from mortgage loans on, or issued for the purpose of financing or otherwise assisting land development or residential housing for persons or families of low or moderate income;
25. To acquire, develop and own multifamily residential housing as hereinafter provided;
26. To enter into agreements with owners of housing developments eligible for federal low-income housing credits as hereinafter provided in this chapter;
27. To exercise any of the powers granted by this chapter for the purpose of financing an economically mixed project and, if such project is within a revitalization area designated in or pursuant to § [36-55.30:2](#), any nonhousing buildings that are incidental to such project or are determined by such governing body to be necessary or appropriate for the revitalization of such area or for the industrial, commercial, or other economic development of such area; provided that a capital reserve fund shall not be created for any such financing pursuant to § [36-55.41](#);
28. To make and enter into contracts and agreements to act as the loan servicer for a housing lender on properties located in or outside of the Commonwealth to persons and families of any income; and
29. To indemnify other parties against liabilities, obligations, losses, payments, damages, expenses, and costs as may be necessary or appropriate to the exercise of any power herein granted or reasonably implied, provided that (i) such indemnification shall be payable solely from the funds of the HDA and (ii) such indemnification shall

not constitute a debt or obligation of the Commonwealth, and the Commonwealth shall not be liable therefor.

1972, c. 830; 1975, c. 536; 1979, c. 613; 1986, c. 6; 1987, c. 254; 1990, c. 956; 1996, c. [498](#); 1998, c. [442](#); 2004, c. [187](#); 2011, c. [690](#); 2012, c. [238](#).

§36-55.30:1. Repealed.

Repealed by Acts 1979, c. 374.

§36-55.30:2. Housing revitalization areas; economically mixed projects.

A. For the sole purpose of empowering the HDA to provide financing in accordance with this chapter, the governing body of any city or county may by resolution designate an area within such city or county as a revitalization area if such governing body shall in such resolution make the following determinations with respect to such area: (i) either (a) the area is blighted, deteriorated, deteriorating or, if not rehabilitated, likely to deteriorate by reason that the buildings, improvements or other facilities in such area are subject to one or more of the following conditions: dilapidation; obsolescence; overcrowding; inadequate ventilation, light or sanitation; excessive land coverage; deleterious land use; or faulty or inadequate design, quality or condition; or (b) the industrial, commercial or other economic development of such area will benefit the city or county but such area lacks the housing needed to induce manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area. Any redevelopment area, conservation area, or rehabilitation area created or designated by the city or county pursuant to Chapter 1 (§ [36-1](#) et seq.) of this title, any census tract in which 70 percent or more of the families have incomes which are 80 percent or less of the statewide median income as determined by the federal government pursuant to Section 143 of the United States Internal Revenue Code or any successor code provision on the basis of the most recent decennial census for which data are available, and any census tract which is designated by the United States Department of Housing and Urban Development and, for the most recent year for which census data are available on

household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent shall be deemed to be designated as a revitalization area without adoption of the above described resolution of the city or county. In any revitalization area, the HDA may provide financing for one or more economically mixed projects and, in conjunction therewith, any nonhousing buildings that are incidental to such project or projects or are determined by the governing body of the city or county to be necessary or appropriate for the revitalization of such area or for the industrial, commercial or other economic development thereof.

B. The HDA may finance an economically mixed project that is not within a revitalization area if the governing body of the city or county in which such project is or will be located shall by resolution determine (i) either (a) that the ability to provide residential housing and supporting facilities that serve persons or families of lower or moderate income will be enhanced if a portion of the units therein are occupied or held available for occupancy by persons and families who are not of low and moderate income or (b) that the surrounding area of such project is, or is expected in the future to be, inhabited predominantly by lower income persons and families and will benefit from an economic mix of residents in such project and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area.

C. In any economically mixed project financed under this section, the percentage of units occupied or held available for occupancy by persons and families who are not of low and moderate income, as determined as of the date of their initial occupancy of such units, shall not exceed 80 percent.

1979, c. 374; 1996, cc. [77](#), [498](#); 2004, c. [187](#); 2006, c. [784](#).

§36-55.30:3. Regulations; adoption procedures.

A. The HDA shall have the power to adopt, amend and repeal regulations, not inconsistent with this chapter or other applicable laws, to carry into effect the powers and purposes of the HDA and the conduct of its business. Such regulations shall be designed to effectuate the general purposes of this chapter.

B. The full text or an informative summary of any proposed new regulation, or any amendment to or repeal of a regulation shall be published not less than fifteen nor more than thirty days before the same may be acted upon and shall state the time and place of a public hearing at which the matters mentioned therein will be considered, at which time any person wishing to comment shall be heard and any written comments shall be considered. Such publication shall be in a newspaper of general circulation published in Richmond and in addition, as HDA may determine, it may be similarly published in newspapers in localities particularly affected as well as publicized through press releases and other media as will best serve the purpose and subject involved.

C. If HDA is satisfied that the proposed regulation or amendments thereto or repeal thereof, or any part thereof, in the form in which it was proposed or changed as a result of such public hearing, provided the changes do not alter the main purpose of the regulation, is advisable, such regulation, amendment to or repeal of a regulation, or any part thereof, may be adopted and, if adopted, shall be published as prescribed in subsection B of this section and shall state the date when it is to become effective.

1979, c. 613; 1988, c. 364.

§36-55.31. Powers relative to making mortgage loans and temporary construction loans to housing sponsors and persons and families of low and moderate income.

The HDA shall have all the powers necessary or convenient to carry out and effectuate the purpose and provisions of this chapter, including the following powers in addition to others herein granted:

(1) through (3) [Repealed.]

(4) Enter into agreements and contracts with housing sponsors under the provisions of this section;

(5) Institute any action or proceeding against any housing sponsor or persons and families of low or moderate income receiving a loan under the provisions hereof, or owning any housing development hereunder in any court of competent jurisdiction in order to enforce the provisions of this chapter, the terms and provisions of any agreement or contract between HDA and such recipients of loans under the provisions hereof, including without limitation provisions as to rental or carrying charges and income limits as applied to tenants or occupants, or to foreclose its

mortgage, or to protect the public interest, persons and families of low and moderate income, stockholders, or creditors of such sponsor. In connection with any such action or proceeding it may apply for the appointment of a trustee or receiver to take over, manage, operate and maintain the affairs of a housing sponsor and HDA through such agent as it shall designate is hereby authorized to accept appointment as trustee or receiver of any such sponsor when so appointed by a court of competent jurisdiction.

The reorganization of any housing sponsor shall be subject to the supervision and control of HDA, and no such reorganization shall be had without the consent of HDA. Upon any such reorganization the amount of capitalization, including therein all stocks, income debentures and bonds and other evidence of indebtedness shall be such as is authorized by HDA, but not in excess of the fair value of the property received;

(6) In any foreclosure action involving a housing sponsor other than a foreclosure action instituted by HDA, the municipality in which any housing development is situated shall, in addition to other necessary parties, be made parties defendant. HDA and the municipality shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against HDA or the municipality.

Subject to the terms of any applicable agreement, contract or other instrument entered into or obtained pursuant to this chapter, judgment of foreclosure shall not be entered unless the court to which application therefor is made shall be satisfied that the interest of the lienholders or holders of bonds or other obligations cannot be adequately secured or safeguarded except by the sale of the property; and in such proceeding the court shall be authorized to make an order increasing the rental or carrying charges to be charged for the housing accommodations in the housing development involved in such foreclosure, or appoint a member of HDA or any officer of the municipality, as a receiver or trustee of the property, or grant such other and further relief as may be reasonable and proper; and in the event of a foreclosure or other judicial sale, the property shall be sold only to a housing sponsor which will manage, operate and maintain the housing development subject to the provisions of this chapter, unless the court shall find that the interest and principal on the obligations secured by the lien which is the subject of foreclosure cannot be earned under the limitations imposed by the provisions of this chapter and that the proceeding was brought in good faith, in which event the property may be sold free of limitations

imposed by this chapter or subject to such limitations as the court may deem advisable to protect the public interest;

(7) In the event of a judgment against any housing sponsor in any action not pertaining to the foreclosure of a mortgage, there shall be no sale of any of the real property included in any housing development hereunder of such housing sponsor except upon 60 days' written notice to HDA. Upon receipt of such notice HDA shall take such steps as in its judgment may be necessary to protect the rights of all parties;

(8) In the event of violation by a housing sponsor of any provision of a loan, the terms of any agreement between HDA and the housing sponsor, the provisions of this chapter or of any rules or regulations duly promulgated pursuant to the provisions of this chapter, HDA may remove any or all of the existing directors or officers of such corporate housing sponsor and may appoint such person or persons who HDA in its sole discretion deems advisable as new directors or officers to serve in the places of those removed notwithstanding the provisions of any other law and may designate a managing agent with complete and exclusive power to act on behalf of a defaulting partnership housing sponsor; provided, however, that any such directors or officers or managing agents so appointed by HDA shall serve only for a period coexistent with the duration of such violation or until HDA is assured in a manner satisfactory to it against violations of a similar nature or both. Officers or directors so appointed need not be stockholders or meet other qualifications which may be prescribed by the certificate of incorporation or by other laws governing such qualified housing sponsor;

(9) Foreclose under deeds of trust by powers of sale pursuant to Title 55 and amendments thereto;

(10) Make, undertake commitments to make and participate in the making of mortgage loans, including without limitation federally insured mortgage loans, to housing sponsors to finance the ownership and operation of housing developments and multifamily residential housing intended for occupancy by persons and families of low and moderate income, upon the terms and conditions set forth in subsections A and B of § [36-55.33:1](#);

(11) Make, undertake commitments to make and participate in the making of mortgage loans, including without limitation federally insured mortgage loans, to persons and families of low and moderate income to finance the purchase or refinancing of

single-family residential housing, upon the terms and conditions set forth in subsections A and C of § [36-55.33:1](#);

(12) Make, undertake commitments to make and participate in the making of mortgage loans, including without limitation federally insured mortgage loans, to housing sponsors and persons and families of low and moderate income to finance the construction, rehabilitation, preservation or improvement of housing developments and residential housing intended, upon completion of such construction, rehabilitation, preservation or improvement, for ownership or occupancy by persons and families of low and moderate income, upon the terms and conditions set forth in subsections A and D of § [36-55.33:1](#);

(13) Make, undertake commitments to make and participate in the making of mortgage loans to finance the construction, rehabilitation, preservation or improvement, or ownership and operation, of economically mixed projects and, if any such project is within a revitalization area designated in or pursuant to § [36-55.30:2](#), any non-housing buildings that are incidental to such project or are determined by such governing body to be necessary or appropriate for the revitalization of such area or for the industrial, commercial or other economic development of such area, upon the terms and conditions set forth in subsections A and E of § [36-55.33:1](#).

1972, c. 830; 1975, c. 536; 1979, c. 374; 2004, c. [187](#).

§36-55.31:1. Loans for installation of certain energy-saving devices.

The Virginia Housing Development Authority shall establish a program of loans for financing the purchase and installation of insulation, storm windows and doors and solar or other alternative energy sources which will reduce the reliance on present sources of energy for use in the dwellings of residents of the Commonwealth or public or nonprofit buildings or facilities. Any and all funds available through specific state appropriations or federal grants or other state or federal assistance for such purposes may be utilized by the Virginia Housing Development Authority. Any loan made pursuant to this section may be secured by a mortgage or otherwise or may be unsecured, shall be repaid, shall bear interest and shall be upon such terms and conditions as may be determined by HDA in its rules and regulations or in the HDA resolution, or commitment for, such loan. Any such loans made with respect to dwellings of residents of the Commonwealth shall be limited to dwellings occupied by persons or families of low and moderate income. The Commissioners of the Vir-

ginia Housing Development Authority shall promulgate rules and regulations for the orderly administration of this section.

1977, c. 431; 1978, c. 631.

§36-55.32. Powers relative to purchase and sale to mortgage lenders of mortgage loans; loans to mortgage lenders.

The HDA shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

- (1) To invest in, purchase or to make commitments to purchase, and take assignments from mortgage lenders, of notes and mortgages evidencing loans for the construction, rehabilitation, purchase, leasing or refinancing of residential housing for persons and families of low and moderate income in this Commonwealth upon the terms set forth in § [36-55.35](#);
- (2) To make loans to mortgage lenders under terms and conditions requiring the proceeds thereof to be used by such mortgage lenders for the making of new residential mortgage loans to finance multi-family or single-family residential housing for persons and families of low and moderate income, upon the terms set forth in § [36-55.35](#);
- (3) To make commitments to purchase, and to purchase, service and sell mortgages insured by any department, agency or instrumentality of the United States, and to make loans directly upon the security of any such mortgage, provided the underlying mortgage loans shall have been made and shall be continued to be used solely to finance or refinance the construction, rehabilitation, purchase or leasing of residential housing for persons and families of low and moderate income in this Commonwealth;
- (4) To sell, at public or private sale, with or without public bidding, any mortgage or other obligation held by HDA;
- (5) To enter into mortgage insurance agreements with mortgage lenders in connection with the lending of money by such institutions to persons and families of low and moderate income for the purchase of residential housing;
- (6) Subject to any agreement with bondholders or noteholders, to collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders and acquire or take possession of such collateral and sell the same at public or

private sale, with or without public bidding, and otherwise deal with such collateral as may be necessary to protect the interests of HDA therein.

1972, c. 830; 1975, c. 536; 1982, c. 152.

§36-55.33. Repealed.

Repealed by Acts 1975, c. 536.

§36-55.33:1. Mortgage loan terms and conditions.

A. All mortgage loans made by HDA pursuant to § [36-55.31](#) of this chapter shall be subject to the following terms and conditions:

1. The ratio of mortgage loan principal amount to total housing development costs and the amortization period of any mortgage loans made by HDA which are federally insured mortgages, in whole or in part, or which are otherwise assisted or aided, directly or indirectly, by the federal government, shall be governed by the rules and regulations provided in or pursuant to the federal government program under which the HDA mortgage loan or part thereof is insured, guaranteed, assisted or aided; but in no event shall such amortization period exceed 50 years.
2. A mortgage loan made by HDA may be prepaid to maturity after a period of years, and on such terms and conditions, as are determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.
3. HDA shall have authority to establish and modify from time to time the interest rates at which it shall make mortgage loans and commitments therefor. Such interest rates shall be established by HDA in its sole discretion at the lowest level consistent with HDA's cost of operation and its responsibilities to the holders of its bonds, bond anticipation notes and other obligations. In addition to such interest charges, HDA may make and collect such fees and charges, including but not limited to reimbursement of HDA's financing costs, service charges, insurance premiums and mortgage insurance premiums, as HDA determines to be reasonable. No person shall, by way of defense or otherwise, avail himself of any of the provisions of Chapter 3 (§ [6.2-300](#) et seq.) of Title 6.2 to avoid or defeat the payment of any interest or fee which he shall have contracted to pay on any loan or forbearance of money made, directly or indirectly, or assisted in any manner by HDA under or pursuant to this chapter.

B. Mortgage loans made by HDA to housing sponsors to finance the ownership and operation of housing developments and multifamily residential housing intended for occupancy by persons and families of low and moderate income, pursuant to subdivision (10) of § [36-55.31](#), shall be subject to the following terms and conditions in addition to those contained in subsection A of this section:

1. The amount disbursed with respect to an HDA mortgage loan to a limited profit housing sponsor shall not exceed 95 percent of the total housing development costs and to a nonprofit housing sponsor shall not exceed 100 percent of the total housing development costs. Subsequent to the disbursement of such amount, additional amounts may be from time to time disbursed if the sum of the amount to be so disbursed and the then outstanding principal balance of the HDA mortgage loan does not exceed 95 percent of the market value of the housing development or residential housing as then determined by the Authority. The amortization period of such an HDA mortgage loan shall be as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan; but in no event shall such amortization period exceed 50 years.

2. The instrument evidencing any such HDA mortgage loan and the mortgage securing any such HDA mortgage loan shall be in such form and contain such terms and conditions as shall be prescribed or approved by HDA. The aforesaid mortgage and instrument evidencing an HDA mortgage loan may contain exculpatory provisions relieving the housing sponsor or its principal or principals from personal liability if deemed desirable by HDA.

3. With respect to any such HDA mortgage loan made to a limited profit housing sponsor, HDA may require that such limited profit housing sponsor not make distributions in any one year with respect to the housing development or multifamily residential housing financed by such HDA mortgage loan in excess of such percentage of such limited profit housing sponsor's equity in the housing development or multifamily residential housing as may be determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for such mortgage loan. None of the partners, principals, stockholders or holders of a beneficial interest in such limited profit housing sponsor shall earn, accept or receive a return in any one year with respect to the housing development or multifamily residential housing financed by such HDA mortgage loan greater than his applicable proportion of any such percentage of such limited profit housing sponsor's equity in the housing

development or multifamily residential housing as may be determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan. The right to any such limited distribution or return may be cumulative to the extent provided by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan. For the purpose of this section, the terms "distribution" and "return" are intended to mean payments on account of the housing development or multifamily residential housing financed by such HDA mortgage loan resulting from the operation thereof. Any payment to a person or entity who is a partner, principal, stockholder or holder of a beneficial interest in such limited profit housing sponsor shall not be deemed a "distribution" or "return" to such person or entity if the funds with which such payment is made are funds paid or contributed to such limited profit housing sponsor by persons or entities purchasing a beneficial interest in such limited profit housing sponsor. At or after the completion of construction, rehabilitation or improvement of the housing development or multifamily residential housing financed by such HDA mortgage loan, such limited profit housing sponsor's equity in the housing development or multifamily residential housing shall be established in the manner provided by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan. Such equity shall be determined by HDA, at its option, as either (i) the difference between the total housing development costs as to the housing development or multifamily residential housing and the final principal amount of such HDA mortgage loan, or (ii) the difference between the fair market value of such housing development and the final principal amount of such HDA mortgage loan. HDA may thereafter from time to time adjust such equity to be equal to the difference, as of the date of adjustment, between the fair market value of such housing development and the outstanding principal balance of such HDA mortgage loan. HDA may review and regulate a proposed retirement of any capital investment in, or redemption of any stock of, such limited profit housing sponsor in the manner provided by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.

4. With respect to any such HDA mortgage loan, HDA may require the housing sponsor and other parties related to the housing development or multifamily residential housing financed by such HDA mortgage loan to execute such agreements, assurances, guarantees and certifications as HDA shall determine to be necessary including, without limitation, agreements between HDA and such housing sponsor and its

partners, principals or stockholders to limitations established by HDA as to rentals and other charges, profits, fees, the use and disposition of the real property constituting the site of or relating to the housing development or multifamily residential housing and other property of such housing sponsor, and the use and disposition of franchises of such housing sponsor to the extent more restrictive limitations are not provided by the law under which such housing sponsor is incorporated or organized.

5. As a condition of any such HDA mortgage loan, HDA shall have the power to supervise the housing sponsor in accordance with the provisions of § [36-55.34:1](#) at all times during which such HDA mortgage loan is outstanding and thereafter as necessary to preserve the federal tax exemption of the notes or bonds issued by HDA to finance such HDA mortgage loan.

C. Mortgage loans made by HDA to persons and families of low and moderate income to finance the purchase or refinancing of single-family residential housing, pursuant to subdivision (11) of § [36-55.31](#), shall be subject to the following terms and conditions in addition to those contained in subsection A of this section:

1. The amount disbursed with respect to such HDA mortgage loan shall not exceed 100 percent of the sales price or market value of the single-family residential housing, as determined or approved by or on behalf of HDA. HDA may also disburse additional amounts to finance such closing costs and fees as it may deem necessary or appropriate, and all such disbursements and financings of closing costs and fees subsequent to the enactment of this chapter are hereby validated. The amortization period of such an HDA mortgage loan shall be as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan; but in no event shall such amortization period exceed 50 years. If during the term of the HDA mortgage loan (i) the outstanding principal balance of the HDA mortgage loan is expected to increase to an amount in excess of the original principal balance or (ii) the amount of monthly payments on the HDA mortgage loan will or may be adjusted, HDA shall so notify the applicants prior to the execution of the HDA mortgage loan. Such notice shall describe the terms and conditions under which the outstanding principal balance or the amount of monthly payments, or both, may be so increased or adjusted, and such notice shall be signed by the applicants.

2. Such an HDA mortgage loan shall be made only after a determination that such a mortgage loan is not otherwise available from private lenders upon reasonably equi-

valent terms and conditions, and the HDA resolution authorizing, or commitment for, such mortgage loan shall contain such a determination.

3. The instrument evidencing any such HDA mortgage loan and the mortgage securing any such HDA mortgage loan shall be in such form and contain such terms and conditions as shall be prescribed or approved by HDA. With respect to any such HDA mortgage loan, HDA may require the person or family of low or moderate income to execute such agreements, assurances, guarantees and certifications as HDA shall determine to be necessary including, without limitation, agreements between HDA and such person or family of low or moderate income relating to the use, occupancy, maintenance and sale of the single-family residential housing financed by such HDA mortgage loan and the payment, prepayment and assignment of such HDA mortgage loan.

D. Mortgage loans made by HDA to housing sponsors or persons or families of low or moderate income to finance the construction, rehabilitation, preservation or improvement of housing developments or residential housing intended, upon completion of such construction, rehabilitation, preservation or improvement, for ownership or occupancy by persons and families of low and moderate income, pursuant to subdivision (12) of § [36-55.31](#) of this chapter, shall be subject to the following terms and conditions in addition to those contained in subsection A of this section:

1. The amount disbursed with respect to such an HDA mortgage loan to a limited profit housing sponsor shall not exceed 95 percent of the total housing development costs and to a nonprofit housing sponsor or a person or family of low or moderate income shall not exceed 100 percent of the total housing development costs. Subsequent to the disbursement of such amount, additional amounts may be from time to time disbursed if the sum of the amount to be so disbursed and the then outstanding principal balance of the HDA mortgage loan does not exceed 95 percent of the market value of the housing development or residential housing as then determined by the Authority. Without regard as to whether HDA intends to remain the lender in respect to such mortgage loan throughout the amortization period thereof, the amortization period of such an HDA mortgage loan shall be as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.

2. In considering any application for such an HDA mortgage loan, HDA shall give first priority to applications relating to housing developments or residential housing

which are or will be well-planned and well-designed, and also shall give consideration to:

- a. The comparative need for housing for persons and families of low and moderate income in the area proposed to be served by the housing development or residential housing;
- b. The ability of the applicant to construct, rehabilitate or improve and market or operate, manage and maintain the housing development or residential housing;
- c. The existence of zoning or other regulations to protect adequately the housing development or residential housing against detrimental future uses which could cause undue depreciation in the value of the housing development or residential housing;
- d. The availability of adequate parks, recreational areas, utilities, schools, transportation and parking; and
- e. The existence of statewide housing plans.

3. With respect to any such HDA mortgage loan, HDA may require the housing sponsor, person or family of low or moderate income, contractors, architects, marketing agents, management agents and other parties related to the housing development or residential housing financed by such HDA mortgage loan to execute such agreements, assurances, guarantees and certifications as HDA shall determine to be necessary including, without limitation, agreements between HDA and such housing sponsor and its partners, principals or stockholders or such person or family of low or moderate income to limitations established by HDA as to rentals and other charges, profits, fees, the use and disposition of the real property constituting the site of or relating to the housing development or residential housing and other property of such housing sponsor, and the use and disposition of franchises of such housing sponsor to the extent more restrictive limitations are not provided by the law under which such housing sponsor is incorporated or organized. HDA shall require the housing sponsor or person or family of low or moderate income receiving such HDA mortgage loan, or the construction contractor, or both, to furnish such assurances of completion of the construction, rehabilitation or improvement as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.

4. As a condition of any such HDA mortgage loan to a housing sponsor, HDA shall have the power to supervise such housing sponsor in accordance with the provisions

of § [36-55.34:1](#) at all times during which such HDA mortgage loan is outstanding and thereafter as necessary to preserve the federal tax exemption of the notes or bonds issued by HDA to finance such HDA mortgage loan.

5. With respect to any such HDA mortgage loan, the provisions of subdivisions 2 and 3 of subsection B of this section shall be applicable.

E. Mortgage loans made by HDA pursuant to subdivision 13 of § [36-55.31](#) to finance the construction, rehabilitation, preservation or improvement, or ownership and operation, of economically mixed projects or portions thereof and, if any such project is within a revitalization area designated in or pursuant to § [36-55.30:2](#), any non-housing buildings that are incidental to such project or are determined by such governing body of the city or county to be necessary or appropriate for the revitalization of such area or for the industrial, commercial or other economic development of such area shall be subject to the following terms and conditions in addition to those contained in subsection A of this section:

1. The principal amount of such an HDA mortgage loan shall not exceed 95 percent of the total housing development costs, and the amortization period of such an HDA mortgage loan shall be as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or in the commitment for, such mortgage loan; but in no event shall such amortization period exceed 50 years.

2. Such an HDA mortgage loan shall be made only if the provisions of § [36-55.30:2](#) are satisfied.

3. The instrument evidencing any such HDA mortgage loan and the mortgage securing any such HDA mortgage loan shall be in such form and contain such terms and conditions as shall be prescribed or approved by HDA. The aforesaid mortgage and instrument evidencing an HDA mortgage loan may contain exculpatory provisions relieving a housing sponsor, if any, or its principal or principals from personal liability if deemed desirable by HDA.

4. The nonhousing buildings shall be financed by such an HDA mortgage loan only if the HDA shall receive a certification from the housing sponsor that a mortgage loan for the financing of such nonhousing buildings is not otherwise available from private lenders upon reasonably equivalent terms and conditions.

1975, c. 536; 1979, c. 374; 1982, c. 176; 1987, c. 164; 1988, c. 556; 1989, c. 161; 1991, c. 447; 2004, c. [187](#); 2010, c. [794](#).

§36-55.33:2. Powers relative to acquisition, development and ownership by HDA of multi-family residential housing.

A. HDA shall have all the powers necessary or convenient to purchase, acquire, construct, rehabilitate, own, operate, improve, repair, maintain, encumber, mortgage, lease, sell and transfer or otherwise dispose of multi-family residential housing or any part or interest therein for occupancy by persons and families of low and moderate income. For the purposes of this section, HDA may form corporations, joint ventures, partnerships, trusts or other legal entities or any combination thereof, on its own behalf or in conjunction with individuals or other public or private entities, to serve as housing sponsors for multi-family residential housing developments; may acquire, own, encumber, pledge, sell, transfer or otherwise dispose of interests in such housing sponsors; may provide financing and other funding to such housing sponsors; and may exercise all necessary or convenient rights and powers and perform all requisite duties and obligations relating thereto. HDA shall not exercise the powers granted under this section with respect to any multi-family residential housing development, unless HDA makes the following findings:

1. That there exists a shortage of decent, safe and sanitary housing at rentals or prices which persons and families of low income or moderate income can afford within the general housing market area to be served by the proposed housing development.
2. That private enterprise and investment have been unable, without assistance, to provide the needed decent, safe and sanitary housing at rentals or prices which persons or families of low and moderate income can afford.
3. That private sponsors would not be willing, without assistance, to undertake the proposed housing development upon substantially similar terms and conditions.
4. That HDA has not received notification from both the local housing authority having jurisdiction over the area in which the housing development would be located and the sponsor of such development that it is the preference of both parties that the local housing authority undertake the proposed housing development.
5. That the proposed housing development will provide well-planned, well-designed housing for persons or families of low and moderate income.
6. That the housing development will be of public use and will provide a public benefit.

7. That the housing development will be undertaken within the authority conferred by this chapter upon HDA.

B. HDA shall also find, in connection with the new construction or substantial rehabilitation by HDA of any proposed multi-family residential housing development, that the governing body of the locality in which such housing development is to be located has not, within sixty days after written notification of such proposed construction or substantial rehabilitation has been sent by HDA to such governing body and to any local housing authority having jurisdiction in such locality, certified to HDA in writing its disapproval of the proposed multi-family residential housing development. The foregoing notwithstanding, no such finding need be made if HDA has received from the governing body its certified resolution approving the proposed housing development.

C. At least sixty days prior to purchasing, acquiring, constructing or rehabilitating any multi-family residential housing development pursuant to this section, HDA shall publish a notice in a newspaper of general circulation in the locality in which such development is to be located. Such notice (i) shall state that HDA intends to purchase, acquire, construct or rehabilitate a multi-family residential housing development or developments in such locality and shall solicit proposals from interested parties for such purchase, acquisition, construction or rehabilitation or (ii) shall identify the multi-family residential housing development or developments to be purchased, acquired, constructed or rehabilitated and shall request comments from the general public with respect to such proposed purchase, acquisition, construction or rehabilitation.

D. In the event HDA or any legal entity formed by HDA is to construct or rehabilitate a multi-family residential housing development pursuant to this section, HDA or such legal entity shall contract with a private firm for the performance of such construction and rehabilitation, unless HDA determines that no responsible private firm would be willing and able to contract for such construction or rehabilitation at a price necessary for the financial feasibility of such development. HDA or any legal entity formed by HDA shall contract with a private firm or public body for the performance of management services for any multi-family residential housing development owned by HDA or such legal entity pursuant to this section, unless HDA determines that no responsible private firm and no public body would be willing and able to contract for the performance of such management services at a price necessary

for the financial feasibility of such development. For the purpose of this subsection, the term "private firm" shall include an individual, joint venture, partnership, stock corporation, trust or other similar business entity legally authorized to perform the construction, rehabilitation or management, as may be applicable, of the proposed multi-family residential housing development.

1987, c. 254; 1991, c. 206; 1996, c. [298](#).

§36-55.34. Repealed.

Repealed by Acts 1975, c. 536.

§36-55.34:1. Power to supervise housing sponsors.

Subject to such limitations and conditions as may be agreed to by HDA, HDA shall have the power to supervise a housing sponsor and its real and personal property, at all times during which an HDA mortgage loan to such housing sponsor is outstanding and thereafter as necessary to preserve the federal tax exemption of the notes or bonds issued by HDA to finance such HDA mortgage loan, in the following respects:

1. Through its agents or employees, HDA may enter upon and inspect the housing development or residential housing and any nonhousing buildings, including all parts thereof, financed by such HDA mortgage loan, for the purpose of investigating the physical and financial condition thereof, and its construction, rehabilitation, operation, management and maintenance, and may examine all books and records with respect to capitalization, income, expenditures and other matters relating thereto;
2. HDA may supervise the operation and maintenance of the housing development or residential housing and any nonhousing buildings financed by such HDA mortgage loan and may order such alterations, changes or repairs as HDA may deem to be necessary to protect the security of its investment, the public interest, or the health, safety or welfare of the occupants of such housing development or residential housing and any nonhousing buildings;
3. HDA may order such housing sponsor, or the management agent or other parties related to the housing development or residential housing and any nonhousing buildings financed by such HDA mortgage loan, to perform such actions as may be necessary to comply with the provisions of all applicable laws or ordinances, HDA's rules and regulations or the terms of any agreement concerning such housing development or residential housing and any nonhousing buildings, or to refrain from doing any acts in violation thereof; and in this regard HDA shall be a proper party to file a

complaint and to prosecute thereon for any violations of laws or ordinances as set forth herein;

4. HDA may prescribe uniform systems of accounts and records for housing sponsors and may require such housing sponsors to make reports, make certifications as to expenditures and give answers to specific questions on such forms and at such times as HDA may deem to be necessary for the purposes of this chapter;

5. HDA may establish and alter from time to time a schedule of rents and charges for the housing development or residential housing and any nonhousing buildings financed by such HDA mortgage loan, and HDA may establish standards for, and may monitor and regulate, tenant or occupant selection by such housing sponsor;

6. HDA may require such housing sponsor to pay to HDA such fees and charges as it may prescribe in connection with the examination, inspection, supervision, auditing or other regulation of the housing development or residential housing and any nonhousing buildings financed by such HDA mortgage loan or of such housing sponsor;

7. In its rules and regulations HDA shall specify the categories of cost which shall be allowable in the construction, rehabilitation, preservation or improvement of a housing development or residential housing and any nonhousing buildings, and HDA shall require such housing sponsor to certify the actual housing development costs upon completion of the housing development or residential housing and any nonhousing buildings, subject to audit and determination by HDA, or shall require such housing sponsor to provide such other assurances of such housing development costs as HDA shall deem necessary to enable HDA to determine with reasonable accuracy the actual amount of such housing development costs; and

8. The provisions of any agreements which provide for the regulation and supervision by HDA of any housing development or residential housing and any nonhousing buildings shall, when duly recorded among the land records of the jurisdiction or jurisdictions in which the housing development or residential housing and any nonhousing buildings are located, run with the land and be binding on the successors and assigns of the owner thereof until released of record by HDA.

1975, c. 536; 1987, c. 164; 1991, c. 447; 2004, c. [187](#).

§36-55.34:2. Power to enter into agreements with owners of housing developments eligible for federal low-income housing credits.

HDA may enter into agreements with the owners of housing developments which are or will be eligible for low-income housing credits under the United States Internal Revenue Code. Any such agreement shall contain covenants and restrictions as shall be required by the United States Internal Revenue Code and such other provisions as HDA shall deem necessary or appropriate. Any such agreement shall be enforceable in accordance with its terms in any court of competent jurisdiction in the Commonwealth by HDA or by such other persons as shall be specified in the United States Internal Revenue Code. Any such agreement, when duly recorded as a restrictive covenant among the land records of the jurisdiction or jurisdictions in which the development is located, shall run with the land and be binding on the successors and assigns of the owner. All references in this section to the United States Internal Revenue Code shall include any amendments thereto and any rules and regulations promulgated thereunder, as the foregoing may be or become effective at any time.

1990, c. 956 .

§36-55.35. Terms and conditions of purchase from and sale to mortgage lenders of mortgage loans; loans to mortgage lenders.

A. Except in the case of a mortgage loan that, when made by the mortgage lender, is to be purchased by HDA, no obligation shall be eligible for purchase or commitment to purchase by HDA from a mortgage lender hereunder if the date of said obligation precedes the date of HDA's commitment to purchase such obligation by such number of years as shall be determined by HDA and unless at or before the time of transfer thereof to HDA such mortgage lender certifies:

1. That in its judgment the loan would in all respects be a prudent investment; and
2. That the proceeds of sale or its equivalent shall be reinvested as provided in subsection F of this section, or invested in short-term obligations pending such reinvestment. However, certification pursuant to this subsection shall not be required in the case of the purchase or commitment to purchase by HDA of a mortgage loan held, insured or assisted by the federal government or any agency or instrumentality thereof.

B. HDA shall purchase mortgage loans at a purchase price equal to the outstanding principal balance; however, discount from the principal balance or the payment of a premium may be employed to effect a fair rate of return which in the opinion of HDA is consistent with the obligations of the HDA hereunder and the purposes of this chapter. In addition to the aforesaid payment of outstanding principal balance HDA

shall pay the accrued interest due thereon, on the date the loan or obligation is delivered against payment therefor. The provisions of this subsection shall not apply to the purchase by HDA of a mortgage loan held, insured or assisted by the federal government or any agency or instrumentality thereof, in which case the purchase price shall be determined by agreement of HDA and the mortgage lender.

C. Loans purchased or sold hereunder may include but shall not be limited to loans which are insured, guaranteed or assisted by the federal government or for which there is a commitment by the federal government to insure, guarantee or assist such loan.

D. HDA shall from time to time adopt, modify or repeal rules and regulations governing the making of loans to mortgage lenders and the purchase and sale of mortgage loans and the application of the proceeds thereof, including rules and regulations as to any or all of the following:

1. Procedures for the submission of requests or the invitation of proposals for the purchase and sale of mortgage loans or for loans to mortgage lenders;
2. Limitations or restrictions as to number of family units, location or other qualifications or characteristics of residences to be financed by residential mortgage loans and requirements as to the income limits of persons and families of low and moderate income occupying such residences;
3. Restrictions as to the interest rates on residential mortgage loans or the return realized therefrom by mortgage lenders;
4. Requirements as to commitments by mortgage lenders with respect to residential mortgage loans;
5. Schedules of any fees and charges necessary to provide for expenses and reserves of the HDA; and
6. Any other matters related to the duties and the exercise of the powers of HDA to purchase and sell mortgage loans or to make mortgage loans or other loans to mortgage lenders.

Such rules and regulations shall be designed to effectuate the general purposes of this chapter and the following specific objectives: (i) the expansion of the supply of funds in the Commonwealth available for residential mortgage loans; (ii) the provision of the additional housing needed to remedy the shortage of adequate housing in the

Commonwealth and eliminate the existence of a large number of substandard dwellings; and (iii) the restriction of the financial return and benefit to that necessary to protect against the realization by mortgage lenders of an excessive financial return or benefit as determined by prevailing market conditions.

E. The interest rate or rates and other terms of the loans to mortgage lenders made from the proceeds of any issue of bonds of the HDA shall be at least sufficient so as to assure the payment of said bonds and the interest thereon as the same become due from the amounts received by HDA in repayment of such loans and interest thereon.

F. HDA shall require as a condition of each loan to a mortgage lender and as a condition of the purchase or the making of a commitment to purchase mortgage loans from a mortgage lender that such mortgage lender within such period of time following the receipt of the proceeds as shall be prescribed by rules and regulations of HDA, shall have entered into written commitments to make, and shall thereafter proceed as promptly as practicable to make and disburse from such proceeds, residential mortgage loans in the Commonwealth of Virginia having a stated maturity of not less than twenty years from the date thereof in an aggregate principal amount equal to the amount of such proceeds. HDA shall not purchase nor make commitment to purchase mortgage loans or obligations from a mortgage lender from which it has previously purchased mortgage loans nor make a loan to a mortgage lender to which it has previously made a loan unless said mortgage lender has either restored or made commitments to restore to its portfolio of residential mortgage loans in the Commonwealth of Virginia, residential mortgage loans having a stated maturity of not less than twenty years from the date thereof in an aggregate principal amount equal to either the proceeds of prior sale or the amount of prior loan to said mortgage lender. HDA may require the submission to it by each mortgage lender of evidence satisfactory to it of the making of such new residential mortgage loans. The provisions of this subsection shall not apply to the purchase or commitment to purchase by HDA of a mortgage loan held, insured or assisted by the federal government or any agency or instrumentality thereof or a mortgage loan that, when made by the mortgage lender, is to be purchased by HDA.

G. HDA shall require that such loans to mortgage lenders shall be additionally secured as to payment of both principal and interest by a pledge of and lien upon collateral security in such amounts as HDA shall by resolution determine to be

necessary to assure the payment of such loans and the interest thereon as the same become due. Such collateral security shall consist of (a) direct obligations of, or obligations guaranteed by, the United States of America or the Commonwealth of Virginia; (b) bonds, debentures, notes or other evidences of indebtedness, satisfactory to the HDA, issued by any of the following federal agencies: Bank for Cooperatives, Federal Intermediate Credit Bank, Federal Home Loan Bank System, Export-Import Bank of Washington, Federal Land Banks, the Federal National Mortgage Association or the Government National Mortgage Association; (c) direct obligations of or obligations guaranteed by the Commonwealth; or (d) mortgages insured or guaranteed, upon terms and conditions satisfactory to the HDA, by the federal government or private mortgage insurance companies as to payment of principal and interest.

1972, c. 830; 1975, c. 536; 1982, c. 101; 1996, c. [298](#); 2011, cc. [218](#), [224](#).

§36-55.36. Terms and conditions of mortgage insurance.

(1) For mortgage payments to be eligible for insurance under the provisions of this chapter, the underlying mortgage loan shall: (a) be one which is made to and held by a mortgagee approved by HDA as responsible and able to service the mortgage properly; (b) not exceed (i) 100% of the estimated cost of such proposed housing development if owned or to be owned by a nonprofit mortgagor or if owned by a person or family of low or moderate income, in the case of a single-family dwelling or condominium; or, (ii) 95% of the estimated cost of the proposed housing development if owned or to be owned by any other mortgagor; (c) have a maturity satisfactory to HDA but in no case longer than 80% of HDA's estimate of the remaining useful life of said housing or 40 years from the date of the issuance of insurance, whichever is earlier; (d) contain amortization provisions satisfactory to HDA requiring periodic payments by the mortgagor not in excess of his reasonable ability to pay as determined by HDA; (e) be in such form and contain such terms and provisions with respect to maturity, property insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary liens, equitable and legal redemption rights, prepayment privileges and other matters as HDA may prescribe.

(2) All applications for mortgage insurance shall be forwarded, together with an application fee prescribed by HDA, to the executive director of HDA. HDA shall cause an investigation of the proposed housing to be made, review the application and the report of the investigation, and approve or deny the application. No application shall

be approved unless HDA finds that it is consistent with the purposes of this chapter and further finds that the financing plan for the proposed housing is sound. HDA shall notify the applicant and the proposed lender of its decision. Any such approval shall be conditioned upon payment to HDA, within such reasonable time and after notification of approval as may be specified by HDA, of the commitment fee prescribed by HDA.

(3) HDA shall fix mortgage insurance premiums for the insurance of mortgage payments under the provisions of this chapter. Such premiums shall be computed as a percentage of the principal of the mortgage outstanding at the beginning of each mortgage year, but shall not be more than one-half of one per centum per year of such principal amount. The amount of premium need not be uniform for all insured loans. Such premiums shall be payable by mortgagors or mortgagees in such manner as prescribed by HDA.

(4) In the event of default by the mortgagor, the mortgagee shall notify HDA both of the default and the mortgagee's proposed course of action. When it appears feasible, HDA may for a temporary period upon default or threatened default by the mortgagor authorize mortgage payments to be made by HDA to the mortgagee which payments shall be repaid under such conditions as HDA may prescribe. HDA may also agree to revised terms of financing when such appear prudent. The mortgagee shall be entitled to receive the benefits of the insurance provided herein upon: (a) Any sale of the mortgaged property by court order in foreclosure or a sale with the consent of HDA by the mortgagor or a subsequent owner of the property or by the mortgagee after foreclosure or acquisition by deed in lieu of foreclosure, provided all claims of the mortgagee against the mortgagor or others arising from the mortgage, foreclosure, or any deficiency judgment shall be assigned to HDA without recourse except such claims as may have been released with the consent of HDA; or (b) the expiration of six months after the mortgagee has taken title to the mortgaged property under judgment of strict foreclosure, foreclosure by sale or other judicial sale, or under a deed in lieu of foreclosure if during such period the mortgagee has made a bona fide attempt to sell the property, and thereafter conveys the property to HDA with an assignment, without recourse, to HDA of all claims of the mortgagee against the mortgagor or others arising out of the mortgage foreclosure, or deficiency judgment; or (c) the acceptance by HDA of title to the property or an assignment of the mortgage, without recourse to HDA, in the event HDA determines it imprudent to proceed under (a) or (b) above. Upon the occurrence of either (a), (b) or (c) hereof, the

obligation of the mortgagee to pay premium charges for insurance shall cease, and HDA shall, within thirty days thereafter, pay to the mortgagee ninety-eight percent of the sum of (i) the then unpaid principal balance of the insured indebtedness, (ii) the unpaid interest to the date of conveyance or assignment to HDA, as the case may be, (iii) the amount of all payments made by the mortgagee for which it has not been reimbursed for taxes, insurance, assessments and mortgage insurance premiums, and (iv) such other necessary fees, costs or expenses of the mortgagee as may be approved by HDA.

(5) Upon request of the mortgagee, HDA may at any time, under such terms and conditions as it may prescribe, consent to the release of the mortgagor from his liability or consent to the release of parts of the property from the lien of the mortgage, or approve a substitute mortgagor or sale of the property or part thereof.

(6) No claim for the benefit of the insurance provided in this chapter shall be accepted by HDA except within one year after any sale or acquisition of title of the mortgaged premises described in subdivision (a) or (b) of subsection (4) of this section.

1972, c. 830; 1975, c. 536.

§36-55.36:1. Power to create insurance funds and form corporations for the purpose of insuring HDA mortgage loans.

HDA shall have the power to create one or more insurance funds and to form one or more corporations for the purpose of providing replacement mortgage guaranty insurance, upon such terms and conditions as HDA shall prescribe, on mortgage loans made or financed by HDA pursuant to this chapter for which (i) mortgage guaranty insurance is being provided by a company which, subsequent to the provision of such coverage, has experienced a drop in rating by a nationally recognized credit rating service which could result in a rating for the bonds which would be in nonconformance with the rating covenants of the related bond indenture; and (ii) the executive director of HDA executes an affidavit stating that HDA was unable, after diligent effort, to procure replacement mortgage guaranty insurance in a form and premium acceptable to HDA from another insurer licensed in this Commonwealth to transact mortgage guaranty insurance business. For purposes of this section, "diligent effort" means a good faith search by HDA for mortgage guaranty insurance among admitted insurers resulting in declinations of coverage, by three unaffiliated insurers licensed and authorized in this Commonwealth to write the mortgage guaranty insurance coverage sought, at a premium equal to or less than the premium in force for the loans

made or financed by HDA. HDA may provide financing and other funding to any such fund or corporation and may exercise all necessary or convenient rights and powers and perform all requisite duties and obligations relating thereto. Any such fund or corporation shall be subject to the direction and control of the commissioners of HDA and shall have such powers and duties as the commissioners of HDA shall prescribe. Any such fund or corporation may charge such premiums and may establish such reserves as HDA shall specify. HDA may specify that any such reserves shall be assets of such fund or corporation and shall not be subject to the claims of creditors of HDA. Any such fund or corporation, its directors, officers and employees, its assets and operations, and its policies of insurance and the premiums therefor shall not be subject to the provisions of Title 38.2 and rules and regulations issued pursuant thereto. The property of any such fund or corporation and its income and operations shall be exempt from taxation or assessments of every kind by the Commonwealth and all municipalities and other political subdivisions thereof. The provisions of [§ 36-55.36](#) shall not be applicable to mortgage guaranty insurance provided under this section.

1990, c. 956 .

§36-55.37. Exemption from taxation.

(1) As set forth in the declaration of finding and purpose herein, HDA will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter, and the notes and bonds of HDA issued and to be issued pursuant to this chapter, the transfer thereof, and the income therefrom including any profit made on the sale thereof and all its fees, charges, gifts, grants, revenues, receipts, and other moneys received, pledged to pay or secure the payment of such notes or bonds shall at all times be free from taxation and assessment of every kind by the Commonwealth and by the municipalities and all other political subdivisions of the Commonwealth.

(2) The property of HDA and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by HDA under the provisions of this chapter.

(3) Any housing development, residential housing or nonhousing building financed in whole or in part pursuant to the provisions of this chapter and owned by HDA shall be exempt from all property taxation and special assessments of the Commonwealth or political subdivisions thereof; provided, however, that in lieu of such

taxes, HDA may agree to make such payments to the Commonwealth or any political subdivision thereof as HDA finds consistent with the cost of supplying municipal services to the housing development, residential housing or nonhousing building and maintaining the economic feasibility of the housing development, residential housing or nonhousing building, which payments such bodies are hereby authorized to accept.

1972, c. 830; 1974, c. 263; 2004, c. [187](#).

§36-55.37:1. Repealed.

Repealed by Acts 1996, c. [298](#).

§36-55.38. Admission and income limitations relative to housing developments.

(1) Admission to housing developments financed pursuant to the provisions of this chapter shall be limited to persons or families of low or moderate income and, in the case of economically mixed projects, such other persons and families as the HDA shall determine, subject to the limitation in subsection C of § [36-55.30:2](#).

(2) HDA shall make and publish rules and regulations from time to time governing the terms of tenant selection plans and income limits for tenants eligible to occupy housing developments assisted by HDA in conformance with the provisions of this chapter and such income limits may vary with the size and circumstances of the person or family.

(3) HDA shall by rules and regulations provide income standards for continued residence in housing developments assisted by HDA, and either HDA, or with its approval the housing sponsor of any such housing development may terminate the tenancy or interest of any person or family residing in any such housing development whose gross aggregate income exceeds prescribed income standards for a period of six months or more; provided, that no tenancy or interest of any such person or family in any such housing development shall be terminated except upon reasonable notice and opportunity to obtain suitable alternate housing, in accordance with rules and regulations of HDA; provided further, that any such person or family, with the approval of HDA, shall be permitted to continue to occupy the unit, subject to payment of a rent or carrying charges or surcharge to the housing sponsor in accordance with a schedule of surcharges fixed by HDA.

(4) Any person or family residing in a housing development which shall be a cooperative and is required to be removed from the housing development because of excessive income as herein provided shall be discharged from liability on any note, bond or

other evidence of indebtedness relating thereto and shall be reimbursed, in accordance with the rules of HDA, for all sums paid by such person or family to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy or on account of the acquisition of title for such purpose.

1972, c. 830; 1975, c. 536; 1996, c. [498](#); 2004, c. [187](#).

§36-55.39. Procedure prior to financing of housing developments undertaken by housing sponsors.

A. Notwithstanding any other provision of this chapter, HDA is not empowered to finance any housing development undertaken by a housing sponsor pursuant to §§ [36-55.31](#), [36-55.33:1](#) and [36-55.34:1](#) of this chapter unless, prior to the financing of any housing development hereunder, the commissioners or the executive director of HDA find:

1. That there exists a shortage of decent, safe and sanitary housing at rentals or prices which persons and families of low income or moderate income can afford within the general housing market area to be served by the proposed housing development.
2. That private enterprise and investment have been unable, without assistance, to provide the needed decent, safe and sanitary housing at rentals or prices which persons or families of low and moderate income can afford or to provide sufficient mortgage financing for residential housing for occupancy by such persons or families.
3. That the housing sponsor or sponsors undertaking the proposed housing development in the Commonwealth will supply well-planned, well-designed housing for persons or families of low and moderate income and, in the case of an economically mixed project, other persons and families and that such sponsors are financially responsible.
4. That the housing development, to be assisted pursuant to the provisions of this chapter, will be of public use and will provide a public benefit.
5. That the housing development will be undertaken within the authority conferred by this chapter upon HDA and the housing sponsor or sponsors.

B. The locality, upon written request from the housing sponsor, shall provide a written staff determination that the proposed development is consistent with current zoning and other land use regulations in effect at the time of such request. Failure of the locality to comply with this subsection within 30 days of the receipt of the written

request from the housing sponsor shall be deemed to be a determination that the proposed development is consistent with current zoning and other land use regulations. Prior to financing by the HDA, the housing sponsor shall provide the HDA with (i) a copy of the written staff determination received from the locality, (ii) a written certification that the locality failed to respond to the housing sponsor's request within 30 days as provided herein, or (iii) a copy of any building permit issued by the locality.

1972, c. 830; 1975, c. 536; 1978, c. 297; 1982, c. 175; 1990, c. 461; 1995, c. [215](#); 1996, c. [560](#); 1997, c. [684](#); 2004, c. [187](#).

§36-55.40. Notes and bonds.

A.1. HDA shall have power and is hereby authorized to issue from time to time its negotiable notes and bonds in conformity with applicable provisions of the Uniform Commercial Code in such principal amount as HDA shall determine to be necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of HDA, establishment of reserves to secure such notes and bonds, and all other expenditures of HDA incident to and necessary or convenient to carry out its corporate purposes and powers. In accordance with § [2.2-5002](#), such power to issue notes and bonds shall not be restricted or limited solely because the interest on the notes and bonds is subject, in whole or in part, directly or indirectly, to federal income taxes.

2. HDA shall have the power, from time to time, to issue (i) notes to renew notes and (ii) bonds, to pay notes, including the interest thereon and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes. The refunding bonds may be (i) exchanged for the bonds to be refunded or (ii) sold and the proceeds applied to the purchase, redemption or payment of such bonds.

3. Except as may otherwise be expressly provided by HDA, every issue of its notes and bonds shall be general obligations of HDA payable out of any revenues or moneys of HDA, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

B. The notes and bonds shall be authorized by resolution or resolutions of HDA, shall bear such date or dates and shall mature at such time or times as such resolution or resolutions may provide, except that no bond shall mature more than fifty years from

the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of HDA may be sold by HDA, at public or private sale, at such price or prices as HDA shall determine.

C. Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

1. Pledging all or any part of the revenues to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with noteholders or bondholders as may then exist;
2. Pledging all or any part of the assets of HDA, including mortgages and obligations securing the same, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;
3. The use and disposition of the gross income from mortgages owned by HDA and payment of principal of mortgages owned by HDA;
4. The setting aside of reserves or sinking funds and the regulation and disposition thereof;
5. Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;
6. Limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;
7. The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto; and the manner in which such consent may be given;

8. Limitations on the amount of moneys to be expended by HDA for operating expenses of HDA;

9. Vesting in a trustee or trustees such property, rights, powers and duties in trust as HDA may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this chapter and limiting or abrogating the right of the bondholders to appoint a trustee under this chapter or limiting the rights, powers and duties of such trustee;

10. Defining the acts or omissions to act which shall constitute a default in the obligations and duties of HDA to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the Commonwealth and the other provisions of this chapter;

11. Any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

D. Any pledge made by HDA shall be valid and binding from the time when the pledge is made; HDA's interest, then existing or thereafter obtained, in the revenues, moneys, mortgage loans, receivables, contract rights or other property or proceeds so pledged shall immediately be subject to the lien of such pledge without any physical delivery or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against HDA, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded, nor shall any filing be required with respect thereto.

E. Neither the commissioners of HDA nor any other person executing such notes or bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.

F. HDA, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of HDA, which shall thereupon be cancelled unless HDA shall provide written notification to the trustee pursuant to subsection J, at a price not exceeding:

1. If the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or

2. If the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

G. In the discretion of HDA, the bonds may be secured by a trust indenture by and between HDA and a corporate trustee, which may be any trust company or bank having the power of a trust company within or without the Commonwealth. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of HDA in relation to the exercise of its corporate powers and the custody, safeguarding and application of all moneys. HDA may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of HDA. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

H. Whether or not the notes and bonds are of such form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the notes and bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of the notes and bonds for registration.

I. In case any of the commissioners or officers of HDA whose signatures appear on any notes or bonds or coupons shall cease to be such commissioners or officers before the delivery of such notes or bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery.

J. Notwithstanding any statute or case law to the contrary, the purchase or actual or constructive ownership by HDA of any of its notes or bonds with the intent that such notes or bonds remain outstanding, as evidenced by written notification from HDA to the trustee under the resolution or trust indenture, shall not cause such notes or bonds or the indebtedness evidenced thereby to be canceled or extinguished, subject to such terms and conditions as may be set forth in the written notification and except as may be otherwise provided in the resolution or trust indenture.

1972, c. 830; 1978, c. 189; 1996, c. [298](#); 1998, c. [442](#).

§36-55.41. Reserve funds and appropriations.

A. 1. HDA may create and establish one or more special funds (herein referred to as "capital reserve funds"), and shall pay into each such capital reserve fund (i) any moneys appropriated and made available by the Commonwealth for the purpose of such fund, (ii) any proceeds of sale of notes or bonds, to the extent provided in the resolution or resolutions of HDA authorizing the issuance thereof, and (iii) any other moneys which may be made available to HDA for the purpose of such fund from any other source or sources. All moneys held in any capital reserve fund, except as hereinafter provided, shall be used, as required, solely for the payment of the principal of bonds secured in whole or in part by such fund or of the sinking fund payments hereinafter mentioned with respect to such bonds, the purchase or redemption of such bonds, the payment of interest on such bonds or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; however, if moneys in any such fund at any time are less than the minimum capital reserve fund requirement established for such fund as hereinafter provided, HDA shall not use such moneys for any optional purchase or redemption of such bonds. Any income or interest earned by, or increment to, any capital reserve fund due to the investment thereof may be transferred by HDA to other funds or accounts of HDA to the extent it does not reduce the amount of such capital reserve fund below the minimum capital reserve fund requirement for such fund;

2. HDA shall not at any time issue bonds, secured in whole or in part by a capital reserve fund, if upon the issuance of such bonds, the amount of such capital reserve fund will be less than the minimum capital reserve fund requirement of such fund, unless HDA, at the time of issuance of such bonds, shall deposit in such fund from the proceeds of the bonds to be issued, or from other sources, an amount which, together with the amount then in such fund, will not be less than the minimum capital reserve fund requirement for such fund. For purposes of this section, the term "minimum capital reserve fund requirement" shall mean, as of any particular date of computation, an amount of money, as provided in the resolutions of HDA authorizing the bonds with respect to which such fund is established, equal to not more than the greatest of the respective amounts, for the current or any future fiscal year of HDA, of annual debt service on the bonds of HDA secured in whole or in part by such fund, such annual debt service for any fiscal year being the amount of money equal to the aggregate of (i) all interest payable during such fiscal year on all bonds

secured in whole or in part by such fund outstanding on the date of computation, plus (ii) the principal amount of all such bonds outstanding on said date of computation which mature during such fiscal year, plus (iii) all amounts specified in any resolution of the authority authorizing any of such bonds as payable during such fiscal year as a sinking fund payment with respect to any of such bonds which mature after such fiscal year, all calculated on the assumption that such bonds will after said date of computation cease to be outstanding by reason, but only by reason, of the payment of bonds when due, and the payment when due and application in accordance with the resolution authorizing those bonds, of all of such sinking fund payments payable at or after said date of computation; however, in computing the annual debt service for any fiscal year as aforesaid, bonds deemed to have been paid in accordance with the defeasance provisions of the resolution or resolutions of HDA authorizing the issuance thereof shall not be included in bonds outstanding on the date of computation aforesaid;

3. In computing the amount of any capital reserve funds for the purpose of this section, securities in which all or a portion of such funds shall be invested shall be valued at par or if purchased at less than par, at their cost to HDA;

4. To assure the continued operation and solvency of HDA for the carrying out of its corporate purposes, provision is made in subdivision 1 of this subsection for the accumulation in each capital reserve fund of an amount equal to the minimum capital reserve fund requirement for such fund.

B. In order further to assure the maintenance of the foregoing capital reserve funds, the chairman of HDA shall annually, on or before December 1, make and deliver to the Governor and Director of the Budget his certificate stating the sum, if any, required to restore each such capital reserve fund to the minimum capital reserve fund requirement for such fund. Within five days after the beginning of each session of the General Assembly, the Governor shall submit to the presiding officer of each house printed copies of a budget including the sum, if any, required to restore each such capital reserve fund to the minimum capital reserve fund requirement for such fund. All sums appropriated by the legislature for such restoration and paid shall be deposited by HDA in the applicable capital reserve fund.

C. HDA shall create and establish such other fund or funds as may be necessary or desirable for its corporate purposes.

D. All amounts paid over to HDA by the Commonwealth pursuant to the provisions of this section shall constitute and be accounted for as advances by the Commonwealth to HDA and, subject to the rights of the holders of any bonds or notes of HDA theretofore or thereafter issued, shall be repaid to the Commonwealth without interest from all available operating revenues of HDA in excess of amounts required for the payment of bonds, notes or other obligations of HDA, the capital reserve funds and operating expenses.

E. The outstanding principal amount of notes and bonds issued by HDA secured by capital reserve funds pursuant to this section, other than notes and bonds for which refunding obligations shall have been issued pursuant to § [36-55.42](#), shall not exceed \$1.5 billion. For the purpose of this subdivision, the outstanding principal amount of notes or bonds issued by HDA at a price less than the face amount thereof shall be deemed to be the issue price of such notes or bonds.

1972, c. 830; 1974, c. 263; 1987, c. 451; 1994, c. [378](#); 1997, c. [41](#).

§36-55.42. Refunding obligations; issuance.

HDA may provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and for any corporate purpose of HDA. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the HDA in respect of the same shall be governed by the provisions of this chapter which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

1972, c. 830.

§36-55.43. Same; sale.

Refunding obligations issued as provided in § [36-55.42](#) may be sold or exchanged for outstanding obligations issued under this chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the

same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by the United States of America, which proceeds shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

1972, c. 830.

§36-55.44. Deposit and investment of moneys of HDA.

A. All moneys of HDA except as otherwise authorized or provided in this chapter shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of the Commonwealth, in national banking associations, in federal home loan banks, or to the extent then permitted by law, in savings institutions organized under the laws of the Commonwealth of Virginia or the United States. The moneys in such accounts shall be paid out on checks, drafts payable on demand, electronic wire transfers, or other means authorized by HDA. Each payment shall be approved by the executive director or such other officers or employees of HDA as HDA shall authorize. Deposits of such moneys shall, if required by HDA, be secured as it shall prescribe, and all banks and trust companies are authorized to give such security for such deposits.

B. Unless otherwise limited by contract with the holders of any of its notes or bonds or with any other parties making loans to HDA, any moneys of HDA and any moneys held in trust or otherwise for the payment of such notes, bonds or loans may be invested in (i) obligations or securities which are considered lawful investments for fiduciaries, both individual and corporation, as set forth in § [2.2-4519](#), (ii) any investments and deposits authorized by Chapter 45 (§ [2.2-4500](#) et seq.) of Title 2.2, and (iii) any other investments which are permitted pursuant to subsection C for moneys held under any bond resolution or trust indenture of the Authority and which, when acquired by HDA, have, or are general obligations of issuers who have, long-term ratings of at least AA or Aa or the highest short-term ratings, as applicable, by two rating agencies, one of which shall be Moody's Investors Service, Inc., or Standard & Poor's Ratings Group or any successor thereto.

C. In addition to the authorization in subsection B and regardless of any other provisions of law which would otherwise have the effect of limiting the powers set forth

in this subsection, HDA shall have power to contract with the holders of any of its notes or bonds and with any other parties making loans to HDA as to the custody, collection, securing, investment and payment of any moneys of HDA and of any moneys held in trust or otherwise for the payment of such notes, bonds or loans, and to carry out such contracts. Unless otherwise specified in such contracts, moneys held in trust or otherwise for the payment of notes, bonds or loans or in any way to secure notes, bonds or loans and deposits of such moneys may be secured in the same manner as set forth in subsection A.

D. Whenever investments are made in accordance with this section, no commissioner or employee of HDA shall be liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part.

1972, c. 830; 1975, c. 536; 1982, cc. 231, 235; 1993, c. 224; 1996, c. [77](#); 1998, c. [442](#).

§36-55.44:1. Swap agreements by HDA authorized.

In connection with, or incidental to, the issuance or carrying of notes or bonds or the acquisition or carrying of any investments, HDA may enter into swap agreements or other contracts or arrangements which HDA determines to be necessary or appropriate to place obligations or investments of HDA, as represented by notes, bonds or investments of HDA, in whole or in part, on the interest rate, currency, cash flow or other basis desired by HDA or to hedge payment, currency, rate, spread, or other exposure. Such contracts or arrangements may be entered into by HDA in connection with, or incidental to, entering into or maintaining (i) any agreement which secures notes or bonds of HDA and is authorized or permitted by law or (ii) any investment, or contract providing for any investment, otherwise authorized or permitted by law.

Such contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by HDA, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate.

In connection with, or incidental to, any of these contracts or arrangements, HDA may enter into credit enhancement or liquidity agreements with such terms and conditions as HDA shall determine.

1994, c. [84](#).

§36-55.45. Agreement with Commonwealth.

The Commonwealth does hereby pledge to and agree with the holders of any notes or bonds issued under this chapter that the Commonwealth will not limit or alter the rights hereby vested in HDA to fulfill the terms of any agreements made with the said holders thereof or in any way impair the rights and remedies of such holders until such notes and bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. HDA is authorized to include this pledge and agreement of the Commonwealth in any agreement with the holders of such notes or bonds.

1972, c. 830.

§36-55.46. Commonwealth not liable on notes and bonds.

The notes, bonds or other obligations of HDA shall not be a debt or grant or loan of credit of the Commonwealth of Virginia, and the Commonwealth shall not be liable thereon, nor shall they be payable out of any funds other than those of HDA; and such notes and bonds shall contain on the face thereof a statement to such effect.

1972, c. 830.

§36-55.47. Remedies of noteholders and bondholders.

(1) In the event that HDA shall default in the payment of principal of or interest on any issue of notes and bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that HDA shall fail or refuse to comply with the provisions of this chapter, or shall default in any agreement made with the holders of any issue of notes or bonds, the holders of twenty-five per centum in aggregate principal amount of the notes or bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the Circuit Court of the City of Richmond, Commonwealth of Virginia, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes or bonds for the purposes herein provided.

(2) Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such notes or bonds then outstanding shall, in his or its own name:

(a) By suit, action or proceeding in accordance with the provisions of Title 8.01, enforce all rights of the noteholders or bondholders, including the right to require

HDA to carry out any agreements with such holders and to perform its duties under this chapter;

(b) Bring suit upon such notes or bonds;

(c) By action or suit, require HDA to account as if it were the trustee of an express trust for the holders of such notes or bonds;

(d) By action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes or bonds;

(e) Declare all such notes or bonds due and payable, and if all defaults shall be made good, then, with the consent of the holders of twenty-five per centum of the principal amount of such notes or bonds then outstanding, annul such declaration and its consequences.

(3) The Circuit Court of the City of Richmond shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such noteholders or bondholders. The venue of any suit, action or proceeding shall be laid in the City of Richmond, Commonwealth of Virginia.

(4) Before declaring the principal of notes or bonds due and payable, the trustee shall first give thirty days' notice in writing to HDA.

1972, c. 830.

§36-55.48. Grants from Commonwealth.

The Commonwealth may make grants of money or property to HDA for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers, including, but not limited to, deposits to the reserve funds. This section shall not be construed to limit any other power the Commonwealth may have to make such grants to HDA.

1972, c. 830.

§36-55.49. Notes and bonds as legal investments.

The notes and bonds of HDA shall be legal investments in which all public officers and public bodies of this Commonwealth, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies and other

persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the Commonwealth, may properly and legally invest funds, including capital, in their control or belonging to them. The notes and bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the Commonwealth or any agency or political subdivisions of the Commonwealth and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may hereafter be authorized by law including but not limited to security for deposits pursuant to Chapter 44 (§ [2.2-4400](#) et seq.) of Title 2.2 and amendments thereto.

1972, c. 830; 1975, c. 536.

§36-55.50. Liberal construction.

Neither this chapter nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which HDA might otherwise have under any laws of this Commonwealth, and this chapter is cumulative to any such powers. This chapter does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. However, the issuance of bonds, notes and other obligations and refunding bonds under the provisions of this chapter need not comply with the requirements of any other state law applicable to the issuance of bonds, notes and other obligations, and contracts for the construction and acquisition of any housing developments undertaken pursuant to this chapter need not comply with the provisions of any other state law applicable to contracts for the construction and acquisition of state-owned property. No proceedings, notice or approval shall be required for the issuance of any bonds, notes and other obligations or any instrument as security therefor, except as is provided in this chapter.

1972, c. 830.

§36-55.51. Reports.

A. HDA shall submit to the Governor within ninety days after the end of its fiscal year a complete and detailed report setting forth:

(1) Its operations and accomplishments;

(2) Its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by HDA for its operating and capital outlay purposes;

(3) Its assets and liabilities at the end of its fiscal year, including a schedule of its mortgage loans and commitments and the status of reserve, special or other funds; and

(4) A schedule of its notes and bonds outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

B. In order to maintain liaison in development of housing policy, the HDA shall also have the duty of providing reports to the Director of the Department of Housing and Community Development on its policies, objectives, priorities, operations and programs, both present and projected, so as to assist the Director in the formulation of his reports to the Governor and General Assembly regarding housing and community development policies, goals, plans and programs.

1972, c. 830; 1977, c. 613.

§36-55.51:1. Annual audit.

An annual audit shall be conducted on the accounts of HDA by an independent certified public accountant, and such audit shall be reviewed by the Auditor of Public Accounts. The cost of such audit and review shall be borne by HDA.

1987, c. 451.

§36-55.52. Inconsistent provisions in other laws superseded.

Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, the provisions of this chapter shall be controlling.

1972, c. 830.

Virginia Human Rights Act

§2.2-3900. Short title; declaration of policy.

A. This chapter shall be known and cited as the Virginia Human Rights Act.

B. It is the policy of the Commonwealth to:

1. Safeguard all individuals within the Commonwealth from unlawful discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability, in places of public accommodation, including educational institutions and in real estate transactions; in employment; preserve the public safety, health and general welfare; and further the interests, rights and privileges of individuals within the Commonwealth; and
2. Protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.

1987, c. 581, §§ 2.1-714, 2.1-715; 1997, c. [404](#); 2001, c. [844](#).

§2.2-3901. Unlawful discriminatory practice and gender discrimination defined.

Conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability shall be an "unlawful discriminatory practice" for the purposes of this chapter.

The terms "because of sex or gender" or "on the basis of sex or gender" or terms of similar import when used in reference to discrimination in the Code and acts of the General Assembly include because of or on the basis of pregnancy, childbirth or related medical conditions. Women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all purposes as persons not so affected but similar in their abilities or disabilities.

1987, c. 581, § 2.1-716; 1991, c. 457; 1997, c. [404](#); 2001, c. [844](#); 2005, c. [839](#).

§2.2-3902. Construction of chapter; other programs to aid persons with disabilities, minors and the elderly.

The provisions of this chapter shall be construed liberally for the accomplishment of its policies. Nothing contained in this chapter shall be deemed to repeal, supersede or expand upon any of the provisions of any other state or federal law relating to discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.

Nothing in this chapter shall prohibit or alter any program, service, facility, school, or privilege that is afforded, oriented or restricted to a person because of disability or age from continuing to habilitate, rehabilitate, or accommodate that person.

In addition, nothing in this chapter shall be construed to affect any governmental program, law or activity differentiating between persons on the basis of age over the

age of 18 years (i) where the differentiation is reasonably necessary to normal operation or the activity is based upon reasonable factors other than age or (ii) where the program, law or activity constitutes a legitimate exercise of powers of the Commonwealth for the general health, safety and welfare of the population at large.

Complaints filed with the Division of Human Rights of the Department of Law (the Division) in accordance with § [2.2-520](#) alleging unlawful discriminatory practice under a Virginia statute that is enforced by a Virginia agency shall be referred to that agency. The Division may investigate complaints alleging an unlawful discriminatory practice under a federal statute or regulation and attempt to resolve it through conciliation. Unsolved complaints shall thereafter be referred to the federal agency with jurisdiction over the complaint. Upon such referral, the Division shall have no further jurisdiction over the complaint. The Division shall have no jurisdiction over any complaint filed under a local ordinance adopted pursuant to § [15.2-965](#).

1987, c. 581, § 2.1-717; 1991, c. 457; 1997, c. [404](#); 2000, c. [933](#); 2001, c. [844](#); 2012, cc. [803](#), [835](#).

§2.2-3903. Causes of action not created.

A. Nothing in this chapter or in Article 4 (§ [2.2-520](#) et seq.) of Chapter 5 creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions, except as specifically provided in subsections B and C.

B. No employer employing more than five but less than 15 persons shall discharge any such employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, including lactation. No employer employing more than five but less than 20 persons shall discharge any such employee on the basis of age if the employee is 40 years of age or older. For the purposes of this section, "lactation" means a condition that may result in the feeding of a child directly from the breast or the expressing of milk from the breast.

C. The employee may bring an action in a general district or circuit court having jurisdiction over the employer who allegedly discharged the employee in violation of this section. Any such action shall be brought within 300 days from the date of the discharge or, if the employee has filed a complaint with the Division of Human Rights of the Department of Law or a local human rights or human relations agency or commission within 300 days of the discharge, such action shall be brought within 90 days from the date that the Division or a local human rights or human relations agency or commission has rendered a final disposition on the complaint. The court may award

up to 12 months' back pay with interest at the judgment rate as provided in § [6.2-302](#). However, if the court finds that either party engaged in tactics to delay resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment without regard to the 12-month limitation.

In any case where the employee prevails, the court shall award attorney fees from the amount recovered, not to exceed 25 percent of the back pay awarded. The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee.

D. Causes of action based upon the public policies reflected in this chapter shall be exclusively limited to those actions, procedures, and remedies, if any, afforded by applicable federal or state civil rights statutes or local ordinances. Nothing in this section or § [2.2-3900](#) shall be deemed to alter, supersede, or otherwise modify the authority of the Division or of any local human rights or human relations commissions established pursuant to § [15.2-853](#) or [15.2-965](#).

1987, c. 581, § 2.1-725; 1995, c. [838](#); 1997, c. [404](#); 2000, c. [933](#); 2001, c. [844](#), § 2.2-2639; 2002, c. [561](#); 2005, cc. [756](#), [770](#), [857](#); 2012, cc. [803](#), [835](#); 2014, c. [635](#).

Virginia Investment Partnership Act

§2.2-5100. Short title; definitions.

A. This chapter shall be known and may be cited as the "Virginia Investment Partnership Act."

B. As used in this chapter, unless the context requires a different meaning:

"Average manufacturing wage" means that amount determined by the Virginia Employment Commission to be the average wage paid manufacturing workers in a locality or region of the Commonwealth.

"Average nonmanufacturing wage" means that amount determined by the Virginia Employment Commission to be the average wage paid nonmanufacturing workers in basic employment in a locality or region of the Commonwealth.

"Basic employment" means employment that brings new or additional income into Virginia and adds to the gross state product.

"Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is capitalized by the company and that increases the productivity of the manufacturing facility, results in the creation, development or utilization of a more advanced technology than is in use immediately prior to such investment, or both. In order to qualify as a capital investment, an investment in technology shall result in a measurable increase in capacity or productivity, a measurable decrease in the production of flawed product, or both. Expenditures for maintenance, replacement or repair of existing machinery, tools and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be ineligible for designation as a capital investment if such replacement results in a measurable increase in productivity.

"Eligible company" means, for companies located in a Metropolitan Statistical Area with a population of 300,000 or more in the most recently preceding decennial census, a Virginia employer that:

- a. (i) creates or causes to be created at least 400 jobs with average salaries at least 50 percent greater than the Prevailing Average Wage or (ii) creates or causes to be created at least 300 jobs with average salaries at least 100 percent greater than the Prevailing Average Wage, and
- b. makes a capital investment of at least \$5 million or \$6,500 per job, whichever is greater.

For all companies located elsewhere in Virginia, "eligible company" shall mean a Virginia employer that creates or causes to be created at least 200 jobs with average salaries at least 50 percent greater than the Prevailing Average Wage, and making a capital investment of at least \$6,500 per job.

"Eligible manufacturer or research and development service" means an existing Virginia manufacturer or research and development service that makes a capital investment of at least \$25 million that is announced on or after June 1, 1998, which investment does not result in any net reduction in employment within one year after the capital investment has been completed and verified. Any entity participating in any other production grant program in the Commonwealth shall not be an eligible manufacturer or research and development service.

"Eligible research and development service" means an existing Virginia research and development service that supports manufacturing and that makes a capital investment of at least \$25 million, which investment does not result in any net reduction in employment within one year after the capital investment has been completed and verified. Any entity participating in any other production grant program in the Commonwealth shall not be eligible.

"Existing Virginia manufacturer" means a manufacturer that has a legal presence within the Commonwealth for at least three years prior to making the announcement of the capital investment that makes it an eligible manufacturer.

"Flawed product" means an irregular unit of goods that cannot be sold to an end user.

"Fund" means the Virginia Investment Partnership Grant Fund created pursuant to § [2.2-5104](#), comprised of (i) the Major Eligible Employer Grant subfund, (ii) the Investment Performance Grant subfund, and (iii) the Economic Development Incentive Grant subfund.

"Major eligible employer" means an existing Virginia manufacturer or any other non-manufacturing basic employer that makes a capital investment of at least \$100 million and creates at least 1,000 jobs, or corporate headquarters and other basic employers that make a capital investment of at least \$100 million and create at least 400 jobs paying at least twice the prevailing average wage for the area.

"Manufacturer" means a business firm owning or operating a manufacturing establishment as defined in the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget or the North American Industry Classification System Manual issued by the United States Census Bureau.

"Net present value of benefits to Virginia" means the present value of the amount by which (i) the anticipated additional state tax revenue expected to accrue to the Commonwealth as a result of the capital investment and jobs created, over a period following the completion of the capital investment not to exceed 20 years, exceeds (ii) the value of all incentives provided by the Commonwealth, including any grant under this article, for such capital investment during that period.

"New job" means employment of an indefinite duration at the eligible facility, created as the direct result of the capital investment, for which the standard fringe benefits are paid by the firm for the employee, requiring a minimum of either (i) 35 hours

of an employee's time a week for the entire normal year of the firm's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth to the facility, and positions with contractors, suppliers, and similar multiplier or spin-off jobs shall not qualify as new jobs under this article.

"Partnership" means the Virginia Economic Development Partnership.

"Prevailing Average Wage" means that amount determined by the Virginia Employment Commission to be the average wage paid workers in the city or county of the Commonwealth where the eligible company is located.

"Productivity" means the number of hours of labor required to produce a unit of goods.

"Research and development service" means a business firm owning or operating an establishment engaged in conducting research and experimental development that supports manufacturing in the physical, engineering and life sciences as defined in the North American Industry Classification System Manual issued by the United States Census Bureau.

"Secretary" means the Secretary of Commerce and Trade.

1999, cc. [875](#), [961](#), §§ 2.1-548.43:1, 2.1-548.43:2; 2000, c. [571](#); 2001, c. [844](#); 2003, c. [17](#); 2005, c. [431](#); 2009, cc. [151](#), [174](#); 2012, cc. [196](#), [407](#).

§2.2-5101. Virginia Investment Performance Grants.

A. Subject to the appropriation by the General Assembly of sufficient moneys to the Investment Performance Grant subfund, any eligible manufacturer or research and development service that is not eligible for a major eligible employer grant under § [2.2-5102](#) shall be eligible for an investment performance grant as provided in this section.

B. The Partnership shall establish an application process by which eligible manufacturers and research and development services may apply for a grant under this section. An application for a grant under this section shall not be approved until the Partnership has verified that the capital investment has been completed.

C. The amount of the investment performance grant that an eligible manufacturer or research and development service shall be eligible to receive under this section shall

be determined by the Secretary, based on the recommendation of the Partnership, and contingent upon approval by the Governor. The determination of the appropriate amount of an investment performance grant shall be based on the application of guidelines that establish criteria for correlating the amount of a grant to the relative value to the Commonwealth of the eligible investment.

D. The Partnership shall assist the Secretary in developing objective guidelines that shall be used in awarding investment performance grants. No grant shall be awarded until the Secretary has provided copies of such guidelines for review to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance. The preparation of the guidelines shall be exempt from the requirements of Article 2 (§ [2.2-4006](#) et seq.) of the Administrative Process Act. The guidelines shall require determinations regarding the amount of investment performance grants to address:

1. The number of new jobs created by the capital investment;
2. The wages paid for the new jobs and the amount by which wages exceed the average manufacturing wage for the locality or region;
3. The extent to which the capital investment produces (i) measurable increases in capacity, productivity, or both; (ii) measurable decreases in the production of flawed product; or (iii) measurable advances in knowledge, research, or the application of research findings for the creation of new or significantly improved products or processes that support manufacturing;
4. The amount of the capital investment;
5. The net present value of benefits to Virginia;
6. The amount of other incentives offered by the Commonwealth and the locality; and
7. The importance of the manufacturing or research and development facility to the economy of the locality or region.

The guidelines shall also address the eligibility of manufacturers or research and development services that make a capital investment in phases over a period of years, and limits on eligibility for multiple grants by the same manufacturer or research and development service within stated periods of time.

E. The amount of an investment performance grant to any eligible manufacturer under this section shall not exceed \$3 million or 10 percent of the amount

appropriated by the General Assembly to the Investment Performance Grant subfund in the year that the terms of a grant are determined. For all eligible projects awarded grants on or after July 1, 2005, and before July 1, 2009, the amount of an investment performance grant to any recipient under this section shall not exceed \$1.5 million. For eligible projects awarded grants on or after July 1, 2009, the amount of an investment performance grant to any recipient under this section shall not exceed \$3 million, except for eligible projects that demonstrate extraordinary characteristics described in guidelines implementing this chapter the amount of an investment performance grant to any such recipient under this section shall not exceed \$5 million.

F. For all eligible projects awarded grants before July 1, 2005, the aggregate amount of investment performance grants approved under this section in any year shall not exceed \$6 million, and the aggregate amount of grants outstanding to all eligible manufacturers under this section for all years shall at no time exceed \$30 million. For all such grants awarded prior to that date, the annual obligations of the Commonwealth to make grant payments to individual eligible manufacturers under this section shall not exceed \$600,000. For all eligible projects awarded grants on or after July 1, 2005, and before July 1, 2009, the aggregate amount of investment performance grants approved under this section in any year shall not exceed \$3 million, and the aggregate amount of such grants awarded after that date and outstanding at any time shall not exceed \$15 million. For all such grants awarded on or after that date, the annual obligations of the Commonwealth to make grant payments to individual recipients under this section shall not exceed \$300,000. For all eligible projects awarded grants on or after July 1, 2009, and before July 1, 2015, the aggregate amount of investment performance grants approved under this section in any year shall not exceed \$6 million, and the aggregate amount of such grants awarded on or after July 1, 2009, and before July 1, 2015, and outstanding at any time shall not exceed \$30 million. For all such grants awarded on or after July 1, 2009, and before July 1, 2015, the annual obligations of the Commonwealth to make grant payments to individual recipients under this section shall not exceed \$1 million. For all eligible projects awarded grants on or after July 1, 2015, the aggregate amount of investment performance grants approved under this section in any year shall not exceed \$6 million, and the aggregate amount of such grants awarded on or after July 1, 2015, and outstanding at any time shall not exceed \$20 million. For all such grants awarded on or after July 1, 2015, the annual obligations of the Commonwealth to make grant payments to individual recipients under this section shall not exceed \$1 million.

G. Any eligible manufacturer or research and development service shall be eligible to receive a grant from the Fund in five equal installments beginning in the third year after the capital investment is completed and the Partnership has verified that the requirements applicable to such grant have been satisfied. Any eligible manufacturer or research and development service located in a fiscally distressed area of the State, as defined in the guidelines implementing this chapter, shall be eligible to begin receiving grants in the second year after the capital investment is completed and verified.

1999, cc. [875](#), [961](#), § 2.1-548.43:3; 2000, c. [571](#); 2001, c. [844](#); 2003, c. [17](#); 2005, c. [431](#); 2007, c. [384](#); 2009, cc. [267](#), [423](#); 2015, c. [761](#).

§2.2-5102. Performance grant for major eligible manufacturers.

A. As used in this section, "major eligible employer" means any eligible manufacturer or other nonmanufacturing basic employer that makes a capital investment of at least \$100 million that results in the creation of at least 1,000 new jobs. For corporate headquarters and other basic employers that make a capital investment of at least \$100 million and create at least 400 new jobs paying at least twice the prevailing average wage for the area, the 1,000 job requirement may be reduced in proportion to the factor by which the wages for the new jobs exceed the prevailing average wage for the area. All other provisions of this chapter shall apply equally to major eligible manufacturers and major eligible nonmanufacturing basic employers, in this chapter collectively referred to as "major eligible employers."

B. Subject to the appropriation by the General Assembly of sufficient moneys to the Major Eligible Employer Grant subfund, any major eligible employer shall be eligible for a grant under this section of up to \$25 million, to be payable from such subfund over a period of not less than five years and not more than seven years, commencing in the third year following the approval by the Secretary of the employer's grant application.

C. The Partnership shall establish an application process by which major eligible employers may apply for a grant under this section. An application for a grant under this section shall not be approved until the Partnership has verified that the capital investment has been completed.

D. The Comptroller shall not draw any warrants to issue checks for grants under this chapter without a specific legislative appropriation as specified in conditions and restrictions on expenditures in the appropriation act. The payment of any grant

under this section shall be in accordance with the terms and conditions set forth in a memorandum of understanding between a major eligible employer and the Commonwealth. These terms and conditions shall supplement the provisions of this chapter and shall include but not be limited to the terms of the payment of the grant. The payment of the grant shall be made in full or in proportion to a major eligible employer's fulfillment of the terms of the memorandum of understanding. The Secretary shall consult with the House Committee on Appropriations and the Senate Committee on Finance prior to entering into any memorandum of understanding. The House Committee on Appropriations and the Senate Committee on Finance shall have the opportunity to review any memorandum of understanding prior to its execution by the Commonwealth.

1999, cc. [875](#), [961](#), § 2.1-548.43:4; 2000, c. [571](#); 2001, c. [844](#); 2003, c. [17](#); 2015, c. [761](#).

§2.2-5102.1. Virginia Economic Development Incentive Grants.

A. Subject to the appropriation by the General Assembly of sufficient moneys to the Economic Development Incentive Grant subfund, any eligible company that meets the requirements of this section and is not awarded a grant under § [2.2-5101](#) or [2.2-5102](#) for the same project shall be eligible to apply for an economic development incentive grant as provided in this section.

B. The Partnership shall establish an application process by which eligible companies may apply for a grant under this section. An application for a grant under this section shall not be approved for payment until the Partnership has verified that the applicable requirements of the memorandum of agreement have been satisfied.

C. The amount of the economic development incentive grant that an eligible company may receive under this section shall be determined at the sole discretion of the Governor based on the recommendation of the Secretary. The determination of the appropriate amount for an economic development incentive grant shall be based on the application of guidelines that establish criteria for correlating the amount of a grant to the relative value to the Commonwealth of the new investment and employment.

D. The Partnership shall assist the Secretary in developing objective guidelines that shall be used in awarding economic development incentive grants. No grant shall be awarded until the Secretary has provided copies of such guidelines for review to the chairmen of the House Committee on Appropriations and the Senate Committee on

Finance. The preparation of the guidelines shall be exempt from the requirements of Article 2 (§ [2.2-4006](#) et seq.) of the Administrative Process Act (§ [2.2-4000](#) et seq.). The guidelines shall require determinations regarding the amount of investment performance grants to address:

1. The number of new jobs created by the capital investment;
2. The wages paid for the new jobs and the amount by which wages exceed the average wage for the locality or region;
3. The amount of the capital investment;
4. The net present value of benefits to Virginia;
5. The amount of other incentives offered by the Commonwealth and the locality; and
6. The importance of the facility to the economy of the locality or region.

The guidelines shall also address the eligibility of companies that make a capital investment in phases over a period of years, and limits on eligibility for multiple grants by the same company within stated periods of time.

E. For eligible projects awarded grants prior to July 1, 2010, the aggregate amount of economic development incentive grants payable under this section in any fiscal year shall not exceed \$6 million, and the aggregate amount of such grants outstanding that were awarded prior to July 1, 2010, shall not exceed \$30 million. For eligible projects awarded grants on or after July 1, 2010, the aggregate amount of economic development incentive grants payable under this section in any fiscal year shall not exceed \$6 million and the aggregate amount of such grants outstanding on or after July 1, 2010, shall not exceed \$30 million.

F. Any eligible company shall be eligible to receive a grant from the Fund in no fewer than five installments beginning in the third year after the Partnership has verified that the requirements applicable to such grant have been satisfied. All such terms shall be negotiated and set forth in a memorandum of agreement.

G. The Comptroller shall not draw any warrants to issue checks for grants under this chapter without a specific legislative appropriation as specified in conditions and restrictions on expenditures in the appropriation act. The payment of any grant under this section shall be in accordance with the terms and conditions set forth in a memorandum of agreement between a major eligible employer and the

Commonwealth. These terms and conditions shall supplement the provisions of this chapter and shall include but not be limited to the terms of the payment of the grant. The payment of the grant shall be made in full or in proportion to a major eligible employer's fulfillment of the terms of the memorandum of agreement.

2005, c. [431](#); 2007, c. [576](#); 2010, cc. [735](#), [768](#).

§2.2-5103. Requirements for grants generally.

A. Any eligible manufacturer, eligible company, or research and development service eligible to apply for a grant under this chapter shall provide evidence, satisfactory to the Secretary, of the amount of the capital investment, the number of new jobs created as a result of the capital investment and such other evidence that requirements of this chapter have been satisfied. An eligible manufacturer, eligible company, or research and development service whose application has been approved shall continue to comply with the requirements for grant eligibility during the grant payment period. The Partnership shall verify that the conditions for approval of any grant have been satisfied. The Partnership may require that as a condition of receiving any grant or loan incentive that is based on employment goals, a recipient manufacturer, company, or research and development service must submit copies of employer quarterly payroll reports provided to the Virginia Employment Commission to verify the employment status of any position included in the employment goal.

B. Prior to any grant payment, the Partnership shall certify to (i) the Comptroller and (ii) each applicant the amount of the grant to which such applicant is entitled. Subject to the appropriation by the General Assembly of sufficient moneys to the appropriate subfund, payment of such grant shall be made from the subfund by check issued by the State Treasurer on warrant of the Comptroller within 60 days of certification.

C. As a condition of receipt of a grant, a major eligible employer or eligible company shall make available to the Partnership for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied. All such documents appropriately identified by the major eligible employer or eligible company shall be considered confidential and proprietary.

D. Within 30 days of each calendar quarter, the Secretary shall provide a report to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance that shall include, but is not limited to, the following information: the name

of the eligible manufacturer, eligible company, or research and development service determined to be eligible for a grant; the product it manufactures, the nature of the research, or the products it produces or services it provides, as applicable; the locality of the manufacturing, research and development, or other facility; the amount of the grant made or committed from the Fund; the number of new jobs created or projected to be created; the amount of the manufacturer's, eligible company's, or research and development service's capital investment; and the timetable for the completion of the capital investment and new jobs created or employment creation, as applicable.

E. The Secretary shall provide grants and commitments from the Fund in an amount not to exceed the dollar amount contained in the Fund. If funds are committed for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve such funds as have been committed, and such funds shall remain in the Fund for those future fiscal years. No grant shall be payable in the years beyond the existing appropriation act unless such funds are currently available in the Fund.

1999, cc. [875](#), [961](#), § 2.1-548.43:5; 2000, c. [571](#); 2001, c. [844](#); 2005, c. [431](#); 2013, c. [547](#).

§2.2-5104. Virginia Investment Partnership Grant Fund.

A. There is established a special fund in the state treasury to be known as the Virginia Investment Partnership Grant Fund. The Fund shall consist of the Major Eligible Employer Grant subfund, the Economic Development Incentive Grant subfund, and the Investment Performance Grant subfund. Each subfund shall include such moneys as may be appropriated by the General Assembly and designated for the respective subfund, and a "sinking fund" including some proportion of the marginal revenues derived from eligible companies receiving grants under this Act. The Fund shall be used solely for the payment of investment incentive grants to eligible Virginia business entities pursuant to this chapter. The Partnership shall administer the Virginia Investment Partnership Grant Fund.

B. The Partnership shall allocate, from the appropriate subfund, moneys in the following order of priority: (i) first to unpaid grant amounts carried forward from prior years because eligible manufacturers did not receive the full amount of any grant to which they were eligible in a prior year and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved

applicants in any class of priority are eligible, the moneys in the appropriate subfund shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to which an approved applicant is eligible and the amount of money in the subfund available for allocation to such class.

C. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any year, it shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the Partnership to the following year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.

D. The Partnership shall determine the amount of the grants to be allocated to eligible applicants by June 30 of each year. The Partnership shall then certify to the Comptroller the amount of grant an eligible manufacturer shall receive. Payments shall be made by check issued by the State Treasurer on warrant of the Comptroller.

E. All excess funds remaining in any given year shall be carried forward on the books of the Fund for use in subsequent years.

F. Actions of the Partnership relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) pursuant to subdivision B 4 of § [2.2-4002](#).

1999, cc. [875](#), [961](#), § 2.1-548.43:6; 2000, c. [571](#); 2001, c. [844](#); 2005, c. [431](#).

Virginia Lease-Purchase Agreement Act

§59.1-207.17. Title.

This chapter may be cited as the "Virginia Lease-Purchase Agreement Act."

1988, c. 24.

§59.1-207.18. Definitions.

As used in this chapter:

"Advertisement" means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a lease-purchase agreement.

"Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the lease-purchase agreement.

"Consumer" means a natural person who rents personal property under a lease-purchase agreement to be used primarily for personal, family or household purposes.

"Consummation" means the time a consumer becomes contractually obligated on a lease-purchase agreement.

"Lessor" means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement.

"Lease-purchase agreement" means an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of four months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue leasing or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

1988, c. 24.

§59.1-207.19. Inapplicability of other laws; exempted transactions.

A. Lease-purchase agreements that comply with this chapter are not governed by the laws relating to:

1. A home solicitation sale as defined in § [59.1-21.1](#);
2. A transaction described in § [6.2-311](#); or
3. A security interest as defined in subdivision (35) of § [8.1A-201](#).

B. This chapter does not apply to the following:

1. Lease-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;
2. A lease of a safe deposit box;
3. A lease or bailment of personal property which is incidental to the lease of real property, and which provides that the consumer has no option to purchase the leased property; or
4. A lease of an automobile.

1988, c. 24; 2003, c. [353](#); 2010, c. [794](#).

§59.1-207.20. General requirements of disclosure.

A. The lessor shall disclose to the consumer the information required by this chapter. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by such disclosures.

B. The disclosures shall be made at or before consummation of the lease-purchase agreement.

C. The disclosures shall be made clearly and conspicuously in writing and a copy of the lease-purchase agreement provided to the consumer. The disclosures required under subsection A of § [59.1-207.19](#) shall be made on the face of the contract above the line for the consumer's signature.

D. If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of this chapter.

1988, c. 24.

§59.1-207.21. Disclosures.

A. For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

1. The total number, total amount and timing of all payments necessary to acquire ownership of the property;
2. A statement that the consumer will not own the property until the consumer has made the total payment necessary to acquire ownership;
3. A statement that the consumer is responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed;
4. A brief description of the leased property, sufficient to identify the property to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of this chapter;
5. A brief description of any damages to the leased property;
6. A statement of the cash price of the property. Where the agreement involves a lease of five or more items as a set, in one agreement, a statement of the aggregate cash price of all items shall satisfy this requirement;

7. The total of initial payments paid or required at or before consummation of the agreement or delivery of the property, whichever is later;
8. A statement that the total of payments does not include other charges, such as late payment, default, pickup, and reinstatement fees, which fees shall be separately disclosed in the contract;
9. A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option and the price, formula or method for determining the price at which the property may be so purchased;
10. A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the lease property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty;
11. The date of the transaction and the identities of the lessor and consumer;
12. A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any lease term along with any past due rental payments; and
13. Notice of the right to reinstate an agreement as herein provided.

B. With respect to matters specifically governed by the Federal Consumer Credit Protection Act, compliance with such Act satisfies the requirements of this section.

1988, c. 24.

§59.1-207.22. Prohibited practices.

A lease-purchase agreement may not contain:

1. A confession of judgment;
2. A negotiable instrument;
3. A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor pursuant to the lease-purchase agreement;
4. A wage assignment;
5. A waiver by the consumer of claims or defenses; or

6. A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises or to commit any breach of the peace in the repossession of goods.

1988, c. 24.

§59.1-207.23. Reinstatement.

A. A consumer who fails to make a timely rental payment may reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of (i) all past due rental charges, (ii) if the property has been picked up, the reasonable costs of pickup and redelivery, and (iii) any applicable late fee, within five days of the renewal date if the consumer pays monthly, or within two days of the renewal date if the consumer pays more frequently than monthly.

B. In the case of a consumer who has paid less than two-thirds of the total of payments necessary to acquire ownership and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable reinstatement period set forth in subsection A of this section, the consumer may reinstate the agreement during a period of not less than twenty-one days after the date of the return of the property.

C. In the case of a consumer who has paid two-thirds or more of the total of payments necessary to acquire ownership, and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable period set forth in subsection A of this section, the consumer may reinstate the agreement during a period of not less than forty-five days after the date of the return of the property.

D. Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

1988, c. 24.

§59.1-207.24. Receipts and accounts.

A lessor shall provide the consumer a written receipt for each payment made by cash or money order.

1988, c. 24.

§59.1-207.25. Renegotiations and extensions.

A. A renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and consumer. A renegotiation shall be considered a new agreement requiring new disclosures.

However, events such as the following shall not be treated as renegotiations:

1. The addition or return of property in a multiple-item agreement or the substitution of the lease property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent;
2. A deferral or extension of one or more periodic payments, or portions of a periodic payment;
3. A reduction in charges in the lease or agreement; and
4. A lease or agreement involved in a court proceeding.

B. No disclosures are required for any extension of a lease-purchase agreement.

1988, c. 24.

§59.1-207.26. Advertising.

A. If an advertisement for a lease-purchase agreement refers to or states the dollar amount of any payment and the right to acquire ownership for any one specific item, the advertisement shall also clearly and conspicuously state the following items, as applicable:

1. That the transaction advertised is a lease-purchase agreement;
2. The total of payments necessary to acquire ownership; and
3. That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

B. Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

C. The provisions of subsection A of this section shall not apply to an advertisement which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or in any similar directory of business.

1988, c. 24.

§59.1-207.27. Enforcement; penalties.

Any violation of this chapter shall constitute a prohibited practice under the provisions of § [59.1-200](#) and shall be subject to any and all of the enforcement provisions of Chapter 17 (§ [59.1-196](#) et seq.) of this title.

1988, c. 24.

Virginia Limited Liability Company Act

§13.1-1000. Short title.

This chapter shall be known as the Virginia Limited Liability Company Act.

1991, c. 168 .

§13.1-1001. Reservation of power to amend or repeal.

The General Assembly shall have the power to amend or repeal all or part of this chapter at any time and all domestic and foreign limited liability companies subject to this chapter shall be governed by the amendment or repeal.

1991, c. 168 .

§13.1-1001.1. Construction.

A. Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

B. Sections 9-406 and 9-408 of the Uniform Commercial Code, including §§ [8.9A-406](#) and [8.9A-408](#), do not apply to any interest in a limited liability company, including all rights, powers and interests arising under the articles of organization or operating agreement of a limited liability company or this chapter. This provision prevails over §§ [8.9A-406](#) and [8.9A-408](#), and is expressly intended to permit the enforcement as a fundamental matter of contract among the members of a limited liability company of any provision of an operating agreement that would otherwise be ineffective under § 9-406 or § 9-408 of the Uniform Commercial Code .

C. This chapter shall be construed in furtherance of the policies of giving maximum effect to the principle of freedom of contract and of enforcing operating agreements.

1993, c. 113; 2003, c. [340](#).

§13.1-1002. Definitions.

As used in this chapter:

"Articles of organization" means all documents constituting, at any particular time, the articles of organization of a limited liability company. The articles of organization include the original articles of organization, the original certificate of organization issued by the Commission, and all amendments to the articles of organization. When the articles of organization have been restated pursuant to any articles of restatement, amendment, domestication, or merger, the articles of organization include only the restated articles of organization without the articles of restatement, amendment, domestication, or merger.

"Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code.

"Commission" means the State Corporation Commission of Virginia.

"Contribution" means any cash, property or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in his capacity as a member.

"Distribution" means a direct or indirect transfer of money or other property, or inurrence of indebtedness by a limited liability company, to or for the benefit of its members in respect of their interests.

"Domestic business trust" has the same meaning as specified in § [13.1-1201](#).

"Domestic corporation" has the same meaning as specified in § [13.1-603](#).

"Domestic limited partnership" has the same meaning as specified in § [50-73.1](#).

"Domestic nonstock corporation" has the same meaning as "domestic corporation" as specified in § [13.1-803](#).

"Domestic other business entity" means a partnership, limited partnership, business trust, stock corporation, or nonstock corporation that is formed, organized, or incorporated under the laws of the Commonwealth.

"Domestic partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under § [50-73.88](#), or predecessor law of the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a registered limited liability partnership.

"Domestic stock corporation" has the same meaning as "domestic corporation" as specified in § [13.1-603](#).

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by the recipient through an automated process. Any term used in this definition that is defined in § [59.1-480](#) of the Uniform Electronic Transactions Act (§ [59.1-479](#) et seq.) shall have the meaning set forth in that section.

"Eligible interests" means, as to a partnership, partnership interest as specified in § [50-73.79](#); as to a limited partnership, partnership interest as specified in § [50-73.1](#); as to a business trust, the beneficial interest of a beneficial owner as specified in § [13.1-1226](#); as to a stock corporation, shares as specified in § [13.1-603](#); or, as to a nonstock corporation, membership interest as specified in § [13.1-803](#).

"Foreign business trust" has the same meaning as specified in § [13.1-1201](#).

"Foreign corporation" has the same meaning as specified in § [13.1-603](#).

"Foreign limited liability company" means an entity, excluding a foreign business trust, that is an unincorporated organization that is organized under laws other than the laws of the Commonwealth and that is denominated by that law as a limited liability company, and that affords to each of its members, pursuant to the laws under which it is organized, limited liability with respect to the liabilities of the entity.

"Foreign limited partnership" has the same meaning as specified in § [50-73.1](#).

"Foreign nonstock corporation" has the same meaning as "foreign corporation" as specified in § [13.1-803](#).

"Foreign other business entity" means a partnership, limited partnership, business trust, stock corporation, or nonstock corporation that is formed, organized, or incorporated under the laws of a state or jurisdiction other than the Commonwealth.

"Foreign partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability partnership.

"Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and [50-73.79](#).

"Foreign stock corporation" has the same meaning as "foreign corporation" as specified in § [13.1-603](#).

"Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated organization organized and existing under this chapter, or that has become a domestic limited liability company of the Commonwealth pursuant to § [13.1-1010.3](#) as it existed prior to its repeal, even though also being a non-United States entity organized under laws other than the laws of the Commonwealth, or that has become a domestic limited liability company of the Commonwealth pursuant to § [56-1](#), even though also being a non-United States entity organized under laws other than the laws of the Commonwealth, or that has become a domestic limited liability company of the Commonwealth pursuant to § [13.1-1010.1](#) as it existed prior to its repeal, or that has become a domestic limited liability company of the Commonwealth pursuant to Article 12.2 (§ [13.1-722.8](#) et seq.) of Chapter 9, Article 17.1 (§ [13.1-944.1](#) et seq.) of Chapter 10, Article 14 (§ [13.1-1074](#) et seq.) or Article 15 (§ [13.1-1081](#) et seq.) of this chapter, or Article 12 (§ [13.1-1264](#) et seq.) of Chapter 14. A limited liability company's status for federal tax purposes shall not affect its status as a distinct entity organized and existing under this chapter.

"Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement.

"Manager-managed limited liability company" means a limited liability company that is managed by a manager or managers as provided for in its articles of organization or an operating agreement.

"Member" means a person that has been admitted to membership in a limited liability company as provided in § [13.1-1038.1](#) and that has not ceased to be a member.

"Member-managed limited liability company" means a limited liability company that is not a manager-managed limited liability company.

"Membership interest" or "interest" means a member's share of the profits and the losses of the limited liability company and the right to receive distributions of the limited liability company's assets.

"Non-United States entity" means a foreign limited liability company (other than one formed under the laws of a state), or a corporation, business trust or association, real estate investment trust, common-law trust, or any other unincorporated business, including a partnership, formed, incorporated, organized, created or that otherwise

came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

"Operating agreement" means an agreement of the members as to the affairs of a limited liability company and the conduct of its business, or a writing or agreement of a limited liability company with one member that satisfies the requirements of subdivision A 2 of § [13.1-1023](#).

"Person" has the same meaning as specified in § [13.1-603](#).

"Principal office" means the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign limited liability company are located or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the limited liability company. The designation of the principal office in the most recent statement of change filed pursuant to § [13.1-1018.1](#) shall be conclusive for the purpose of this chapter.

"State," when referring to a part of the United States, includes a state, commonwealth and the District of Columbia, and their agencies and governmental subdivisions; and a territory or insular possession, and their agencies and governmental subdivisions, of the United States.

"United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

1991, c. 168; 1992, cc. 574, 575; 1993, c. 113; 1995, c. [168](#); 1996, c. [265](#); 1997, c. [190](#); 2001, c. [548](#); 2002, cc. [288](#), [621](#); 2003, c. [340](#); 2005, c. [255](#); 2006, c. [912](#); 2007, cc. [233](#), [639](#); 2009, cc. [450](#), [763](#); 2016, c. [288](#).

§13.1-1003. Filing requirements.

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this chapter requires or permits to be filed with the Commission.

C. The document shall contain the information required by this chapter. It may contain other information as well.

D. The document shall be typewritten or printed or, if electronically transmitted, shall be in a format that can be retrieved or reproduced in typewritten or printed

form. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals. The articles of organization, duly authenticated by the official having custody of the applicable records in the state or country under whose law the limited liability company is formed, which are required of foreign limited liability companies, need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be signed in the name of the domestic or foreign limited liability company:

1. By any manager or other person who has been delegated the right and power to manage the business and affairs of the limited liability company, or if no managers or such other persons have been selected, by any member of the limited liability company;

2. If the limited liability company has not been formed, or has been formed without any managers or members and no members have been admitted, by an organizer;

3. In the case of a foreign limited liability company, by a person who is authorized to sign an amendment to the articles of organization or other constituent documents delivered for filing to the Secretary of State or other official having custody of limited liability company records in the state or other jurisdiction under whose law it is formed; or

4. If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile.

H. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

I. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee and any registration fee required by this chapter.

J. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § [59.1-496](#).

1991, c. 168; 1995, c. [70](#); 2000, cc. [58](#), [995](#); 2003, cc. [340](#), [379](#); 2006, c. [748](#); 2013, c. [17](#).

§13.1-1003.1. Filings with the Commission pursuant to reorganization.

A. Notwithstanding anything to the contrary contained in § [13.1-1003](#), [13.1-1011](#), [13.1-1014](#), [13.1-1014.1](#), [13.1-1050](#), [13.1-1072](#), or [13.1-1085](#), whenever, pursuant to any applicable statute of the United States relating to reorganizations of limited liability companies, a plan of reorganization of a limited liability company has been confirmed by the decree or order of a court of competent jurisdiction, the limited liability company may put into effect and carry out the plan and decrees of the court relative thereto (i) through one or more amendments to the limited liability company's articles of organization containing terms and conditions permitted by this chapter; (ii) through a plan of merger or entity conversion; or (iii) through cancellation, without action by the managers or members, to carry out the plan of reorganization decreed or ordered by the court of competent jurisdiction under federal statute.

B. The individual or individuals designated by the court shall deliver to the Commission for filing articles of amendment, restatement, merger, entity conversion, or cancellation, which, in addition to the matters otherwise required or permitted by law to be set forth therein, shall set forth:

1. The name of the limited liability company;
2. Any provision relating to the amendment or amendments, plan of merger or entity conversion, or cancellation approved by the court;
3. The name of the court and the date of the court's order or decree approving the amendment, plan of merger or entity conversion, or cancellation;
4. The title and case number, if any, of the reorganization proceeding in which the order or decree was entered; and
5. A statement that the court had jurisdiction of the proceeding under federal statute.

C. If the Commission finds that the articles of amendment, restatement, merger, entity conversion, or cancellation comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment, restatement, merger, entity conversion, or cancellation.

D. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

2016, c. [288](#).

§13.1-1004. Issuance of certificate by Commission; recordation of documents.

A. Whenever this chapter conditions the effectiveness of a document upon the issuance of a certificate by the Commission to evidence the effectiveness of the document, the Commission shall by order issue the certificate if it finds that the document complies with the provisions of this chapter and that all required fees have been paid. The Commission shall admit any such certificate to record in its office.

B. The existence of a limited liability company shall begin at the time the Commission issues a certificate of organization unless a later date and time are specified as provided by subsection D of this section. The certificate of organization shall be conclusive evidence that all conditions precedent required to be performed by the person(s) forming the limited liability company have been complied with and that the limited liability company has been formed under this chapter.

C. Whenever the Commission is directed to admit any document to record in its office, it shall cause it to be spread upon its record books or to be recorded or reproduced in any other manner the Commission may deem suitable. Except as otherwise provided by law, the Commission may furnish information from and provide access to any of its records by any means the Commission may deem suitable.

D. 1. A certificate issued by the Commission is effective at the time such certificate is issued, unless the certificate relates to articles filed with the Commission and the articles state that the certificate shall become effective at a later time and date specified in the articles. In that event, the certificate shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the fifteenth day after the date on which the certificate is issued by the Commission. Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

2. Notwithstanding subdivision 1 of this subsection, any certificate that has a delayed effective time and date shall not become effective if, prior to the effective time and date, the parties to the articles to which the certificate relates file a request for cancellation with the Commission, and the Commission, by order, cancels the certificate.

3. Notwithstanding subdivision 1 of this subsection, for purposes of §§ [13.1-1012](#) and [13.1-1054](#), any certificate that has a delayed effective date shall be deemed to be effective when the certificate is issued.

E. Notwithstanding any other provision of law to the contrary, the Commission shall have the power to act upon a petition filed by a limited liability company at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person without authority to act for the limited liability company.

1991, c. 168; 1996, c. [265](#); 2010, c. [703](#).

§13.1-1005. Fees.

The Commission shall charge and collect the following fees:

1. For filing any one of the following, the fee shall be \$100:

a. Articles of organization.

b. An application for registration as a foreign limited liability company.

c. Articles of entity conversion to convert a domestic corporation to a limited liability company.

d. Articles of domestication.

2. For filing any one of the following, the fee shall be \$25:

a. Articles of amendment.

b. Articles of cancellation.

c. Articles of correction referred to in § [13.1-1011.1](#), a copy of an amendment or correction referred to in § [13.1-1055](#), or an amended application for registration referred to in § [13.1-1055](#), provided that an amended application shall not require a separate fee when it is filed with a copy of an amendment or a correction referred to in § [13.1-1055](#).

d. A copy of an instrument of merger of a foreign limited liability company referred to in § [13.1-1060](#).

e. Articles of merger.

f. A copy of an instrument of entity conversion of a foreign limited liability company holding a certificate of registration to transact business in the Commonwealth.

g. Articles of restatement.

h. Articles of organization surrender.

i. An application for a certificate of cancellation of a foreign limited liability company.

3. For filing any one of the following, the fee shall be \$10:

a. An application to reserve or to renew the reservation of a name for use by a domestic or foreign limited liability company.

b. A notice of the transfer of a name reserved for use by a domestic or a foreign limited liability company.

4. For issuing a certificate pursuant to § [13.1-1067](#), \$6 for each certificate.

1991, c. 168; 1992, cc. 574, 575; 1993, c. 113; 1995, c. [368](#); 1998, c. [432](#); 2001, c. [545](#); 2002, c. [1](#); 2003, c. [379](#); 2004, c. [274](#); 2005, c. [255](#); 2006, cc. [748](#), [912](#); 2007, c. [810](#); 2008, c. [108](#); 2012, c. [130](#).

§13.1-1006. Penalty for signing false documents.

A. It shall be unlawful for any person to sign a document he knows is false in any material respect with intent that the document be delivered to the Commission for filing.

B. Any person who violates the provisions of this section shall be guilty of Class 1 misdemeanor.

1991, c. 168 .

§13.1-1007. Unlawful to transact or offer to transact business as a limited liability company unless authorized.

It shall be unlawful for any person to transact business in this Commonwealth as a limited liability company or to offer or advertise to transact business in this Commonwealth as a limited liability company unless the alleged limited liability company is either a domestic limited liability company or a foreign limited liability company authorized to transact business in this Commonwealth. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

1991, c. 168; 2013, c. [17](#).

§13.1-1008. Purposes.

Every limited liability company formed under this chapter has the purpose of engaging in any lawful business, purpose, or activity, whether or not such business, purpose, or activity is carried on for profit, except as otherwise provided by the law of this Commonwealth, unless a more limited purpose is set forth in the articles of organization.

1991, c. 168; 1992, c. 574; 2002, c. [288](#); 2004, c. [601](#).

§13.1-1009. Powers.

Unless the articles of organization provide otherwise, every limited liability company has perpetual duration and succession in its name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

1. To sue and be sued, complain and defend in its name;
2. To purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
3. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
4. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other person;
5. To make contracts and guaranties, incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;
6. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
7. To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this Commonwealth;
8. To elect and appoint managers, employees and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit;
9. To pay pensions and establish pension plans, pension trusts, profit sharing plans, and benefit and incentive plans for all or any of the current or former managers,

members, employees, and agents of the limited liability company or any of its subsidiaries;

10. To make donations to the public welfare or for religious, charitable, scientific, literary or educational purposes;

11. To make payments or donations, or do any other act, not inconsistent with this section or any other applicable law, that furthers the business and affairs of the limited liability company;

12. To pay compensation, or to pay additional compensation to any or all managers, members, and employees on account of services previously rendered to the limited liability company, whether or not an agreement to pay such compensation was made before such services were rendered;

13. To insure for its benefit the life of any of its managers, members, or employees, to insure the life of any member for the purpose of acquiring at his death the interest owned by such member and to continue such insurance after the relationship terminates;

14. To cease its activities, wind up its affairs, and proceed to cancel its existence;

15. To enter into partnership agreements, joint ventures, or other associations of any kind with any person or persons;

16. Subject to such standards and restrictions, if any, as are set forth in its articles of organization or an operating agreement, to indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever, and to pay for or reimburse any member or manager or other person for reasonable expenses incurred by such a person who is a party to a proceeding in advance of final disposition of the proceeding;

17. To transact any lawful business that a corporation, partnership, or other business entity may conduct under the laws of the Commonwealth subject, however, to any and all laws and restrictions that govern or limit the conduct of such activity by such corporation, partnership or other business entity; and

18. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized.

1991, c. 168; 2004, c. [601](#); 2006, c. [912](#); 2008, c. [108](#); 2013, c. [17](#).

§13.1-1010. Organizers.

One or more persons may act as organizers of a limited liability company by signing and delivering articles of organization to the Commission for filing. An organizer need not be a member of the limited liability company after formation has occurred.

1991, c. 168; 2006, c. [748](#); 2016, c. [288](#).

§13.1-1010.1. Repealed.

Repealed by Acts 2016, c. [288](#), cl. 2, effective July 1, 2016.

§13.1-1011. Articles of organization.

A. The articles of organization shall set forth:

1. A name for the limited liability company that satisfies the requirements of § [13.1-1012](#);

2. The post office address, including the street and number, if any, of the limited liability company's initial registered office, the name of the city or county in which it is located, the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of Virginia and one of the following: a member or manager of the limited liability company, a member or manager of a limited liability company that is a member or manager of the limited liability company, an officer or director of a corporation that is a member or manager of the limited liability company, a general partner of a general or limited partnership that is a member or manager of the limited liability company, a trustee of a trust that is a member or manager of the limited liability company, or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth; and

3. The post office address, including the street and number, if any, of the principal office of the limited liability company, which may be the same as the registered office, but need not be within the Commonwealth.

B. The articles of organization may set forth any other matter that under this chapter is permitted to be set forth in an operating agreement of a limited liability company.

C. The articles of organization need not set forth any of the powers enumerated in this chapter.

D. If the Commission finds that the articles of organization comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of organization.

1991, c. 168; 1992, c. 574; 1993, c. 113; 1997, c. [190](#); 2000, c. [162](#); 2001, cc. [517](#), [541](#); 2004, c. [314](#); 2006, c. [748](#); 2009, c. [763](#).

§13.1-1011.1. Articles of correction.

A. A limited liability company may correct its articles of organization at any time to correct a name or address specified in the articles of organization that was inadvertently or improperly set forth.

B. For a correction to the articles of organization of a limited liability company to be adopted, the correction shall be adopted by a majority vote of the managers, provided that if the limited liability company has been formed without any managers and no managers have been appointed, the correction may be adopted by a majority vote of the members entitled to vote thereon, unless the articles of organization require a greater vote, provided that if the limited liability company has been formed without any managers or members and no members have been admitted, a correction may be adopted by a majority vote of the organizers of the limited liability company.

C. To correct its articles of organization, a limited liability company shall file with the Commission articles of correction setting forth:

1. The name of the limited liability company;
2. The text of each correction;
3. A statement of the nature of the error necessitating each correction; and
4. A statement of the manner in which the correction was adopted.

If the Commission finds that the articles of correction comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of correction.

1998, c. [432](#); 2003, c. [379](#); 2006, c. [748](#).

§13.1-1012. Name.

A. A limited liability company name shall contain the words "limited company" or "limited liability company" or their abbreviations "L.C.," "LC," "L.L.C.," or "LLC."

B. A limited liability company name shall not contain:

1. Any word, abbreviation, or combination of characters that states or implies the limited liability company is a corporation or a limited partnership; or

2. Any word or phrase the use of which is prohibited by law for such company.

C. Except as authorized by subsection D, a limited liability company name shall be distinguishable upon the records of the Commission from:

1. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in the Commonwealth;

2. A limited liability company name reserved under § [13.1-1013](#);

3. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in the Commonwealth;

4. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of the Commonwealth or authorized to transact business in the Commonwealth;

5. A corporate name reserved or registered under § [13.1-631](#), [13.1-632](#), [13.1-830](#) or [13.1-831](#);

6. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in the Commonwealth;

7. The name of a domestic business trust or a foreign business trust registered to transact business in the Commonwealth;

8. A business trust name reserved under § [13.1-1215](#);

9. The designated name adopted by a foreign business trust because its real name is unavailable for use in the Commonwealth;

10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in the Commonwealth;

11. A limited partnership name reserved under § [50-73.3](#); and

12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in the Commonwealth.

D. A domestic limited liability company may apply to the Commission for authorization to use a name that is not distinguishable upon its records from one or more

of the names described in subsection C. The Commission shall authorize use of the name applied for if the other entity consents to the use in writing and submits an undertaking in form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying limited liability company.

E. The use of assumed names or fictitious names, as provided for in Chapter 5 (§ [59.1-69](#) et seq.) of Title 59.1, is not affected by this chapter.

F. The Commission, in determining whether a limited liability company name is distinguishable upon its records from the name of any of the business entities listed in subsection C, shall not consider any word, phrase, abbreviation, or designation required or permitted under this section and § [13.1-544.1](#), subsection A of § [13.1-630](#), § [13.1-1104](#), subsection A of § [50-73.2](#), and subdivision A 2 of § [50-73.78](#) to be contained in the name of a business entity formed or organized under the laws of the Commonwealth or authorized or registered to transact business in the Commonwealth.

1991, c. 168; 1992, c. 574; 1995, c. [168](#); 2003, cc. [340](#), [592](#); 2005, c. [379](#); 2012, c. [63](#).

§13.1-1013. Reserved name.

A. A person may apply to the Commission to reserve the exclusive use of a limited liability company name, including a designated name for a foreign limited liability company. The limited liability company name applied for need not comply with subsection A of § [13.1-1012](#). If the Commission finds that the limited liability company name applied for is distinguishable upon the records of the Commission, it shall reserve the name for the applicant's exclusive use for a 120-day period.

B. The owner of a reserved limited liability company name may renew the reservation for successive periods of 120 days each by filing with the Commission, during the 45-day period preceding the date of expiration of the reservation, a renewal application.

C. The owner of a reserved limited liability company name may transfer the reservation to another person by delivering to the Commission a notice of the transfer, signed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

D. A reserved limited liability company name may be used by its owner in connection with (i) the formation or an amendment to change the name of a domestic stock or nonstock corporation, limited liability company, business trust, or limited

partnership; (ii) an application for a certificate of authority or registration to transact business in the Commonwealth as a foreign stock or nonstock corporation, limited liability company, business trust, or limited partnership; or (iii) an amended application for such authority or registration, provided that the proposed name complies with the provisions of § [13.1-630](#), [13.1-762](#), [13.1-829](#), [13.1-924](#), [13.1-1012](#), [13.1-1054](#), [13.1-1214](#), [13.1-1244](#), [50-73.2](#), or [50-73.56](#), as the case may be.

1991, c. 168; 2006, c. [505](#); 2015, c. [444](#).

§13.1-1014. Amendment of articles of organization.

A. A limited liability company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles, or to delete a provision not required in the articles. An amendment to the articles of organization may delete the name and address of the registered agent or registered office, or the address of the principal office, if a statement of change described in § [13.1-1016](#) or [13.1-1018.1](#), as the case may be, is on file with the Commission.

B. For an amendment to the articles of organization of a limited liability company to be adopted, the amendment shall be approved by that number or percentage of members required to amend an operating agreement, unless the articles of organization or a written operating agreement otherwise provide, provided that if the limited liability company has been formed without any members and no members have been admitted, an amendment may be adopted by a majority of the persons named as a manager in the articles of organization or, if there are no members or managers, by a majority of the organizers of the limited liability company.

C. To amend its articles of organization, a limited liability company shall file with the Commission articles of amendment setting forth:

1. The name of the limited liability company;
2. The text of each amendment adopted;
3. The date of each amendment's adoption; and
4. A statement that the amendment was adopted by a vote of the members, by the managers or by the organizers in accordance with this chapter, as the case may be.

If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

D. An amendment to articles of organization does not affect a cause of action existing against or in favor of the limited liability company, a proceeding to which the limited liability company is a party, or the existing rights of persons other than members of the limited liability company. An amendment changing a limited liability company's name does not abate a proceeding brought by or against the limited liability company in its former name.

E. A member of a limited liability company does not have a vested property right resulting from any provision of the articles of organization.

1991, c. 168; 1997, c. [190](#); 2001, c. [548](#); 2005, c. [255](#); 2006, cc. [748](#), [912](#); 2008, c. [108](#); 2013, c. [17](#).

§13.1-1014.1. Restatement of articles of organization.

A. A limited liability company may restate its articles of organization at any time.

B. The restatement may include one or more amendments to the articles of organization, including an amendment to delete the name and address of the registered agent or registered office, or the address of the principal office, if a statement of change described in § [13.1-1016](#) or [13.1-1018.1](#), as the case may be, is on file with the Commission.

C. For a restatement of the articles of organization of a limited liability company to be adopted, the restatement shall be approved by that number or percentage of members required to amend an operating agreement, unless the articles of organization or a written operating agreement otherwise provide, provided that if the limited liability company has been formed without any members and no members have been admitted, a restatement may be adopted by a majority of the persons named as a manager in the articles of organization or, if there are no members or managers, by a majority of the organizers of the limited liability company.

D. A limited liability company restating its articles of organization shall file with the Commission articles of restatement setting forth:

1. The name of the limited liability company immediately prior to restatement;
2. Whether the restatement contains an amendment to the articles of organization;
3. The text of the restated articles of organization or amended and restated articles of organization;
4. The date of adoption of the articles of restatement; and

5. A statement that the restatement was adopted by a vote of the members, by the managers or by the organizers in accordance with this chapter, as the case may be.

E. If the Commission finds that the articles of restatement comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of restatement is effective, the restated articles of organization or amended and restated articles of organization supersede the original articles of organization and all amendments to the original articles of organization.

F. The Commission may certify restated articles of organization or amended and restated articles of organization as the articles of organization currently in effect.

2005, c. [255](#); 2006, cc. [748](#), [912](#); 2008, c. [108](#); 2013, c. [17](#).

§13.1-1015. Registered office and registered agent.

A. Each domestic limited liability company and each foreign limited liability company registered pursuant to Article 10 (§ [13.1-1051](#) et seq.) of this chapter shall continuously maintain in the Commonwealth:

1. A registered office that may be the same as any of its places of business; and

2. A registered agent who shall be either:

a. An individual who is a resident of the Commonwealth and is (i) a member or manager of the limited liability company, (ii) a member or manager of a limited liability company that is a member or manager of the limited liability company, (iii) an officer or director of a corporation that is a member or manager of the limited liability company, (iv) a general partner of a general or limited partnership that is a member or manager of the limited liability company, (v) a trustee of a trust that is a member or manager of the limited liability company, or (vi) a member of the Virginia State Bar, and whose business office is identical with the registered office;

b. A domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice, or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return; or

c. A Virginia resident who is an officer of the limited liability company, provided that such a registered agent or a natural person designated by the registered agent shall be available during regular business hours at the registered office to accept service of any process, notice, or demand. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return. As used in this subdivision, "officer of the limited liability company" means any employee of the limited liability company, other than a member or manager of the limited liability company, who has been designated by the limited liability company by instrument in writing as a person upon whom any process, notice, or demand may be served.

B. The sole duty of the registered agent is to forward to the limited liability company or foreign limited liability company at its last known address any process, notice, or demand that is served on the registered agent.

1991, c. 168; 1993, c. 113; 1994, c. [348](#); 1996, c. [265](#); 2000, cc. [162](#), [537](#); 2001, cc. [517](#), [541](#); 2004, c. [314](#); 2005, c. [255](#); 2016, c. [275](#).

§13.1-1016. Change of registered office or registered agent.

A. A limited liability company or a foreign limited liability company registered to transact business in the Commonwealth may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the limited liability company or foreign limited liability company;
2. The address of its current registered office;
3. If the current registered office is to be changed, the post-office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the domestic or foreign limited liability company will be in compliance with the requirements of § [13.1-1015](#).

B. A statement of change shall forthwith be filed with the Commission by a domestic or foreign limited liability company whenever its registered agent dies, resigns or ceases to satisfy the requirements of § [13.1-1015](#).

C. A domestic or foreign limited liability company's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A domestic or foreign limited liability company's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § [13.1-1015](#). In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office address of the domestic or foreign limited liability company on or before the business day following the day on which the statement is filed.

1991, c. 168; 2003, c. [597](#); 2009, c. [450](#); 2010, c. [434](#).

§13.1-1017. Resignation of registered agent.

A. The registered agent of a domestic or foreign limited liability company may resign the agency appointment by signing and filing with the Commission a statement of resignation accompanied by a certification that the registered agent shall mail a copy thereof to the principal office of the domestic or foreign limited liability company by certified mail on or before the business day following the day on which the statement is filed. The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

1991, c. 168; 2010, c. [434](#).

§13.1-1018. Service on limited liability company.

A. A domestic or foreign limited liability company's registered agent is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company. The registered agent may by instrument in writing, acknowledged before a notary public, designate a natural person or persons in the office of the registered agent upon whom any such process, notice or demand may be served. Whenever any such person accepts service of process, a photographic copy of such instrument shall be attached to the return.

B. Whenever a domestic or foreign limited liability company fails to appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the limited liability company upon whom service may be made in accordance with § [12.1-19.1](#).

C. This section does not prescribe the only means, or necessarily the required means, of serving a domestic or foreign limited liability company.

1991, c. 168; 2001, cc. [517](#), [541](#).

§13.1-1018.1. Change of principal office.

A. A limited liability company or a foreign limited liability company registered pursuant to Article 10 (§ [13.1-1051](#) et seq.) may change its principal office upon filing in the office of the Commission a statement of change on a form supplied by the Commission that sets forth:

1. The name of the limited liability company or foreign limited liability company;
2. The address of its current principal office; and
3. The post office address, including the street and number, if any, of the new principal office.

B. A statement of change shall forthwith be delivered to the Commission for filing by a domestic limited liability company or a foreign limited liability company registered pursuant to Article 10 (§ [13.1-1051](#) et seq.) whenever the address of its principal office ceases to be the office at which the principal executive offices of the domestic or foreign limited liability company are located.

2009, c. [450](#); 2016, c. [288](#).

§13.1-1019. Liability to third parties.

Except as otherwise provided by this Code or as expressly provided in the articles of organization, no member, manager, organizer or other agent of a limited liability company, regardless of whether the limited liability company has a single member or multiple members, shall have any personal obligation for any liabilities of a limited liability company, whether such liabilities arise in contract, tort or otherwise, solely by reason of being a member, manager, organizer or agent of a limited liability company. For the purposes of this section, a person to whom the rights of a member or

manager are delegated as provided in § [13.1-1022](#) or § [13.1-1024](#) shall be deemed an agent of a limited liability company.

1991, c. 168; 2004, c. [601](#); 2006, c. [912](#); 2015, c. [627](#).

§13.1-1020. Parties to actions.

A member of a limited liability company, solely by reason of being a member, is not a proper party to a proceeding by or against a limited liability company, except where (i) the object is to enforce a member's right against or liability to the limited liability company or (ii) as provided in Article 8 (§ [13.1-1042](#) et seq.) of this chapter.

1991, c. 168; 2007, cc. [233](#), [639](#).

§13.1-1021. Limited liability company property.

Any estate or interest in property may be acquired in the name of the limited liability company, and title to any estate or interest so acquired vests in the limited liability company.

1991, c. 168 .

§13.1-1021.1. Agency of members and managers.

A. Subject to subsections B and C:

1. Each member is an agent of the limited liability company for the purpose of its business;
2. An act of a member, including the signing of an instrument in the limited liability company name, for apparently carrying on in the ordinary course the limited liability company business or business of the kind carried on by the limited liability company, binds the limited liability company, unless the member had no authority to act for the limited liability company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority; and
3. An act of a member which is not apparently for carrying on in the ordinary course the limited liability company business or business of the kind carried on by the limited liability company binds the limited liability company only if the act was authorized by the other members in accordance with § [13.1-1022](#).

B. Subject to subsection C, in a manager-managed limited liability company:

1. If the articles of organization specify that the limited liability company is to be managed by a manager or managers, a member is not an agent of the limited liability company for the purpose of its business solely by reason of being a member;

2. Each manager is an agent of the limited liability company for the purpose of its business;

3. An act of a manager, including the signing of an instrument in the limited liability company name, for apparently carrying on in the ordinary course the limited liability company business or business of the kind carried on by the limited liability company, binds the limited liability company, unless the manager had no authority to act for the limited liability company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority; and

4. An act of a manager which is not apparently for carrying on in the ordinary course the limited liability company business or business of the kind carried on by the limited liability company binds the company only if the act was authorized in accordance with § [13.1-1024](#).

C. Unless the articles of organization limit their authority, any member in a member-managed limited liability company, or any manager in a manager-managed limited liability company, may sign and deliver any instrument transferring or affecting the limited liability company's interest in real property, which instrument shall be conclusive in favor of a person who gives value without knowledge of the lack of authority of the person signing and delivering the instrument.

1995, c. [168](#).

§13.1-1022. Management of limited liability company.

A. Except to the extent that the articles of organization or an operating agreement provides in writing for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

B. Unless otherwise provided in this chapter, in the articles of organization, or in an operating agreement, the members of a limited liability company shall vote in proportion to their contributions to the limited liability company, as adjusted from time to time, and a majority vote of the members of a limited liability company shall consist of the vote or other approval of members having a majority share of the voting power of all members.

C. Unless otherwise provided in this chapter, in the articles of organization, or in an operating agreement, any action required or permitted to be taken by the members of a limited liability company may be taken upon a majority vote of the members.

D. Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company have the power and authority to delegate to one or more other persons the members' rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager of the limited liability company, and to delegate by a management agreement or other agreement with, or otherwise to, other persons. Such persons may be denominated as officers of the limited liability company without being deemed to have the status of a manager, unless designated as a manager in the articles of organization or an operating agreement.

E. Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company may take action permitted or required to be taken by the members without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting. A consent transmitted by a member by electronic transmission shall be deemed to be signed for the purposes of this section. Unless otherwise provided in the articles of organization or an operating agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy.

F. The articles of organization or an operating agreement may provide for classes or groups of members having such relative rights, powers, and duties as the articles of organization or an operating agreement may provide, and may make provision for the future creation in the manner provided in the articles of organization or an operating agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members.

G. The articles of organization, an operating agreement, or a plan of merger may provide that dissenters' rights with respect to a membership interest shall be available for any class or group of members in connection with any amendment of an operating agreement, any merger in which the limited liability company is a party, any conversion of the limited liability company to another business form, any transfer to or domestication in any other jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets.

1991, c. 168; 1992, c. 574; 1995, c. [168](#); 1998, c. [432](#); 2002, c. [288](#); 2004, c. [601](#); 2005, c. [255](#).

§13.1-1023. Operating agreement.

A. Authority.

1. The members of a limited liability company may enter into any operating agreement to regulate or establish the affairs of the limited liability company, the conduct of its business and the relations of its members. A limited liability company is bound by its operating agreement whether or not the limited liability company executes the operating agreement. An operating agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with the laws of the Commonwealth or the articles of organization. An operating agreement may provide rights to any person, including a person who is not a party to the operating agreement, to the extent set forth in the operating agreement.

2. If a limited liability company has only one member, an operating agreement shall be deemed to include:

a. Any writing signed by the member, without regard to whether the writing constitutes an agreement, that relates to the affairs of the limited liability company and the conduct of its business.

b. Any agreement, regardless of whether the agreement is in writing, between the member and the limited liability company, that relates to the affairs of the limited liability company and the conduct of its business, provided that the limited liability company has a manager that is a person other than the member.

B. Adoption and amendment.

1. An operating agreement must initially be agreed to by all of the members. Unless the articles of organization or a written operating agreement specifically requires otherwise, an operating agreement need not be in writing.

2. If the articles of organization or an operating agreement does not provide for the manner by which an operating agreement may be amended, then all of the members must agree to any amendment of an operating agreement.

3. If the articles of organization or the operating agreement provide for the manner by which an operating agreement may be amended, including by requiring the

approval of a person who is not a party to the operating agreement or requiring the satisfaction of conditions, an operating agreement may be amended only in that manner or as otherwise permitted by law; provided that (i) the approval of any person may be waived by that person and (ii) any conditions may be waived by all persons for whose benefit the conditions were intended.

C. Enforcement of operating agreement.

1. A court of equity may enforce an operating agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances.

2. As an alternative to injunctive or other equitable relief, when the provisions of § [13.1-1047](#) are applicable, the court may order dissolution of the limited liability company.

1991, c. 168; 1993, c. 113; 1997, c. [190](#); 2005, c. [255](#); 2009, c. [763](#); 2012, c. [706](#).

§13.1-1023.1. Remedies for breach of operating agreement by member or manager.

A. An operating agreement may provide that:

1. A member or manager who fails to perform in accordance with, or to comply with terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences; and

2. At the time or upon the happening of events specified in the operating agreement, a member or manager shall be subject to specified penalties or specified consequences.

The specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in subsection D of § [13.1-1027](#).

B. In the articles of organization, in writing in an operating agreement or in another writing, a member or manager may consent to or be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of the Commonwealth, or the exclusivity of arbitration in a specified jurisdiction of the Commonwealth, and to be served with legal process in a manner prescribed in the articles of organization, an operating agreement, or other writing.

2003, c. [340](#); 2004, c. [601](#).

§13.1-1024. Management of a limited liability company by a manager or managers.

A. The articles of organization or an operating agreement of a limited liability company may delegate full or partial responsibility for managing a limited liability company to or among one or more managers.

B. Managers need not be residents of this Commonwealth or members of the limited liability company unless the articles of organization or an operating agreement so require. The articles of organization or an operating agreement may prescribe other qualifications for managers.

C. The number of managers shall be fixed by or in the manner provided in the articles of organization or an operating agreement. The number of managers may be increased or decreased by amendment to, or in the manner provided in, the articles of organization or an operating agreement.

D. Unless otherwise provided in the articles of organization or an operating agreement, managers shall be elected by the members.

E. Unless otherwise provided in the articles of organization or an operating agreement, any vacancy occurring in the office of manager shall be filled by a majority vote of the members.

F. All managers or any lesser number may be removed in the manner provided in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not provide for the removal of managers, then all managers or any lesser number may be removed with or without cause by a majority vote of the members.

G. Unless otherwise provided in the articles of organization or an operating agreement, any action required or permitted to be taken by the managers of a limited liability company may be taken upon a majority vote of the managers.

H. Unless otherwise provided in the articles of organization or an operating agreement, a manager of a limited liability company has the power and authority to delegate to one or more other persons the manager's rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager of the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Such persons may be denominated as officers of

the limited liability company without being deemed to have the status of a manager, unless designated as a manager in the articles of organization or an operating agreement. Unless otherwise provided in the articles of organization or an operating agreement, such delegation by a manager of a limited liability company shall not cause the manager to cease to be a manager of the limited liability company.

I. Unless otherwise provided in the articles of organization or an operating agreement, the managers of a limited liability company may take any action permitted or required to be taken by the managers without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting. A consent transmitted by a manager by electronic transmission shall be deemed to be signed for the purposes of this section. Unless otherwise provided in the articles of organization or an operating agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy, and any such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law.

J. The articles of organization or an operating agreement may provide for classes or groups of managers having such relative rights, powers, and duties as the articles of organization or an operating agreement may provide, and may make provision for the future creation in the manner provided in the articles of organization or an operating agreement of additional classes or groups of managers having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of managers.

1991, c. 168; 1992, c. 574; 1996, c. [265](#); 1998, c. [432](#); 2002, c. [288](#); 2004, c. [601](#).

§13.1-1024.1. General standards of conduct for a manager.

A. A manager shall discharge his or its duties as a manager in accordance with the manager's good faith business judgment of the best interests of the limited liability company.

B. Unless a manager has knowledge or information concerning the matter in question that makes reliance unwarranted, a manager is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

1. One or more managers or employees of the limited liability company whom the manager believes, in good faith, to be reliable and competent in the matters presented;
 2. Legal counsel, public accountants, or other persons as to matters the manager believes, in good faith, are within the person's professional or expert competence; or
 3. A committee of the managers of which the manager is not a member if the manager believes, in good faith, that the committee merits confidence.
- C. A person alleging a violation of this section has the burden of proving the violation.
- D. For the purposes of this section only, the term "manager" shall be deemed to include any member that is participating in the management of the limited liability company.

1992, c. 574 .

§13.1-1025. Limitation of liability of members and managers; exception.

A. In any proceeding brought by or in the right of a limited liability company or brought by or on behalf of members of the limited liability company, the damages assessed against a manager or member arising out of a single transaction, occurrence or course of conduct shall not exceed the lesser of:

1. The monetary amount, including the elimination of liability, specified in writing in the articles of organization or an operating agreement as a limitation on or elimination of the liability of the manager or member; or
2. The greater of (i) \$100,000 or (ii) the amount of cash compensation received by the manager or member from the limited liability company during the twelve months immediately preceding the act or omission for which liability was imposed; however, the cash compensation of a manager or member shall not be deemed to include amounts constituting distributions for the purposes of § [13.1-1035](#).

B. The liability of a manager or member shall not be limited as provided in this section to the extent otherwise provided in writing in the articles of organization or an operating agreement, or if the manager or member engaged in willful misconduct or a knowing violation of the criminal law.

C. No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of organization or operating agreement with respect to any act or omission occurring before such amendment.

1991, c. 168; 1992, c. 574; 2002, c. [288](#).

§13.1-1026. Business transactions of members or managers with the limited liability company.

Except as provided in the articles of organization or an operating agreement, a member or manager may lend money to and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member or manager.

1991, c. 168 .

§13.1-1027. Contributions.

A. The contributions of a member to a limited liability company may be in cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services.

B. Except as provided in the articles of organization or an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the limited liability company to contribute cash equal to that portion of the value, as stated in the limited liability company records required to be kept by § [13.1-1028](#), of such contribution that has not been made.

C. Unless otherwise provided in the articles of organization or an operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit or otherwise acts in reliance on the original obligation may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such

member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

D. The articles of organization or an operating agreement may provide in writing that the interest of any member who fails to make any contribution that he is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating his interest in the limited liability company to that of nondefaulting members, a forced sale of his interest in the limited liability company, forfeiture of his interest in the limited liability company, the lending by other members of the amount necessary to meet his commitment, a fixing of the value of his interest in the limited liability company by appraisal or by formula and redemption or sale of his interest in the limited liability company at such value, or other penalty or consequence.

E. No promise by a member to contribute to a limited liability company is enforceable unless set out in a writing signed by the member.

F. The contributions of a corporation to a limited liability company of which such corporation is a member may be in the form of an asset for which an application for a project requiring a certificate has been approved by the Commissioner pursuant to the provisions of Title 32.1. No further approval by such Commissioner shall be required as a condition to the validity of the member's contribution of such an asset to the limited liability company if (i) both the member and the limited liability company have their principal offices within the same city or county of the Commonwealth, (ii) such contributing member owns at least one-third of the membership interests of the limited liability company, and (iii) the assets contributed by such member to the limited liability company comprise not more than ten percent of such assets of the member.

1991, c. 168; 1995, c. [168](#); 1999, c. [966](#).

§13.1-1028. Information and records.

A. Each limited liability company shall, at its discretion, either (i) keep at its principal office or (ii) provide each member access as an electronic record, as defined in § [13.1-603](#), on a network or system to the following:

1. A current list of the full name and last known business address of each member, in alphabetical order;
2. A copy of the articles of organization and the certificate of organization, and all articles of amendment and certificates of amendment thereto;
3. Copies of the limited liability company's federal, state and local income tax returns and reports, if any, for the three most recent years;
4. Copies of any then-effective written operating agreement and of any financial statements of the limited liability company for the three most recent years; and
5. Unless contained in a written operating agreement, a writing setting out:
 - a. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute;
 - b. The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made;
 - c. Any right of a member to receive, or of the limited liability company to make, distributions to a member which include a return of all or any part of the member's contribution; and
 - d. Any events upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

B. Each member has the right, upon reasonable request, to:

1. Inspect and copy any of the limited liability company records required to be maintained by this section; and
2. Obtain from the manager or managers, or if the limited liability company has no manager or managers, from any member or other person with access to such information, from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited liability company, (ii) promptly after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year, and (iii) other information regarding the affairs of the limited liability company, except to the extent the information demanded is unreasonable or otherwise improper under the circumstances.

C. Notwithstanding the provisions of subsections A and B, the rights of a member to obtain information as provided in such subsections may be restricted in writing in an original operating agreement or any subsequent written amendment to an operating agreement approved or adopted by all of the members and in compliance with any applicable requirements of the operating agreement.

1991, c. 168; 1992, c. 574; 2001, c. [548](#); 2002, c. [288](#); 2016, c. [287](#).

§13.1-1029. Sharing of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, on the basis provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the limited liability company records required to be kept pursuant to § [13.1-1028](#), of the contributions made by each member to the extent they have been received by the limited liability company.

1991, c. 168; 1995, c. [168](#); 1997, c. [190](#).

§13.1-1030. Sharing of distributions.

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes of members, on the basis provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement do not so provide in writing, distributions shall be made on the basis of the value, as stated in the limited liability company records required to be kept pursuant to § [13.1-1028](#), of the contributions made by each member to the extent they have been received by the limited liability company.

1991, c. 168; 1995, c. [168](#); 1997, c. [190](#).

§13.1-1031. Interim distributions.

Except as provided in this article, a member is entitled to receive distributions from a limited liability company before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the articles of organization or an operating agreement.

1991, c. 168; 1996, c. [265](#).

§13.1-1032. Resignation of member.

A member may resign from a limited liability company only to the extent provided for in writing in the articles of organization or an operating agreement.

1991, c. 168; 1995, c. [168](#).

§13.1-1033. Repealed.

Repealed by Acts 1995, c. [168](#).

§13.1-1034. Distribution in kind.

Except as provided in writing in the articles of organization or an operating agreement, a member, regardless of the nature of his or its contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in writing in the articles of organization or an operating agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to him or it exceeds a percentage of that asset which his or its membership interest constitutes of all membership interests in the limited liability company.

1991, c. 168 .

§13.1-1035. Restrictions on making distribution.

A. No distribution may be made by a limited liability company if, after giving effect to the distribution:

1. The limited liability company would not be able to pay its debts as they became due in the usual course of business; or
2. The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or an operating agreement permits otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

B. The limited liability company may base a determination that a distribution is not prohibited under subsection A of this section either on:

1. Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or
2. A fair valuation or other method that is reasonable in the circumstances.

C. The effect of a distribution under subsection A of this section is measured as of (i) the date the distribution is authorized if the payment occurs within 120 days after

the date of authorization or (ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

D. [Repealed.]

E. For the purposes of this section, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

F. This section shall not apply to distributions in liquidation under Article 9 (§ [13.1-1046](#) et seq.) of this chapter.

1991, c. 168; 1992, c. 574; 2001, c. [548](#); 2009, c. [763](#).

§13.1-1036. Liability upon wrongful distribution.

If a member has received a distribution in violation of the articles of organization or an operating agreement or in violation of § [13.1-1035](#) of this chapter, then the member is liable to the limited liability company for a period of two years thereafter for the amount of the distribution wrongfully made.

1991, c. 168; 2009, c. [763](#).

§13.1-1037. Right to distribution.

At the time a member becomes entitled to receive a distribution, he or it has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

1991, c. 168 .

§13.1-1038. Nature of interest in limited liability company.

A membership interest in a limited liability company is personal property. The only transferable interest of a member in the limited liability company is the member's share of the profits and losses of the limited liability company and the member's right to receive distributions.

1991, c. 168; 2006, c. [912](#).

§13.1-1038.1. Admission of members.

A. Subject to subsection B, a person may become a member in a limited liability company:

1. In the case of a person acquiring a membership interest directly from the limited liability company, upon compliance with an operating agreement or, if the operating agreement does not so provide, upon the consent of a majority of the managers of a manager-managed limited liability company or a majority vote of the members of a member-managed limited liability company;
2. In the case of an assignee of a membership interest, as provided in subsection A of § [13.1-1040](#);
3. In the case of a limited liability company that has no members as of the commencement of its existence under § [13.1-1004](#), as provided in any writing signed by both the initial member or members and the managers, if any are designated in the articles of organization, or, if no managers are so designated, the organizers;
4. In the case of a limited liability company the last remaining member of which has dissociated, (i) as provided in a writing executed by the successor in interest of that member, who may provide for the admission of the successor in interest or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that caused the dissociation of the last remaining member, provided that the articles of organization or an operating agreement may provide that the successor in interest of the last remaining member shall be obligated to agree in writing to the admission of the successor in interest of that member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that caused the dissociation of the last remaining member, or (ii) in the manner provided for in the articles of organization or an operating agreement, effective as of the occurrence of the event that caused the dissociation of the last remaining member, pursuant to a provision of the articles of organization or an operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company;
5. In the case of a person being admitted as a member of a limited liability company pursuant to a merger approved in accordance with § [13.1-1071](#), as provided in the articles of merger or an operating agreement of the surviving limited liability company; and
6. In the case of a person being admitted as a member of a limited liability company pursuant to a conversion or domestication of a partnership, non-United States entity, foreign limited liability company, or corporation into a domestic limited

liability company in accordance with Article 12.2 (§ [13.1-722.8](#) et seq.) of Chapter 9 of this title, or, effective on and after November 1, 2006, Article 14 (§ [13.1-1074](#) et seq.) of Chapter 12 of this title, as provided in the articles of organization or an operating agreement of the converted or domesticated limited liability company at the time of conversion or domestication.

B. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or
2. The time provided in an operating agreement, articles of merger or articles of organization, as applicable, or, if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

C. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a membership interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in the articles of organization or an operating agreement:

1. A person may be admitted to a limited liability company as a member of the limited liability company without acquiring a membership interest in the limited liability company; and
2. A person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a membership interest in the limited liability company.

1993, c. 113; 1997, c. [190](#); 2000, c. [581](#); 2001, c. [548](#); 2005, c. [255](#); 2006, cc. [748](#), [912](#); 2016, c. [288](#).

§13.1-1039. Assignment of interest.

A. Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company is assignable in whole or in part. An assignment of an interest in a limited liability company does not of itself dissolve the limited liability company. Except as provided in subsection A of § [13.1-1040](#), an assignment does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights of a member. Unless otherwise provided in the articles of organization or an operating

agreement, such an assignment entitles the assignee to receive, to the extent assigned, only any share of profits and losses and distributions to which the assignor would be entitled.

B. Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company may be evidenced by a certificate of interest issued by the limited liability company. The articles of organization or an operating agreement may provide for the assignment or transfer of any interest represented by such a certificate and make other provisions with respect to such certificates.

1991, c. 168; 1992, c. 574; 1998, c. [432](#); 2006, c. [912](#); 2013, c. [772](#).

§13.1-1040. Right of assignee to become member.

A. Except as otherwise provided in writing in the articles of organization or an operating agreement, an assignee of an interest in a limited liability company may become a member only by the consent of a majority of the member-managers (other than the assignor member) of a manager-managed limited liability company of which one or more members is a manager, or by a majority vote of the members (other than the assignor member) of any other limited liability company.

B. An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreement and this chapter. An assignee who becomes a member also is liable for any obligations of his assignor to make contributions and return distributions as provided in Articles 5 (§ [13.1-1022](#) et seq.) and 6 (§ [13.1-1029](#) et seq.) of this chapter. However, an assignee who becomes a member is not obligated for liabilities of the assignor unknown to him at the time he or it became a member.

C. If an assignee of an interest in a limited liability company becomes a member, the assignor is not released from his liability under §§ [13.1-1027](#) and [13.1-1036](#) to the limited liability company.

1991, c. 168; 1994, c. [348](#); 1995, c. [168](#); 1997, c. [190](#).

§13.1-1040.1. Events causing member's dissociation.

Except as otherwise provided in the articles of organization or an operating agreement, a member is dissociated from a limited liability company upon the occurrence of any of the following events:

1. To the extent resignation of a member is provided for in writing in the articles of organization or an operating agreement, the limited liability company's having notice of the member's express will to resign as a member on a later date specified by the member in the notice or, if no later date is specified, the date of notice;
2. An event agreed to in the articles of organization or an operating agreement as causing the member's dissociation;
3. The member's expulsion pursuant to the articles of organization or an operating agreement;
4. The member's expulsion by the unanimous vote of the other members if:
 - a. It is unlawful to carry on the business of the limited liability company with that member; or
 - b. There has been an assignment or transfer of all or substantially all of that member's membership interest, other than a transfer for security purposes or a court order charging the member's interest;
5. On application by the limited liability company or another member, the member's expulsion by judicial determination because:
 - a. The member engaged in wrongful conduct that adversely and materially affected the business of the limited liability company;
 - b. The member willfully or persistently committed a material breach of the articles of organization or an operating agreement; or
 - c. The member engaged in conduct relating to the business of the limited liability company which makes it not reasonably practicable to carry on the business with the member;
6. The member's:
 - a. Becoming a debtor in bankruptcy;
 - b. Executing an assignment for the benefit of creditors;
 - c. Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that member or of all or substantially all of that member's property; or
 - d. Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or

acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

7. In the case of a member who is an individual:

a. The member's death;

b. The appointment of a guardian, committee or conservator for the member; or

c. A judicial determination that the member has otherwise become incapable of performing the member's duties under the articles of organization or an operating agreement;

8. In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited liability company, but not merely by reason of the substitution of a successor trustee;

9. In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited liability company, but not merely by reason of the substitution of a successor personal representative;

10. Termination of a member who is not an individual, partnership, corporation, limited liability company, trust, or estate;

11. The expiration of ninety days after the limited liability company notifies a corporate member that it will be expelled because it has filed articles of dissolution or the equivalent, its existence has been terminated or its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, if there is no revocation of the certificate of dissolution or no reinstatement of its existence, its charter or its right to conduct business; or

12. A partnership or limited liability company that is a member has been dissolved and its business is being wound up.

1998, c. [432](#); 2002, c. [288](#); 2009, c. [763](#).

§13.1-1040.2. Effect of a member's dissociation.

A. Except as provided in the articles of organization or an operating agreement, the dissociation of a member shall not affect the membership interest held by the dissociated member or the former member's successor in interest. The former member or successor in interest shall continue to hold a membership interest and shall have

the same rights that an assignee of the membership interest would have under subsection A of § [13.1-1039](#).

B. Except as provided in the articles of organization or an operating agreement, the dissociation of a member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and, upon the occurrence of any such event, the limited liability company shall be continued without dissolution.

2000, c. [581](#); 2006, c. [912](#).

§13.1-1041. Repealed.

Repealed by Acts 2004, c. [601](#).

§13.1-1041.1. Member's transferable interest subject to charging order.

A. On application by a judgment creditor of a member or of a member's assignee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. To the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of the interest.

B. A charging order constitutes a lien on the judgment debtor's transferable interest in the limited liability company.

C. This chapter does not deprive a member or a member's assignee of a right under exemption laws with respect to the judgment debtor's interest in the limited liability company.

D. The entry of a charging order is the exclusive remedy by which a judgment creditor of a member or of a member's assignee may satisfy a judgment out of the judgment debtor's transferable interest in the limited liability company.

E. No creditor of a member or of a member's assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

2004, c. [601](#); 2006, c. [912](#).

§13.1-1042. Right of action; standing; condition precedent; stay of proceeding.

A. A member shall not commence or maintain a derivative proceeding unless the member fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company and is a proper plaintiff pursuant to § [13.1-1043](#).

B. No member may commence a derivative proceeding until:

1. A written demand has been made on the limited liability company to take suitable action; and

2. Ninety days have expired from the date delivery of the demand was made unless (i) the member has been notified before the expiration of 90 days that the demand has been rejected by the limited liability company or (ii) irreparable injury to the limited liability company would result by waiting until the end of the 90-day period.

C. If the limited liability company commences a review and evaluation of the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

1991, c. 168; 2011, c. [379](#).

§13.1-1043. Proper plaintiff.

In a derivative action, the plaintiff shall be a member at the time of bringing the action and (i) shall have been a member at the time of the transaction of which he or it complains or (ii) his or its status as a member shall have devolved upon him or it by operation of law or pursuant to the terms of the articles of organization or an operating agreement from a person who was a member at the time of the transaction.

1991, c. 168 .

§13.1-1044. Pleading.

In derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure commencement of the action by a member or manager with the authority to do so or the reasons for not making the effort.

1991, c. 168 .

§13.1-1045. Expenses.

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, except as hereinafter provided, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited liability company the remainder of those proceeds received by him or it. On termination of the derivative action, the court may require the plaintiff to pay any defendant's reasonable expenses, including reasonable attorney's fees, incurred in defending the action if it finds that the action was commenced without reasonable

cause or the plaintiff did not fairly and adequately represent the interests of the members and the limited liability company in enforcing the right of the limited liability company.

1991, c. 168 .

§13.1-1046. Dissolution; generally.

A limited liability company organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

1. At the time or on the happening of any events specified in writing in the articles of organization or an operating agreement;
2. Upon the unanimous written consent of the members;
3. The entry of a decree of judicial dissolution under § [13.1-1047](#);
4. Automatic cancellation of its existence pursuant to § [13.1-1050.2](#); or
5. Involuntary cancellation of its existence pursuant to § [13.1-1050.3](#).

1991, c. 168; 1994, c. [348](#); 1995, c. [168](#); 1996, c. [265](#); 1997, c. [190](#); 1998, c. [432](#); 2000, c. [581](#); 2001, c. [548](#); 2008, cc. [108](#), [588](#), [770](#); 2009, c. [167](#).

§13.1-1047. Judicial dissolution.

A. On application by or for a member, the circuit court of the locality in which the registered office of the limited liability company is located may decree dissolution of a limited liability company if it is not reasonably practicable to carry on the business in conformity with the articles of organization and any operating agreement.

B. When the winding up of the affairs of the limited liability company has been completed, the court shall so advise the Commission, which shall enter an order of cancellation of the limited liability company's existence.

1991, c. 168; 2008, c. [108](#).

§13.1-1047.1. Waiver of cancellation.

Except in the case of an event of dissolution described in subdivision 4 or 5 of § [13.1-1046](#), at any time after the dissolution of a limited liability company and before the winding up of its business is completed, all of the members may waive the right to have the limited liability company's business wound up and its existence canceled. In that event:

1. The limited liability company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the limited liability company or a member after the dissolution and before the waiver is determined as if dissolution had never occurred; and
2. The rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

2012, c. [706](#).

§13.1-1048. Winding up.

A. The winding up of a limited liability company shall be completed when all debts, liabilities, and obligations of the limited liability company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the limited liability company have been distributed to the members.

B. Unless otherwise provided in the articles of organization or an operating agreement, upon the dissolution of a limited liability company, the members may wind up the limited liability company's affairs; however, the circuit court of the locality in which the registered office of the limited liability company is located, on cause shown, may wind up the limited liability company's affairs on application of any member, his legal representative, or assignee, and in connection therewith, may appoint one or more liquidating trustees.

C. Upon dissolution of a limited liability company and until the effective date of a certificate of cancellation issued pursuant to § [13.1-1050](#), the liquidating trustees, in the name and on behalf of the limited liability company, may (i) prosecute and defend suits, whether civil, criminal or administrative, (ii) wind up the limited liability company's business, (iii) dispose of and convey the limited liability company's property, (iv) discharge or make reasonable provision for the limited liability company's liabilities, and (v) distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members and without imposing the liability of a general partner on a liquidating trustee.

1991, c. 168; 1995, c. [168](#); 2002, c. [288](#); 2004, c. [601](#); 2006, c. [748](#); 2008, c. [108](#).

§13.1-1049. Distribution of assets upon dissolution.

Upon the winding up of a limited liability company, the assets of the limited liability company shall be distributed as follows:

1. To creditors, including members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company other than for distributions to members under § [13.1-1031](#);
2. Unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under § [13.1-1031](#); and
3. Unless otherwise provided in the articles of organization or an operating agreement, to members first for the return of their contributions and second with respect to their interests in the limited liability company, in the proportions in which the members share in distributions.

1991, c. 168; 1996, c. [265](#).

§13.1-1049.1. Known claims against dissolved limited liability company.

A. A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

B. The dissolved limited liability company shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:

1. Provide a reasonable description of the claim that the claimant may be entitled to assert;
2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an instrument of indebtedness;
3. Provide a mailing address where a claim may be sent;
4. State a deadline, which may not be fewer than 120 days from the effective date of the written notice, by which confirmation of the claim shall be delivered to the dissolved limited liability company; and
5. State that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not delivered by the deadline.

C. A claim against the dissolved limited liability company is barred to the extent that it is not admitted:

1. If the dissolved limited liability company delivered written notice to the claimant in accordance with subsection B and the claimant does not deliver written confirmation of the claim to the dissolved limited liability company by the deadline; or
2. If the dissolved limited liability company delivered written notice to the claimant that its claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within 90 days from the effective date of such notice.

D. For purposes of this section, "claim" does not include (i) a contingent liability or a claim based on an event occurring after the effective date of dissolution or (ii) a liability or claim the ultimate maturity of which is more than 60 days after the delivery of written notice to the claimant pursuant to subsection B.

E. If a liability exists but the full extent of any damages is or may not be ascertainable, and a proceeding to enforce the claim is commenced pursuant to subdivision C 2, the claimant may amend the pleadings after filing to include any damages that occurred or are alleged to have occurred after filing, and the court having jurisdiction of such claim may continue such proceeding during its pendency if it appears that further damages are or still may be occurring.

2004, c. [601](#); 2009, c. [763](#).

§13.1-1049.2. Other claims against dissolved limited liability company.

A. A dissolved limited liability company may also publish notice of its dissolution and request that persons with claims against the dissolved limited liability company present them in accordance with the notice.

B. The notice shall:

1. Be published one time in a newspaper of general circulation in the city or county where the dissolved limited liability company's principal office, or, if none in the Commonwealth, its registered office, is or was last located;
2. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
3. State that a claim against the dissolved limited liability company will be barred unless a proceeding to enforce the claim is commenced prior to the earlier of the

expiration of any applicable statute of limitations or three years after the date of publication of the notice.

C. If the dissolved limited liability company publishes a newspaper notice in accordance with subsection B, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company prior to the earlier of the expiration of any applicable statute of limitations or three years after the publication date of the newspaper notice:

1. A claimant who was not given written notice under § [13.1-1049.1](#);
2. A claimant whose claim was timely sent to the dissolved limited liability company but not acted on; and
3. A claimant whose claim does not meet the definition of a claim in subsection D of § [13.1-1049.1](#).

D. A claim that is not barred by subsection C of § [13.1-1049.1](#) or subsection C of § [13.1-1049.2](#) may be enforced:

1. Against the dissolved limited liability company, to the extent of its undistributed assets; or
2. Except as provided in subsection D of § [13.1-1049.3](#), if the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the limited liability company assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

2006, c. [912](#).

§13.1-1049.3. Court proceedings.

A. A dissolved limited liability company that has complied with the notice requirements of § [13.1-1049.2](#) may file an application with the circuit court of the city or county where the dissolved limited liability company's principal office, or, if none in the Commonwealth, its registered office, is or was last located for a determination of the amount and form of security to be provided for payment of claims that (i) are contingent or have not been made known to the dissolved limited liability company or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved limited liability company, are reasonably

estimated to arise after the effective date of dissolution or (ii) are based on a liability the ultimate maturity of which is more than 60 days after delivery of written notice to the claimant pursuant to subsection B of § [13.1-1049.1](#). Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § [13.1-1049.2](#).

B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved limited liability company to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved limited liability company.

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved limited liability company.

D. Provision by the dissolved limited liability company for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved limited liability company's obligations with respect to claims that do not meet the definition of a claim in subsection D of § [13.1-1049.1](#), and such claims may not be enforced against a member who received assets in liquidation.

2006, c. [912](#); 2009, c. [763](#).

§13.1-1050. Articles of cancellation.

A. When the affairs of a limited liability company have been wound up pursuant to § [13.1-1048](#), it shall file articles of cancellation with the Commission. The articles shall set forth:

1. The name of the limited liability company;
2. The identification number issued by the Commission to the limited liability company;
3. The effective date of its certificate of organization;
4. A statement that the limited liability company has completed the winding up of its affairs; and
5. Any other information the members determine to include therein, including the reason for filing the articles of cancellation.

B. If the Commission finds that the articles of cancellation comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of cancellation, canceling the limited liability company's existence. Upon the effective date of such certificate, the existence of the limited liability company shall cease, except for the purpose of suits, other proceedings, and appropriate actions by members as provided in this chapter.

1991, c. 168; 2006, c. [748](#); 2008, c. [108](#); 2013, c. [17](#).

§13.1-1050.1. Repealed.

Repealed by Acts 2008, c. [108](#), cl. 2, effective April 1, 2009.

§13.1-1050.2. Automatic cancellation of limited liability company existence.

A. Whether or not the notice described in subsection B of § [13.1-1064](#) is mailed, if any limited liability company fails to pay its annual registration fee on or before the last day of the third month immediately following its annual registration fee due date each year, the existence of the limited liability company shall be automatically canceled as of that day.

B. If any limited liability company whose registered agent has filed with the Commission a statement of resignation pursuant to § [13.1-1017](#) fails to file a statement of change pursuant to § [13.1-1016](#) within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the limited liability company of the impending cancellation of its existence. If the limited liability company fails to file the statement of change on or before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the existence of the limited liability company shall be automatically canceled as of that day.

C. The properties and affairs of a limited liability company whose existence has been canceled pursuant to this section shall pass automatically to its managers, or if the limited liability company is managed by its members, then to its members, or if the limited liability company has no managers or members, then to the holders of its interests, in each such case as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited liability company; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its members; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets,

either in cash or in kind, among its members or interest holders according to their respective rights and interests.

D. No member, manager or other agent of a limited liability company shall have any personal obligation for any liabilities of the limited liability company, whether such liabilities arise in contract, tort, or otherwise, solely by reason of the cancellation of the limited liability company's existence pursuant to this section.

2008, c. [108](#); 2010, c. [703](#); 2013, c. [17](#).

§13.1-1050.3. Involuntary cancellation of limited liability company existence.

A. The existence of a limited liability company may be canceled involuntarily by order of the Commission when it finds that the limited liability company has:

1. Continued to exceed or abuse the authority conferred upon it by law;
2. Failed to maintain a registered office or a registered agent in the Commonwealth as required by law;
3. Failed to file any document required by this chapter to be filed with the Commission; or
4. Been convicted for a violation of 8 U.S.C. § 1324a (f), as amended, for actions of its members or managers constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

B. Before entering any such order, the Commission shall issue a rule against the limited liability company giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The properties and affairs of a limited liability company whose existence has been canceled pursuant to this section shall pass automatically to its managers, or if the limited liability company is managed by its members, then to its members, or if the limited liability company has no managers or members, then to the holders of its interests, in each such case as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited liability company; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its members; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets,

either in cash or in kind, among its members or interest holders according to their respective rights and interests.

D. Any limited liability company convicted of the offense listed in subdivision A 4 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A limited liability company whose existence is canceled pursuant to subdivision A 4 shall not be eligible for reinstatement for a period of not less than one year.

2008, c. [108](#); 2009, c. [167](#).

§13.1-1050.4. Reinstatement of a limited liability company that has ceased to exist.

A. A limited liability company that has ceased to exist may apply to the Commission for reinstatement within five years thereafter, unless the cancellation was by order of the Commission (i) entered pursuant to subdivision A 1 of § [13.1-1050.3](#) or (ii) entered pursuant to § [13.1-1047](#) and the circuit court's decree directing dissolution contains no provision for reinstatement of the existence of the limited liability company.

B. To have its existence reinstated, a limited liability company shall provide the Commission with the following:

1. An application for reinstatement, which may be in the form of a letter, that includes the identification number issued by the Commission to the limited liability company;
2. A reinstatement fee of \$100;
3. All annual registration fees and penalties that were due before the limited liability company ceased to exist and that would have been assessed or imposed to the date of reinstatement if the limited liability company's existence had not been canceled;
4. If the name of the limited liability company does not comply with the provisions of § [13.1-1012](#) at the time of reinstatement, articles of amendment to the articles of organization to change the limited liability company's name to a name that satisfies the provisions of § [13.1-1012](#), with the fee required by this chapter for the filing of articles of amendment; and

5. If the limited liability company's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § [13.1-1016](#).

C. If the limited liability company complies with the provisions of this section, the Commission shall enter an order of reinstatement of existence. Upon entry of the order, the existence of the limited liability company shall be deemed to have continued from the date of the cancellation as if cancellation had never occurred, and any liability incurred by the limited liability company or a member, manager, or other agent after the cancellation and before the reinstatement is determined as if cancellation of the limited liability company's existence had never occurred.

2008, c. [108](#); 2013, c. [17](#).

§13.1-1050.5. Survival of remedy after cancellation of existence.

The cancellation of existence of a limited liability company shall not take away or impair any remedy available to or against the limited liability company or its members or managers for any right or claim existing, or any liability incurred, before the cancellation. Any action or proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its name. The members or managers shall have power to take limited liability company action or other action as shall be appropriate to protect any remedy, right, or claim.

2016, c. [288](#).

§13.1-1051. Authority to transact business required; governing law.

A. A foreign limited liability company may not transact business in the Commonwealth until it obtains a certificate of registration from the Commission.

B. Subject to the Constitution of the Commonwealth:

1. The laws of the state or other jurisdiction under which a foreign limited liability company is formed govern its formation and internal affairs and the liability of its members and managers; and

2. A foreign limited liability company may not be denied a certificate of registration by reason of any difference between those laws and the laws of the Commonwealth.

However, a foreign limited liability company holding a valid certificate of registration to transact business in the Commonwealth shall have no greater rights and privileges than a domestic limited liability company. The certificate of registration shall not be

deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in the Commonwealth.

1991, c. 168; 2008, c. [108](#).

§13.1-1052. Application for certificate of registration.

A. A foreign limited liability company may apply to the Commission for a certificate of registration to transact business in the Commonwealth. The application shall be made on a form prescribed and furnished by the Commission. The application shall set forth:

1. The name of the foreign limited liability company and, if the limited liability company is prevented by § [13.1-1054](#) from using its own name in the Commonwealth, a designated name that satisfies the requirements of § [13.1-1054](#);
2. The name of the state or other jurisdiction under whose law it is formed, its date of formation and period of duration, and if the limited liability company was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization or formation; and (iv) the entity identification number issued to it by the Commission;
3. The address of the proposed registered office of the foreign limited liability company in the Commonwealth (including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located) and the name of its proposed registered agent in the Commonwealth at that address and a statement that the registered agent is either (a) an individual who is a resident of the Commonwealth and is either (1) a member or manager of the limited liability company, (2) a member or manager of a limited liability company that is a member or manager of the limited liability company, (3) an officer or director of a corporation that is a member or manager of the limited liability company, (4) a general partner of a general or limited partnership that is a member or manager of the limited liability company, (5) a trustee of a trust that is a member or manager of the limited liability company, or (6) a member of the Virginia State Bar, or (b) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability part-

nership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office;

4. A statement that the clerk of the Commission is irrevocably appointed the agent of the foreign limited liability company for service of process if the foreign limited liability company fails to maintain a registered agent in the Commonwealth as required by § [13.1-1015](#), the registered agent's authority has been revoked, the registered agent has resigned, or the registered agent cannot be found or served with the exercise of reasonable diligence;

5. The post office address, including the street and number, if any, of the foreign limited liability company's principal office; and

6. A statement evidencing that the foreign limited liability company is a "foreign limited liability company" as defined in § [13.1-1002](#).

B. The foreign limited liability company shall deliver with the completed application a copy of its articles of organization or other constituent documents and all amendments and corrections thereto filed in the foreign limited liability company's state or other jurisdiction of organization, duly authenticated by the Secretary of State or other official having custody of the limited liability company records in the state or other jurisdiction under whose law it is organized.

C. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of registration to transact business in the Commonwealth.

1991, c. 168; 1992, c. 574; 1996, c. [265](#); 2002, c. [608](#); 2004, c. [274](#); 2008, c. [108](#); 2016, c. [288](#).

§13.1-1053. Repealed.

Repealed by Acts 2008, c. [108](#), cl. 2, effective April 1, 2009.

§13.1-1054. Name of foreign limited liability company.

A. No certificate of registration shall be issued to a foreign limited liability company unless the name of the foreign limited liability company satisfies the requirements of § [13.1-1012](#).

B. If the name of a foreign limited liability company does not satisfy the requirements of § [13.1-1012](#), to obtain or maintain a certificate of registration to transact business in the Commonwealth:

1. The foreign limited liability company may adopt a designated name for use in the Commonwealth that adds the words "limited company" or "limited liability company" or the abbreviation "L.C.," "LC," "L.L.C." or "LLC" to its name or, if it is a professional limited liability company, the words "professional company" or "professional limited liability company" or the initials "P.L.C.," "PLC," "P.L.L.C.," or "PLLC" at the end of its name, if it informs the Commission of its designated name; or

2. If its real name is unavailable, the foreign limited liability company may adopt a designated name that is available, and which satisfies the requirements of § [13.1-1012](#), if it informs the Commission of the designated name.

1991, c. 168; 1992, c. 574; 1996, c. [265](#); 2012, c. [63](#); 2016, c. [288](#).

§13.1-1055. Amendments; amended applications for registration.

A. A foreign limited liability company that is registered to transact business in the Commonwealth shall promptly file with the Commission an amended application for registration on a form prescribed and furnished by the Commission:

1. If any statement in the application for registration was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect; or

2. To abandon or change the designated name adopted by the limited liability company for use in the Commonwealth pursuant to subsection B of § [13.1-1054](#).

B. Notwithstanding the provisions of subsection A, the manner by which a foreign limited liability company shall change its registered office or principal office is by filing a statement of change pursuant to § [13.1-1016](#) or [13.1-1018.1](#), as the case may be.

C. Whenever the articles of organization or other constituent document of a foreign limited liability company that is registered to transact business in the Commonwealth is amended or corrected, the foreign limited liability company shall promptly deliver to the Commission for filing a copy of the amendment or correction duly authenticated by the Secretary of State or other official having custody of the limited liability company records in the state or other jurisdiction of its organization.

1991, c. 168; 1992, c. 574; 2003, c. [370](#); 2008, c. [108](#); 2009, c. [450](#); 2016, c. [288](#).

§13.1-1056. Voluntary cancellation of certificate of registration.

A. A foreign limited liability company registered to transact business in the Commonwealth may apply to the Commission for a certificate of cancellation to cancel its certificate of registration. The application shall be on a form prescribed and furnished by the Commission, which shall set forth:

1. The name of the foreign limited liability company, the name of the state or other jurisdiction under whose law it is or was formed, and the identification number issued by the Commission to the foreign limited liability company;

2. If applicable, a statement that the foreign limited liability company was a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it was organized and that it was not the surviving entity of the merger, or has converted to another type of entity under the laws of the state or other jurisdiction under whose law it was formed;

3. That the foreign limited liability company is not transacting business in the Commonwealth and that it surrenders its registration to transact business in the Commonwealth;

4. That the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;

5. A mailing address to which the clerk of the Commission may mail a copy of any process served on him under subdivision 4; and

6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the foreign limited liability company.

B. The Commission shall not issue a certificate of cancellation to any foreign limited liability company unless the foreign limited liability company files with the Commission a statement certifying that the foreign limited liability company has filed returns and has paid all state taxes to the time of the certificate, or a statement that no returns are required to be filed or taxes are required to be paid. In that case the foreign limited liability company may file returns and pay taxes before they would otherwise be due. If the Commission finds that the application complies with the requirements of law and all required fees have been paid, it shall issue a certificate of cancellation canceling the certificate of registration.

C. Before any foreign limited liability company registered to transact business in the Commonwealth cancels its existence, it shall deliver to the Commission for filing an application for a certificate of cancellation. Whether or not an application is filed, the cancellation of the existence of a foreign limited liability company shall not take away or impair any remedy available against the foreign limited liability company for any right or claim existing or any liability incurred before the cancellation. Any action or proceeding against a foreign limited liability company whose existence has been canceled may be defended by the foreign limited liability company in its name. The members, managers, and officers shall have power to take any action as shall be appropriate to protect any remedy, right, or claim. The right of a foreign limited liability company whose existence has been canceled to institute and maintain in its name actions, suits, or proceedings in the courts of the Commonwealth shall be governed by the law of the state or other jurisdiction of its organization.

D. Service of process on the clerk of the Commission is service of process on a foreign limited liability company whose certificate of registration has been canceled pursuant to this section. Service upon the clerk shall be made in accordance with § [12.1-19.1](#), and service upon the foreign limited liability company may be made in any other manner permitted by law.

1991, c. 168; 2008, cc. [588](#), [770](#); 2009, c. [167](#); 2012, c. [130](#); 2013, c. [17](#); 2016, c. [288](#).

§13.1-1056.1. Automatic cancellation of certificate of registration.

A. Whether or not the notice described in subsection B of § [13.1-1064](#) is mailed, if any foreign limited liability company fails to pay its annual registration fee on or before the last day of the third month immediately following its annual registration fee due date each year, such foreign limited liability company shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of registration shall be automatically canceled as of that day.

B. If any foreign limited liability company whose registered agent has filed with the Commission a statement of resignation pursuant to § [13.1-1017](#) fails to file a statement of change pursuant to § [13.1-1016](#) within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the foreign limited liability company of the impending cancellation of its certificate of registration. If the foreign limited liability company fails to file the statement of change on or before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the foreign limited liability

company shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of registration shall be automatically canceled as of that day.

C. The automatic cancellation of a foreign limited liability company's certificate of registration constitutes the appointment of the clerk of the Commission as the foreign limited liability company's agent for service of process in any proceeding based on a cause of action arising during the time the foreign limited liability company was registered to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign limited liability company and shall be made on the clerk in accordance with § [12.1-19.1](#).

D. Cancellation of a foreign limited liability company's certificate of registration does not terminate the authority of the registered agent of the foreign limited liability company.

2008, c. [108](#); 2010, c. [703](#); 2013, c. [17](#).

§13.1-1056.2. Involuntary cancellation of certificate of registration.

A. The certificate of registration to transact business in the Commonwealth of any foreign limited liability company may be canceled involuntarily by order of the Commission when it finds that the foreign limited liability company:

1. Has continued to exceed or abuse the authority conferred upon it by law;
2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;
3. Has failed to file any document required by this chapter to be filed with the Commission;
4. No longer exists under the laws of the state or other jurisdiction of its organization; or
5. Has been convicted for a violation of 8 U.S.C. § 1324a (f), as amended, for actions of its members or managers constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

B. Before entering any such order the Commission shall issue a rule against the foreign limited liability company giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The authority of a foreign limited liability company to transact business in the Commonwealth ceases on the date shown on the order canceling its certificate of registration.

D. The Commission's cancellation of a foreign limited liability company's certificate of registration appoints the clerk of the Commission the foreign limited liability company's agent for service of process in any proceeding based on a cause of action arising during the time the foreign limited liability company was registered to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign limited liability company and shall be made on the clerk in accordance with § [12.1-19.1](#).

E. Cancellation of a foreign limited liability company's certificate of registration does not terminate the authority of the registered agent of the foreign limited liability company.

F. Any foreign limited liability company convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A certificate of registration canceled pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

2008, c. [108](#); 2009, c. [167](#).

§13.1-1056.3. Reinstatement of a certificate of registration that has been canceled.

A. A foreign limited liability company whose certificate of registration to transact business in the Commonwealth has been canceled may be relieved of the cancellation and have its certificate of registration reinstated by the Commission within five years of the date of cancellation unless the certificate of registration was canceled by order of the Commission entered pursuant to subdivision A 1 of § [13.1-1056.2](#).

B. To have its certificate of registration reinstated, a foreign limited liability company shall provide the Commission with the following:

1. An application for reinstatement, which may be in the form of a letter, that includes the identification number issued by the Commission to the limited liability company;
2. A reinstatement fee of \$100;

3. All annual registration fees and penalties that were due before the certificate of registration was canceled and that would have been assessed or imposed to the date of reinstatement if the limited liability company had not had its certificate of registration canceled;

4. A duly authenticated copy of any amendments or corrections made to the articles of organization or other constituent documents of the foreign limited liability company and any mergers entered into by the foreign limited liability company from the date of cancellation of its certificate of registration to the date of its application for reinstatement, along with an amended application for registration if required for an amendment or a correction, and all fees required by this chapter for the filing of such instruments;

5. If the name of the foreign limited liability company does not comply with the provisions of § [13.1-1054](#) at the time of reinstatement, an amended application for registration to adopt a designated name for use in the Commonwealth that satisfies the requirements of § [13.1-1054](#), with the fee required by this chapter for the filing of an amended application for registration; and

6. If the foreign limited liability company's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § [13.1-1016](#).

C. If the foreign limited liability company complies with the provisions of this section, the Commission shall enter an order of reinstatement, reinstating the foreign limited liability company's certificate of registration to transact business in the Commonwealth.

2008, c. [108](#); 2013, c. [17](#).

§13.1-1057. Transaction of business without registration.

A. A foreign limited liability company transacting business in the Commonwealth may not maintain any action, suit, or proceeding in any court of the Commonwealth until it has registered in the Commonwealth.

B. The successor to a foreign limited liability company that transacted business in the Commonwealth without registering in the Commonwealth and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in the Commonwealth until the foreign limited liability company or its successor has registered in the Commonwealth.

C. The failure of a foreign limited liability company to register in the Commonwealth does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of the Commonwealth.

D. If a foreign limited liability company transacts business in the Commonwealth without a certificate of registration, each member, manager or employee of the limited liability company who does any of such business in the Commonwealth knowing that a certificate of registration is required and has not been obtained shall be liable for a penalty of not less than \$500 and not more than \$5,000 to be imposed by the Commission, after the limited liability company and the individual have been given notice and an opportunity to be heard.

E. Suits, actions, and proceedings may be initiated against a foreign limited liability company that transacts business in the Commonwealth without a certificate of registration by serving process on any manager, managing member, or agent of the limited liability company doing such business or, if none can be found, on the clerk of the Commission or on the limited liability company in any other manner permitted by law. If any foreign limited liability company transacts business in the Commonwealth without a certificate of registration, it shall by transacting such business be deemed to have thereby appointed the clerk of the Commission its agent for service of process. Service upon the clerk shall be made in accordance with § [12.1-19.1](#).

1991, c. 168; 2006, c. [912](#); 2008, c. [523](#); 2013, c. [17](#).

§13.1-1058. Actions by Attorney General.

The Attorney General may bring an action to restrain a foreign limited liability company from transacting business in this Commonwealth in violation of this article.

1991, c. 168 .

§13.1-1059. Transactions not constituting doing business.

A. The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this article:

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of its members or carrying on any other activities concerning its internal affairs;
3. Maintaining bank accounts;

4. Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's securities or maintaining trustees or depositaries with respect to those securities;
5. Selling through independent contractors;
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;
7. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;
8. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;
9. Owning, without more, real or personal property;
10. Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;
11. For a period of less than 90 consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films that are sent outside of the Commonwealth for processing, editing, marketing and distribution; or
12. Serving, without more, as a general partner of, or as a partner in a partnership that is a general partner of, a domestic or foreign limited partnership that does not otherwise transact business in the Commonwealth.

B. The term "transacting business" as used in this section shall have no effect on personal jurisdiction under § [8.01-328.1](#).

C. The list of activities in subsection A of this section is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.

1991, c. 168; 1996, c. [265](#); 2004, c. [601](#).

§13.1-1060. Merger of foreign limited liability company registered to transact business in Commonwealth.

A. Whenever a foreign limited liability company that is registered to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it is organized, and that limited liability company is the surviving entity of the merger, it shall, within 30 days after the merger becomes effective, deliver to the Commission for filing a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or other jurisdiction under whose law it is organized. However, the filing shall not be required when a foreign limited liability company merges with a domestic corporation, limited liability company, limited partnership, business trust, or partnership; the foreign limited liability company's articles of organization or other constituent documents are not amended by the merger; and the articles or statement of merger filed on behalf of the domestic corporation, limited liability company, limited partnership, business trust, or partnership pursuant to [§ 13.1-720](#), [13.1-1072](#), [13.1-1261](#), [50-73.48:3](#), or [50-73.131](#) contains a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign limited liability company is organized and that the foreign limited liability company has complied with that law in effecting the merger.

B. Whenever a foreign limited liability company that is registered to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the laws of which it is organized, and that limited liability company is not the surviving entity of the merger, the surviving partnership, limited liability company, business trust, limited partnership, or corporation shall, if not continuing to transact business in the Commonwealth, within 30 days after the merger becomes effective, deliver to the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or other jurisdiction under whose law it was organized, and comply in behalf of the predecessor limited liability company with [§ 13.1-1056](#). If a surviving business trust, registered limited liability partnership, limited liability company, limited partnership, or corporation is to continue to transact business in the Commonwealth and has not registered as a foreign registered limited liability partnership, limited liability company, business trust, or limited partnership or received a certificate of authority to transact business in the Commonwealth as a foreign corporation, as the case may be, it shall, within 30 days after the merger becomes effective, deliver to the Commission an application, if a foreign registered limited liability partnership, for registration as a foreign registered limited liability

partnership, if a foreign limited liability company, for registration as a foreign limited liability company, if a foreign business trust, for registration as a foreign business trust, if a foreign limited partnership, for registration as a foreign limited partnership, or, if a foreign corporation, for a certificate of authority to transact business in the Commonwealth, together with a duly authenticated copy of the instrument of merger and also a copy of its partnership certificate, statement of registered limited liability partnership, articles of organization, articles of trust, certificate of limited partnership, or articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of registered limited liability partnership, limited liability company, business trust, limited partnership, or corporate records in the state or other jurisdiction under whose laws it is organized, formed, or incorporated.

C. Upon the merger of a foreign limited liability company with one or more foreign partnerships, limited liability companies, business trusts, limited partnerships, or corporations, all property in the Commonwealth owned by any of the partnerships, limited liability companies, business trusts, limited partnerships, or corporations shall pass to the surviving partnership, limited liability company, business trust, limited partnership, or corporation except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of merger is filed with the Commission.

1991, c. 168; 1992, c. 575; 1997, c. [190](#); 2004, c. [274](#); 2008, c. [108](#); 2016, c. [288](#).

§13.1-1060.1. Entity conversion of foreign limited liability company registered to transact business in Commonwealth.

A. Whenever a foreign limited liability company that is registered to transact business in the Commonwealth converts to another type of entity, the surviving or resulting entity shall, within 30 days after such entity conversion becomes effective, file with the Commission a copy of the instrument of entity conversion duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or other jurisdiction under whose laws such entity conversion was effected; and

1. If the surviving or resulting entity is not continuing to transact business in the Commonwealth or is not a foreign corporation, business trust, limited partnership, or registered limited liability partnership, then, within 30 days after such entity con-

version, it shall comply on behalf of the predecessor limited liability company with the provisions of § [13.1-1056](#); or

2. If the surviving or resulting entity is a foreign corporation, business trust, limited partnership, or registered limited liability partnership and is to continue to transact business in the Commonwealth, then, within such 30 days, it shall deliver to the Commission an application for a certificate of authority or registration to transact business in the Commonwealth or, in the case of a foreign registered limited liability partnership, a statement of registration.

B. Upon the entity conversion of a foreign limited liability company that is registered to transact business in the Commonwealth, all property in the Commonwealth owned by the foreign limited liability company shall pass to the surviving or resulting entity except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of entity conversion is filed with the Commission.

2004, c. [274](#).

§13.1-1061. Annual registration fees to be assessed and collected by Commission; application of payment.

The Commission shall assess and collect the annual registration fees imposed by this chapter. When the Commission receives payment of a registration fee assessed against a domestic or foreign limited liability company, such payment shall be applied against any unpaid registration fees previously assessed against such limited liability company, including any penalties incurred thereon, beginning with the assessment that has remained unpaid for the longest period of time.

1991, c. 168 .

§13.1-1062. Assessment of annual registration fees; annual registration fees to be paid by domestic and foreign limited liability companies.

A. Each domestic limited liability company and each foreign limited liability company registered to transact business in the Commonwealth shall pay into the state treasury on or before the last day of the twelfth month next succeeding the month in which it was organized or registered to transact business in the Commonwealth, and by such date in each year thereafter, an annual registration fee of \$50, provided that the initial annual registration fee to be paid by a domestic limited liability company created

by entity conversion shall be due in the year after the calendar year in which it converted.

The annual registration fee shall be imposed irrespective of any specific license tax or other tax or fee imposed by law upon the limited liability company for the privilege of carrying on its business in the Commonwealth or upon its franchise, property or receipts.

B. Each year, the Commission shall ascertain from its records each domestic limited liability company and each foreign limited liability company registered to transact business in the Commonwealth as of the first day of the second month next preceding the month in which it was organized or registered to transact business in the Commonwealth, and, except as provided in subsection A, shall assess against each such limited liability company the annual registration fee herein imposed.

C. At the discretion of the Commission, the annual registration fee due date for a limited liability company may be extended, on a monthly basis for a period of not less than one month nor more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual registration fee due dates of limited liability companies as equally as practicable throughout the year on a monthly basis.

D. A statement of the assessment, when made, shall be forwarded by the clerk of the Commission to the Comptroller and to each domestic and foreign limited liability company.

E. Any domestic limited liability company that has ceased to exist in the Commonwealth because of the issuance of a certificate of cancellation of existence, certificate of organization surrender, or certificate of entity conversion, or any foreign limited liability company that has obtained a certificate of cancellation, effective on or before its annual registration fee due date pursuant to subsection A in any year, shall not be required to pay the annual registration fee for that year. Any domestic or foreign limited liability company that has merged, effective on or before its annual registration fee due date pursuant to subsection A in any year, into a surviving domestic or foreign corporation, limited liability company, business trust, limited partnership, or partnership that files with the Commission an authenticated copy of the instrument of merger on or before such date, shall not be required to pay the annual registration fee for that year. Any foreign limited liability company that has converted, effective on or before its annual registration fee due date pursuant to

subsection A in any year, to a different entity type that files with the Commission an authenticated copy of the instrument of entity conversion on or before such date, shall not be required to pay the annual registration fee for that year. The Commission shall cancel the annual registration fee assessments specified in this subsection that remain unpaid.

F. Registration fee assessments that have been paid shall not be refunded.

G. The fees paid into the state treasury under this section and the fees collected under § [13.1-1005](#) shall be set aside and paid into the special fund created under § [13.1-775.1](#), and shall be used only by the Commission as it deems necessary to defray the costs of the Commission and of the office of the clerk of the Commission in supervising, implementing, administering and enforcing the provisions of this chapter. The projected excess of fees collected over the costs of administration and enforcement so incurred shall be paid into the general fund prior to the close of each fiscal year, based on the unexpended balance of the special fund at the end of the prior fiscal year. An adjustment of this transfer amount to reflect actual fees collected shall occur during the first quarter of the succeeding fiscal year.

1991, c. 168; 1995, c. [621](#); 2001, c. [545](#); 2002, c. [1](#); 2006, c. [748](#); 2010, c. [703](#); 2013, c. [17](#).

§13.1-1063. Repealed.

Repealed by Acts 2010, c. [703](#), cl. 3.

§13.1-1064. Penalty for failure to timely pay annual registration fees.

A. Any domestic or foreign limited liability company that fails to pay the annual registration fee into the state treasury within the time prescribed in § [13.1-1062](#) shall incur a penalty of \$25, which shall be added to the amount of the annual registration fee due. The penalty prescribed herein shall be in addition to any other penalty or liability imposed by law.

B. The Commission shall mail to each domestic and foreign limited liability company that fails to pay the annual registration fee within the time prescribed in § [13.1-1062](#) a notice of assessment of the penalty imposed herein and of the impending cancellation of its existence or certificate of registration, as the case may be.

1991, c. 168; 1997, c. [190](#); 2000, c. [52](#); 2004, cc. [274](#), [601](#); 2005, c. [255](#); 2008, c. [108](#).

§13.1-1065. Payment of fees, fines, penalties, and interest prerequisite to Commission action; refunds.

A. The Commission shall not file or issue with respect to any domestic or foreign limited liability company any document or certificate specified in this chapter, except a statement of change pursuant to § [13.1-1016](#), a statement of resignation pursuant to § [13.1-1017](#), and a statement of change pursuant to § [13.1-1018.1](#), until all fees, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid by or on behalf of such limited liability company. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign limited liability company that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the limited liability company's annual registration fee payment in any year, provided that the Commission shall not issue a certificate of domestication with respect to a foreign limited liability company until the annual registration fee has been paid by or on behalf of that limited liability company.

B. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment.

1991, c. 168; 2002, c. [608](#); 2004, c. [316](#); 2006, c. [659](#); 2007, c. [810](#); 2009, c. [450](#).

§13.1-1066. Collection of unpaid bills for annual registration fees.

The annual registration fee with penalty and interest shall be enforceable, in addition to existing remedies for the collection of taxes, levies, and fees, by action in the name of the Commonwealth in the appropriate circuit court. Venue shall be in accordance with § [8.01-261](#).

1991, c. 168; 2016, c. [288](#).

§13.1-1067. Property title records.

A. Whenever the records in the office of the clerk of the Commission reflect that a domestic or foreign limited liability company has changed or corrected its name, merged into a domestic or foreign limited liability company, corporation, business trust, limited partnership or partnership, converted into a domestic or foreign corporation, business trust, limited partnership or partnership, or domesticated in or from another jurisdiction, the clerk of the Commission, upon request, shall issue a certificate reciting such change, correction, merger, conversion or domestication. The certificate may be admitted to record in the deed books, in accordance with § [17.1-227](#), of any court's office within the jurisdiction of which any property of the limited

liability company is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever a foreign limited liability company has changed or corrected its name, merged into another business entity, converted into another type of business entity, or domesticated in another jurisdiction, and it cannot or chooses not to obtain a certificate reciting such change, correction, merger, conversion or domestication from the clerk of the Commission pursuant to subsection A, a similar certificate by any competent authority of the foreign limited liability company's jurisdiction of organization may be admitted to record in the deed books, in accordance with § [17.1-227](#), of any recording office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

1991, c. 168; 1992, cc. 574, 575; 1993, c. 113; 1996, c. [282](#); 1997, c. [190](#); 2001, c. [548](#); 2003, c. [340](#); 2006, c. [912](#); 2007, c. [771](#).

§13.1-1067.1. Repealed.

Repealed by Acts 1993, c. 113 .

§13.1-1068. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§13.1-1069. Repealed.

Repealed by Acts 2005, c. [839](#), effective October 1, 2005.

§13.1-1069.1. Definitions.

As used in this article:

"Merger" means a business combination pursuant to § [13.1-1070](#).

"Party to a merger" means any domestic or foreign limited liability company or other business entity that will merge under a plan of merger.

"Survivor" in a merger means the domestic or foreign limited liability company or other business entity into which one or more other domestic or foreign limited liability companies or other business entities are merged.

2016, c. [288](#).

§13.1-1070. Merger.

A. One or more domestic limited liability companies may merge with one or more domestic or foreign limited liability companies or other business entities pursuant to a plan of merger.

B. A foreign limited liability company or other business entity may be a party to a merger with a domestic limited liability company only if the merger is permitted by the laws under which the foreign limited liability company or other business entity is organized, formed, or incorporated.

C. The plan of merger shall include:

1. The name and entity type of each domestic or foreign limited liability company or other business entity that will merge and the name of the domestic or foreign limited liability company or other business entity that will be the survivor of the merger;

2. The name of the state or other jurisdiction under whose law each party to the merger is organized, formed, or incorporated;

3. The terms and conditions of the merger;

4. The manner and basis of converting the membership interests of each merging domestic or foreign limited liability company and eligible interests of each merging domestic or foreign other business entity into membership interests, eligible interests, or other securities, obligations, rights to acquire membership interests, eligible interests, or other securities, cash, or other property, or any combination of the foregoing;

5. The manner and basis of converting any rights to acquire the membership interests of each merging domestic or foreign limited liability company and eligible interests of each merging domestic or foreign other business entity into membership interests, eligible interests, or other securities, obligations, rights to acquire membership interests, eligible interests, or other securities, cash, or other property, or any combination of the foregoing;

6. When the survivor is a domestic limited liability company, any amendments to its articles of organization, which may be in the form of amended and restated articles of organization; and

7. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of organization or other organizational document of any party.

D. The plan of merger may also include a provision that the plan may be amended before the effective time and date of the certificate of merger, but if the members of a domestic limited liability company that is a party to the merger are required by any provision of this chapter to approve the plan, the plan may not be amended after approval of the plan by the members to change any of the following, unless the amendment is approved by the members:

1. The amount or kind of eligible interests or other securities, obligations, rights to acquire eligible interests, or other securities, cash, or other property to be received by the members, shareholders, or holders of eligible interests in any party to the merger;
2. The articles of organization of any domestic or foreign limited liability company, the articles of incorporation of any domestic or foreign stock or nonstock corporation, the articles of trust or governing instrument of any domestic or foreign business trust, the certificate of limited partnership of any domestic or foreign limited partnership, or the partnership agreement of any domestic or foreign partnership that will survive the merger; or
3. Any of the other terms or conditions of the plan if the change would adversely affect the members in any material respect.

1992, c. 575; 1997, c. [190](#); 2003, c. [340](#); 2004, c. [601](#); 2005, c. [765](#); 2008, c. [108](#); 2016, c. [288](#).

§13.1-1071. Action on a plan of merger.

Each domestic limited liability company that is a party to a merger shall approve the plan of merger, unless the articles of organization or a written operating agreement of the limited liability company provides otherwise, by the unanimous vote of the members of the limited liability company. However, a provision of a limited liability company's articles of organization or operating agreement purporting to authorize the limited liability company to approve a merger by a less than unanimous vote of the members shall be effective to permit approval of a merger by a less than unanimous vote only if either (i) the articles of organization or operating agreement included that provision at the time each member who does not vote in favor of the merger became bound by the articles of organization or operating agreement or (ii) the provision was added to the articles of organization or operating agreement through an amendment to which each member who does not vote in favor of the merger specifically consented.

1992, c. 575; 1993, c. 113; 2016, c. [288](#).

§13.1-1072. Articles of merger.

A. After a plan of merger has been adopted and approved as required by this chapter, articles of merger shall be signed on behalf of each party to the merger. The articles shall set forth:

1. The plan of merger;
2. If the articles of organization of a domestic limited liability company that is the survivor of a merger are amended, as an attachment to the articles of merger, the amendments to the survivor's articles of organization;
3. The date the plan of merger was approved by each domestic limited liability company that is a party to the merger;
4. A statement that the plan of merger was approved by each domestic limited liability company that is a party to the merger in accordance with the provisions of § [13.1-1071](#); and
5. As to each foreign limited liability company or other business entity that is a party to the merger, a statement that the merger is permitted by the state or other jurisdiction under whose law the foreign limited liability company or other business entity is organized, formed, or incorporated and that the foreign limited liability company or other business entity has complied with that law in effecting the merger.

B. Articles of merger shall be delivered to the Commission for filing by the survivor of the merger. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger. Articles of merger filed under this section may be combined with any filing required under the provisions of this title and Title 50 regarding any domestic other business entity that is a party to the merger if the combined filing satisfies the requirements of this section and the requirements for the filing of articles of merger or a statement of merger on behalf of the domestic other business entity.

1992, c. 575; 1993, c. 113; 1997, c. [190](#); 2003, cc. [340](#), [597](#); 2004, c. [274](#); 2008, c. [108](#); 2016, c. [288](#).

§13.1-1073. Effect of merger.

When a merger takes effect:

1. The separate existence of every domestic limited liability company that is a party to the merger except the surviving domestic limited liability company, if any, ceases;

2. The title to all real estate and other property owned by each domestic limited liability company party to the merger is vested in the surviving domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation without reversion or impairment;
3. The surviving domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation has all liabilities of each domestic limited liability company party to the merger;
4. A proceeding pending by or against any domestic limited liability company party to the merger may be continued as if the merger had not occurred, or the surviving domestic or foreign limited liability company, partnership, limited partnership, business trust or corporation may be substituted in the proceeding for the domestic limited liability company whose existence ceased;
5. If a domestic limited liability company is the surviving entity of the merger, the articles of organization and operating agreement of that limited liability company are amended to the extent provided in the plan of merger; and
6. The former holders of membership interests of every domestic limited liability company party to the merger are entitled only to the rights provided in the plan of merger.

1992, c. 575; 1997, c. [190](#); 2003, c. [340](#).

§13.1-1073.1. Abandonment of merger.

A. Unless otherwise provided in a plan of merger or in the laws under which a foreign limited liability company or a domestic or foreign other business entity that is a party to a merger is organized or by which the merger is governed, after the plan has been approved as required by this article, and at any time before the certificate of merger has become effective, it may be abandoned by a domestic limited liability company that is a party thereto without action by members in accordance with any procedures set forth in the plan of merger or, if no procedures are set forth in the plan, by a vote of the members of the limited liability company that is equal to or greater than the vote cast for the plan of merger pursuant to § [13.1-1071](#), subject to any contractual rights of other parties to the merger.

B. If a merger is abandoned under subsection A after articles of merger have been filed with the Commission but before the certificate of merger has become effective, a statement that the merger has been abandoned in accordance with this section,

signed on behalf of a party to the merger, shall be delivered to the Commission for filing before the effective time and date of the certificate of merger. Upon filing, the statement shall take effect and the merger shall be deemed abandoned and shall not become effective.

2016, c. [288](#).

§13.1-1074. Domestication.

A. A foreign limited liability company may become a domestic limited liability company if the laws of the jurisdiction in which the foreign limited liability company is organized authorize it to domesticate in another jurisdiction. The laws of this Commonwealth shall govern the effect of domesticating in this Commonwealth pursuant to this article.

B. A domestic limited liability company not required by law to be a domestic limited liability company may become a foreign limited liability company if the jurisdiction in which the limited liability company intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved in the manner provided in this article. The laws of the jurisdiction in which the limited liability company domesticates shall govern the effect of domesticating in that jurisdiction.

2006, c. [912](#); 2013, c. [17](#).

§13.1-1075. Plan of domestication.

A. The plan of domestication shall set forth:

1. The name of the state or other jurisdiction under whose laws the domestic or foreign limited liability company is organized;
2. A statement of the jurisdiction in which the domestic or foreign limited liability company is to be domesticated;
3. The terms and conditions of the domestication, provided that such terms and conditions may not alter the ownership proportion and relative rights, preferences, and limitations of the interests of the limited liability company; and
4. For a foreign limited liability company that is to become a domestic limited liability company, as a referenced attachment, amended and restated articles of organization that comply with § [13.1-1011](#) as they will be in effect upon consummation of the domestication.

B. The plan of domestication may include any other provision relating to the domestication.

C. The plan of domestication may also include a provision that the members may amend the plan at any time prior to the effective date of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication.

2006, c. [912](#); 2012, c. [130](#).

§13.1-1076. Action on plan of domestication by a domestic limited liability company.

In the case of a domestic limited liability company, unless the articles of organization or a written operating agreement of the limited liability company provides otherwise, the members of the limited liability company shall approve the plan of domestication in the manner provided in the limited liability company's operating agreement for amendments to the operating agreement by the members or, if no provision is made in an operating agreement, by all the members.

2006, c. [912](#); 2016, c. [288](#).

§13.1-1077. Articles of domestication.

A. After the domestication of a foreign limited liability company to a domestic limited liability company is approved in the manner required by the laws of the jurisdiction in which the limited liability company is organized, the limited liability company shall deliver to the Commission for filing articles of domestication setting forth:

1. The name of the foreign limited liability company immediately before the filing of the articles of domestication and the name of the limited liability company upon its domestication as a domestic limited liability company, which shall satisfy the requirements of § [13.1-1012](#);

2. The date on which the foreign limited liability company was originally formed, organized, or incorporated, and its original name, entity type, and jurisdiction of formation, organization, or incorporation, and, for each subsequent change of entity type or jurisdiction of formation, organization, or incorporation made before the filing of the articles of domestication, the effective date of the change and the limited liability company's name, entity type, and jurisdiction of formation, organization, or incorporation upon consummation of the change;

3. The plan of domestication, including the full text of the amended and restated articles of organization of the domestic limited liability company that comply with the requirements of this chapter, as they will be in effect upon consummation of the domestication; and

4. A statement that the domestication is permitted by the laws of the jurisdiction in which the foreign limited liability company is organized and that the foreign limited liability company has complied with those laws in effecting the domestication.

B. If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

C. The certificate of domestication shall become effective pursuant to subsection D of § [13.1-1004](#).

D. A foreign limited liability company's existence as a domestic limited liability company shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign limited liability company have been complied with and that the limited liability company has been organized under this chapter.

E. If the foreign limited liability company is authorized to transact business in the Commonwealth under Article 10 (§ [13.1-1051](#) et seq.), its certificate of registration shall be canceled automatically on the effective time and date of the certificate of domestication issued by the Commission.

2006, c. [912](#); 2012, c. [130](#); 2013, c. [17](#); 2016, c. [288](#).

§13.1-1078. Surrender of articles of organization upon domestication.

A. Whenever a domestic limited liability company has approved, in the manner required by this article, a plan of domestication providing for the limited liability company to be domesticated under the laws of another jurisdiction, the limited liability company shall deliver to the Commission for filing articles of organization surrender setting forth:

1. The name of the limited liability company immediately before the filing of the articles of organization surrender;

2. The jurisdiction in which the limited liability company is to be domesticated and the name of the limited liability company upon its domestication under the laws of that jurisdiction;
 3. The plan of domestication;
 4. A statement that the plan of domestication was adopted by the limited liability company in accordance with § [13.1-1076](#);
 5. A statement that the articles of organization surrender are being filed in connection with the domestication of the limited liability company as a foreign limited liability company to be organized under the laws of another jurisdiction and that the limited liability company is surrendering its certificate of organization under the laws of this Commonwealth;
 6. A statement that the limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was organized in the Commonwealth;
 7. A mailing address to which the clerk may mail a copy of any process served on him under subdivision 6; and
 8. A commitment by the limited liability company to notify the clerk of the Commission in the future of any change in the mailing address of the limited liability company.
- B. If the Commission finds that the articles of organization surrender comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of organization surrender.
- C. The limited liability company shall automatically cease to be a domestic limited liability company when the certificate of organization surrender becomes effective.
- D. If the former domestic limited liability company intends to continue to transact business in the Commonwealth, then, within thirty days after the effective date of the certificate of organization surrender, it shall deliver to the Commission an application for a certificate of registration to transact business in the Commonwealth pursuant to § [13.1-1052](#) together with a copy of its instrument of domestication and articles of organization and all amendments thereto, duly authenticated by the Sec-

retary of State or other official having custody of limited liability company records in the state or other jurisdiction under whose laws it is organized or domesticated.

2006, c. [912](#); 2009, c. [201](#); 2016, c. [288](#).

§13.1-1079. Effect of domestication.

A. When a foreign limited liability company's certificate of domestication in this Commonwealth becomes effective, with respect to that limited liability company:

1. The title to all real estate and other property remains in the limited liability company without reversion or impairment;
2. The liabilities remain the liabilities of the limited liability company;
3. A proceeding pending may be continued by or against the limited liability company as if the domestication did not occur;
4. The articles of organization attached to the articles of domestication constitute the articles of organization of the limited liability company; and
5. The limited liability company is deemed to:
 - a. Be organized under the laws of this Commonwealth for all purposes;
 - b. Be the same limited liability company as the limited liability company that existed under the laws of the jurisdiction or jurisdictions in which it was originally organized or formerly domesticated; and
 - c. Have been organized on the date it was originally formed or organized.

B. Any member of a foreign limited liability company that domesticates into this Commonwealth who, prior to the domestication, was liable for the liabilities or obligations of the limited liability company is not released from those liabilities or obligations by reason of the domestication.

2006, c. [912](#).

§13.1-1080. Abandonment of domestication.

A. Unless otherwise provided in a plan of domestication of a domestic limited liability company to become a foreign limited liability company, after the plan has been approved as required by this article, and at any time before the certificate of organization surrender has become effective, the domestication may be abandoned without action by the members in accordance with any procedures set forth in the plan of domestication or, if no procedures are set forth in the plan, by a vote of the members

of the domestic limited liability company that is equal to or greater than the vote cast for the plan of domestication pursuant to § [13.1-1076](#).

B. If a domestication is abandoned under subsection A after articles of organization surrender have been filed with the Commission but before the certificate of organization surrender has become effective, a statement that the domestication has been abandoned in accordance with this section shall be delivered to the Commission for filing before the effective time and date of the certificate of organization surrender. Upon filing, the statement shall take effect and the domestication shall be deemed abandoned and shall not become effective.

C. If the domestication of a foreign limited liability company into the Commonwealth is abandoned in accordance with the laws of the jurisdiction in which the foreign limited liability company is organized after articles of domestication have been filed with the Commission but before the certificate of domestication has become effective, a statement that the domestication has been abandoned shall be delivered to the Commission for filing before the effective time and date of the certificate of domestication. Upon filing, the statement shall take effect and the domestication shall be deemed abandoned and shall not become effective.

2006, c. [912](#); 2016, c. [288](#).

Virginia Membership Camping Act

§59.1-311. Title.

This chapter shall be known and may be cited as the "Virginia Membership Camping Act."

1985, c. 409.

§59.1-312. Applicability.

This chapter shall apply to each membership camping contract executed at least in part in this Commonwealth after July 1, 1985, regardless of the whereabouts of the membership camping operator's principal office or his campground or recreational facilities.

1985, c. 409.

§59.1-313. Definitions.

When used in this chapter, unless the context requires a different meaning, the following shall have the meanings respectively set forth:

"Advertisement" shall be synonymous with "offer to sell."

"Agreement" shall be synonymous with "membership camping contract."

"Blanket encumbrance" means any legal instrument, whether or not evidencing the obligation to pay money, which permits or requires the foreclosure, sale, conveyance or other disposition of the campground or any portion thereof.

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Business day" means any day except Sunday or a legal holiday.

"Camping site" means any parcel of real estate designed and promoted for the purpose of locating thereon a trailer, tent, tent trailer, pickup camper, recreational vehicle, house trailer, van, cabin or other similar device used for camping or for overnight lodging.

"Campground" means any single tract or parcel of real property on which there are at least ten camping sites.

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services, or a member of his staff to whom he has delegated his duties under this chapter.

"Contract" shall be synonymous with "membership camping contract."

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Facility" means an amenity within a campground set aside or otherwise made available to purchasers in their use and enjoyment of the campground, and may include campsites, swimming pools, tennis courts, recreational buildings, boat docks, restrooms, showers, laundry rooms, and trading posts or grocery stores.

"Holder" means the membership camping operator who enters into a membership camping contract with a purchaser or the assignee of such contract who purchases the same for value.

"Managing entity" means a person who undertakes the duties, responsibilities and obligations of the management of a campground.

"Membership camping contract" or "membership camping agreement" means any written agreement of more than one year's duration, executed in whole or in part within

this Commonwealth, which grants to a purchaser a nonexclusive right or license to use the campground of a membership camping operator or any portion thereof on a first come, first serve or reservation basis together with other purchasers. "Membership camping contract" or "membership camping agreement" also means any written agreement of more than one year's duration, executed in whole or in part within this Commonwealth, which obligates the membership camping operator to transfer or which does in fact transfer to the purchaser title to or an ownership interest in a campground or any portion thereof, and which gives the purchaser a nonexclusive right or license to use the campground of a membership camping operator or any portion thereof, on a first come, first serve or reservation basis together with other purchasers.

"Membership camping operator" means any person who is in the business of soliciting, offering, advertising, or executing membership camping contracts. A membership camping operator shall not include:

1. Any enterprise that is tax-exempt under § 501(c) (3) of the Internal Revenue Code, as amended; or
2. Any enterprise that is tax-exempt under Chapter 36 of Title 58.1; or
3. Manufactured home parks wherein the residents occupy the premises as their primary homes.

"Membership fees, dues, and assessments" means payments required of the purchaser, or his successor in interest, by the agreement for the support and maintenance of facilities at the campground about which the agreement relates.

"Nondisturbance agreement" means any instrument executed by the owner of a blanket encumbrance which subordinates the rights of the owner of the blanket encumbrance to the rights of the purchasers of membership camping contracts. Unless the agreement specifically so provides, the owner of a blanket encumbrance does not by the fact of such ownership assume any of the obligations of the membership camping operator under membership camping contracts or under this chapter.

"Offer," "offer to sell," "offer to execute" or "offering" means any offer, solicitation, advertisement, or inducement, to execute a membership camping agreement.

"Person" means any individual, corporation, partnership, company, unincorporated association or any other legal entity other than a government or agency or a subdivision thereof.

"Purchase money" means any money, currency, note, security or other consideration paid by the purchaser for a membership camping agreement.

"Purchaser" means a person who enters into a membership camping contract with the membership camping operator.

"Ratio of membership camping contracts to camping sites" means the total number of membership camping contracts sold in relation to each available camping site.

"Reciprocal program" means any arrangement under which a purchaser is permitted to use camping sites or facilities at one or more campgrounds not owned or operated by the membership camping operator with whom the purchaser has entered into a membership camping contract.

"Salesperson" means an individual, other than a membership camping operator, who offers to sell a membership camping contract by means of a direct sales presentation, but does not include a person who merely refers a prospective purchaser to a sales person without making any direct sales presentation.

1985, c. 409; 1989, c. 676; 1992, c. 545; 1999, c. [77](#).

§59.1-313.1. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this chapter the Board, the Commissioner, or the Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Board, the Commissioner, or the Department may be sent by regular mail.

2011, c. [566](#).

§59.1-314. Conflicts with other statutes.

In the event that there is any conflict between this chapter and the Virginia Condominium Act (§ [55-79.39](#) et seq.), the Subdivided Land Sales Act (§ [55-336](#) et seq.), or the Virginia Real Estate Time-Share Act (§ [55-360](#) et seq.), the provisions of this chapter shall prevail, but this chapter shall not invalidate or otherwise affect rights or obligations vested under the Condominium Act, the Subdivided Land Sales Act, or the Virginia Real Estate Time-Share Act, before July 1, 1985, or the manner of their enforcement.

1985, c. 409.

§59.1-315. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§59.1-316. Reserved.

Reserved.

§59.1-317. Administration; unlawful offer or execution of membership camping contract.

A. This chapter shall be administered by the Virginia Department of Agriculture and Consumer Services.

B. It shall be unlawful for any membership camping operator to offer to sell any membership camping contract in this Commonwealth unless he is registered with the Commissioner.

C. It shall be unlawful for any membership camping operator registered under this chapter to sell any membership camping contract which causes the total ratio of the outstanding and valid membership camping contracts to exceed a ratio of fifteen such contracts for each camping site.

1985, c. 409; 1989, c. 676 .

§59.1-318. Application for registration of membership camping operator.

A. The application for registration shall be on a form prescribed by the Commissioner and shall include, to the extent applicable, the following:

1. The applicant's name, address, and the organizational form of his business, including the date, and jurisdiction under which the business was organized; the address of each of its offices in this Commonwealth; and the name and address of each campground located in this Commonwealth, which is owned or operated, in whole or in part, by the applicant;
2. The name, address, and principal occupation for the past five years of every officer of the applicant, including its principal managers, and the extent and nature of the interest of each such person at the time the application is filed;
3. A list of all owners of ten percent or more of the capital stock of the applicant, except that this list is not required if the applicant is a company required to report under the Securities and Exchange Act of 1934;
4. A brief description of and a certified copy of the instrument which creates the applicant's ownership of, or other right to use the campground and the facilities at

the campground which are to be available for use by purchasers, together with a copy of any lease, license, franchise, reciprocal agreement or other agreement entitling the applicant to use such campground and facilities, and any material provision of the agreement which restricts a purchaser's use of such campground or facilities;

5. A sample copy of each instrument which will be delivered to a purchaser to evidence his membership in the campground and a sample copy of each agreement which a purchaser will be required to execute;

6. A statement of the zoning and other governmental regulations affecting the use of the campground including the site plans and building permits and their status;

7. A list of special taxes or assessments, whether current or proposed, which affect the campground;

8. Financial statements of the applicant prepared in accordance with generally accepted accounting principles, which shall include a financial statement for the most recent fiscal year audited by an independent certified public accountant and an unaudited financial statement for the most recent fiscal quarter;

9. A copy of the disclosure statement required by § [59.1-326](#);

10. An irrevocable appointment of the Commissioner or his designees to receive service of any lawful process in any proceeding arising under this chapter against the applicant or his agents, except one issued by the Commissioner. The Commissioner shall forward any such process by registered or certified mail addressed to any of the principals, officers, directors, partners, or trustees of the applicant who are listed on the application for registration pursuant to this chapter, or to any other person designated in the application to receive such process, and shall keep a record of it. Any process, notice, order, or demand issued by the Commissioner shall be served by registered mail addressed to any principal, officer, director, partner, or trustee of the applicant listed on the application for registration pursuant to this chapter or to any person designated in the application to receive such process. Nothing in this section shall be construed to limit or prohibit the lawful service of process on individual principals as allowed by the laws of the Commonwealth. The names and addresses of the principals, officers, directors, partners, or trustees of the membership camping operator as last filed with the Commissioner pursuant to the provisions of this chapter shall be conclusive for the purposes of services of process;

11. A narrative description of the promotional plan for the sale of the membership camping contracts;

12. Any bonds required to be posted pursuant to the provisions of this chapter;

13. A copy of the agreement, if any, between the applicant and any person owning, controlling, or managing the campground and the applicant;

14. A complete list of locations and addresses of any and all sales offices located within the Commonwealth, together with a roster of all salespersons who are employed in this Commonwealth by the applicant whether as employees or as independent contractors;

15. The names of any other states or foreign countries in which an application for registration of the membership camping operator or the membership camping contract or any similar document has been filed; and

16. Complete information concerning any adverse order, judgment, or decree which has been entered by any court or administrative agency in connection with a campground or other project operated by the applicant or in which the applicant has or had an interest at the time.

B. The application shall be signed by the membership camping operator, an officer or general partner thereof or by another person holding a power of attorney for this purpose from the membership camping operator. If the application is signed pursuant to a power of attorney, a copy of the power of attorney shall be included with the application.

C. The application shall be submitted with a facing page as might be prescribed by the Commissioner if then in effect, along with the appropriate fees.

D. An application for registration shall be amended within twenty-five days if there is a material change in the information included in the application. A material change includes any change which significantly reduces or terminates either the applicant's or the purchaser's right to use the campground or any of the facilities described in the membership camping contract, but does not include minor changes covering the use of the campground, its facilities or the reciprocal program.

E. The review of the application for registration of the membership camping operator shall occur pursuant to the provisions of § [59.1-320.1](#).

F. Registration with the Commissioner shall not be deemed to be an approval or endorsement by the Commissioner of the membership camping operator, his membership camping contract, or his campground, and any attempt by the membership camping operator to indicate that registration constitutes such approval or endorsement shall be unlawful.

1985, c. 409; 1992, c. 545 .

§59.1-319. Reserved.

Reserved.

§59.1-320. Repealed.

Repealed by Acts 1992, c. 545 .

§59.1-320.1. Review of registration application.

A. Once the Commissioner receives an application for registration in proper form, accompanied by the proper fee, he shall, within a reasonable period of time not to exceed forty-five days after the receipt of such application:

1. Register the applicant if the applicant:

a. Has met the requirements of § [59.1-318](#);

b. Is not in violation of § [59.1-323](#); and

c. Has a reasonable ability to discharge the obligations imposed upon him by his membership camping contract; or

2. Issue a notice of opportunity for a hearing to consider whether the application should be denied, if it reasonably appears that the applicant fails to satisfy any provision of § [59.1-323](#) or any other requirement of this chapter.

B. Except as otherwise provided by order of the Commissioner, each registration shall be valid for the period from July 1 of one year until its expiration on June 30 of the following year.

1992, c. 545 .

§59.1-321. Exemption from registration under other acts.

Any membership camping operator registered with the Commissioner under this chapter shall not be required to register or comply with the terms and requirements of the following:

1. The Virginia Condominium Act (§ [55-79.39](#) et seq.).

2. The Virginia Real Estate Time-Share Act (§ [55-360](#) et seq.).

3. The Virginia Securities Act (§ [13.1-501](#) et seq.).

1985, c. 409; 1996, c. [372](#).

§59.1-322. Other acts.

Registration with the Commissioner by a membership camping operator shall not relieve such operator of the obligation of complying with the requirements of the Virginia Home Solicitation Sales Act (§ [59.1-21.1](#) et seq.), if applicable.

1985, c. 409.

§59.1-323. Denial, suspension, or revocation of registration; hearing; summary action.

A. The Commissioner may deny an application for registration of a membership camping operator or may suspend, or revoke such registration if the Commissioner finds that such action is necessary for the protection of purchasers or prospective purchasers or that any one of the following is true:

1. The membership camping operator has failed to comply with any provision of this chapter that materially affects the rights of purchasers, prospective purchasers or owners of membership camping contracts.

2. The membership camping operator's offering or execution of membership camping contracts is fraudulent.

3. The membership camping operator's application for registration or any amendment thereto is incomplete in any respect.

4. The membership camping operator has failed to file timely amendments to the application for registration or meet any other requirement of § [59.1-318](#) of this chapter.

5. The membership camping operator has represented or is representing to purchasers in connection with the offer to sell membership camping contracts that a particular facility or facilities are planned without reasonable expectation that such facility will be completed within a reasonable time, or without the apparent means to ensure its completion.

6. The membership camping operator has permanently withdrawn from use all or any substantial portion of any campground and that (i) no adequate provision has been made to provide a substitute campground of comparable quality and attraction in the

same general area within a reasonable time after such withdrawal, and (ii) the rights of all purchasers at the affected location have not expired, and (iii) the Commissioner has found that the withdrawal is consistent with the protection of purchasers. Notwithstanding the foregoing, a membership camping operator may reserve the right to withdraw permanently from use all or any portion of a campground devoted to membership camping if, after the membership camping operator first represents to purchasers that the campground is or will be available for camping, the specific date upon which the withdrawal becomes effective is disclosed in writing to all purchasers at or prior to the time the membership camping contract is executed.

7. The membership camping operator has made any representation in any document or information filed with the Commissioner which is false or misleading.

8. The membership camping operator has engaged or is engaging in any unlawful act or practice.

9. The membership camping operator has disseminated or caused to be disseminated, any false or misleading promotional materials in connection with a campground.

10. The membership camping operator does not have a reasonable ability to discharge the obligations imposed upon him by any membership camping contract.

B. Except as provided in subsection C of this section, before denying, suspending or revoking a registration, as provided in subsection A of this section, the Commissioner shall issue to the membership camping operator a notice of opportunity for a hearing to consider the denial, suspension, or revocation.

C. If the Commissioner finds that the public health, safety or welfare requires emergency action and incorporates this finding in his order, the Commissioner may summarily deny, suspend or revoke a registration. The membership camping operator shall be given an opportunity within ten days after entry of such an order to appear before the Commissioner and show cause why the summary order should not remain in effect. If good cause is shown, the Commissioner shall vacate the summary order. If good cause is not shown, the summary order shall remain in effect. The membership camping operator shall have fifteen days thereafter within which to request a hearing, or the Commissioner may within thirty days thereafter set the matter for a hearing.

1985, c. 409; 1992, c. 545 .

§59.1-324. Cease and desist orders; temporary order.

A. If it appears to the Commissioner that any person has engaged or is engaging in any practice in violation of this chapter, he may issue an order directing the person to cease and desist provided that reasonable notice and an opportunity for a hearing shall be given to such person.

B. The Commissioner may issue a temporary order pending the hearing which is effective on delivery to the person named in the order. The temporary order shall remain in effect until five days after the hearing required in subsection A above is held. In the event no hearing is requested by the person named in the order, the order shall become final within fifteen days after it is delivered.

1985, c. 409.

§59.1-325. Fees.

A. Each application for registration under § [59.1-318](#) shall be accompanied by a reasonable fee to be determined by the Board and published in the regulations adopted in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

B. Each application for registration or for amendment shall be accompanied by a reasonable fee to be determined by the Board and published in regulations adopted in accordance with the provisions of the Administrative Process Act.

C. Until such time as regulations covering fees are adopted by the Board, the registration fee shall be \$2,500 and the fee for amendments shall be \$100.

D. All fees shall be remitted to the State Treasurer and shall be credited to a special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

1985, c. 409; 1988, c. 58; 1992, c. 545 .

§59.1-326. Membership camping operator's disclosure statement.

A. Every membership camping operator, salesperson, or other person who is in the business of offering for sale or transfer the rights under existing membership camping contracts for a fee shall deliver to his purchaser a current membership camping operator's disclosure statement before execution by the purchaser of the membership camping contract and no later than the date shown on such contract.

B. The membership camping operator's disclosure statement shall consist of the following items in the order as presented:

1. A cover page stating:

a. The words "Membership Camping Operator's Disclosure Statement" printed in bold-faced type of a minimum size of 10 points;

b. The name and principal business address of the membership camping operator;

c. A statement that the membership camping operator is in the business of offering for sale membership camping contracts;

d. The following statement printed in boldfaced type of a minimum size of 10 points:

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN THE EXECUTION OF A MEMBERSHIP CAMPING CONTRACT. THE MEMBERSHIP CAMPING OPERATOR IS REQUIRED BY LAW TO DELIVER TO YOU A COPY OF THIS DISCLOSURE STATEMENT BEFORE YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. YOU AS A PROSPECTIVE PURCHASER SHOULD REVIEW ALL REFERENCES, EXHIBITS, CONTRACT DOCUMENTS, AND SALES MATERIALS. YOU SHOULD NOT RELY UPON ANY ORAL REPRESENTATIONS AS BEING CORRECT. REFER TO THIS DOCUMENT AND TO THE ACCOMPANYING EXHIBITS FOR CORRECT REPRESENTATIONS. THE MEMBERSHIP CAMPING OPERATOR IS PROHIBITED FROM MAKING ANY REPRESENTATIONS WHICH CONFLICT WITH THOSE CONTAINED IN THE CONTRACT AND THIS DISCLOSURE STATEMENT.

e. The following statement printed in boldfaced type of a minimum size of 10 points:

SHOULD YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT, YOU HAVE THE UNQUALIFIED RIGHT TO CANCEL SUCH CONTRACT. THIS RIGHT OF CANCELLATION CANNOT BE WAIVED. THE RIGHT TO CANCEL EXPIRES AT MIDNIGHT ON THE 7TH CALENDAR DAY FOLLOWING THE DATE ON WHICH THE CONTRACT WAS EXECUTED. TO CANCEL THE MEMBERSHIP CAMPING CONTRACT, YOU AS THE PURCHASER MUST MAIL NOTICE OF YOUR INTENT TO CANCEL BY CERTIFIED UNITED STATES MAIL TO THE MEMBERSHIP CAMPING OPERATOR AT THE ADDRESS SHOWN IN THE MEMBERSHIP CAMPING CONTRACT, POSTAGE PREPAID. THE CAMPING OPERATOR IS REQUIRED BY LAW TO RETURN ALL MONEYS PAID BY YOU IN CONNECTION WITH THE EXECUTION OF THE MEMBERSHIP CAMPING CONTRACT, UPON YOUR PROPER AND TIMELY CANCELLATION OF THE CONTRACT. IN ADDITION, AFTER THE INITIAL 7-CALENDAR-DAY CANCELLATION PERIOD, YOU THE PURCHASER OR YOUR

SUCCESSOR IN INTEREST MAY TERMINATE YOUR LIABILITY UNDER THE MEMBERSHIP CAMPING CONTRACT INCLUDING PAYMENT OF ANY MEMBERSHIP FEES, DUES, AND ASSESSMENTS UPON YOUR GIVING PROPER AND EFFECTIVE NOTICE TO THE MEMBERSHIP CAMPING OPERATOR. TO BE EFFECTIVE, THE NOTICE MUST BE IN WRITING AND SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND IT MUST CONTAIN: (1) YOUR TRANSFER OF ANY AND ALL RIGHTS, TITLE, AND INTEREST YOU HAVE IN THE MEMBERSHIP CAMPING CONTRACT AND CAMPGROUND BACK TO THE MEMBERSHIP CAMPING OPERATOR; (2) A RECORDABLE DEED, DULY EXECUTED AND NOTARIZED, AND THE RECORDING FEE, IF YOU RECEIVED A RECORDED DEED FROM THE MEMBERSHIP CAMPING OPERATOR; (3) PAYMENTS OF (i) THE UNPAID BALANCE OF THE PURCHASE PRICE AND ANY ACCRUED UNPAID INTEREST THEREON AND (ii) ALL UNPAID MEMBERSHIP FEES, DUES, AND ASSESSMENTS WITH ACCRUED INTEREST THEREON PERMITTED BY THE MEMBERSHIP CAMPING CONTRACT; AND (4) PAYMENT OF ALL OTHER UNPAID FINANCIAL OBLIGATIONS OWED BY YOU THE PURCHASER PURSUANT TO THE MEMBERSHIP CAMPING CONTRACT.

f. The following statement:

"Registration of the membership camping operator with the Commissioner of the Virginia Department of Agriculture and Consumer Services does not constitute an approval or endorsement by the Commissioner of the membership camping operator, his membership camping contract, or his campground."

2. The name of the membership camping operator and the address of his principal place of business and the following information:

- a. The name, principal occupation, and address of every director, partner, or trustee of the membership camping operator;
- b. The name and address of each person owning or controlling an interest of 10 percent or more in the membership camping operator;
- c. The particulars of any indictment, conviction, judgment, decree, or order of any court or administrative agency against the membership camping operator or its managing entity arising out of the violation or alleged violation of any federal, state, local, or foreign law or regulation in connection with activities relating to the sale of campground memberships, land sales, land investments, security sales, construction, or sale of homes or improvements or any similar or related activity; and

- d. A statement of any unsatisfied judgments against the membership camping operator or its managing entity, the status of any pending suits involving the sale of membership camping contracts or the management of campgrounds to which the membership camping operator or its managing entity is a party and the status of any pending suits, administrative proceedings, or indictments of significance to the campground;
3. A brief description of the nature of the purchaser's right or license to use the campground and the facilities that are to be available for use by purchasers;
4. A brief description of the membership camping operator's experience in the membership camping business, including the length of time the operator has been in the membership camping business;
5. The location of each of the campgrounds that is to be available for use by purchasers and a brief description of the facilities at each campground that are currently available for use by purchasers. Facilities that are planned, incomplete, or not yet available for use shall be clearly identified as incomplete or unavailable. A brief description of any facilities that are or will be available to nonpurchasers shall also be provided;
6. As to all memberships offered by the membership camping operator at each campground:
 - a. The form of membership offered;
 - b. The types and duration of memberships along with a summary of the major privileges, restrictions, and limitations applicable to each type; and
 - c. Provisions, if any, that have been made for public utilities at each campsite including water, electricity, telephone, and sewerage facilities;
7. A statement regarding any initial or special fee due from the purchaser together with a description of the purpose and method of calculating the fee;
8. A description of any liens, defects, or encumbrances affecting the campground;
9. A general description of any financing offered or available through the membership camping operator;
10. A statement that the purchaser has until midnight of the seventh calendar day following the signing of the membership campground contract to cancel the contract by proper notice to the membership camping operator;

11. A description of the insurance coverage that the membership camping operator provides for the benefit of purchasers, if any;
12. A statement regarding any fees or charges that purchasers are or may be required to pay for the use of the campground or any facilities;
13. The extent to which financial arrangements, if any, have been provided for the completion of facilities together with a statement of the membership camping operator's obligation to complete planned facilities. The statement shall include a description of any restrictions or limitations on the membership camping operator's obligation to begin or to complete such facilities;
14. The name of the managing entity, if there is one, and the significant terms of any management contract, including but not limited to the circumstances under which the membership camping operator may terminate the management contract;
15. A statement regarding any services that the membership camping operator currently provides or expenses he pays that are expected to become the responsibility of the purchasers, including the projected liability that each such service or expense may impose on each purchaser;
16. A brief description of the ownership in or other right to use the campground that is to be transferred to each purchaser, together with the duration of any lease, license, franchise, or reciprocal agreement entitling the membership camping operator or purchasers from him to use the campground, and any provisions in any such agreements that restrict or limit a purchaser's use of the campground;
17.
 - a. A copy, whether by way of supplement or otherwise, of the rules, restrictions, or covenants regulating the purchaser's use of the campground in Virginia and its facilities that are to be available for use by the purchasers, including a statement of whether and how the rules, restrictions, or covenants may be changed;
 - b. A summary, whether by way of supplement or otherwise, of the rules, restrictions, or covenants regulating the purchaser's use of any other campgrounds, facilities, or any other amenities resulting from the purchase of, or used as an inducement to influence the purchase of, the membership camping contract;
18. A description of any restraints on the transfer of the membership camping contract;

19. A brief description of the policies covering the availability of camping sites, the availability of reservations and the conditions under which they are made;

20. A brief description of any grounds for forfeiture of a purchaser's membership camping contract;

21. A statement of whether the membership camping operator has the right to withdraw permanently from use all or any portion of any campground devoted to membership camping and, if so, the conditions under which such withdrawal is to be permitted;

22. A statement describing the material terms and conditions of any reciprocal program to be available to the purchaser, including a statement concerning whether the purchaser's participation in any reciprocal program is dependent upon the continued affiliation of the membership camping operator with that reciprocal program and whether the membership camping operator reserves the right to terminate such affiliation;

23. The following statement printed in boldfaced type of a minimum size of 10 points:

"The purchase of this membership camping contract should not be based on any representations that it is an investment or that it can be resold. The resale of a membership may be difficult"; and

24. A statement that contains in boldfaced type the name, address, and telephone number of the Virginia Department of Agriculture and Consumer Services and that states that that agency is the regulatory agency that handles consumer complaints regarding membership campgrounds.

C. The membership camping operator shall promptly amend his membership camping operator's disclosure statement to reflect any material change in the campground or its facilities. He shall also promptly file any such amendments with the Commissioner.

1985, c. 409; 1992, c. 545; 2013, c. [24](#).

§59.1-327. Purchaser's rights.

A. The purchaser shall have the following rights during the first seven calendar days following the execution of the membership camping contract:

1. A purchaser shall have the right to cancel a membership camping contract within seven calendar days following the date of its execution.
 2. The right of cancellation shall not be waived and any attempt to obtain such a waiver shall be unlawful. Nothing in this section shall preclude the execution of documents in advance of closing for delivery after expiration of the cancellation period.
 3. If the purchaser elects to cancel the membership camping contract, he may do so only by mailing notice thereof by certified United States mail to the membership camping operator at the address listed in the membership camping contract. The cancellation shall be deemed effective upon mailing.
 4. Upon cancellation, the membership camping operator shall refund to the purchaser all payments made by such purchaser and collected by the membership camping operator pursuant to the canceled membership camping contract. The refund shall be made within sixty days after the effective date of the cancellation and may, where payment has been made by credit card, be made by an appropriate credit to the purchaser's account. Where payment is made by an exchange of real or personal property, the property may be returned to the purchaser.
 5. The purchaser's right to cancel shall apply only to the initial membership camping contract executed by such purchaser and to no successor contract and shall not apply to a successor contract which replaces an existing contract executed by such purchaser, unless the successor contract is executed within seven calendar days of the original contract in which case the cancellation period shall renew itself.
- B. In addition to the rights afforded the purchaser contained in subsection A of this section, the purchaser and any successor in interest shall not be held liable for any maintenance fees, dues, and assessments succeeding the effective date of notification pursuant to subdivision 2 of this subsection, if:
1. The purchaser or his successor in interest relinquishes any and all interest in the membership camping contract to the membership camping operator or his assigns; and
 2. The purchaser or his successor in interest notifies the membership camping operator or his assigns, in writing, by certified mail, return receipt requested, of his relinquishment. The notice shall be deemed effective:
 - a. Eighteen months after the notice is mailed provided the membership camping contract is no less than fifty-four months old; and

b. If and only if the principal and interest payments, the membership fees, dues, and assessments and all other financial obligations owed by the purchaser, or his successor in interest, under the membership camping contract are paid in full as of the date of mailing; and

c. The relinquishment contained in subdivision B 1 shall be in the form of a recordable deed, duly executed and properly notarized, or other form found acceptable to the membership camping operator accompanied by a fee sufficient to record the deed.

C. If the notice complies with subsection B of this section concerning avoiding further payments of membership fees, dues, and assessments, the membership camping operator shall confirm, in writing, receipt of the notice within ten days after its receipt. If the notice does not comply with subsection B of this section, the membership camping operator or his assigns shall inform the purchaser or his successors in interest, in writing, within ten days after its receipt, of the specific reasons why the notice does not comply.

D. All moneys collected by the membership camping operator pursuant to the membership camping contract prior to notification by the purchaser or his successor in interest pursuant to subsection B of this section shall remain the property of the membership camping operator.

E. Upon satisfaction of all provisions of subsection B of this section, the purchaser or his successor in interest shall have no rights or obligations under the membership camping contract and the membership camping operator or his assigns shall make no claims against the purchaser or his successor in interest thereunder.

1985, c. 409; 1992, c. 545 .

§59.1-328. Membership camping contracts.

The membership camping operator shall deliver to his purchaser a fully executed copy of the membership camping contract, which contract shall include at least the following information:

1. The actual date the membership camping contract is executed by the purchaser.
2. The name of the membership camping operator and the address of his principal place of business.

3. The total financial obligation imposed upon the purchaser by the contract, including the initial purchase price and any additional charges that the purchaser may be required to pay.

4. A description of the nature and duration of the membership being purchased, including any interest in real property.

5. A statement that the membership camping operator, salesperson, or any other person who is in the business of offering for sale or transfer the rights under existing membership camping contracts for a fee is required by the Virginia Membership Camping Act (§ [59.1-311](#) et seq.) to provide each purchaser with a copy of the membership camping operator's disclosure statement prior to execution of such contract and that a failure to do so is a violation of the Act.

6. The following statement under its own paragraph and conspicuously placed:

"PURCHASER'S NONWAIVABLE RIGHT TO CANCEL" shall appear at the beginning of such paragraph in boldfaced type of a minimum size of 10 points, immediately preceding the following statement, which shall appear in type no smaller than the other provisions of the contract:

YOU AS THE PURCHASER HAVE A NONWAIVABLE 7-CALENDAR-DAY RIGHT OF CANCELLATION. THIS RIGHT OF CANCELLATION IS FULLY EXPLAINED ON THE COVER SHEET OF THE MEMBERSHIP CAMPING OPERATOR'S DISCLOSURE STATEMENT. YOU ARE URGED TO REVIEW THE DISCLOSURE STATEMENT PRIOR TO THE EXECUTION OF THIS CONTRACT FOR A COMPLETE UNDERSTANDING OF YOUR RIGHT OF CANCELLATION. IN ADDITION, AFTER THE INITIAL 7-CALENDAR-DAY CANCELLATION PERIOD, YOU THE PURCHASER OR YOUR SUCCESSOR IN INTEREST MAY TERMINATE YOUR LIABILITY UNDER THE MEMBERSHIP CAMPING CONTRACT INCLUDING PAYMENT OF ANY MEMBERSHIP FEES, DUES, AND ASSESSMENTS UPON YOUR GIVING PROPER AND EFFECTIVE NOTICE TO THE MEMBERSHIP CAMPING OPERATOR. TO BE EFFECTIVE, THE NOTICE MUST BE IN WRITING AND SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND IT MUST CONTAIN: (1) YOUR TRANSFER OF ANY AND ALL RIGHTS, TITLE, AND INTEREST YOU HAVE IN THE MEMBERSHIP CAMPING CONTRACT AND CAMPGROUND BACK TO THE MEMBERSHIP CAMPING OPERATOR; (2) A RECORDABLE DEED, DULY EXECUTED AND NOTARIZED, AND THE RECORDING FEE, IF YOU RECEIVED A RECORDED DEED FROM THE MEMBERSHIP CAMPING OPERATOR; (3) PAYMENTS OF (i) THE UNPAID BALANCE

OF THE PURCHASE PRICE AND ANY ACCRUED UNPAID INTEREST THEREON AND (ii) ALL UNPAID MEMBERSHIP FEES, DUES, AND ASSESSMENTS WITH ACCRUED INTEREST THEREON PERMITTED BY THE MEMBERSHIP CAMPING CONTRACT; AND (4) PAYMENT OF ALL OTHER UNPAID FINANCIAL OBLIGATIONS OWED BY YOU THE PURCHASER PURSUANT TO THE MEMBERSHIP CAMPING CONTRACT.

7. The full name of all salespersons involved in the execution of the membership camping contract.

8. A statement that contains, in boldfaced type, the name, address, and telephone number of the Virginia Department of Agriculture and Consumer Services, stating that that agency is the regulatory agency handling consumer complaints regarding membership campgrounds.

1985, c. 409; 1992, c. 545; 2013, c. [24](#).

§59.1-329. Escrow and bonding.

A. All purchase money received from or on behalf of a purchaser in connection with the execution of a membership camping contract shall be deposited in an escrow or trust account designated solely for that purpose, which may be the membership camping operator's own escrow or trust account or that of his attorney's, until the expiration of the time for cancellation has expired unless a later time is provided in the membership camping contract. If the contract has not been canceled, any purchase money received from a purchaser may be released to the membership camping operator upon:

1. The conveying to the purchaser of the title to, interest in, or right or license to use the campground and facilities as required in the membership camping contract; or
2. The forfeiture of the purchase money by the purchaser under the terms of the membership camping contract.

B. In lieu of the obligations imposed by subsection A, the membership camping operator may file and maintain with the Commissioner a surety bond issued in favor of the Commissioner for the benefit of purchasers insuring the escrow of the purchase money until such time as it may be released as outlined in subsection A. Such bond may not be canceled until thirty days after written notice of cancellation is received by the Commissioner. In lieu of such bond, the membership camping operator may post with the Commissioner an irrevocable letter of credit in a form and content

acceptable to the Commissioner. The penalty of the bond or letter of credit shall be adjusted from time to time in accordance with the following schedule:

TOTAL AMOUNT OF

PURCHASE MONEY HELD PENALTY OF BOND

- | | |
|---------------------------|-----------|
| 1. \$0 to \$200,000 | \$50,000 |
| 2. \$200,000 to \$500,000 | \$75,000 |
| 3. Over \$500,000 | \$100,000 |

C. The amount of purchase money paid by purchasers held at any one time by the membership camping operator shall not exceed the amount for which the operator is bonded or the letter of credit is issued in accordance with the schedule set forth in subsection B.

D. In addition to any bonding requirements contained in this section, the membership camping operator shall file and maintain with the Commissioner a payment and performance bond with surety issued in favor of the Commissioner for the benefit of the purchasers and which guarantees the completion of all incomplete or planned facilities constructed or to be constructed in this Commonwealth as outlined or listed in either the membership camping contract or the membership camping operator's disclosure statement. The bond may not be canceled until thirty days after written notice of cancellation is received by the Commissioner. In lieu of the bond the membership camping operator may post with the Commissioner an irrevocable letter of credit. The surety bond or letter of credit shall be in a form and content acceptable to the Commissioner. The penalty of the bond or letter of credit shall be in an amount equal to the cost of completing the incomplete or planned facilities as of the date of its issuance or as of the membership camping operator's application for continued registration date as provided in § [59.1-320.1](#), whichever is later.

1985, c. 409; 1992, c. 545 .

§59.1-330. Repealed.

Repealed by Acts 1992, c. 545 .

§59.1-330.1. Noncomplying contract voidable.

Any membership camping contract which does not comply with the applicable provisions of this chapter shall be voidable at the option of the purchaser.

1992, c. 545 .

§59.1-330.2. Fraud rendering contract voidable.

Any membership camping contract entered into by the purchaser upon any false, misleading, prohibited, or unlawful information, representation, notice, or advertisement of the membership camping operator or the operator's agent shall be voidable at the option of the purchaser.

1992, c. 545 .

§59.1-331. Resale of memberships.

A. In the event of the resale of a membership by a purchaser who is neither a membership camping operator nor any other person who is in the business of offering for sale or transfer the rights under existing membership camping contracts for a fee, such purchaser (hereinafter in this section called "owner") shall furnish to the new purchaser before the execution of any instrument of conveyance a copy of the membership camping contract and a certificate containing:

1. A statement disclosing any right of first refusal or other restraint on transfer of the membership.
2. A statement setting forth the amount of the periodic payments which are required by the contract including any amounts currently due and payable.
3. That the membership camping operator may have a valid reason for not transferring the contract to the new purchaser.
4. That there may have been changes in the rules or regulations concerning the rights and obligations of the membership camping operator or purchasers, including changes with respect to membership fees, dues, and assessments, or that some campgrounds or facilities may have been withdrawn.
5. Any other material changes or risks to the purchaser known to the owner.

B. The membership camping operator within ten days after receipt of a written request by an owner, shall furnish the owner with a written certificate containing the information necessary to enable the owner to comply with subdivisions 1 and 2 of subsection A of this section. An owner providing such certificate pursuant to subsection A is not liable to the purchaser for any erroneous information provided by the membership camping operator and included in the certificate. The membership camping operator is not liable to either the owner or the new purchaser for any information not provided by him.

1985, c. 409; 1992, c. 545 .

§59.1-332. Conditions on offering items as an inducement to execute.

A. It is unlawful for any person by any means, as part of an advertising program, to offer any item of value as an inducement to the recipient to visit a membership camping operator's campground, attend a sales presentation or contact a salesperson, unless the person clearly discloses in writing in the offer in readily understandable language each of the following:

1. The name and campground address of the membership camping operator.
2. A general statement that the advertising program is being conducted by a membership camping operator and the purpose of any requested visit.
3. A statement of odds, in arabic numerals, of receiving each item offered.
4. The approximate retail value of each item offered.
5. The number of campgrounds that are participating in such advertising program.
6. The restrictions, qualifications and other conditions that must be satisfied before the recipient is entitled to receive the item, including:
 - a. Any deadline, if any, by which the recipient must visit the campground, attend the sales presentation or contact a salesperson in order to receive the item.
 - b. The approximate duration of any visit and sales presentation.
 - c. The date upon which the offer shall terminate and the final date upon which the gifts or prizes are to be awarded.
 - d. Any other conditions, such as minimum age qualification, a financial qualification or a requirement that if the recipient is married both husband and wife must be present in order to receive the item.
7. A statement that the membership camping operator reserves the right to provide a rain check or a substitute or like item, if these rights are reserved.
8. All other material rules, terms and conditions of the offer or program.

B. It is unlawful for any person making an offer subject to subsection A, or any employee or agent of the person, to offer any item if the person knows or has reason to know that the offered item will not be available in a sufficient quantity based on the reasonably anticipated response to the offer.

C. It is unlawful for any person making an offer subject to subsection A, or any employee or agent of the person, to fail to provide any offered item which any

recipient who has responded to the offer in the manner specified in the offer, has performed the requirements disclosed in the offer and has met the qualifications described in the offer is entitled to receive, unless the offered item is not reasonably available and the offer discloses the reservation of a right to provide a rain check or a like or substitute item if the offered item is unavailable.

D. If the person making an offer subject to subsection A is unable to provide an offered item because of limitations of supply, quantity or quality not reasonably foreseeable or controllable by the person making the offer, the person making the offer shall inform the recipient of the recipient's right to receive a rain check for the item offered, unless the person making the offer knows or has a reasonable basis for knowing that the item will not be reasonably available at approximately the same price to the person making the offer, and shall inform the recipient of the recipient's right to at least one of the following additional options:

1. The person making the offer will provide a like item of equivalent or greater retail value or a rain check for the item. This option must be offered if the offered item is not reasonably available.

2. The person making the offer will provide a substitute item of equivalent or greater retail value.

3. The person making the offer will provide a rain check for a like or substitute item.

E. If a rain check is provided, the person making an offer subject to subsection A shall, within a reasonable time, and in any event not more than ninety days after the rain check is provided, deliver the agreed item to the recipient's address without additional cost or obligation to the recipient, unless the item for which the rain check is provided remains unavailable because of limitations of supply, quantity or quality not reasonably foreseeable or controllable by the person making the offer. If the item is unavailable for these reasons, the person shall, not more than thirty days after the expiration of the aforesaid ninety-day period, deliver a like item of equal or greater retail value or, if the item is not reasonably available to the person at approximately the same price, a substitute item of equal or greater retail value.

F. On the written request of a recipient who has received or claims a right to receive any offered item, the person making an offer subject to subsection A shall furnish to the recipient sufficient evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

G. It is unlawful for any person making an offer subject to subsection A, or any employee or agent of the person, to:

1. Misrepresent the size, quantity, identity or quality of any prize, gift, money or other item of value offered.
2. Misrepresent in any manner the odds of receiving any particular gift, prize, amount of money or other item of value.
3. Label any offer a "notice of termination" or "notice of cancellation."
4. Materially misrepresent, in any manner, the offer, or program.

H. If any provision of this section is in conflict with the provisions of the Prizes and Gifts Act (§ [59.1-415](#) et seq.), the provisions of the Prizes and Gifts Act shall control. 1985, c. 409; 1992, c. 545 .

§59.1-333. Nondisturbance provisions.

With respect to any property in this Commonwealth acquired and put into operation by a membership camping operator after July 1, 1985, the membership camping operator shall neither offer nor execute a membership camping contract in this Commonwealth granting the right to use such property until:

1. Each person holding an interest in a blanket encumbrance shall have executed and delivered a nondisturbance agreement which includes the following provisions: (i) that the rights of the owner or owners of the blanket encumbrance in the affected campground are subordinate to the rights of purchasers, and (ii) that any person who acquires the affected campground or any portion thereof by the exercise of any right of sale or foreclosure contained in such agreement shall take the same subject to the rights of the purchasers, and (iii) that the owner or owners of the blanket encumbrance shall not use or cause the property to be used in any manner which interferes with the right of the purchasers to use the campground and its facilities in accordance with the terms and conditions of the membership camping contract. Such agreement shall be recorded in the clerk's office of the circuit court in which the property is located; and
2. Every financial institution providing a major hypothecation loan to the membership camping operator (the "hypothecation lender") which has a lien on, or security interest in the membership camping operator's ownership interest in the campground shall have executed and delivered a nondisturbance agreement and

recorded such agreement in the clerk's office of the circuit court in which the campground is located. In addition, each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender shall have executed, delivered and recorded an instrument stating that such person shall give the hypothecation lender notice of, and at least thirty days to cure, any default under the blanket encumbrance before such person commences any foreclosure action affecting the campground. For the purposes of this provision, a major hypothecation loan to a membership camping operator is a loan or line of credit secured by substantially all of the contracts receivable arising from the membership camping operator's sale of membership camping contracts; or

3. There shall have been delivered to and accepted by the Commissioner a surety bond or letter of credit satisfying the following requirements: The surety bond or letter of credit shall be issued to the Commissioner for the benefit of purchasers and shall be in an amount which is not less than 105 percent of the remaining principal balance of every indebtedness secured by a blanket encumbrance affecting the campground. Such bond shall be issued by a surety authorized to do business in this Commonwealth and having sufficient net worth to satisfy the indebtedness. Such letter of credit shall be irrevocable and shall be drawn upon a bank, savings and loan, or financial institution and shall be in form and content acceptable to the Commissioner. The bond or letter of credit shall provide for payment of all amounts secured by the blanket encumbrance, including costs, expenses, and legal fees of the lien holder, if for any reason the blanket encumbrance is enforced. The bond or letter of credit may be reduced at the option of the membership camping operator periodically in proportion to the reductions of the amounts secured by the blanket encumbrance.

4. The nondisturbance agreement may be amended provided the provisions of this section are not diminished or altered by the amendment.

1985, c. 409.

§59.1-334. Investigations.

A. The Commissioner may:

1. Make necessary public or private investigations within or without this Commonwealth to determine whether any person has violated or is about to violate any provision of this chapter or any rule, regulation, or order issued hereunder, or to aid in the enforcement of this chapter in prescribing rules and form hereunder.

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter to be investigated.

B. For the purpose of any investigation or proceeding under this chapter, the Commissioner may administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Any proceeding or hearing of the Commissioner under this chapter, where witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

D. Upon failure to obey a subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

E. The Board may prescribe reasonable rules and regulations in order to implement the terms of this chapter and such rules and regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.).

F. Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Process Act.

1985, c. 409.

§59.1-335. Penalties.

A. Any person violating any of the provisions of §§ [59.1-317](#), [59.1-318](#), [59.1-326](#), [59.1-327](#), [59.1-328](#), and [59.1-329](#) or a cease and desist or temporary order issued pursuant to § [59.1-324](#) shall be guilty of a Class 1 misdemeanor and any person violating any of the provisions of § [59.1-332](#) shall be guilty of a Class 3 misdemeanor. Other than with reference to § [59.1-332](#) each violation shall be deemed a separate offense.

B. Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § [59.1-200](#) and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ [59.1-196](#) et seq.) of this title.

1985, c. 409; 1992, c. 545 .

Virginia Motion Picture Fair Competition Act

§59.1-255. Short title.

This chapter may be known and cited as the "Virginia Motion Picture Fair Competition Act."

1978, c. 764.

§59.1-256. Purpose of chapter.

The purpose of this chapter is to establish fair and open procedures for the bidding and negotiation for the right to exhibit motion pictures within the Commonwealth in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution within the Commonwealth, to promote fair and effective competition in that business, and to ensure that exhibitors have the opportunity to view a motion picture and know its contents before committing themselves to exhibiting it in their communities.

1978, c. 764.

§59.1-257. Definitions.

As used in this chapter:

1. The term "person" means and includes one or more individuals, partnerships, associations, societies, trusts, organizations, or corporations;
2. The term "theater" means any establishment in which motion pictures are exhibited to the public regularly for a charge;
3. The term "distributor" means any person engaged in the business of distributing or supplying motion pictures to exhibitors by rental, sale or licensing;

4. The term "exhibitor" means any person engaged in the business of operating one or more theaters;
5. The term "exhibit" or "exhibition" means showing a motion picture to the public for a charge;
6. The term "invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid for the right to exhibit a motion picture;
7. The term "bid" means a written offer or proposal by an exhibitor to a distributor in response to an invitation to bid for the right to exhibit a motion picture, stating the terms under which the exhibitor will agree to exhibit a motion picture;
8. The term "license agreement" means any contract, agreement, understanding or condition between a distributor and an exhibitor relating to the licensing or exhibition of a motion picture by the exhibitor;
9. The term "trade screening" means the showing of a motion picture by a distributor at some location within the Commonwealth or the District of Columbia or Prince Georges and Montgomery Counties, Maryland, which is open to any exhibitor from whom the distributor intends to solicit bids or with whom the distributor intends to negotiate for the right to exhibit the motion picture;
10. The term "blind bidding" means the bidding for, negotiating for, or offering or agreeing to terms for the licensing or exhibition of a motion picture at any time before such motion picture has either been trade screened within the Commonwealth or the District of Columbia or Prince Georges and Montgomery Counties, Maryland, or before such motion picture, at the option of the distributor, otherwise has been made available for viewing within the Commonwealth, or the District of Columbia or Prince Georges and Montgomery Counties, Maryland, by all exhibitors from whom the distributor is soliciting bids or with whom the distributor is negotiating for the right to exhibit such motion picture; and
11. The term "run" means the continuous exhibition of a motion picture in a defined geographic area for a specified period of time. A "first run" is the first exhibition of a picture in the designated area; a "second run" is the second exhibition; and "subsequent runs" are subsequent exhibitions after the second run. "Exclusive run" is any run limited to a single theater in a defined geographic area and a "nonexclusive run" is any run in more than one theater in a defined geographic area.

1978, c. 764.

§59.1-258. "Blind bidding" prohibited.

A. Blind bidding is hereby prohibited within the Commonwealth. No bids shall be returnable, no negotiations for the exhibition or licensing of a motion picture shall take place, and no license agreement or any of its terms shall be agreed to, for the exhibition of any motion picture within the Commonwealth before the motion picture has either been trade screened within the Commonwealth or the District of Columbia or Prince Georges and Montgomery Counties, Maryland, or before such motion picture, at the option of the distributor, otherwise has been made available for viewing within the Commonwealth or the District of Columbia or Prince Georges and Montgomery Counties, Maryland, by all exhibitors from whom the distributor is soliciting bids or with whom the distributor is negotiating for the right to exhibit the motion picture.

B. A distributor shall provide reasonable and uniform notice of the trade screening of any motion picture to those exhibitors within the Commonwealth from whom he intends to solicit bids or with whom he intends to negotiate for the right to exhibit that motion picture.

C. Any purported waiver of the prohibition against blind bidding in this chapter shall be void and unenforceable.

1978, c. 764.

§59.1-259. Bidding procedures.

If bids are solicited from exhibitors for the licensing of a motion picture within the Commonwealth, then:

1. The invitation to bid shall specify (i) whether the run for which the bid is being solicited is a first, second or subsequent run; (ii) whether the run is an exclusive or nonexclusive run; (iii) the geographic area for the run; (iv) the names of all exhibitors who are being solicited; (v) the date and hour the invitation to bid expires; and (vi) the time, date and the location, including the address, where the bids will be opened, which shall be within the Commonwealth or the District of Columbia or Prince Georges and Montgomery Counties, Maryland.

2. All bids shall be submitted in writing and shall be opened at the same time and in the presence of those exhibitors, or their agents, who submitted bids and are present at such time.

3. Immediately upon being opened, the bids shall be subject to examination by exhibitors, or their agents, who submitted bids, and who are present at the opening. Within ten business days after the bids are opened, the distributor shall notify each exhibitor who submitted a bid either the name of the winning bidder or the fact that none of the bids was acceptable.
4. Once bids are solicited, the distributor shall license the picture only by bidding and may solicit rebids if he does not accept any of the submitted bids.

1978, c. 764.

§59.1-260. Civil enforcement; injunction.

Any person who suffers loss or pecuniary damage resulting from a violation of the provisions of this chapter shall be entitled to bring an individual action to recover damages and reasonable attorney's fees. The provisions of this chapter may be enforced by injunction or any other available equitable or legal remedy.

1978, c. 764.

§59.1-261. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

Virginia Motor Vehicle Sales and Use Tax

§58.1-2400. Title.

This chapter shall be known and may be cited as the "Virginia Motor Vehicle Sales and Use Tax Act."

Code 1950, § 58-685.10; 1966, c. 587; 1984, c. 675.

§58.1-2401. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Commissioner" shall mean the Commissioner of the Department of Motor Vehicles of the Commonwealth.

"Department" shall mean the Department of Motor Vehicles of this Commonwealth, acting through its duly authorized officers and agents.

"Mobile office" shall mean an industrialized building unit not subject to the federal regulation, which may be constructed on a chassis for the purpose of towing to the point of use and designed to be used with or without a permanent foundation, for commercial use and not for residential use; or two or more such units separately towable, but designed to be joined together at the point of use to form a single commercial structure, and which may be designed for removal to, and installation or erection on other sites.

"Motor vehicle" shall mean every vehicle, except for mobile office as herein defined, which is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, including manufactured homes as defined in § [46.2-100](#) and every device in, upon and by which any person or property is, or can be, transported or drawn upon a highway, but excepting devices moved by human or animal power, devices used exclusively upon stationary rails or tracks and vehicles, other than manufactured homes, used in this Commonwealth but not required to be licensed by the Commonwealth.

"Sale" shall mean any transfer of ownership or possession, by exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of a motor vehicle. The term shall also include a transaction whereby possession is transferred but title is retained by the seller as security. The term shall not include a transfer of ownership or possession made to secure payment of an obligation, nor shall it include a refund for, or replacement of, a motor vehicle of equivalent or lesser value pursuant to the Virginia Motor Vehicle Warranty Enforcement Act (§ [59.1-207.9](#) et seq.). Where the replacement motor vehicle is of greater value than the motor vehicle replaced, only the difference in value shall constitute a sale.

"Sale price" shall mean the total price paid for a motor vehicle and all attachments thereon and accessories thereto, as determined by the Commissioner, exclusive of any federal manufacturers' excise tax, without any allowance or deduction for trade-ins or unpaid liens or encumbrances. However, "sale price" shall not include (i) any manufacturer rebate or manufacturer incentive payment applied to the transaction by the customer or dealer whether as a reduction in the sales price or as payment for the vehicle and (ii) the cost of controls, lifts, automatic transmission, power steering, power brakes or any other equipment installed in or added to a motor vehicle which is required by law or regulation as a condition for operation of a motor vehicle by a handicapped person.

Code 1950, §§ 58-685.11, 58-685.13, 58-685.13:2; 1966, c. 587; 1968, c. 321; 1970, cc. 409, 489; 1972, cc. 302, 680; 1973, c. 207; 1974, c. 477; 1976, cc. 567, 610; 1977, c. 537; 1978, cc. 656, 758, 766; 1979, cc. 310, 436; 1982, c. 541; 1983, c. 386; 1984, c. 675; 1986, Sp. Sess., c. 11; 1995, c. [50](#); 1997, cc. [283](#), [853](#); 1999, c. [77](#); 2011, cc. [405](#), [639](#); 2013, c. [766](#).

§58.1-2402. (Contingent expiration date -- see note*) Levy.

A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or use of motor vehicles in Virginia, other than a sale to or use by a person for rental as an established business or part of an established business or incidental or germane to such business.

The amount of the tax to be collected shall be determined by the Commissioner by the application of the following rates against the gross sales price:

1. Three percent through midnight on June 30, 2013, four percent (4.0%) beginning July 1, 2013, through midnight on June 30, 2014, four and five-hundredths of a percent (4.05%) beginning July 1, 2014, through midnight on June 30, 2015, four and one tenth of a percent (4.1%) beginning July 1, 2015, through midnight on June 30, 2016, and four and fifteen-hundredths (4.15%) of a percent beginning on and after July 1, 2016, of the sale price of each motor vehicle sold in Virginia. If such motor vehicle is a manufactured home as defined in § [36-85.3](#), the tax shall be three percent of the sale price of each such manufactured home sold in the Commonwealth; if such vehicle is a mobile office as defined in § [58.1-2401](#), the tax shall be two percent of the sale price of each mobile office sold in the Commonwealth; if such vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § [36-85.3](#), (ii) a mobile office as defined in § [58.1-2401](#), (iii) a trailer or semitrailer as severally defined in § [46.2-100](#) that is not designed or used to carry property, nor (iv) a vehicle registered under § [46.2-700](#), the tax shall be zero percent of the sale price of each such vehicle sold in the Commonwealth.

2. Three percent through midnight on June 30, 2013, four percent (4.0%) beginning July 1, 2013, through midnight on June 30, 2014, four and five-hundredths of a percent (4.05%) beginning July 1, 2014, through midnight on June 30, 2015, four and one tenth of a percent (4.1%) beginning July 1, 2015, through midnight on June 30, 2016, and four and fifteen-hundredths (4.15%) of a percent beginning on and after July 1, 2016, of the sale price of each motor vehicle, not sold in Virginia but used or

stored for use in the Commonwealth; or three percent of the sale price of each manufactured home as defined in § [36-85.3](#), or two percent of the sale price of each mobile office as defined in § [58.1-2401](#), not sold in Virginia but used or stored for use in this Commonwealth. If such vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § [36-85.3](#), (ii) a mobile office as defined in § [58.1-2401](#), (iii) a trailer or semitrailer as severally defined in § [46.2-100](#) that is not designed or used to carry property, nor (iv) a vehicle registered under § [46.2-700](#), the tax shall be zero percent of the sale price of each such vehicle not sold in the Commonwealth but used or stored for use in the Commonwealth. When any motor vehicle or manufactured home not sold in the Commonwealth is first used or stored for use in Virginia six months or more after its acquisition, the tax shall be based on its current market value.

3. The minimum tax levied on the sale of any motor vehicle in the Commonwealth that is subject to taxation at a rate exceeding zero percent shall be \$75, except as provided by those exemptions defined in § [58.1-2403](#).

4 through 7. [Repealed.]

B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall the same transaction be taxed more than once under either subdivision.

C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of § [58.1-2403](#) shall be subject to the tax, based on the current market value when such vehicle is no longer owned or used by the United States government or any governmental agency, or the Commonwealth of Virginia or any political subdivision thereof, unless such vehicle is then rented, in which case the tax imposed by § [58.1-1736](#) shall apply, subject to the exemptions provided in § [58.1-1737](#). Further, any motor vehicle, trailer or semitrailer exempt from the tax imposed by this chapter under subdivision 11 of § [58.1-2403](#) or §§ [46.2-663](#) through [46.2-674](#) shall be subject to the tax, based on the current market value, when such vehicle is subsequently licensed to operate on the highways of the Commonwealth.

D. Any person who with intent to evade or to aid another person to evade the tax provided for herein, falsely states the selling price of a vehicle on a bill of sale, assignment of title, application for title, or any other document or paper submitted to the

Commissioner pursuant to any provisions of this title or Title 46.2, shall be guilty of a Class 3 misdemeanor.

E. Effective January 1, 1997, any amount designated as a "processing fee" and any amount charged by a dealer for processing a transaction, which is required to be included on a buyer's order pursuant to subdivision A 10 of § [46.2-1530](#), shall be subject to the tax.

Code 1950, §§ 58-685.12, 58-685.12:1; 1966, c. 587; 1970, c. 675; 1974, c. 477; 1976, cc. 567, 610; 1977, c. 537; 1981, c. 145; 1984, c. 675; 1985, c. 123; 1986, Sp. Sess., cc. 10, 11; 1988, c. 372; 1992, c. 384; 1993, c. 159; 1994, c. [527](#); 1996, c. [1047](#); 1997, cc. [283](#), [853](#); 2004, c. [522](#); 2005, c. [449](#); 2011, cc. [405](#), [639](#), [881](#), [889](#); 2012, cc. [22](#), [111](#); 2013, c. [766](#).

§58.1-2402. (Contingent effective date -- see note*) Levy.

A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or use of motor vehicles in Virginia, other than a sale to or use by a person for rental as an established business or part of an established business or incidental or germane to such business.

The amount of the tax to be collected shall be determined by the Commissioner by the application of the following rates against the gross sales price:

1. Three percent of the sale price of each motor vehicle sold in Virginia. If such motor vehicle is a manufactured home as defined in § [36-85.3](#), the tax shall be three percent of the sale price of each such manufactured home sold in the Commonwealth; if such vehicle is a mobile office as defined in § [58.1-2401](#), the tax shall be two percent of the sale price of each mobile office sold in the Commonwealth; if such vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § [36-85.3](#), (ii) a mobile office as defined in § [58.1-2401](#), (iii) a trailer or semitrailer as severally defined in § [46.2-100](#) that is not designed or used to carry property, nor (iv) a vehicle registered under § [46.2-700](#), the tax shall be zero percent of the sale price of each such vehicle sold in the Commonwealth.

2. Three percent of the sale price of each motor vehicle, or three percent of the sale price of each manufactured home as defined in § [36-85.3](#), or two percent of the sale price of each mobile office as defined in § [58.1-2401](#), not sold in Virginia but used or stored for use in the Commonwealth. If such vehicle has a gross vehicle weight rating

or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § [36-85.3](#), (ii) a mobile office as defined in § [58.1-2401](#), (iii) a trailer or semitrailer as severally defined in § [46.2-100](#) that is not designed or used to carry property, nor (iv) a vehicle registered under § [46.2-700](#), the tax shall be zero percent of the sale price of each such vehicle not sold in the Commonwealth but used or stored for use in the Commonwealth. When any motor vehicle or manufactured home not sold in the Commonwealth is first used or stored for use in Virginia six months or more after its acquisition, the tax shall be based on its current market value.

3. The minimum tax levied on the sale of any motor vehicle in the Commonwealth that is subject to taxation at a rate exceeding zero percent shall be \$35, except as provided by those exemptions defined in § [58.1-2403](#).

4 through 7. [Repealed.]

B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall the same transaction be taxed more than once under either subdivision.

C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of § [58.1-2403](#) shall be subject to the tax, based on the current market value when such vehicle is no longer owned or used by the United States government or any governmental agency, or the Commonwealth of Virginia or any political subdivision thereof, unless such vehicle is then rented, in which case the tax imposed by § [58.1-1736](#) shall apply, subject to the exemptions provided in § [58.1-1737](#). Further, any motor vehicle, trailer or semitrailer exempt from the tax imposed by this chapter under subdivision 11 of § [58.1-2403](#) or §§ [46.2-663](#) through [46.2-674](#) shall be subject to the tax, based on the current market value, when such vehicle is subsequently licensed to operate on the highways of the Commonwealth.

D. Any person who with intent to evade or to aid another person to evade the tax provided for herein, falsely states the selling price of a vehicle on a bill of sale, assignment of title, application for title, or any other document or paper submitted to the Commissioner pursuant to any provisions of this title or Title 46.2, shall be guilty of a Class 3 misdemeanor.

E. Effective January 1, 1997, any amount designated as a "processing fee" and any amount charged by a dealer for processing a transaction, which is required to be

included on a buyer's order pursuant to subdivision A 10 of § [46.2-1530](#), shall be subject to the tax.

Code 1950, §§ 58-685.12, 58-685.12:1; 1966, c. 587; 1970, c. 675; 1974, c. 477; 1976, cc. 567, 610; 1977, c. 537; 1981, c. 145; 1984, c. 675; 1985, c. 123; 1986, Sp. Sess., cc. 10, 11; 1988, c. 372; 1992, c. 384; 1993, c. 159; 1994, c. [527](#); 1996, c. [1047](#); 1997, cc. [283](#), [853](#); 2004, c. [522](#); 2005, c. [449](#); 2011, cc. [405](#), [639](#), [881](#), [889](#); 2012, cc. [22](#), [111](#).

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§58.1-2402.1. Repealed.

Repealed by Acts 2009, cc. [864](#) and [871](#), cl. 5.

§58.1-2403. Exemptions.

No tax shall be imposed as provided in § [58.1-2402](#) if the vehicle is:

1. Sold to or used by the United States government or any governmental agency thereof;
2. Sold to or used by the Commonwealth of Virginia or any political subdivision thereof;
3. Registered in the name of a volunteer fire department or volunteer emergency medical services agency not operated for profit;

4. Registered to any member of the Mattaponi, Pamunkey, or Chickahominy Indian tribes or any other recognized Indian tribe of the Commonwealth living on the tribal reservation;
5. Transferred incidental to repossession under a recorded lien and ownership is transferred to the lienholder;
6. A manufactured home permanently attached to real estate and included in the sale of real estate;
7. A gift to the spouse, son, daughter, or parent of the transferor. With the exception of a gift to a spouse, this exemption shall not apply to any unpaid obligation assumed by the transferee incidental to the transfer;
8. Transferred from an individual or partnership to a corporation or limited liability company or from a corporation or limited liability company to an individual or partnership if the transfer is incidental to the formation, organization or dissolution of a corporation or limited liability company in which the individual or partnership holds the majority interest;
9. Transferred from a wholly owned subsidiary to the parent corporation or from the parent corporation to a wholly owned subsidiary;
10. Being registered for the first time in the Commonwealth and the applicant holds a valid, assignable title or registration issued to him by another state or a branch of the United States Armed Forces and (i) has owned the vehicle for longer than 12 months or (ii) has owned the vehicle for less than 12 months and provides evidence of a sales tax paid to another state. However, when a vehicle has been purchased by the applicant within the last 12 months and the applicant is unable to provide evidence of a sales tax paid to another state, the applicant shall pay the Virginia sales tax based on the fair market value of the vehicle at the time of registration in Virginia;
11. a. Titled in a Virginia or non-Virginia motor vehicle dealer's name for resale; or
b. Titled in the name of an automotive manufacturer having its headquarters in Virginia, except for any commercially leased vehicle that is not described under subdivision 3 of § [46.2-602.2](#). For purposes of this subdivision, "automotive manufacturer" and "headquarters" means the same as such terms are defined in § [46.2-602.2](#);

12. A motor vehicle having seats for more than seven passengers and sold to an urban or suburban bus line the majority of whose passengers use the buses for traveling a distance of less than 40 miles, one way, on the same day;
13. Purchased in the Commonwealth by a nonresident and a Virginia title is issued for the sole purpose of recording a lien against the vehicle if the vehicle will be registered in a state other than Virginia;
14. A motor vehicle designed for the transportation of 10 or more passengers, purchased by and for the use of a church conducted not for profit;
15. Loaned or leased to a private nonprofit institution of learning, for the sole purpose of use in the instruction of driver's education when such education is a part of such school's curriculum for full-time students;
16. Sold to an insurance company or local government group self-insurance pool, created pursuant to § [15.2-2703](#), for the sole purpose of disposition when such company or pool has paid the registered owner of such vehicle a total loss claim;
17. Owned and used for personal or official purposes by accredited consular or diplomatic officers of foreign governments, their employees or agents, and members of their families, if such persons are nationals of the state by which they are appointed and are not citizens of the United States;
18. A self-contained mobile computerized axial tomography scanner sold to, rented or used by a nonprofit hospital or a cooperative hospital service organization as described in § 501(e) of the United States Internal Revenue Code;
19. A motor vehicle having seats for more than seven passengers and sold to a restricted common carrier or common carrier of passengers;
20. Beginning July 1, 1989, a self-contained mobile unit designed exclusively for human diagnostic or therapeutic service, sold to, rented to, or used by a nonprofit hospital, or a cooperative hospital service organization as described in § 501(e) of the United States Internal Revenue Code, or a nonprofit corporation as defined in § 501(c)(3) of the Internal Revenue Code, established for research in, diagnosis of, or therapy for human ailments;
21. Transferred, as a gift or through a sale to an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code, provided the motor vehicle is not titled and tagged for use by such organization;

22. A motor vehicle sold to an organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized for the primary purpose of distributing food, clothing, medicines, and other necessities of life to, and providing shelter for, needy persons in the United States and throughout the world;
23. Transferred to the trustees of a revocable inter vivos trust, when the individual titleholder of a Virginia titled motor vehicle and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries of the trust may also be named in the trust instrument, when no consideration has passed between the titleholder and the beneficiaries; and transferred to the original titleholder from the trustees holding title to the motor vehicle;
24. Transferred to trustees of a revocable inter vivos trust, when the owners of the vehicle and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust following the death of the grantor, when no consideration has passed between the grantor and the beneficiaries in either case;
25. Sold by a vehicle's lessor to its lessee upon the expiration of the term of the vehicle's lease, if the lessee is a natural person and this natural person has paid the tax levied pursuant to this chapter with respect to the vehicle when he leased it from the lessor, and if the lessee presents an original copy of the lease upon request of the Department of Motor Vehicles or other evidence that the sales tax has been paid to the Commonwealth by the lessee purchasing the vehicle;
26. Titled in the name of a deceased person and transferred to the spouse or heir, or under the will, of such deceased person;
27. An all-terrain vehicle, moped, or off-road motorcycle all as defined in § [46.2-100](#). Such all-terrain vehicles, mopeds, or off-road motorcycles shall not be deemed a motor vehicle or other vehicle subject to the tax imposed under this chapter;
28. A motor vehicle that is sold to an organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and that is primarily used by the organization to transport to markets for sale produce that is (i) produced by local farmers and (ii) sold by such farmers to the organization; or
29. Transferred from the purchaser of the vehicle back to the seller of the vehicle who (i) accepted the vehicle pursuant to the Virginia Motor Vehicle Warranty Enforcement

Act (§ [59.1-207.9](#) et seq.) or (ii) otherwise agreed to accept the return of the vehicle due to a mechanical defect or failure and refunded to the purchaser the purchase price of the vehicle. Except when the return of the vehicle is pursuant to the Virginia Motor Vehicle Warranty Enforcement Act, the transfer shall occur within 45 days of the date of purchase.

Code 1950, §§ 58-685.13, 58-685.13:1; 1966, c. 587; 1970, c. 409; 1972, cc. 302, 680; 1973, c. 457; 1974, c. 477; 1976, c. 610; 1977, c. 537; 1978, cc. 758, 766; 1982, c. 541; 1984, c. 675; 1988, c. 372; 1990, cc. 40, 849; 1995, cc. [27](#), [247](#), [786](#); 1997, c. [283](#); 1998, c. [322](#); 1999, c. [77](#); 2000, cc. [576](#), [602](#), [1027](#); 2002, c. [513](#); 2003, c. [278](#); 2005, cc. [246](#), [274](#); 2006, c. [604](#); 2007, c. [896](#); 2008, cc. [304](#), [753](#); 2009, cc. [864](#), [871](#); 2011, cc. [405](#), [639](#); 2012, cc. [22](#), [111](#); 2013, c. [783](#); 2014, c. [243](#); 2015, cc. [159](#), [502](#), [503](#); 2017, c. [552](#).

§58.1-2404. Time for payment of tax on sale or use of a motor vehicle.

The tax on the sale or use of a motor vehicle shall be paid by the purchaser or user of such motor vehicle and collected by the Commissioner at the time the owner applies to the Department of Motor Vehicles for, and obtains, a certificate of title. No tax shall be levied or collected under this chapter upon the sale or use of a motor vehicle for which no certificate of title is required by this Commonwealth.

Code 1950, § 58-685.14; 1966, c. 587; 1974, c. 477; 1984, c. 675; 2011, cc. [405](#), [639](#).

§58.1-2405. Basis of tax.

A. In the case of the sale or use of a motor vehicle upon which the pricing information is required by federal law to be posted, the Commissioner may collect the tax upon the basis of the total sale price shown on such document; however, if the Commissioner is satisfied that the purchaser has paid less than such price, by such evidence as the Commissioner may require, he may assess and collect the tax upon the basis of the sale price so found by him. In no case shall such lesser price include credits for trade-in or any other transaction of such nature.

B. In the case of the sale or use of a motor vehicle which is not a new motor vehicle, the Commissioner may employ such publications, sources of information, and other data as are customarily employed in ascertaining the maximum sale price of such used motor vehicles but in no case shall any credit be allowed for trade-in, prior rental or any other transaction of like nature.

C. In the case of the sale or use of a motor vehicle, which is not a new motor vehicle, between individuals who are not required to be licensed as dealers or salespersons under the provisions of § [46.2-1508](#), the Commissioner may collect the tax upon the basis of the total sale price as established by such evidence as the Commissioner may require; provided that if such motor vehicle is no more than five years old and is listed in a recognized pricing guide, the total sale price shall not be less than the value listed in such pricing guide for such vehicle, less an allowance of \$1,500, unless the purchaser shall execute an affidavit under penalty of perjury stating a lesser total sale price and declaring such sale or use to be a bona fide transaction for full value. In using a recognized pricing guide, the Commissioner shall use the trade-in value specified in such guide, with no additions for optional equipment or subtractions for mileage, so long as uniformly applied for all types of motor vehicles. In no case shall any credit be allowed for trade-in, prior rental, or any other transaction of like nature.

Code 1950, § 58-685.15; 1966, c. 587; 1974, c. 477; 1984, c. 675; 2003, c. [328](#); 2015, c. [615](#).

§58.1-2406. Collection of tax; estimate of tax.

In the event any person submits with his application for a certificate of title a sum insufficient to pay the sale or use tax as determined by the Commissioner, it shall be the duty of the Commissioner or his authorized agent to make an estimate of the tax due the Commonwealth and to assess such tax. The notice of assessment shall be forthwith sent to such person by certified mail at the address of the person as it appears on the records of the Division. Such notice, when sent in accordance with these requirements, shall be sufficient regardless of whether or not it was ever received.

If any person fails to pay such tax, the Commissioner shall bring an appropriate action for the recovery of such tax plus interest. Judgment shall be rendered for the amount of the tax found to be due together with interest and costs.

Code 1950, § 58-685.17; 1966, c. 587; 1974, c. 477; 1984, c. 675.

§58.1-2407. Repealed.

Repealed by Acts 2011, cc. [405](#) and [639](#), cl. 2, effective July 1, 2012.

§58.1-2411. Civil penalties upon failure to pay tax, etc.

When any person fails to pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a penalty to be added to the tax in the amount of ten percent or ten dollars, whichever is greater; however, if the failure is due to providential or other good cause, shown to the satisfaction of the Commissioner, the tax may be accepted exclusive of penalties. The \$10 minimum penalty levied herein shall be applied only in cases where the payment of tax is not received within the time prescribed in this chapter and shall not be considered for audit purposes.

In the case of a false or fraudulent application, where willful intent exists to defraud the Commonwealth of any tax due under this chapter, a specific penalty of 50 percent of the amount of the proper tax shall be assessed. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any person reports the sale price of a motor vehicle at 50 percent or less of the actual amount.

Interest at the rate of one and one-half of one percent per month, or a fraction thereof, shall accrue on both tax and penalty until paid.

Code 1950, § 58-685.17:2; 1974, c. 477; 1982, c. 141; 1984, c. 675; 2011, cc. [405](#), [639](#).

§58.1-2412. Repealed.

Repealed by Acts 2011, cc. [405](#) and [639](#), cl. 2, effective July 1, 2012.

§58.1-2418. Local sales and use taxes prohibited.

No city, town or county shall impose or continue to impose any local sales or use tax on motor vehicles.

Code 1950, § 58-685.25; 1966, c. 587; 1974, c. 477; 1981, c. 145; 1984, c. 675.

§58.1-2419. Tax on sale to be separately stated.

In every transaction subject to the provisions of this chapter, the tax imposed by this chapter shall be separately stated from the sale price of such motor vehicle and shall be paid by the purchaser in accordance with the provisions of this chapter.

Code 1950, § 58-685.24; 1966, c. 587; 1974, c. 477; 1984, c. 675; 2011, cc. [405](#), [639](#).

§58.1-2420. Examination of dealer's records, etc.

The Commissioner or any agent authorized by him may examine during the usual business hours all records, books, papers or other documents of any dealer in motor

vehicles relating to the sales price of any motor vehicle to verify the truth and accuracy of any statement or any other information as to a particular sale.

Code 1950, § 58-685.18; 1966, c. 587; 1974, c. 477; 1984, c. 675; 2011, cc. [405](#), [639](#).

§58.1-2421. Rules and regulations.

The Commissioner shall have the power to make and publish reasonable rules and regulations consistent with this chapter, other applicable laws, and the Constitutions of Virginia and the United States, for the enforcement of the provisions of this chapter and the collection of the revenues hereunder.

Such rules and regulations shall not be subject to Chapter 40 (§ [2.2-4000](#) et seq.) of Title 2.2.

Code 1950, § 58-685.16; 1966, c. 587; 1974, c. 477; 1984, c. 675; 2011, cc. [405](#), [639](#).

§58.1-2422. Forwarding of tax information to law-enforcement officials.

The Commissioner may, in his discretion, upon request duly received from the official charged with the duty of enforcement of motor vehicle tax laws of any other state, forward to such official any information which he may have in his possession relative to the registration and payment of any tax collected pursuant to this chapter.

Code 1950, § 58-685.21; 1966, c. 587; 1984, c. 675.

§58.1-2423. Refunds generally.

In the event that it appears to the satisfaction of the Commissioner that any tax imposed by this chapter has been erroneously or illegally collected from any person or paid by any person, the Commissioner shall certify the amount thereof to the Comptroller, who shall thereupon draw his warrant for such certified amount on the State Treasurer. Such refund shall be paid by the State Treasurer. A claimant who pays the tax, either for the claimant or for the benefit of another on whose behalf the tax is paid, shall make a sufficient showing that the tax was erroneously collected by providing an affidavit stating that (i) the vehicle identification information provided on the Application for Certificate of Title and Registration, the certificate of origin, manufacturer's statement of origin, or title, as the case may be, forwarded to the Department of Motor Vehicles by any means generally allowed was incorrect or (ii) the transaction would have been exempt from taxation had the titling documents been correct when submitted to the Department of Motor Vehicles and the tax was paid in error. In the event of such a showing, the refund shall be paid to the claimant.

In the event that it appears to the satisfaction of the Commissioner that any tax imposed by this chapter has been collected from a person who purchased and returned a vehicle pursuant to the Virginia Motor Vehicle Warranty Enforcement Act (§ [59.1-207.9](#) et seq.), the Commissioner shall certify the amount thereof to the Comptroller, who shall thereupon draw his warrant for such certified amount on the State Treasurer. Such refund shall be paid by the State Treasurer. A claimant who pays the tax, either for the claimant or for the benefit of another on whose behalf the tax is paid, shall provide a written statement in a manner prescribed by the Commissioner stating that the vehicle was returned under the Virginia Motor Vehicle Warranty Enforcement Act.

In the event that it appears to the satisfaction of the Commissioner that any tax imposed by this chapter has been collected from a person who purchased and within 45 days returned a vehicle not subject to the Virginia Motor Vehicle Warranty Enforcement Act (§ [59.1-207.9](#) et seq.) due to a mechanical defect or failure and received a refund of the purchase price, the Commissioner shall certify the amount thereof to the Comptroller, who shall thereupon draw his warrant for such certified amount on the State Treasurer. Such refund shall be paid by the State Treasurer. A claimant who pays the tax, either for the claimant or for the benefit of another on whose behalf the tax is paid, shall provide an affidavit stating that the vehicle was returned due to a mechanical defect or failure, the purchase price was refunded, the title was properly assigned to the person accepting return of the vehicle, and the purchaser no longer has possession of the vehicle.

In the event that it appears to the satisfaction of the Commissioner that the tax imposed by this chapter was upon a motor vehicle purchased by a foreign national and that within six months after the date of purchase the motor vehicle has been exported to a foreign country, the Commissioner shall certify the amount to the Comptroller who shall thereupon draw his warrant for such certified amount on the State Treasurer. Such refund shall be paid by the State Treasurer.

No refund shall be made under the provisions of this section unless a written statement is filed with the Commissioner setting forth the reason such refund is claimed. The claim shall be in such form as the Commissioner shall prescribe. It shall be filed with the Commissioner within three years from the date of the payment of the tax.

Code 1950, § 58-685.19; 1966, c. 587; 1972, c. 207; 1973, c. 174; 1974, c. 477; 1981, c. 440; 1984, c. 675; 2003, c. [837](#); 2017, c. [552](#).

§58.1-2423.1. Expired.

Expired.

§58.1-2424. Credits against tax.

Credit shall be granted for the amount of tax paid to another state on a motor vehicle purchased in another state at the time such vehicle is first registered in the Commonwealth, provided the purchaser provides proof of payment of such tax. However, no credit shall be granted for any tax paid to another state if that state exempts from the tax vehicles sold to residents of a state which does not give credit for the tax.

Credit for taxes collected under the Virginia retail sales and use tax (§ [58.1-600](#) et seq.) shall be allowed against the tax levied for specially constructed or reconstructed vehicles and other motor vehicles subject to such tax.

Code 1950, § 58-685.20; 1966, c. 587; 1974, c. 477; 1976, c. 610; 1981, c. 145; 1984, c. 675; 1990, c. 163; 2011, cc. [405](#), [639](#).

§58.1-2425. (Contingent expiration date -- see note*) Disposition of revenues.

A. Funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected pursuant to the provisions of this chapter from manufactured homes, as defined in § [46.2-100](#), shall be distributed to the city, town, or county wherein such manufactured home is to be situated as a dwelling; (ii) effective January 1, 1987, an amount equivalent to the net additional revenues from the sales and use tax on motor vehicles generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ [46.2-694](#), [46.2-697](#), [58.1-2401](#), [58.1-2402](#), and this section shall be distributed to and paid into the Transportation Trust Fund established pursuant to § [33.2-1524](#), a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; and (iii) the net additional revenues generated by increases in the rates of taxes under subdivisions A 1 and A 2 of § [58.1-2402](#) and generated by the increase in the minimum tax under subdivision A 3 of §

[58.1-2402](#) pursuant to enactments of a Session of the General Assembly held in 2013 shall be deposited by the Comptroller into the Highway Maintenance and Operating Fund established pursuant to § [33.2-1530](#).

B. As provided in subsection A of § [58.1-638](#), of the funds becoming part of the Transportation Trust Fund pursuant to clause (ii) of subsection A, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund.

Code 1950, § 58-685.23; 1966, c. 587; 1976, c. 567; 1981, c. 145; 1984, c. 675; 1986, Sp. Sess., c. 11; 1987, c. 696; 1991, c. 323; 1997, cc. [283](#), [423](#), [853](#); 1998, cc. [905](#), [907](#); 1999, c. [77](#); 2004, c. [522](#); 2005, c. [323](#); 2007, c. [896](#); 2009, cc. [864](#), [871](#); 2011, cc. [405](#), [639](#); 2013, c. [766](#).

§58.1-2425. (Contingent effective date -- see note*) Disposition of revenues.

A. Funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected pursuant to the provisions of this chapter from manufactured homes, as defined in § [46.2-100](#), shall be distributed to the city, town, or county wherein such manufactured home is to be situated as a dwelling; and (ii) effective January 1, 1987, an amount equivalent to the net additional revenues from the sales and use tax on motor vehicles generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ [46.2-694](#), [46.2-697](#), [58.1-2401](#), [58.1-2402](#) and this section shall be distributed to and paid into the Transportation Trust Fund established pursuant to § [33.2-1524](#), a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs.

B. As provided in subsection A of § [58.1-638](#), of the funds becoming part of the Transportation Trust Fund pursuant to clause (ii) of subsection A of this section, an

aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund.

Code 1950, § 58-685.23; 1966, c. 587; 1976, c. 567; 1981, c. 145; 1984, c. 675; 1986, Sp. Sess., c. 11; 1987, c. 696; 1991, c. 323; 1997, cc. [283](#), [423](#), [853](#); 1998, cc. [905](#), [907](#); 1999, c. [77](#); 2004, c. [522](#); 2005, c. [323](#); 2007, c. [896](#); 2009, cc. [864](#), [871](#); 2011, cc. [405](#), [639](#).

*This section is set out twice because the 14th enactment of Chapter 766 of the Acts of Assembly of 2013 states: "That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such additional revenues that are to be deposited into the Commonwealth Transportation Fund or any sub-fund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose."

§58.1-2426. Application to Commissioner for correction; appeal.

A. Any person assessed with any tax administered by the Department pursuant to this chapter may, within 30 days from the date of such assessment, apply for relief to the Commissioner. Such application shall be in the form prescribed by the Department, and shall fully set forth the grounds upon which the taxpayer relies and all facts relevant to the taxpayer's contention. The Commissioner may also require such additional information, testimony, or documentary evidence as he deems necessary to a fair determination of the application.

B. On receipt of a written notice of intent to file under subsection A, the Commissioner shall refrain from collecting the tax until the time for filing hereunder has expired, unless he determines that collection is in jeopardy.

C. Any person against whom an order or decision of the Commissioner has been adversely rendered relating to the tax imposed by this chapter may, within fifteen days of such order or decision, appeal from such order or decision to the Circuit Court of the City of Richmond.

Code 1950, § 58-685.22; 1966, c. 587; 1984, c. 675; 2011, cc. [881](#), [889](#).

Virginia Music Licensing Fees Act

§59.1-460. Definitions.

As used in this chapter:

"Copyright owner" means the owner of a copyright of a nondramatic musical or similar work recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code, P.L. 94-553 (17 U.S.C. § 101 et seq.).

"Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

"Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility or any other similar place of business or professional office located in the Commonwealth in which the public may assemble and in which nondramatic musical works or similar copyrighted works may be performed, broadcast, or otherwise transmitted for the enjoyment of members of the public there assembled.

"Royalty" or "royalties" means the fees payable to a copyright owner or performing rights society for the public performance of nondramatic musical or other similar works.

1995, c. [648](#).

§59.1-461. Notice and schedule to be provided.

No performing rights society shall enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any time thereafter, but no later than seventy-two hours prior to the execution of that contract, it provides to the proprietor, in writing, notice that such performing rights society:

1. Has filed for public inspection, within the previous twelve months, with the State Corporation Commission (i) a certified copy of each form of performing rights contract or license agreement providing for the payment of royalties made available from such performing rights society to any Virginia proprietor; (ii) the most current available list of such performing rights society's members or affiliates; and (iii) the most current available listing of the copyrighted musical works in such performing rights society's repertory;
2. Will make available, upon request, to any proprietor, by electronic means or otherwise, information as to whether specific copyrighted musical works are in its repertory;
3. Will make available, upon written request of any proprietor, any of the information referred to in subdivision 1 of this section, at the sole expense of the proprietor, provided that such notice shall specify the means by which such information can be secured; and
4. Complies with federal law and orders of courts having appropriate jurisdiction regarding the rates and terms of royalties and the circumstances under which licenses for rights of public performance are offered to any proprietor.

1995, c. [648](#).

§59.1-462. Royalty contract requirements.

Every contract for the payment of royalties between a proprietor and a performing rights society executed, issued or renewed in the Commonwealth on or after July 1, 1995, shall be:

1. In writing;
2. Signed by the parties;
3. Written to include, at a minimum, the following information:
 - a. The proprietor's name and business address and the name and location of each place of business to which the contract applies;
 - b. The name of the performing rights society;

c. The duration of the contract; and

d. The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of such rates for the duration of the contract.

1995, c. [648](#).

§59.1-463. Prohibited conduct.

A. No performing rights society or any agent or employee thereof shall:

1. Enter onto the premises of a proprietor's business for the purpose of discussing or inquiring about a contract for the payment of royalties with the proprietor or his employees, without first identifying himself to the proprietor or his employees and making known to them the purpose of the discussion or inquiry;

2. Engage in any coercive conduct, act or practice that is substantially disruptive of a proprietor's business;

3. Use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor; or

4. Fail to comply with or fulfill the obligations imposed by §§ [59.1-461](#) and [59.1-462](#).

B. However, nothing in this chapter shall be construed to prohibit a performing rights society from conducting investigations to determine the existence of music use by a proprietor or informing a proprietor of the proprietor's obligation under the U.S.

Copyright Law, Title 17 of the United States Code.

1995, c. [648](#).

§59.1-464. Remedies; injunction.

Any person who suffers a violation of this chapter may bring an action to recover actual damages and reasonable attorney's fees and seek an injunction or any other remedy available at law or in equity.

1995, c. [648](#).

§59.1-465. Remedies cumulative.

The rights, remedies and prohibitions contained in this chapter shall be in addition to and cumulative of any other right, remedy or prohibition accorded by common law, federal law or the statutes of the Commonwealth, and nothing contained herein

shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition.

1995, c. [648](#).

§59.1-466. Exceptions.

This chapter shall not apply to contracts between copyright owners or performing rights societies and broadcasters licensed by the Federal Communications Commission, or to contracts with cable operators, programmers or other transmission services. Nor shall this chapter apply to musical works performed in synchronization with an audio/visual film or tape, or to the gathering of information for determination of compliance with or activities related to the enforcement of Chapter 3.1 (§ [59.1-41.1](#) et seq.) of Title 59.1.

1995, c. [648](#).

Virginia Nonstock Corporation Act

§13.1-801. Short title.

This chapter shall be known as the Virginia Nonstock Corporation Act or the "Act."

Code 1950, § 13.1-201; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-802. Reservation of power to amend or repeal.

The General Assembly shall have power to amend or repeal all or part of this Act at any time, and all domestic and foreign corporations subject to this Act shall be governed by the amendment or repeal.

Code 1950, § 13.1-291; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-803. Definitions.

As used in this Act:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission and all amendments including certificates of merger, consolidation or correction. When the articles of incorporation have been restated pursuant to any articles of restatement, amendment, domestication, or merger, it includes only the restated articles of incorporation without the accompanying articles of restatement, amendment, domestication, or merger.

"Board of directors" means the group of persons vested with the management of the business of the corporation irrespective of the name by which such group is designated, and "director" means a member of the board of directors.

"Certificate," when relating to articles filed with the Commission, means the order of the Commission that makes the articles effective, together with the articles.

"Commission" means the State Corporation Commission of Virginia.

"Conspicuous" means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text that is italicized, is in boldface, contrasting colors, or capitals, or is underlined is conspicuous.

"Corporation" or "domestic corporation" means a corporation not authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this Act or existing pursuant to the laws of the Commonwealth on January 1, 1986, or that, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of the Commonwealth, even though also being a corporation organized under laws other than the laws of the Commonwealth or that has become a domestic corporation of the Commonwealth pursuant to Article 11.1 (§ [13.1-898.2](#) et seq.) of this Act.

"Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with § [13.1-810](#), by electronic transmission.

"Disinterested director" means a director who, at the time action is to be taken under § [13.1-871](#), [13.1-878](#), or [13.1-880](#), does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial, financial, professional, employment, or other relationship with a person who has a financial interest in the matter, either of which would reasonably be expected to affect adversely the objectivity of the director when participating in the action, and if the action is to be taken under § [13.1-878](#) or [13.1-880](#), is also not a party to the proceeding. The presence of one or more of the following circumstances shall not by itself prevent a person from being a disinterested director: (a) nomination or election of the director to the current board by any person, acting alone or participating with others, who is so interested in the matter or (b) service as a director of another corporation of which an interested person is also a director.

"Document" means (i) any tangible medium on which information is inscribed, and includes any writing or written instrument, or (ii) an electronic record.

"Domestic business trust" has the same meaning as specified in § [13.1-1201](#).

"Domestic limited liability company" has the same meaning as specified in § [13.1-1002](#).

"Domestic limited partnership" has the same meaning as specified in § [50-73.1](#).

"Domestic partnership" means an association of two or more persons to carry on as co-owners of a business for profit formed under § [50-73.88](#) or predecessor law of the Commonwealth and includes, for all purposes of the laws of the Commonwealth, a registered limited liability partnership.

"Domestic stock corporation" has the same meaning as "domestic corporation" as specified in § [13.1-603](#).

"Effective date of notice" is defined in § [13.1-810](#).

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic record" means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection J of § [13.1-810](#).

"Electronic transmission" or "electronically transmitted" means any form or process of communication, not directly involving the physical transfer of paper or other tangible medium, that (i) is suitable for the retention, retrieval, and reproduction of information by the recipient, and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection J of § [13.1-810](#).

"Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign stock corporation.

"Eligible interests" means interests or shares.

"Employee" includes, unless otherwise provided in the bylaws, an officer but not a director. A director may accept duties that make him also an employee.

"Entity" includes any domestic or foreign corporation; any domestic or foreign stock corporation; any domestic or foreign unincorporated entity; any estate or trust; and any state, the United States, and any foreign government.

"Foreign business trust" has the same meaning as specified in § [13.1-1201](#).

"Foreign corporation" means a corporation not authorized by law to issue shares, organized under laws other than the laws of the Commonwealth.

"Foreign limited liability company" has the same meaning as specified in § [13.1-1002](#).

"Foreign limited partnership" has the same meaning as specified in § [50-73.1](#).

"Foreign partnership" means an association of two or more persons to carry on as co-owners of a business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability partnership.

"Foreign registered limited liability partnership" has the same meaning as specified in § [50-73.79](#).

"Foreign stock corporation" has the same meaning as "foreign corporation" as specified in § [13.1-603](#).

"Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than the Commonwealth.

"Government subdivision" includes authority, county, district, and municipality.

"Includes" denotes a partial definition.

"Individual" means a natural person.

"Interest" means either or both of the following rights under the organic law of a foreign or domestic unincorporated entity:

1. The right to receive distributions from the entity either in the ordinary course or upon liquidation; or
2. The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

"Means" denotes an exhaustive definition.

"Member" means one having a membership interest in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

"Membership interest" means the interest of a member in a domestic or foreign corporation, including voting and all other rights associated with membership.

"Organic document" means the document, if any, that is filed of public record to create an unincorporated entity. Where an organic document has been amended or restated, the term means the organic document as last amended or restated.

"Organic law" means the statute governing the internal affairs of a domestic or foreign corporation or eligible entity.

"Person" includes an individual and an entity.

"Principal office" means the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to § [13.1-936](#) shall be conclusive for purposes of this Act.

"Proceeding" includes civil suit and criminal, administrative and investigatory action conducted by a governmental agency.

"Record date" means the date established under Article 7 (§ [13.1-837](#) et seq.) of this Act on which a corporation determines the identity of its members and their membership interests for purposes of this Act. The determination shall be made as of the close of business at the principal office of the corporation on the record date unless another time for doing so is specified when the record date is fixed.

"Shares" has the same meaning as specified in § [13.1-603](#).

"Sign" or "signature" means, with present intent to authenticate or adopt a document: (i) to execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or (ii) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

"State" when referring to a part of the United States, includes a state, commonwealth, and the District of Columbia, and their agencies and governmental subdivisions; and a territory or insular possession, and their agencies and governmental subdivisions, of the United States.

"Transact business" includes the conduct of affairs by any corporation that is not organized for profit.

"Unincorporated entity" or "domestic unincorporated entity" means a domestic partnership, limited liability company, limited partnership, or business trust.

"United States" includes any district, authority, bureau, commission, department, or any other agency of the United States.

"Voting group" means all members of one or more classes that under the articles of incorporation or this Act are entitled to vote and be counted together collectively on a matter at a meeting of members. All members entitled by the articles of incorporation or this Act to vote generally on the matter are for that purpose a single voting group.

"Voting power" means the current power to vote in the election of directors.

"Writing" or "written" means any information in the form of a document.

Code 1950, § 13.1-202; 1956, c. 428; 1985, c. 522; 1997, c. [801](#); 2002, c. [285](#); 2007, c. [925](#); 2010, c. [171](#); 2012, c. [706](#).

§13.1-804. Filing requirements.

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this Act requires or permits to be filed with the Commission.

C. The document shall contain the information required by this Act. It may contain other information as well.

D. The document shall be typewritten or printed or, if electronically transmitted, shall be in a format that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals. The articles of incorporation, duly authenticated by the official having custody of corporate records

in the state or country under whose law the corporation is incorporated, which are required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be signed in the name of the domestic or foreign corporation:

1. By the chairman or any vice-chairman of the board of directors, the president, or any other of its officers authorized to act on behalf of the corporation;
2. If directors have not been selected or the corporation has not been formed, by an incorporator; or
3. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. Any annual report required to be filed by § [13.1-936](#) shall be signed in the name of the corporation by an officer or director listed in the report or, if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

H. The person signing the document shall state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

I. If, pursuant to any provision of this Act, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

J. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee, and any charter or entrance fee or registration fee required by this Act.

K. The Commission may accept the electronic filing of any information required or permitted to be filed by this Act and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § [59.1-496](#).

L. Whenever a provision of this Act permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

1. The plan or filed document shall specify the nationally recognized news or information medium in which the facts may be found or otherwise state the manner in

which the facts can be objectively ascertained. The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

2. The facts may include:

- a. Any of the following that are available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;
- b. A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or
- c. The terms of or actions taken under an agreement to which the corporation is a party, or any other agreement or document.

3. As used in this subsection:

a. "Filed document" means a document filed with the Commission under § [13.1-819](#) or Article 10 (§ [13.1-884](#) et seq.) or 11 (§ [13.1-893.1](#) et seq.) of this Act; and

b. "Plan" means a plan of merger.

4. The following terms of a plan or filed document may not be made dependent on facts outside the plan or filed document:

- a. The name and address of any person required in a filed document;
- b. The registered office of any entity required in a filed document;
- c. The registered agent of any entity required in a filed document;
- d. The number of members and designation of each class of members;
- e. The effective date of a filed document; and
- f. Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

5. If a term of a filed document is made dependent on a fact objectively ascertainable outside of the filed document and that fact is not objectively ascertainable by reference to a source described in subdivision 2a or to a document that is a matter of public record, or if the affected members have not received notice of the fact from the corporation, then the corporation shall file with the Commission articles of

amendment setting forth the fact promptly after the time when the fact referred to is first objectively ascertainable or thereafter changes. Articles of amendment under this subdivision are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the members.

6. The provisions of subdivisions 1, 2, and 5 of this subsection shall not be considered by the Commission in deciding whether the terms of a plan or filed document comply with the requirements of law.

1985, c. 522; 1986, c. 231; 1995, c. [70](#); 2000, c. [995](#); 2007, c. [925](#); 2010, c. [171](#); 2015, c. [623](#).

§13.1-804.1. Filing with the Commission pursuant to reorganization.

A. Notwithstanding anything to the contrary contained in § [13.1-804](#), [13.1-819](#), [13.1-896](#), or [13.1-904](#), whenever, pursuant to any applicable statute of the United States relating to reorganizations of corporations, a plan of reorganization of a corporation has been confirmed by the decree or order of a court of competent jurisdiction, the corporation may, without action by the board of directors or members to carry out the plan of reorganization ordered or decreed by such court of competent jurisdiction under federal statute, put into effect and carry out the plan and decrees of the court relative thereto (i) through an amendment or amendments to the corporation's articles of incorporation containing terms and conditions permitted by this Act, (ii) through a plan of merger, or (iii) through dissolution.

B. The individual or individuals designated by the court shall file with the Commission articles of amendment, merger, or dissolution, which, in addition to the matters otherwise required or permitted by law to be set forth therein, shall set forth:

1. The name of the corporation;
2. The text of each amendment, plan of merger, or dissolution approved by the court;
3. The date of the court's order or decree approving the articles of amendment, plan of merger, or dissolution;
4. The title of the reorganization proceeding in which the order or decree was entered; and
5. A statement that the court had jurisdiction of the proceeding under federal statute.

C. If the Commission finds that the articles of amendment, merger, or dissolution comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment, merger, or dissolution.

D. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

2007, c. [925](#).

§13.1-805. Issuance of certificate by Commission; recordation of documents.

A. Whenever this chapter conditions the effectiveness of a document upon the issuance of a certificate by the Commission to evidence the effectiveness of the document, the Commission shall by order issue the certificate if it finds that the document complies with the requirements of law and that all required fees have been paid. The Commission shall admit any such certificate to record in its office.

B. Whenever the Commission is directed to admit any document to record in its office, it shall cause it to be spread upon its record books or to be recorded or reproduced in any other manner the Commission may deem suitable. Except as otherwise provided by law, the Commission may furnish information from and provide access to any of its records by any means the Commission may deem suitable.

Code 1950, § 13.1-288; 1956, c. 428; 1982, c. 375; 1984, c. 295; 1985, c. 522; 1986, c. 231; 1987, c. 183; 1988, c. 405; 1989, c. 152 .

§13.1-806. Effective time and date of document.

A. A certificate issued by the Commission is effective at the time such certificate is issued, unless the certificate relates to articles filed with the Commission and the articles state that the certificate shall become effective at a later time and date specified in the articles. In that event the certificate shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the 15th day after the date on which the certificate is issued by the Commission. Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this Act.

B. Notwithstanding subsection A, any certificate that has a delayed effective time and date shall not become effective if, prior to the effective time and date, the parties to the articles to which the certificate relates file a request for cancellation with the Commission and the Commission, by order, cancels the certificate.

C. Notwithstanding subsection A, for purposes of §§ [13.1-829](#) and [13.1-924](#), any certificate that has a delayed effective date shall be deemed to be effective when the certificate is issued.

1985, c. 522; 2007, c. [925](#).

§13.1-807. Correcting filed articles.

A. The board of directors of a corporation may authorize correction of any articles filed with the Commission if (i) the articles contain an inaccuracy; (ii) the articles were not properly authorized or defectively executed, attested, sealed, verified, or acknowledged; or (iii) the electronic transmission of the articles to the Commission was defective.

B. Articles are corrected by filing with the Commission articles of correction setting forth:

1. The name of the corporation prior to filing;
2. A description of the articles to be corrected, including their effective date;
3. Each inaccurate or defective matter that is to be corrected;
4. The correction of each inaccurate or defective matter; and
5. A statement that the board of directors authorized the correction and the date of such authorization.

C. Upon the issuance of a certificate of correction by the Commission, the articles of correction shall become effective as of the effective date and time of the articles they correct except as to persons relying on the uncorrected articles and adversely affected by the correction. As to those persons, articles of correction are effective upon the issuance of the certificate of correction.

D. No articles of correction shall be accepted by the Commission when received more than 30 days after the effective date of the certificate relating to the articles to be corrected.

1985, c. 522; 2007, c. [925](#); 2008, cc. [91](#), [509](#).

§13.1-808. Evidentiary effect of copy of filed document.

A certificate attached to a copy of any document admitted to the records of the Commission, bearing the signature of the clerk of the Commission or a member of the staff of the office of the clerk, which in either case may be in facsimile, and the seal

of the Commission, which may be in facsimile, is conclusive evidence that the document has been admitted to the records of the Commission.

1985, c. 522; 2007, c. [925](#).

§13.1-809. Certificate of good standing.

A. Anyone may apply to the Commission to furnish a certificate of good standing for a domestic or foreign corporation.

B. The certificate shall state that the corporation is in good standing in the Commonwealth and shall set forth:

1. The domestic corporation's corporate name or the foreign corporation's corporate name used in the Commonwealth;

2. That (i) the domestic corporation is duly incorporated under the law of the Commonwealth, the date of its incorporation, and the period of its duration if less than perpetual; or (ii) the foreign corporation is authorized to transact business in the Commonwealth; and

3. If requested, a list of all certificates relating to articles filed with the Commission that have been issued by the Commission with respect to such corporation and their respective effective dates.

C. A domestic corporation or a foreign corporation authorized to transact business in the Commonwealth shall be deemed to be in good standing if:

1. All fees, fines, penalties and interest assessed, imposed, charged or to be collected by the Commission pursuant to this Act have been paid;

2. An annual report required by § [13.1-936](#) has been delivered to and accepted by the Commission; and

3. No certificate of dissolution, certificate of withdrawal, or order of reinstatement prohibiting the domestic corporation from engaging in business until it changes its corporate name has been issued or such certificate or prohibition no longer is in effect.

D. The certificate may state any other facts of record in the office of the clerk of the Commission that may be requested by the applicant.

E. Subject to any qualification stated in the certificate, a certificate of good standing issued by the Commission may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in the Commonwealth.

1985, c. 522; 1988, c. 405; 1993, c. 60; 2006, c. [663](#); 2007, c. [925](#).

§13.1-810. Notices and other communications.

For purposes of this chapter, except for notice to or from the Commission:

A. Notice shall be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

B. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication shall be in the English language. A notice or other communication may be given or sent by any method of delivery except that an electronic transmission shall be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication may be communicated by publication in a newspaper of general circulation in the area where the notice is intended to be given, or by radio, television, or other form of public communication in the area where notice is intended to be given.

C. Notice or other communication to a domestic or foreign corporation, authorized to transact business in the Commonwealth, may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

D. Notice or other communication may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection K.

E. Any consent under subsection D may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if (i) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or other person responsible for the giving of notice or other communications. The inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

F. Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

1. It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and
2. It is in a form capable of being processed by that system.

G. Receipt of an electronic acknowledgment from an information processing system described in subdivision F 1 establishes that an electronic transmission was received. However, such receipt of an electronic acknowledgment, by itself, does not establish that the content sent corresponds to the content received.

H. An electronic transmission is received under this section even if no individual is aware of its receipt.

I. Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

1. If in physical form, the earliest of when it is actually received or when it is left at:
 - a. A member's address shown on the corporation's record of members maintained by the corporation pursuant to subsection C of § [13.1-932](#);
 - b. A director's residence or usual place of business;
 - c. The corporation's principal place of business; or
 - d. The corporation's registered office when left with the corporation's registered agent;
2. If mailed postage prepaid and correctly addressed to a member, upon deposit in the United States mail;
3. If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a member, the earliest of when it is actually received or: (i) if sent by registered or certified mail return receipt requested, the date shown on the receipt, signed by or on behalf of the addressee; or (ii) five days after it is deposited in the mail;
4. If an electronic transmission, when it is received as provided in subsection F; and
5. If oral, when communicated.

J. A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if (i) the electronic

transmission is otherwise retrievable in perceivable form and (ii) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

K. If this chapter prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of this chapter, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

1985, c. 522; 2007, c. [925](#); 2010, c. [171](#).

§13.1-810.1. Number of members.

A. For purposes of this Act, the following identified as a member in a corporation's current record of members constitutes one member:

1. Two or more persons who together have a single membership interest in the corporation;
2. A corporation, limited liability company, partnership, limited partnership, business trust, trust, estate, or other entity; or
3. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

B. For purposes of this Act, membership interests registered in substantially similar names constitute one member if it is reasonable to believe that the names represent the same person.

2007, c. [925](#); 2015, c. [623](#).

§13.1-811. Penalty for signing false documents.

A. It shall be unlawful for any person to sign a document which he knows is false in any material respect with intent that the document be delivered to the Commission for filing.

B. Anyone who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 13.1-295; 1958, c. 506; 1975, c. 500; 1985, c. 522; 2007, c. [925](#).

§13.1-812. Unlawful to transact or offer to transact business as a corporation unless authorized.

It shall be unlawful for any person to transact business in the Commonwealth as a corporation or to offer or advertise to transact business in the Commonwealth as a corporation unless the alleged corporation is either a domestic corporation or a foreign corporation authorized to transact business in the Commonwealth. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 13.1-296; 1958, c. 565; 1981, c. 320; 1985, c. 522; 2007, c. [925](#).

§13.1-813. Hearing and finality of Commission action; injunctions.

A. The Commission shall have no power to grant a hearing with respect to any certificate issued by the Commission with respect to any articles filed with the Commission except on a petition by a member or director, filed with the Commission and the corporation within 30 days after the effective date of the certificate, in which the member or director asserts that the certification of corporate action contained in the articles contains a misstatement of a material fact as to compliance with statutory requirements, specifying the particulars thereof. After hearing, on notice in writing to the corporation and the member or director, the Commission shall determine the issues and revoke or refuse to revoke its order accordingly.

B. No court within or without the Commonwealth shall have jurisdiction to enjoin or delay the holding of any meeting of directors or members for the purpose of authorizing or consummating any amendment, merger, domestication, or termination of corporate existence, or the execution or filing with the Commission of any articles or other documents for such purpose, except pursuant to subsection D of § [13.1-845](#) or for fraud. No court within or without the Commonwealth, except the Supreme Court by way of appeal as authorized by law, shall have jurisdiction to review, reverse, correct or annul any action of the Commission, within the scope of its authority, with regard to any articles, certificate, order, objection or petition, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties.

C. Notwithstanding any provision of subsection A to the contrary, the Commission shall have the power to act upon a petition filed by a corporation at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person or persons without authority to act for the corporation, or of its own motion to correct Commission records so as to eliminate the effects of clerical errors committed by its staff.

Code 1950, § 13.1-287; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. [925](#); 2008, c. [91](#); 2010, c. [171](#); 2015, c. [623](#).

§13.1-814. Shares of stock and dividends prohibited.

A corporation shall not issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors or officers, except that a corporation may make distributions to another nonprofit corporation that is a member of such corporation or has the power to appoint one or more of its directors. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered, including pensions, may confer benefits upon its members in conformity with its purposes, and may make distributions to its members or others as permitted by this Act upon dissolution or final liquidation and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income.

Code 1950, § 13.1-229; 1956, c. 428; 1985, cc. 380, 522.

§13.1-814.1. Special provisions for community associations.

A. As used in this section, "community association" shall mean a corporation incorporated under this chapter or under former Chapter 2 of this title which owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the corporation.

B. Notwithstanding the requirements of §§ [13.1-851](#), [13.1-852](#), [13.1-855](#), [13.1-856](#), [13.1-857](#), [13.1-858](#) and [13.1-862](#), the provisions set forth in those sections need not be set forth in the articles of incorporation of a community association and shall be effective if set forth in the bylaws.

C. Notwithstanding the provisions of §§ [13.1-855](#), [13.1-856](#), [13.1-892](#) and [13.1-899](#), the provisions of the bylaws of any community association in existence on or before January 1, 1986, shall continue to govern (i) the procedures for and election of members of the board of directors, (ii) the amendment of the bylaws, (iii) the sale, release, exchange or disposition of all or substantially all of the corporation's property, whether or not in the usual and regular course of business, and (iv) the corporation's ability to mortgage, pledge, or dedicate to repayment of indebtedness, or otherwise encumber its property; provided, that the community association may, in accordance with its current articles of incorporation and bylaws, vote to amend its corporate documents to become subject to §§ [13.1-855](#), [13.1-856](#), [13.1-892](#) and [13.1-899](#).

1986, c. 532.

§13.1-815. Fees to be collected by Commission; payment of fees prerequisite to Commission action; exceptions.

A. The Commission shall assess the registration fees and shall charge and collect the filing fees, charter fees and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment. When the Commission receives payment of an annual registration fee assessed against a domestic or foreign corporation, such payment shall be applied against any unpaid annual registration fees previously assessed against such corporation, including any penalties incurred thereon, beginning with the assessment or penalty that has remained unpaid for the longest period of time.

B. The Commission shall not file or issue with respect to any domestic or foreign corporation any document or certificate specified in this Act, except the annual report required by § [13.1-936](#), a statement of change pursuant to § [13.1-834](#) or [13.1-926](#), and a statement of resignation pursuant to § [13.1-835](#) or [13.1-927](#), until all fees, charges, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this Act or Title 12.1 have been paid by or on behalf of such corporation. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign corporation that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the corporation's annual registration payment in any year, provided that the Commission shall not issue a certificate of domestication with respect to a foreign corporation until the annual registration fee has been paid by or on behalf of that corporation.

C. A domestic or foreign corporation shall not be required to pay the annual registration fee assessed against it pursuant to subsection B of § [13.1-936.1](#) in any year if (i) the Commission issues or files any of the following types of certificate or instrument and (ii) the certificate or instrument is effective on or before the annual registration fee due date:

1. A certificate of termination of corporate existence, a certificate of incorporation surrender, or a certificate of entity conversion for a domestic corporation;
2. A certificate of withdrawal for a foreign corporation;

3. A certificate of merger or an authenticated copy of an instrument of merger for a domestic or foreign corporation that has merged into a surviving domestic corporation or eligible entity, or into a surviving foreign corporation or eligible entity; or

4. An authenticated copy of an instrument of entity conversion for a foreign corporation that has converted to a different entity type.

The Commission shall cancel the annual registration fee assessments specified in this subsection that remain unpaid.

D. Annual registration fee assessments that have been paid shall not be refunded.

Code 1950, § 13.1-284; 1956, c. 428; 1985, c. 522; 1988, c. 405; 1989, c. 152; 1997, c. [216](#); 2003, c. [374](#); 2006, c. [659](#); 2007, cc. [810](#), [925](#); 2009, c. [216](#); 2010, c. [753](#); 2015, c. [623](#).

§13.1-815.1. Charter and entrance fees for corporations.

A. Every domestic corporation, upon the granting of its charter or upon domestication, shall pay a charter fee in the amount of \$50 into the state treasury, and every foreign corporation shall pay an entrance fee of \$50 into the state treasury for its certificate of authority to transact business in the Commonwealth.

B. For any foreign corporation that files articles of domestication and that had authority to transact business in the Commonwealth at the time of such filing, the charter fee to be charged upon domestication shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as an entrance fee by such corporation. For any foreign corporation that files an application for a certificate of authority to transact business in the Commonwealth and that had previously surrendered its articles of incorporation as a domestic corporation, the entrance fee to be charged upon obtaining a certificate of authority to transact business in the Commonwealth shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as a charter fee by such corporation.

1988, c. 405; 2003, c. [374](#); 2007, cc. [810](#), [925](#); 2008, c. [509](#).

§13.1-816. Fees for filing documents or issuing certificates.

The Commission shall charge and collect the following fees, except as provided in § [12.1-21.2](#):

1. For filing any one of the following, the fee shall be \$25:

- a. Articles of incorporation, domestication, or incorporation surrender.
- b. Articles of amendment or restatement.
- c. Articles of merger.
- d. Articles of correction.
- e. An application of a foreign corporation for a certificate of authority to transact business in the Commonwealth.
- f. An application of a foreign corporation for an amended certificate of authority to transact business in the Commonwealth.
- g. A copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.
- h. A copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.
- i. A copy of an instrument of entity conversion of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

2. For filing any one of the following, the fee shall be \$10:

- a. An application to reserve or to renew the reservation of a corporate name.
- b. A notice of transfer of a reserved corporate name.
- c. An application for use of an indistinguishable name.
- d. Articles of dissolution.
- e. Articles of revocation of dissolution.
- f. Articles of termination of corporate existence.
- g. An application for withdrawal of a foreign corporation.

3. For issuing a certificate pursuant to § [13.1-945](#), the fee shall be \$6.

Code 1950, §§ 13.1-285, 13.1-286.1; 1956, c. 428; 1958, c. 564; 1964, c. 551; 1972, c. 579; 1975, c. 500; 1981, c. 522; 1982, c. 460; 1984, c. 294; 1985, c. 522; 1987, c. 183; 1988, c. 405; 1995, c. [368](#); 2003, c. [374](#); 2004, c. [274](#); 2007, cc. [771](#), [925](#); 2012, c. [130](#).

§13.1-817. Repealed.

Repealed by Acts 1991, c. 123 .

§13.1-818. Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by signing and delivering articles of incorporation to the Commission for filing.

Code 1950, § 13.1-230; 1956, c. 428; 1968, c. 42; 1975, c. 500; 1985, c. 522; 2015, c. [623](#).

§13.1-819. Articles of incorporation.

A. The articles of incorporation shall set forth:

1. A corporate name for the corporation that satisfies the requirements of § [13.1-829](#).
2. If the corporation is to have no members, a statement to that effect.
3. If the corporation is to have one or more classes of members, any provision which the incorporators elect to set forth in the articles of incorporation or, if the articles of incorporation so provide, in the bylaws designating the class or classes of members, stating the qualifications and rights of the members of each class and conferring, limiting or denying the right to vote.
4. If the directors or any of them are not to be elected or appointed by one or more classes of members, a statement of the manner in which such directors shall be elected or appointed, and a designation of ex officio directors, if any.
5. The address of the corporation's initial registered office (including both (i) the post-office address with street and number, if any, and (ii) the name of the city or county in which it is located), and the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of Virginia and either a director of the corporation or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth.

B. The articles of incorporation may set forth:

1. The names and addresses of the individuals who are to serve as the initial directors;
2. Provisions not inconsistent with law:
 - a. Stating the purpose or purposes for which the corporation is organized;

b. Regarding the management of the business and regulation of the affairs of the corporation;

c. Defining, limiting and regulating the powers of the corporation, its directors, and its members; and

d. Any provision that under this Act is required or permitted to be set forth in the bylaws.

C. The articles of incorporation need not set forth any of the corporate powers enumerated in this Act.

D. Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection L of § [13.1-804](#).

E. Except as provided in subsection A of § [13.1-855](#), whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

Code 1950, § 13.1-231; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1982, c. 182; 1985, c. 522; 1986, c. 622; 1993, c. 113; 2000, c. [162](#); 2001, cc. [517](#), [541](#); 2007, c. [925](#).

§13.1-820. Issuance of certificate of incorporation.

If the Commission finds that the articles of incorporation comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation.

When the certificate of incorporation is effective, the corporate existence shall begin. Upon becoming effective, the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act.

Code 1950, §§ 13-223, 13-224, 13.1-232, 13.1-233; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-821. Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, but knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting except for any liability to any person who also knew that there was no incorporation.

1985, c. 522.

§13.1-822. Organization of corporation.

A. After incorporation:

1. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by adopting bylaws, appointing officers, and carrying on any other business brought before the meeting or
2. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:
 - a. To elect a board of directors and complete the organization of the corporation; or
 - b. To elect directors who shall complete the organization of the corporation.

B. Action required or permitted by this Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

C. An organizational meeting may be held in or out of the Commonwealth.

Code 1950, § 13.1-234; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. [925](#).

§13.1-823. Bylaws.

A. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

B. The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

Code 1950, §§ 13-234, 13.1-212; 1956, c. 428; 1985, c. 522; 2007, c. [925](#); 2010, c. [171](#).

§13.1-824. Emergency bylaws.

A. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection D. The emergency bylaws, which are subject to amendment or repeal by the members, may make all provisions necessary for managing the corporation during the emergency, including:

1. Procedures for calling a meeting of the board of directors;
2. Quorum requirements for the meeting; and

3. Designation of additional or substitute directors.

B. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

C. Corporate action taken in good faith in accordance with the emergency bylaws:

1. Binds the corporation; and

2. May not be used to impose liability on a corporate director, officer, employee or agent.

D. An emergency exists for purposes of this section if a quorum of the corporation's board of directors cannot readily be assembled because of some catastrophic event.

Code 1950, § 13.1-212.1; 1962, c. 102; 1975, c. 500; 1985, c. 522; 2007, c. [925](#).

§13.1-825. Purposes.

Every corporation incorporated under this Act has the purpose of engaging in any lawful activity, unless:

1. A statute requires the corporation to issue shares or one of the purposes of the corporation is to conduct the business of a public service company other than a sewer company; or

2. A more limited purpose is (i) set forth in the articles of incorporation or (ii) required to be set forth in the articles of incorporation by any other law of the Commonwealth.

Code 1950, § 13.1-204; 1956, c. 428; 1958, c. 564; 1960, c. 296; 1971, Ex. Sess., c. 98; 1985, c. 522; 2007, c. [925](#).

§13.1-826. General powers.

A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

1. To sue and be sued, complain and defend, in its corporate name;

2. To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

3. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
4. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
5. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal with shares or other interests in, or obligations of, any other entity;
6. To make contracts and guarantees, incur liabilities, borrow money, and issue its notes, bonds, and other obligations, which may be convertible into, or include the option to purchase, other securities or property of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
7. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
8. To transact its business, locate offices, and exercise the powers granted by this chapter within or without the Commonwealth;
9. To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
10. To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Commonwealth;
11. To make donations for the public welfare or for religious, charitable, scientific, literary or educational purposes;
12. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, and benefit and incentive plans for any or all of the current or former directors, officers, employees, and agents of the corporation or any of its subsidiaries;
13. To insure for its benefit the life of any of its directors, officers, or employees and to continue such insurance after the relationship terminates;
14. To make payments or donations or do any other act not inconsistent with this section or any other applicable law that furthers the business and affairs of the corporation;

15. To pay compensation or to pay additional compensation to any or all directors, officers, and employees on account of services previously rendered to the corporation, whether or not an agreement to pay such compensation was made before such services were rendered;

16. To cease its corporate activities and surrender its corporate franchise; and

17. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

B. Each corporation other than a banking corporation, an insurance corporation, a savings institution or a credit union shall have power to enter into partnership agreements, joint ventures or other associations of any kind with any person or persons. The foregoing limitations on banking corporations, insurance corporations, savings institutions, and credit unions shall not apply to the purchase by any such entity of any security of a limited liability company.

C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the Code on railroads or other public service companies, banking corporations, insurance corporations, savings institutions, credit unions, industrial loan associations or other special types of corporations shall not be deemed repealed or amended by any provision of this chapter except where specifically so provided.

D. Each corporation which is deemed a private foundation, as defined in § 509 of the Internal Revenue Code, unless its articles of incorporation expressly provide otherwise, shall distribute its income and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any act of self-dealing, as defined in § 4941(d) of the Internal Revenue Code, retain any excess business holdings, as defined in § 4943(c) of the Internal Revenue Code, make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any taxable expenditures, as defined in § 4945(d) of the Internal Revenue Code. This subsection shall apply to any corporation organized after December 31, 1969, under this chapter or under the Virginia Nonstock Corporation Act (§ 13.1-201 et seq.) enacted by Chapter 428 of the Acts of Assembly of 1956; and to any corporation organized before January 1, 1970, only for its taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508(e)(2)(B) or (C) of the Internal Revenue Code shall apply or unless the board of directors of such corporation shall elect that such restrictions as contained in this

subsection shall not apply by filing written notice of such election with the Attorney General and the clerk of the Commission on or before December 31, 1971. Each reference to a section of the Internal Revenue Code made in this subsection shall include future amendments to such Code sections and corresponding provisions of future internal revenue laws.

Code 1950, § 13.1-204.1; 1975, c. 500; 1985, c. 522; 1996, c. [77](#); 2007, c. [925](#); 2015, c. [611](#).

§13.1-827. Emergency powers.

A. In anticipation of or during an emergency defined in subsection D, the board of directors of a corporation may:

1. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and
2. Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

B. During an emergency defined in subsection D, unless emergency bylaws provide otherwise:

1. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and
2. One or more officers of the corporation present at a meeting of the board of directors may be deemed by a majority of the directors present at the meeting to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

C. Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

1. Binds the corporation; and
2. May not be used to impose liability on a director, officer, employee, or agent of the corporation.

D. An emergency exists for purposes of this section if a quorum of the corporation's board of directors cannot readily be assembled because of some catastrophic event.

1985, c. 522; 2007, c. [925](#).

§13.1-828. Ultra vires.

A. Except as provided in subsection B, corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

B. A corporation's power to act may be challenged:

1. In a proceeding by a member or a director against the corporation to enjoin the act;
2. In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former officer, director, employee, or agent of the corporation; or
3. In a proceeding against a corporation before the Commission.

C. In a proceeding by a member or a director under subdivision B 1 to enjoin an unauthorized corporate act, the court may enjoin or set aside the act and may award damages for loss, except anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

Code 1950, § 13.1-206; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. [925](#).

§13.1-829. Corporate name.

A. A corporate name shall not contain:

1. Any word or phrase that indicates or implies that it is organized for the purpose of conducting any business other than a business which it is authorized to conduct;
2. The word "redevelopment" unless the corporation is organized as an urban redevelopment corporation pursuant to Chapter 190 of the 1946 Acts of Assembly, as amended;
3. Any word, abbreviation, or combination of characters that states or implies the corporation is a limited liability company or a limited partnership; or
4. Any word or phrase that is prohibited by law for such corporation.

B. Except as authorized by subsection C, a corporate name shall be distinguishable upon the records of the Commission from:

1. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of the Commonwealth or authorized to transact business in the Commonwealth;

2. A corporate name reserved or registered under § [13.1-631](#), [13.1-632](#), [13.1-830](#) or [13.1-831](#);
 3. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in the Commonwealth;
 4. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in the Commonwealth;
 5. A limited liability company name reserved under § [13.1-1013](#);
 6. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in the Commonwealth;
 7. The name of a domestic business trust or a foreign business trust registered to transact business in the Commonwealth;
 8. A business trust name reserved under § [13.1-1215](#);
 9. The designated name adopted by a foreign business trust because its real name is unavailable for use in the Commonwealth;
 10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in the Commonwealth;
 11. A limited partnership name reserved under § [50-73.3](#); and
 12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in the Commonwealth.
- C. A domestic corporation may apply to the Commission for authorization to use a name that is not distinguishable upon the Commission's records from one or more of the names described in subsection B. The Commission shall authorize use of the name applied for if the other entity consents to the use in writing and submits an undertaking in form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying corporation.
- D. The use of assumed names or fictitious names, as provided for in Chapter 5 (§ [59.1-69](#) et seq.) of Title 59.1, is not affected by this Act.
- E. The Commission, in determining whether a corporate name is distinguishable upon its records from the name of any of the business entities listed in subsection B,

shall not consider any word, phrase, abbreviation, or designation required or permitted under § [13.1-544.1](#), subsection A of § [13.1-630](#), subsection A of § [13.1-1012](#), § [13.1-1104](#), subsection A of § [50-73.2](#), and subdivision A 2 of § [50-73.78](#) to be contained in the name of a business entity formed or organized under the laws of the Commonwealth or authorized or registered to transact business in the Commonwealth.

Code 1950, § 13.1-207; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, c. 232; 2003, c. [592](#); 2005, c. [379](#); 2007, c. [925](#); 2009, c. [216](#); 2012, c. [63](#).

§13.1-830. Reserved name.

A. A person may apply to the Commission to reserve the exclusive use of a corporate name, including a designated name for a foreign corporation. If the Commission finds that the corporate name applied for is distinguishable upon the records of the Commission, it shall reserve the name for the applicant's exclusive use for a 120-day period.

B. The owner of a reserved corporate name may renew the reservation for successive periods of 120 days each by filing with the Commission, during the 45-day period preceding the date of expiration of the reservation, a renewal application.

C. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Commission a notice of the transfer, signed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

D. A reserved corporate name may be used by its owner in connection with (i) the formation or an amendment to change the name of a domestic stock or nonstock corporation, limited liability company, business trust, or limited partnership; (ii) an application for a certificate of authority or registration to transact business in the Commonwealth as a foreign stock or nonstock corporation, limited liability company, business trust, or limited partnership; or (iii) an amended application for such authority or registration, provided that the proposed name complies with the provisions of § [13.1-630](#), [13.1-762](#), [13.1-829](#), [13.1-924](#), [13.1-1012](#), [13.1-1054](#), [13.1-1214](#), [13.1-1244](#), [50-73.2](#), or [50-73.56](#), as the case may be.

Code 1950, § 13.1-207.1; 1975, c. 500; 1985, c. 522; 2006, c. [505](#); 2007, c. [925](#); 2015, c. [444](#).

§13.1-831. Registered name.

A. A foreign corporation may register its corporate name, or its corporate name with any addition required by § [13.1-924](#), if the name is distinguishable upon the records of the Commission from the corporate names that are not available under subsection B of § [13.1-829](#).

B. A foreign corporation registers its corporate name, or its corporate name with any addition required by § [13.1-924](#), by:

1. Filing with the Commission (i) an application setting forth its corporate name, or its corporate name with any addition required by § [13.1-924](#), the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and (ii) a certificate setting forth that such corporation is in good standing, or a document of similar import, from the state or country of incorporation, executed by the official who has custody of the records pertaining to corporations; and

2. Paying to the Commission a registration fee in the amount of \$20. Except as provided in subsection E, registration is effective for one year after the date an application is filed.

C. If the Commission finds that the corporate name applied for is available, it shall register the name for the applicant's exclusive use.

D. A foreign corporation whose registration is effective may renew it for the succeeding year by filing with the Commission, during the 60-day period preceding the date of expiration of the registration, a renewal application that complies with the requirements of subsection B, and paying a renewal fee of \$20. The renewal application is effective when filed in accordance with this section and, except as provided in subsection E, renews the registration for one year after the date the registration would have expired if such subsequent renewal of the registration had not occurred.

E. A foreign corporation whose registration is effective may thereafter obtain a certificate of authority to transact business in the Commonwealth under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this Act or by another foreign corporation thereafter authorized to transact business in the Commonwealth. The registration terminates when the domestic corporation is incorporated or the foreign corporation obtains a certificate of authority to transact business in the Commonwealth or consents to the author-

ization of another foreign corporation to transact business in the Commonwealth under the registered name.

F. A foreign corporation that has in effect a registration of its corporate name may release such name by filing a notice of release of a registered name with the Commission and by paying a fee of \$10.

Code 1950, § 13.1-207.2; 1975, c. 500; 1981, c. 522; 1985, c. 522; 1995, c. [114](#); 2002, c. [607](#); 2007, c. [925](#).

§13.1-832. Repealed.

Repealed by Acts 2007, c. [771](#), cl. 2.

§13.1-833. Registered office and registered agent.

A. Each corporation shall continuously maintain in the Commonwealth:

1. A registered office that may be the same as any of its places of business; and
2. A registered agent, who shall be:

a. An individual who is a resident of the Commonwealth and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the corporation at its last known address any process, notice or demand that is served on the registered agent.

Code 1950, § 13.1-208; 1956, c. 428; 1976, c. 4; 1985, c. 522; 1993, c. 113; 2000, c. [162](#); 2001, cc. [517](#), [541](#); 2007, c. [925](#).

§13.1-834. Change of registered office or registered agent.

A. A corporation may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the corporation;
2. The address of its current registered office;
3. If the current registered office is to be changed, the post-office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the corporation will be in compliance with the requirements of § [13.1-833](#).

B. A statement of change shall forthwith be filed with the Commission by a corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § [13.1-833](#).

C. A corporation's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A corporation's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § [13.1-833](#). In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office address of the corporation on or before the business day following the day on which the statement is filed.

Code 1950, § 13.1-209; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1976, c. 4; 1985, c. 522; 1986, c. 622; 1987, c. 183; 1988, c. 405; 2003, c. [597](#); 2007, c. [925](#); 2010, c. [434](#).

§13.1-835. Resignation of registered agent.

A. A registered agent may resign the agency appointment by signing and filing with the Commission a statement of resignation accompanied by a certification that the registered agent shall mail a copy thereof to the principal office of the corporation by certified mail on or before the business day following the day on which the statement is filed. The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

1985, c. 522; 2007, c. [925](#); 2010, c. [434](#).

§13.1-836. Service on corporation.

A. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation. The registered agent may by instrument in writing, acknowledged before a notary public, designate a natural person or persons in the office of the registered agent upon whom any such process, notice or demand may be served and may, by instrument in writing, authorize service of process by facsimile by the sheriff, provided acknowledgement of receipt of service is returned by facsimile to the sheriff. Whenever any person so designated by the registered agent accepts service of process or whenever service is by facsimile, a photographic copy of the instruments designating the person or authorizing the method of service and receipt shall be attached to the return.

B. Whenever a corporation fails to appoint or maintain a registered agent in the Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the corporation upon whom service may be made in accordance with § [12.1-19.1](#).

C. This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

Code 1950, §§ 13-12, 13-14, 13.1-210; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, c. 622; 1991, c. 672; 2001, cc. [517](#), [541](#); 2007, c. [925](#).

§13.1-837. Members.

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or, if the articles of incorporation so provide, in

the bylaws. A corporation may issue certificates evidencing membership interests therein. Membership interests shall not be transferable. Members shall not have voting or other rights except as provided in the articles of incorporation or if the articles of incorporation so provide, in the bylaws. Members of any corporation existing on January 1, 1957, shall continue to have the same voting and other rights as before January 1, 1957, until changed by amendment of the articles of incorporation.

Code 1950, § 13.1-211; 1956, c. 428; 1958, c. 564; 1982, c. 182; 1985, c. 522; 2007, c. [925](#).

§13.1-838. Annual meeting.

A. A corporation shall hold a meeting of members annually at a time stated in or fixed in accordance with the bylaws.

B. Annual meetings of members may be held at such place, in or out of the Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

C. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Code 1950, § 13.1-213; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. [925](#); 2012, c. [706](#).

§13.1-839. Special meeting.

A. A corporation shall hold a special meeting of members:

1. On call of the chairman of the board of directors, the president, the board of directors, or the person or persons authorized to do so by the articles of incorporation or bylaws; or

2. In the absence of a provision in the articles of incorporation or bylaws stating who may call a special meeting of members, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

B. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing, including an electronic transmission, to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

C. If not otherwise fixed under § [13.1-840](#) or [13.1-844](#), the record date for determining members entitled to demand a special meeting is the date the first member signs the demand.

D. Special members' meetings may be held at such place in or out of the Commonwealth as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

E. Only business within the purpose or purposes described in the meeting notice required by subsection C of § [13.1-842](#) may be conducted at a special members' meeting.

Code 1950, § 13.1-213; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. [925](#); 2012, c. [706](#).

§13.1-840. Court-ordered meeting.

A. The circuit court of the city or county where a corporation's principal office is located, or, if none in the Commonwealth, where its registered office is located, may, after notice to the corporation, order a meeting of members to be held:

1. On petition of any member of the corporation entitled to participate in an annual meeting if an annual meeting was not held within 15 months after its last annual meeting or, if there has been no annual meeting, the date of its incorporation; or

2. On petition of a member who signed a demand for a special meeting that satisfies the requirements of § [13.1-839](#) if:

a. Notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

b. The special meeting was not held in accordance with the notice.

B. The court may fix the time and place of the meeting, determine the members entitled to participate in the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

1985, c. 522; 2007, c. [925](#).

§13.1-841. Corporate action without meeting.

A.1. Corporate action required or permitted by this chapter to be taken at a meeting of the members may be taken without a meeting and without prior notice if the

corporate action is taken by all members entitled to vote on the corporate action, in which case no corporate action by the board of directors shall be required.

2. Notwithstanding subdivision 1 of this subsection, if so provided in the articles of incorporation of a corporation, corporate action required or permitted by this chapter to be taken at a meeting of members may be taken without a meeting and without prior notice, if the corporate action is taken by members who would be entitled to vote at a meeting of members having voting power to cast not fewer than the minimum number (or numbers, in the case of voting by voting groups) of votes that would be necessary to authorize or take the corporate action at a meeting at which all members entitled to vote thereon were present and voted.

3. The corporate action shall be evidenced by one or more written consents bearing the date of execution and describing the corporate action taken, signed by the members entitled to take such corporate action without a meeting and delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records. Any corporate action taken by written consent shall be effective according to its terms when the requisite consents are in possession of the corporation. Corporate action taken under this section is effective as of the date specified therein, provided the consent states the date of execution by each member.

B. If not otherwise determined under § [13.1-840](#) or [13.1-844](#), the record date for determining members entitled to take corporate action without a meeting is the date the first member signs the consent under subsection A. No written consent shall be effective to take the corporate action referred to therein unless, within 120 days after the earliest date of execution appearing on a consent delivered to the corporation in the manner required by this section, written consents sufficient in number to take corporate action are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

C. For purposes of this section, written consent may be accomplished by one or more electronic transmissions, as defined in § [13.1-803](#). A consent signed under this section has the effect of a vote of voting members at a meeting and may be described as such in any document filed with the Commission under this chapter.

D. If corporate action is to be taken under this section by fewer than all of the members entitled to vote on the action, the corporation shall give written notice of the proposed corporate action, not less than five days before the action is taken, to all

persons who are members on the record date and who are entitled to vote on the matter. The notice shall contain or be accompanied by the same material that under this chapter would have been required to be sent to members in a notice of meeting at which the corporate action would have been submitted to the members for a vote.

E. If this chapter requires that notice of proposed corporate action be given to non-voting members and the corporate action is to be taken by consent of the voting members, the corporation shall give its nonvoting members written notice of the proposed action not less than five days before it is taken. The notice shall contain or be accompanied by the same material that under this chapter would have been required to be sent to nonvoting members in a notice of meeting at which the corporate action would have been submitted to the members for a vote.

F. Any person, whether or not then a member, may provide that a consent in writing as a member shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a member at such future time and (ii) the person did not revoke the consent prior to such future time.

Code 1950, § 13.1-216; 1956, c. 428; 1985, c. 522; 2007, c. [925](#); 2015, c. [611](#).

§13.1-842. Notice of meeting.

A. 1. A corporation shall notify members of the date, time and place of each annual and special members' meeting. Such notice shall be given no less than 10 nor more than 60 days before the meeting date except that notice of a members' meeting to act on an amendment of the articles of incorporation, a plan of merger, domestication, a proposed sale of assets pursuant to § [13.1-900](#), or the dissolution of the corporation shall be given not less than 25 nor more than 60 days before the meeting date.

Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to members entitled to vote at the meeting.

2. In lieu of delivering notice as specified in subdivision A 1, the corporation may publish such notice at least once a week for two successive calendar weeks in a newspaper published in the city or county in which the registered office is located, or having a general circulation therein, the first publication to be not more than 60 days, and the second not less than seven days before the date of the meeting.

B. Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not state the purpose or purposes for which the meeting is called.

C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

D. If not otherwise fixed under § [13.1-840](#) or [13.1-844](#), the record date for determining members entitled to notice of and to vote at an annual or special meeting is the day before the effective date of the notice to members.

E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different date, time, or place, notice need not be given if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed under § [13.1-844](#), however, not less than 10 days before the meeting date notice of the adjourned meeting shall be given under this section to persons who are members as of the new record date.

Code 1950, § 13.1-214; 1956, c. 428; 1958, c. 564; 1960, c. 214; 1985, c. 522; 1986, c. 529; 2002, c. [285](#); 2007, c. [925](#); 2010, c. [171](#); 2015, c. [611](#).

§13.1-843. Waiver of notice.

A. A member may waive any notice required by this Act, the articles of incorporation, or bylaws before or after the date and time of the meeting that is the subject of such notice. The waiver shall be in writing, be signed by the member entitled to the notice, and be delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records.

B. A member's attendance at a meeting:

1. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

2. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

Code 1950, § 13.1-215; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-844. Record date.

A. The bylaws may fix or provide the manner of fixing in advance the record date for one or more voting groups in order to make a determination of members for any purpose. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix as the record date the date on which it takes such action or a future date.

B. A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of members.

C. A determination of members entitled to notice of or to vote at a members' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

D. If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

1985, c. 522; 2007, c. [925](#).

§13.1-844.1. Conduct of the meeting.

A. At each meeting of members, a chairman shall preside. The chairman shall be appointed as provided in the articles of incorporation, bylaws, or, in the absence of such a provision, by the board of directors.

B. Unless the articles of incorporation or bylaws provide otherwise, the chairman shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

C. The chairman of the meeting shall announce at the meeting when the polls will open and close for each matter voted upon. If no announcement is made, the polls shall be deemed to have opened at the beginning of the meeting and to close upon the final adjournment of the meeting.

2007, c. [925](#).

§13.1-844.2. Remote participation in annual and special meetings.

A. Members may participate in any meeting of members by means of remote communication to the extent the board of directors authorizes such participation for members. Participation by means of remote communication shall be subject to such

guidelines and procedures the board of directors adopts, and shall be in conformity with subsection B.

B. Members participating in a members' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

1. Verify that each person participating remotely is a member; and
2. Provide such members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

2010, c. [171](#).

§13.1-845. Members' list for meeting.

A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of a members' meeting. If the board of directors fixes a different record date to determine the members entitled to vote at the meeting, a corporation shall also prepare an alphabetical list of the names of all its members who are entitled to vote at the meeting. A list shall be arranged by voting group, and show the address of each member.

B. The members' list for notice shall be available for inspection by any member, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the county or city where the meeting will be held. A members' list for voting shall be similarly available for inspection promptly after the record date for voting. A member, or the member's agent or attorney, is entitled on written demand to inspect and, subject to the requirements set forth in subsection C of § [13.1-933](#), to copy a list, during the regular business hours and at the member's expense, during the period it is available for inspection.

C. The corporation shall make the list of members entitled to vote available at the meeting, and any member, or the member's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

D. If the corporation refuses to allow a member, the member's agent, or the member's attorney to inspect a members' list before or at the meeting, or to copy a list as permitted by subsection B, the circuit court of the county or city where the

corporation's principal office, or if none in the Commonwealth its registered office, is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

E. Refusal or failure to prepare or make available a members' list does not affect the validity of action taken at the meeting.

1985, c. 522; 2007, c. [925](#); 2010, c. [171](#).

§13.1-846. Voting entitlement of members.

A. Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation or if the articles of incorporation so provide, in the bylaws.

B. When directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

C. Unless the articles of incorporation provide otherwise, in the election of directors every member, regardless of class, is entitled to one vote for as many persons as there are directors to be elected at that time and for whose election the member has a right to vote.

D. If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

Code 1950, § 13.1-217; 1956, c. 428; 1975, c. 500; 1982, c. 182; 1985, c. 522; 2002, c. [285](#); 2007, c. [925](#).

§13.1-847. Proxies.

A. A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy.

B. A member or the member's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission. Any copy, facsimile telecommunications or other reliable reproduction of the writing or transmission created pursuant to this subsection may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

C. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspectors of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

1. A creditor of the corporation who extended it credit under terms requiring the appointment;
2. An employee of the corporation whose employment contract requires the appointment; or
3. A party to a voting agreement created under § [13.1-852.2](#).

E. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

F. An appointment made irrevocable under subsection D is revoked when the interest with which it is coupled is extinguished.

G. Subject to § [13.1-848](#) and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

H. Any fiduciary who is entitled to vote any membership interest may vote such membership interest by proxy.

1985, c. 522; 1999, c. [101](#); 2002, c. [285](#); 2007, c. [925](#); 2010, c. [171](#).

§13.1-847.1. Voting procedures and inspectors of elections.

A. A corporation may appoint one or more inspectors to act at a meeting of members in connection with determining voting results. Each inspector, before entering upon the discharge of his duties, shall certify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of his ability.

B. The inspectors shall (i) ascertain the number of members and the voting power of each, (ii) determine the number of the members represented at a meeting and the validity of proxy appointments and ballots, (iii) count all votes, (iv) determine, and retain for a reasonable period a record of the disposition of, any challenges made to any determination by the inspectors, and (v) certify their determination of the number of members represented at the meeting and their count of the votes. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties, and may rely on information provided by such persons and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted. In any court proceeding there shall be a rebuttable presumption that the report of the inspectors is correct.

C. No ballot, proxies, or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the circuit court of the city or county where the corporation's principal office is located or, if none in the Commonwealth, where its registered office is located, upon application by a member, shall determine otherwise.

D. In determining the validity of proxies and ballots and in counting the votes, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with subsection B of § [13.1-847](#), ballots, and the regular books and records of the corporation. If the inspectors consider other reliable information for the limited purpose permitted herein, they shall specify, at the time that they make their certification pursuant to clause (v) of subsection B, the precise information that they considered, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for their belief that such information is accurate and reliable.

E. If authorized by the board of directors, any member vote to be taken by written ballot may be satisfied by a ballot submitted by electronic transmission by the member or the member's proxy, provided that any such electronic transmission shall either set forth or be submitted with information from which it may be determined that the electronic transmission was authorized by the member or the member's proxy. A member who votes by a ballot submitted by electronic transmission is deemed present at the meeting of members.

2007, c. [925](#); 2010, c. [171](#); 2015, c. [611](#).

§13.1-848. Corporation's acceptance of votes.

A. If the name signed on a vote, ballot, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the member.

B. If the name signed on a vote, ballot, consent, waiver, or proxy appointment does not correspond to the name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the member if:

1. The member is an entity and the name signed purports to be that of an officer, partner or agent of the entity;
2. The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;
3. The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence acceptable to the corporation that such receiver or trustee has been authorized to vote the membership interest in an order of the court by which such person was appointed has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;
4. The name signed purports to be that of a beneficial owner or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment; or
5. Two or more persons are the member as fiduciaries and the name signed purports to be the name of at least one of the fiduciaries and the person signing appears to be acting on behalf of all the fiduciaries.

C. Notwithstanding the provisions of subdivisions B 2 and 5, in any case in which the will, trust agreement, or other instrument under which a fiduciary purports to act contains directions for the voting of membership interests in any corporation, or for the execution and delivery of proxies for the voting thereof, such directions shall be binding upon the fiduciary and upon the corporation if a copy thereof has been furnished to the corporation.

D. The corporation is entitled to reject a vote, ballot, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to count votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

E. Neither the corporation nor the person authorized to count votes, including an inspector under § [13.1-847.1](#), who accepts or rejects a vote, ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection B of § [13.1-847](#) is liable in damages to the member for the consequences of the acceptance or rejection.

F. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

1985, c. 522; 2007, c. [925](#); 2015, c. [611](#).

§13.1-849. Quorum and voting requirements for voting groups.

A. The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this Act or the articles of incorporation. Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter.

B. Once a member is represented for any purpose at a meeting, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

C. Less than a quorum may adjourn a meeting.

D. The election of directors is governed by § [13.1-852](#).

Code 1950, § 13.1-219; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-850. Action by single and multiple voting groups.

A. If the articles of incorporation or this Act provides for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in § [13.1-849](#).

B. If the articles of incorporation or this Act provides for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in § [13.1-849](#). Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

1985, c. 522; 2007, c. [925](#).

§13.1-851. Change in quorum or voting requirements.

A. The articles of incorporation may provide for a lesser or greater quorum requirement for members or voting groups of members than required by this chapter.

B. An amendment to the articles of incorporation that adds, changes, or deletes a quorum or voting requirement shall meet the quorum requirement and be adopted by the vote and voting groups required to take action under the quorum and voting requirements then in effect.

Code 1950, § 13.1-218; 1956, c. 428; 1985, c. 522; 1986, c. 321.

§13.1-852. Voting for directors; cumulative voting.

A. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.

B. Members do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

C. A statement included in the articles of incorporation that "all of a designated voting group of members are entitled to cumulate their votes for directors" or words of similar import means that the members designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

D. Members otherwise entitled to vote cumulatively may not vote cumulatively at a particular meeting unless:

1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or
2. A member who has the right to cumulate his votes gives notice to the secretary of the corporation not less than 48 hours before the time set for the meeting of the member's intent to cumulate his votes during the meeting. If one member gives such a notice, all other members in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-852.1. Member or director agreements.

A. An agreement among the members or the directors of a corporation that complies with this section is effective among the members or directors and the corporation, even though it is inconsistent with one or more other provisions of this chapter in that it:

1. Eliminates the board of directors or, subject to the requirements of subsection A of § [13.1-872](#), one or more officers, or restricts the discretion or powers of the board of directors or any one or more officers;
2. Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;
3. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the members and directors or by or among any of them, including use of weighted voting rights or director proxies;
4. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any member, director, officer or employee of the corporation, or among any of them;
5. Transfers to one or more members, directors or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or members;
6. Requires dissolution of the corporation at the request of one or more of the members, or directors, in the case of a corporation that has no members or in which the members have no voting rights, or upon the occurrence of a specified event or contingency; or

7. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the members, the directors and the corporation, or among any of them, and is not contrary to public policy.

B. An agreement authorized by this section shall be:

1. a. Set forth in the articles of incorporation or bylaws and approved by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the agreement; or

b. Set forth in a written agreement that is signed by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the agreement;

2. Subject to amendment only by all persons who are members or, if the corporation's members do not have voting rights, by all persons who are directors at the time of the amendment, unless the agreement provides otherwise; and

3. Valid for an unlimited duration, if the agreement is set forth in the articles of incorporation or bylaws, unless the agreement shall be otherwise amended by the members or the directors, as the case may be; or if the agreement is set forth in a written agreement, as set forth in the agreement except that the duration of an agreement that became effective prior to July 1, 2015, remains 10 years unless the agreement provided otherwise or is subsequently amended to provide otherwise.

C. The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate evidencing membership, if any. The failure to note the existence of the agreement on the certificate shall not affect the validity of the agreement or any action taken pursuant to it.

D. An agreement authorized by this section shall cease to be effective when the corporation has more than 300 members of record. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without member action, to delete the agreement and any references to it.

E. An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions

imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

F. The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any member for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in a failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

G. Incorporators or subscribers for membership interests may act as members or directors with respect to an agreement authorized by this section if no members have been elected or appointed or, in the case of a corporation that has no members, no directors are elected or holding office when the agreement was made.

H. No action taken pursuant to this section shall change any requirement to file articles or other documents with the Commission or affect the rights of any creditors or other third parties.

I. An agreement among the members or the directors of a corporation that is consistent with the other provisions of this chapter that does not comply with the provisions of this section shall nonetheless be effective among the members, the directors, and the corporation.

1991, c. 132; 1997, c. [217](#); 2007, c. [925](#); 2015, c. [611](#).

§13.1-852.2. Voting agreements.

A. Two or more members entitled to vote may provide for the manner in which they will vote by signing an agreement for that purpose.

B. A voting agreement created under this section is specifically enforceable.

2007, c. [925](#).

§13.1-853. Requirement for and duties of board of directors.

A. Except as provided in an agreement authorized by § [13.1-852.1](#), each corporation shall have a board of directors.

B. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized by § [13.1-852.1](#).

Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522; 2007, c. [925](#).

§13.1-854. Qualification of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. Unless the articles of incorporation or bylaws so prescribe, a director need not be a resident of the Commonwealth or a member of the corporation.

Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522; 2007, c. [925](#).

§13.1-855. Number and election of directors.

A. A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the bylaws, or if not specified in or fixed in accordance with the bylaws, with the number specified in or fixed in accordance with the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation.

B. The members may adopt a bylaw fixing the number of directors and may direct that such bylaw not be amended by the board of directors.

C. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the members or the board of directors. However, to the extent that the corporation has members with voting privileges, only the members may change the range for the size of the board of directors or change from a fixed to a variable-range size board or vice versa.

D. Directors shall be elected or appointed in the manner provided in the articles of incorporation. If the corporation has members with voting privileges, directors shall be elected at the first annual members' meeting and at each annual meeting thereafter unless their terms are staggered under § [13.1-858](#).

E. No individual shall be named or elected as a director without his prior consent.

Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522; 2007, c. [925](#); 2010, c. [171](#).

§13.1-856. Election of directors by certain classes of members.

If the articles of incorporation authorize dividing the members into classes, the articles may also authorize the election of all or a specified number of directors by the

members of one or more authorized classes. Each class entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

1985, c. 522.

§13.1-857. Terms of directors generally.

A. In the absence of a provision in the articles of incorporation fixing a term of office, the term of office for a director shall be one year.

B. The terms of the initial directors of a corporation expire at the first members' meeting at which directors are elected, or if there are no members or the corporation's members do not have voting rights, at the end of such other period as may be specified in the articles of incorporation.

C. The terms of all other directors expire at the next annual meeting of members following the directors' election unless their terms are staggered under § [13.1-858](#) or, if there are no members or the corporation's members do not have voting rights, as provided in the articles of incorporation.

D. A decrease in the number of directors does not shorten an incumbent director's term.

E. The term of a director elected by the board of directors to fill a vacancy expires at the next members' meeting at which directors are elected or, if there are no members or the corporation's members do not have voting rights, as provided in the articles of incorporation.

F. Except in the case of ex-officio directors, despite the expiration of a director's term, a director continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors, if any.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1986, c. 529; 2004, c. [303](#); 2007, c. [925](#).

§13.1-858. Staggered terms of directors.

A. The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into groups, and the terms of office of the several groups need not be uniform.

B. If the articles of incorporation permit cumulative voting, any provision establishing staggered terms of directors shall provide that at least three directors shall be elected at each annual members' meeting.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1987, c. 140; 1989, c. 419; 2007, c. [925](#).

§13.1-859. Resignation of directors.

A. A director may resign at any time by delivering written notice to the board of directors, its chairman, the president, or the secretary.

B. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time, the board of directors may fill the pending vacancy before the effective time if the board of directors provides that the successor does not take office until the effective time.

C. Any person who has resigned as a director of a corporation, or whose name is incorrectly on file with the Commission as a director of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation of a director, the corporation may file an amended annual report with the Commission indicating the resignation of the director and the successor in office, if any.

1985, c. 522; 1991, c. 124; 2007, c. [925](#).

§13.1-860. Removal of directors.

A. The members may remove one or more directors with or without cause, unless the articles of incorporation provide that directors may be removed only with cause.

B. If a director is elected by a voting group of members, only the members of that voting group may participate in the vote to remove him.

C. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, unless the articles of incorporation require a greater vote, a director may be removed if the number of votes cast to remove him constitutes a majority of the votes entitled to be cast at an election of directors of the voting group or voting groups by which the director was elected.

D. If a corporation has no members or no members with voting rights, a director may be removed pursuant to procedures set forth in the articles of incorporation or bylaws, and if none are provided, a director may be removed by such vote as would suffice for his election.

E. A director may be removed only at a meeting called for the purpose of removing him. The meeting notice shall state that the purpose or one of the purposes of the meeting is removal of the director.

F. Upon the removal of a director, the corporation may file an amended annual report with the Commission indicating the removal of the director and the successor in office, if any.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1987, c. 177; 1991, c. 124; 2007, c. [925](#).

§13.1-861. Judicial review of elections.

Any member or director aggrieved by an election of directors may, after reasonable notice to the corporation and each director whose election is contested, apply for relief to the circuit court in the county or city in which the principal office of the corporation is located, or, if none in the Commonwealth, in the county or city in which its registered office is located. The court shall proceed forthwith in a summary way to hear and decide the issues and thereupon to determine the persons elected or order a new election or grant such other relief as may be equitable. Pending decision, the court may require the production of any information and may by order restrain any person from exercising the powers of a director if such relief is equitable.

Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-862. Vacancy on board of directors.

A. Unless the articles of incorporation provide otherwise, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors:

1. The members may fill the vacancy;
2. The board of directors may fill the vacancy; or
3. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of the directors remaining in office.

B. Unless the articles of incorporation provide otherwise, if the vacant office was held by a director elected by a voting group of members, only the members of that voting group are entitled to vote to fill the vacancy if it is filled by the members.

C. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection B of § [13.1-859](#) or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

D. The corporation may file an amended annual report with the Commission indicating the filling of a vacancy.

Code 1950, § 13.1-222; 1956, c. 428; 1985, c. 522; 1991, c. 124; 2007, c. [925](#).

§13.1-863. Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

1985, c. 522.

§13.1-864. Meetings of the board of directors.

A. The board of directors may hold regular or special meetings in or out of the Commonwealth.

B. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Code 1950, § 13.1-225; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. [925](#).

§13.1-865. Action without meeting of board of directors.

A. Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation. However, if expressly authorized in the articles of incorporation, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting by fewer than all of the directors, but not less than the greater of (i) a majority of the directors in office or (ii) a quorum of the directors as required by the articles of incorporation or bylaws, if the requisite number of directors sign a consent describing the action to be taken and deliver it to the corporation, except such action shall not be permitted to be taken without a meeting if any director objects to the taking of such proposed action. To be effective, such

objection shall have been delivered to the corporation no later than ten business days after notice of the proposed action is given. The corporation shall promptly notify each director of any such objection. Any actions taken without a meeting shall comply with any voting requirements established in the articles of incorporation or bylaws. If corporate action is to be taken under this subsection by fewer than all of the directors, the corporation shall give written notice of the proposed corporate action, not less than 10 business days before the action is taken, or such longer period as may be required by the articles of incorporation or bylaws, to all directors. The notice shall contain or be accompanied by a description of the action to be taken. Notwithstanding any provision of this subsection, corporate action may not be taken by fewer than all of the directors without a meeting if the action also requires adoption by or approval of the members.

B. Action taken under this section is effective when the last director, or the last director sufficient to satisfy the requirements of subsection A if action by fewer than all of the directors is authorized, signs the consent, unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein provided the consent states the date of execution by each director.

C. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by the requisite number of directors.

D. Any person, whether or not then a director, may provide that a consent to action as a director shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a director at such future time and (ii) the person did not revoke the consent prior to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to its becoming effective.

E. For purposes of this section, a written consent and the signing thereof may be accomplished by one or more electronic transmissions.

F. A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

1985, c. 522; 2007, c. [925](#); 2015, c. [611](#); 2016, c. [382](#).

§13.1-866. Notice of board of directors' meetings.

A. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

B. Special meetings of the board of directors shall be held upon such notice as is prescribed in the articles of incorporation or bylaws, or when not inconsistent with the articles of incorporation or bylaws, by resolution of the board of directors. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

1985, c. 522; 2002, c. [285](#); 2007, c. [925](#); 2010, c. [171](#).

§13.1-867. Waiver of notice by director.

A. A director may waive any notice required by this Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided in subsection B of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

B. A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting, or promptly upon his arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

1985, c. 522; 2007, c. [925](#).

§13.1-868. Quorum and voting by directors.

A. Unless the articles of incorporation or bylaws require a greater or lesser number for the transaction of all business or any particular business, or unless otherwise specifically provided in this Act, a quorum of a board of directors consists of:

1. A majority of the fixed number of directors if the corporation has a fixed board size; or
2. A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

B. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection A.

C. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

D. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

1. The director objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting specified business at the meeting; or

2. He votes against, or abstains from, the action taken.

E. Except as provided in § [13.1-852.1](#), a director shall not vote by proxy.

F. Whenever this Act requires the board of directors to take any action or to recommend or approve any proposed corporate act, such action, recommendation or approval shall not be required if the proposed action or corporate act is adopted by the unanimous consent of members.

Code 1950, § 13.1-223; 1956, c. 428; 1985, c. 522; 1992, c. 471; 2007, c. [925](#).

§13.1-869. Committees.

A. Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have two or more members, who serve at the pleasure of the board of directors.

B. The creation of a committee and appointment of directors to it shall be approved by the greater number of (i) a majority of all the directors in office when the action is taken, or (ii) the number of directors required by the articles of incorporation or bylaws to take action under § [13.1-868](#).

C. Sections [13.1-864](#) through [13.1-868](#), which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

D. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under § [13.1-853](#), except that a committee may not:

1. Approve or recommend to members action that this Act requires to be approved by members;
2. Fill vacancies on the board or on any of its committees;
3. Amend the articles of incorporation pursuant to § [13.1-885](#);
4. Adopt, amend, or repeal the bylaws; or
5. Approve a plan of merger not requiring member approval.

E. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § [13.1-870](#).

F. The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation, the bylaws, or the resolution creating the committee provides otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting may unanimously appoint another director to act in place of the absent or disqualified member.

Code 1950, § 13.1-224; 1956, c. 428; 1975, c. 500; 1977, c. 435; 1985, c. 522; 2007, c. [925](#).

§13.1-870. General standards of conduct for directors.

A. A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith business judgment of the best interests of the corporation.

B. Unless a director has knowledge or information concerning the matter in question that makes reliance unwarranted, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

1. One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

2. Legal counsel, public accountants, or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or
3. A committee of the board of directors of which the director is not a member if the director believes, in good faith, that the committee merits confidence.

C. A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

D. A person alleging a violation of this section has the burden of proving the violation.

1985, c. 522; 2007, c. [925](#).

§13.1-870.1. Limitation on liability of officers and directors; exception.

A. In any proceeding brought by or in the right of a corporation or brought by or on behalf of members of the corporation, the damages assessed against an officer or director arising out of a single transaction, occurrence, or course of conduct shall not exceed the lesser of:

1. The monetary amount, including the elimination of liability, specified in the articles of incorporation or, if approved by the members, in the bylaws as a limitation on or elimination of the liability of the officer or director; or
2. The greater of (i) \$100,000, or (ii) the amount of the cash compensation received by the officer or director from the corporation during the 12 months immediately preceding the act or omission for which liability was imposed.

B. In any proceeding against an officer or director who receives compensation from a corporation exempt from income taxation under § 501(c) of the Internal Revenue Code for his services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the corporation during the 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an exempt corporation without compensation for his services shall not be liable for damages in any such proceeding. The immunity provided by this subsection shall survive any termination, cancellation, or other discontinuance of the corporation.

C. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

D. No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

E.1. Notwithstanding the provisions of this section, in any proceeding against an officer or director who receives compensation from a community association for his services, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an association without compensation for his services shall not be liable for damages in any such proceeding.

2. The liability of an officer or director shall not be limited as provided in this subsection if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

3. As used in this subsection, "community association" shall mean a corporation incorporated under this Act that owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the incorporated association.

4. The immunity provided by this subsection shall survive any termination, cancellation, or other discontinuance of the community association.

1987, cc. 59, 257; 1988, c. 561; 1989, c. 422; 2007, c. [925](#); 2011, cc. [693](#), [704](#).

§13.1-870.2. Limitation on liability of officers and directors; additional exception.

A. As used in this section, "community association" shall mean an unincorporated association or corporation which owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the unincorporated association or corporation.

B. In any proceeding against an officer or director who receives compensation from a community association for his services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the 12 months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an association without compensation for his services shall not be liable for damages in any such proceeding.

C. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

D. The immunity provided by this section shall survive any termination, cancellation, or other discontinuance of the community association.

1989, c. 422; 2007, c. [925](#); 2011, cc. [693](#), [704](#).

§13.1-871. Director conflict of interests.

A. A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has an interest that precludes him from being a disinterested director. A conflict of interests transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

1. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or ratified the transaction;
2. The material facts of the transaction and the director's interest were disclosed to the members entitled to vote and they authorized, approved or ratified the transaction; or
3. The transaction was fair to the corporation.

B. For purposes of subdivision A 1, a conflict of interests transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the disinterested directors on the board of directors, or on the committee. A transaction shall not be authorized, approved, or ratified under this section by a single director. If a majority of the disinterested directors vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director who is not disinterested does not affect

the validity of any action taken under subdivision A 1 if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

C. For purposes of subdivision A 2, a conflict of interests transaction is authorized, approved, or ratified if it receives the vote of a majority of the votes entitled to be counted under this subsection. The votes controlled by a director who is not disinterested may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interests transaction under subdivision A 2. The director's votes, however, may be counted in determining whether the transaction is approved under other sections of this Act. A majority of the members, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

Code 1950, § 13.1-223; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-871.1. Business opportunities.

A. A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:

1. Directors' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 1 of § [13.1-871](#), as if the decision being made concerned a director's conflict of interests transaction; or
2. Members' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 2 of § [13.1-871](#), as if the decision being made concerned a director's conflict of interests transaction.

B. In any proceeding seeking equitable relief or other remedies, based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ one of the procedures described in subsection A before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

2007, c. [925](#).

§13.1-872. Required officers.

A. Except as provided in an agreement authorized by § [13.1-852.1](#), a corporation shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors that is not inconsistent with the bylaws and as may be necessary to enable it to execute documents that comply with subsection F of § [13.1-804](#).

B. The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

C. The secretary or any other officer as designated in the bylaws or by resolution of the board shall have responsibility for preparing and maintaining custody of minutes of the directors' and members' meetings and for authenticating records of the corporation.

D. The same individual may simultaneously hold more than one office in the corporation.

Code 1950, § 13.1-226; 1956, c. 428; 1982, c. 372; 1985, c. 522; 1994, c. [189](#); 2007, c. [925](#).

§13.1-873. Duties of officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

1985, c. 522.

§13.1-874. Resignation and removal of officers.

A. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time, the corporation may fill the pending vacancy before the effective time if the successor does not take office until the effective time.

B. A board of directors may remove any officer at any time with or without cause and any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer. Election or appointment of an officer shall not of itself create any contract rights in the officer or the corporation. An officer's removal does not

affect such officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

C. Any person who has resigned as an officer of a corporation, or whose name is incorrectly on file with the Commission as an officer of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation or removal of an officer, the corporation may file an amended annual report with the Commission indicating the resignation or removal of the officer and the successor in office, if any.

Code 1950, § 13.1-227; 1956, c. 428; 1985, c. 522; 1990, c. 282; 1991, c. 124; 2007, c. [925](#).

§13.1-875. Definitions.

In this article:

"Corporation" includes any domestic corporation and any domestic or foreign predecessor entity of a domestic corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

"Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee, or agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if such person's duties to the corporation also impose duties on, or otherwise involve services by, such person to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

"Expenses" includes counsel fees.

"Liability" means the obligation to pay a judgment, settlement, penalty, fine, including any excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

"Official capacity" means, (i) when used with respect to a director, the office of director in a corporation; or (ii) when used with respect to an officer, as contemplated in § [13.1-881](#), the office in a corporation held by the officer. "Official capacity" does

not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

"Party" means an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

"Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or investigative and whether formal or informal.

1985, c. 522; 2007, c. [925](#); 2009, c. [587](#).

§13.1-876. Authority to indemnify.

A. Except as provided in subsection D, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the director:

1. Conducted himself in good faith;
2. Believed:
 - a. In the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and
 - b. In all other cases, that his conduct was at least not opposed to its best interests; and
3. In the case of any criminal proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

B. A director's conduct with respect to an employee benefit plan for a purpose he believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subdivision A 2 b.

C. The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

D. Unless ordered by a court under subsection C of § [13.1-879.1](#), a corporation may not indemnify a director under this section:

1. In connection with a proceeding by or in the right of the corporation except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard under subsection A; or

2. In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. [925](#).

§13.1-877. Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who entirely prevails in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522.

§13.1-878. Advance for expenses.

A. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if the director furnishes the corporation a signed written undertaking, executed personally or on his behalf, to repay any funds advanced if he is not entitled to mandatory indemnification under § [13.1-877](#) and it is ultimately determined under § [13.1-879.1](#) or [13.1-880](#) that he has not met the relevant standard of conduct.

B. The undertaking required by subsection A shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

C. Authorizations of payments under this section shall be made by:

1. The board of directors:

a. If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote; or

b. If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with subsection C of § [13.1-868](#), in which authorization directors who do not qualify as disinterested directors may participate; or

2. The members, but any membership interest under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. [925](#); 2010, c. [171](#); 2015, c. [611](#).

§13.1-879. Repealed.

Repealed by Acts 1987, cc. 59, 257.

§13.1-879.1. Court orders for advances, reimbursement or indemnification.

A. An individual who is made a party to a proceeding because he is a director of the corporation may apply to a court for an order directing the corporation to make advances or reimbursement for expenses, or to provide indemnification. Such application may be made to the court conducting the proceeding or to another court of competent jurisdiction.

B. The court shall order the corporation to make advances, reimbursement, or both, for expenses or to provide indemnification if it determines that the director is entitled to such advances, reimbursement or indemnification and shall also order the corporation to pay the director's reasonable expenses incurred to obtain the order.

C. With respect to a proceeding by or in the right of the corporation, the court may (i) order indemnification of the director to the extent of the director's reasonable expenses if it determines that, considering all the relevant circumstances, the director is entitled to indemnification even though he was adjudged liable to the corporation and (ii) also order the corporation to pay the director's reasonable expenses incurred to obtain the order of indemnification.

D. Neither (i) the failure of the corporation, including its board of directors, its independent legal counsel and its members, to have made an independent determination prior to the commencement of any action permitted by this section that the applying director is entitled to receive advances, reimbursement, or both, nor (ii) the determination by the corporation, including its board of directors, its independent legal counsel and its members, that the applying director is not entitled to receive advances and/or reimbursement or indemnification shall create a presumption to that effect or otherwise of itself be a defense to that director's application for advances for expenses, reimbursement or indemnification.

1987, cc. 59, 257; 2007, c. [925](#).

§13.1-880. Determination and authorization of indemnification.

A. A corporation may not indemnify a director under § [13.1-876](#) unless authorized in the specific case after a determination has been made that indemnification of the director is permissible because he has met the relevant standard of conduct set forth in § [13.1-876](#).

B. The determination shall be made:

1. If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;

2. By special legal counsel:

a. Selected in the manner prescribed in subdivision 1 of this subsection; or

b. If there are fewer than two disinterested directors, selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate; or

3. By the members, but membership interests under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

C. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subdivision B 2 to select counsel.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. [925](#).

§13.1-881. Indemnification of officers.

Unless limited by a corporation's articles of incorporation:

1. An officer of the corporation is entitled to mandatory indemnification under § [13.1-877](#), and is entitled to apply for court-ordered indemnification under § [13.1-879.1](#), in each case to the same extent as a director; and

2. The corporation may indemnify and advance expenses under this article to an officer of the corporation to the same extent as to a director.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. [925](#).

§13.1-882. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director or officer of the corporation, or who, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other entity, against liability asserted against or incurred by such person in that capacity or arising from his status as a director or officer, whether or not the corporation would have power to indemnify him against the same liability under § [13.1-876](#) or [13.1-877](#).

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 2007, c. [925](#).

§13.1-883. Application of article.

A. Unless the articles of incorporation or bylaws expressly provide otherwise, any authorization of indemnification in the articles of incorporation or bylaws shall not be deemed to prevent the corporation from providing the indemnity permitted or mandated by this article. A corporation, by a provision in its articles of incorporation or bylaws or in a resolution adopted or contract approved by its board of directors or members, may obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with § [13.1-876](#) and advance funds to pay for or reimburse expenses in accordance with § [13.1-878](#). Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection C of § [13.1-878](#) and subsection C of § [13.1-880](#).

B. Any corporation shall have power to make any further indemnity, including indemnity with respect to a proceeding by or in the right of the corporation, and to make additional provision for advances and reimbursement of expenses, to any director or officer that may be authorized by the articles of incorporation or any bylaw made by the members or any resolution adopted, before or after the event, by the members, except an indemnity against (i) such person's willful misconduct, or (ii) a knowing violation of the criminal law. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed, unless the articles of incorporation or any such bylaw or resolution expressly

provides otherwise, also to obligate the corporation to advance funds to pay for or reimburse expenses to the fullest extent permitted by law in accordance with § [13.1-878](#) except that the applicable standard shall be conduct that does not constitute willful misconduct or a knowing violation of criminal law, rather than the standard of conduct prescribed in § [13.1-876](#). Unless the articles of incorporation, or any such bylaw or resolution expressly provides otherwise, any determination as to the right to any further indemnity shall be made in accordance with subsection B of § [13.1-880](#). Each such indemnity may continue as to a person who has ceased to have the capacity referred to above and may inure to the benefit of the heirs, executors and administrators of such a person.

C. The provisions of this article and Article 8 (§ [13.1-853](#) et seq.) of this Act shall apply to the same extent to any cooperative organized under the Code of Virginia.

D. No right provided to any person pursuant to this section may be reduced or eliminated by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

E. This article does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

F. This article does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent who is not a director or officer.

Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522; 1987, cc. 59, 257; 1988, c. 561; 2007, c. [925](#); 2010, c. [171](#).

§13.1-884. Authority to amend articles of incorporation.

A. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

B. A member of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, purpose, or duration of the corporation.

Code 1950, § 13.1-235; 1956, c. 428; 1985, c. 522.

§13.1-885. Amendment of articles of incorporation by directors.

A. Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of at least two-thirds of the directors in office. The board may adopt one or more amendments at any one meeting.

B. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without member action:

1. To delete the names and addresses of the initial directors;
2. To delete the name of the initial registered agent or the address of the initial registered office, if a statement of change described in § [13.1-834](#) is on file with the Commission;
3. To add, delete, or change a geographic attribution for the name; or
4. To make any other change expressly permitted by this Act to be made without member action.

Code 1950, § 13.1-236; 1956, c. 428; 1964, c. 580; 1985, c. 522; 2007, c. [925](#); 2015, c. [623](#).

§13.1-886. Amendment of articles of incorporation by directors and members.

A. Where there are members having voting rights, except where member approval of an amendment of the articles of incorporation is not required by this Act, an amendment to the articles of incorporation shall be adopted in the following manner:

1. The proposed amendment shall be adopted by the board of directors;
2. After adopting the proposed amendment, the board of directors shall submit the amendment to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the members the basis for that determination; and
3. The members entitled to vote on the amendment shall approve the amendment as provided in subsection D.

B. The board of directors may condition its submission of the proposed amendment on any basis.

C. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § [13.1-842](#). The notice of meeting shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

D. Unless this Act or the board of directors, acting pursuant to subsection B, requires a greater vote, the amendment to be adopted shall be approved by each voting group entitled to vote on the amendment by more than two-thirds of all the votes cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the amendment by each voting group entitled to vote on the amendment at a meeting at which a quorum of the voting group exists.

Code 1950, § 13.1-236; 1956, c. 428; 1964, c. 580; 1985, c. 522; 2007, c. [925](#).

§13.1-887. Voting on amendments by voting groups.

The articles of incorporation may provide that members of a class are entitled to vote as a separate voting group on specified amendments of the articles of incorporation.

1985, c. 522.

§13.1-887.1. Amendment prior to organization.

When a corporation has not yet completed its organization, its board of directors or incorporators, in the event that there is no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

2002, c. [607](#); 2007, c. [925](#).

§13.1-888. Articles of amendment.

A. A corporation amending its articles of incorporation shall file with the Commission articles of amendment setting forth:

1. The name of the corporation;
2. The text of each amendment adopted or the information required by subdivision L 5 of § [13.1-804](#);
3. The date of each amendment's adoption;
4. If an amendment was adopted by the incorporators or the board of directors without member approval, a statement that the amendment was duly approved by the vote of at least two-thirds of the directors in office or by a majority of the

incorporators, as the case may be, including the reason member and, if applicable, director approval was not required;

5. If an amendment was approved by the members, either:

a. A statement that the amendment was adopted by unanimous consent of the members; or

b. A statement that the amendment was proposed by the board of directors and submitted to the members in accordance with this Act and a statement of:

(1) The existence of a quorum of each voting group entitled to vote separately on the amendment; and

(2) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

B. If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

Code 1950, §§ 13-226, 13-227, 13.1-237, 13.1-238; 1956, c. 428; 1966, c. 218; 1975, c. 500; 1985, c. 522; 2002, c. [607](#); 2007, c. [925](#); 2012, c. [130](#).

§13.1-889. Restated articles of incorporation.

A. A corporation's board of directors may restate its articles of incorporation at any time with or without member approval.

B. The restatement may include one or more new amendments to the articles. If the restatement includes a new amendment requiring member approval, it shall be adopted and approved as provided in § [13.1-886](#). If the restatement includes an amendment that does not require member approval, it shall be adopted as provided in § [13.1-885](#).

C. If the board of directors submits a restatement for member approval, the corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § [13.1-842](#). The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and con-

tain or be accompanied by a copy of the restatement that identifies any new amendment it would make in the articles.

D. A corporation restating its articles of incorporation shall file with the Commission articles of restatement setting forth:

1. The name of the corporation immediately prior to restatement;
2. Whether the restatement contains a new amendment to the articles;
3. The text of the restated articles of incorporation or amended and restated articles of incorporation, as the case may be;
4. Information required by subdivision L 5 of § [13.1-804](#);
5. The date of the restatement's adoption;
6. If the restatement does not contain a new amendment to the articles, that the board of directors adopted the restatement;
7. If the restatement contains a new amendment to the articles not requiring member approval, the information required by subdivision A 4 of § [13.1-888](#); and
8. If the restatement contains a new amendment to the articles requiring member approval, the information required by subdivision A 5 of § [13.1-888](#).

E. If the Commission finds that the articles of restatement comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of restatement is effective the restated articles of incorporation or amended and restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

F. The Commission may certify restated articles of incorporation or amended and restated articles of incorporation as the articles of incorporation currently in effect.

1985, c. 522; 2002, c. [607](#); 2007, c. [925](#).

§13.1-890. Repealed.

Repealed by Acts 2007, c. [925](#), cl. 2.

§13.1-891. Effect of amendment of articles of incorporation.

An amendment to the articles of incorporation does not affect a cause of action existing in favor of or against the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than members of the corporation. An

amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Code 1950, § 13.1-239; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-892. Amendment of bylaws by board of directors or members.

A corporation's board of directors may amend or repeal the corporation's bylaws except to the extent that:

1. The articles of incorporation or § [13.1-893](#) reserves that power exclusively to the members; or

2. The members in repealing, adopting, or amending a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

1985, c. 522; 2007, c. [925](#).

§13.1-893. Bylaw provisions increasing quorum or voting requirements for directors.

A. A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

1. If originally adopted by the members, only by the members, unless the bylaws otherwise provide; or

2. If adopted by the board of directors, either by the members or by the board of directors.

B. A bylaw adopted or amended by the members that increases a quorum or voting requirement for the board of directors may provide that it shall be amended or repealed only by a specified vote of either the members or the board of directors.

C. Action by the board of directors under subsection A to amend or repeal a bylaw that changes the quorum or voting requirement applicable to meetings of the board of directors shall be effective only if it meets the quorum requirement and is adopted by the vote required to take action under the quorum and voting requirement then in effect.

1985, c. 522; 2007, c. [925](#).

§13.1-893.1. Definitions.

As used in this article:

"Merger" means a business combination pursuant to § [13.1-894](#).

"Party to a merger" means any domestic or foreign corporation or eligible entity that will merge under a plan of merger.

"Survivor" in a merger means the domestic or foreign corporation or the eligible entity into which one or more other domestic or foreign corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

2007, c. [925](#); 2009, c. [216](#).

§13.1-894. Merger.

A. One or more domestic corporations may merge with one or more domestic or foreign corporations or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or foreign eligible entities may merge into a new domestic corporation to be created in the merger in the manner provided in this chapter. When a domestic corporation is the survivor of a merger with a domestic stock corporation, it may become, pursuant to subdivision C 5, a domestic stock corporation, provided that the only parties to the merger are domestic corporations and domestic stock corporations.

B. A foreign corporation or a foreign eligible entity may be a party to a merger with a domestic corporation or may be created pursuant to the terms of the plan of merger only if the merger is permitted by the laws under which the foreign corporation or eligible entity is organized or by which it is governed.

C. The plan of merger shall include:

1. The name of each domestic or foreign corporation or eligible entity that will merge and the name of the domestic or foreign corporation or eligible entity that will be the survivor of the merger;
2. The terms and conditions of the merger;
3. The manner and basis of converting the membership interests of each merging domestic or foreign corporation and eligible interests of each domestic or foreign eligible entity into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash or other property, or any combination of the foregoing;
4. The manner and basis of converting any rights to acquire the membership interests of each merging domestic or foreign corporation and eligible interests of each

merging domestic or foreign eligible entity into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash or other property, or any combination of the foregoing;

5. The articles of incorporation of any domestic or foreign corporation or stock corporation or the organic document of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign corporation or stock corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic document; and

6. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed or required by the articles of incorporation or organic document of any such party.

D. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection L of § [13.1-804](#).

E. The plan of merger may also include a provision that the plan may be amended prior to the effective date of the certificate of merger, but if the members of a domestic corporation that is a party to the merger are required by any provision of this chapter to vote on the plan, the plan may not be amended subsequent to approval of the plan by such members to change any of the following unless such amendment is approved by the members:

1. The amount or kind of membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, or other property to be received under the plan by the members of or owners of eligible interests in any party to the merger;

2. The articles of incorporation of any domestic or foreign corporation or stock corporation or the organic document of any unincorporated entity that will survive or be created as a result of the merger, except for changes permitted by subsection B of § [13.1-885](#); or

3. Any of the other terms or conditions of the plan if the change would adversely affect such members in any material respect.

Code 1950, § 13.1-240; 1956, c. 428; 1985, c. 522; 2007, c. [925](#); 2008, c. [509](#); 2015, c. [611](#).

§13.1-895. Action on plan of merger.

A. In the case of a domestic corporation that is a party to a merger, where the members of any merging corporation have voting rights the plan of merger shall be adopted by the board of directors. Except as provided in subsection F, after adopting a plan of merger, the board of directors shall submit the plan to the members for their approval.

The board of directors shall also transmit to the members a recommendation that the members approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the members the basis for that determination.

B. The board of directors may condition its submission of the plan of merger to the members on any basis.

C. If the plan of merger is required to be approved by the members, and if the approval is to be given at a meeting, the corporation shall notify each member, whether or not entitled to vote, of the meeting of members at which the plan is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing domestic or foreign corporation or eligible entity and its members are to receive membership or other interests in the surviving corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organic document of that corporation or eligible entity. If the corporation is to be merged into a domestic or foreign corporation or eligible entity that is to be created pursuant to the merger and its members are to receive membership or other interests in the surviving corporation or eligible entity, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organic document of the new domestic or foreign corporation or eligible entity.

D. Unless the articles of incorporation or the board of directors acting pursuant to subsection B, requires a greater vote, the plan of merger to be authorized shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes cast by that voting group at a meeting at which a quorum of the voting group exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan

by each voting group entitled to vote on the transaction at a meeting at which a quorum of the voting group exists.

E. Separate voting by voting groups is required:

1. On a plan of merger by each class of members:

a. Whose membership interests are to be converted under the plan of merger into membership interests in a different domestic or foreign corporation, or eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, other property, or any combination of the foregoing; or

b. Who would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to the articles of incorporation, would require action by separate voting groups under § [13.1-887](#).

2. On a plan of merger, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger.

F. Unless the articles of incorporation otherwise provide, approval by the corporation's members of a plan of merger is not required if:

1. The corporation will survive the merger;

2. Except for amendments permitted by subsection B of § [13.1-885](#), its articles of incorporation will not be changed; and

3. Each person who is a member of the corporation immediately before the effective time of the merger will retain the same membership interest with identical designation, preferences, limitations, and rights immediately after the effective time of the merger.

G. Where any merging corporation has no members, or no members having voting rights, a plan of merger shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

H. If as a result of a merger one or more members of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger shall require the execution by each member of a separate written consent to become subject to such owner liability.

Code 1950, § 13.1-242; 1956, c. 428; 1985, c. 522; 2002, c. [607](#); 2007, c. [925](#); 2015, c. [611](#).

§13.1-896. Articles of merger.

A. After a plan of merger has been adopted and approved as required by this Act, articles of merger shall be executed on behalf of each party to the merger. The articles shall set forth:

1. The plan of merger, the names of the parties to the merger, and, for each party that is a foreign corporation or eligible entity, the name of the state or country under whose law it is incorporated or formed;
2. If the articles of incorporation of a domestic corporation that is the survivor of a merger are amended, or if a new domestic corporation is created as a result of a merger, as an attachment to the articles of merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;
3. The date the plan of merger was adopted by each domestic corporation that was a party to the merger;
4. If the plan of merger required approval by the members of a domestic corporation that was a party to the merger, either:
 - a. A statement that the plan was approved by the unanimous consent of the members; or
 - b. A statement that the plan was submitted to the members by the board of directors in accordance with this Act, and a statement of:
 - (1) The designation of and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and
 - (2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.
5. If the plan of merger was adopted by the directors without approval by the members of a domestic corporation that was a party to the merger, a statement that the plan of merger was duly approved by the vote of a majority of the directors in office, including the reason member approval was not required; and

6. As to each foreign corporation or eligible entity that was a party to the merger, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

B. Articles of merger shall be filed with the Commission by the survivor of the merger. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger. Articles of merger filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

Code 1950, §§ 13.1-243, 13.1-244; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2000, c. [53](#); 2003, c. [597](#); 2007, c. [925](#); 2009, c. [216](#).

§13.1-897. Effect of merger.

A. When a merger becomes effective:

1. The domestic or foreign corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence as the case may be;
2. The separate existence of every domestic or foreign corporation or eligible entity that is merged into the survivor ceases;
3. Property owned by and, except to the extent that assignment would violate a contractual prohibition on assignment by operation of law, every contract right possessed by each domestic or foreign corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;
4. All liabilities of each domestic or foreign corporation or eligible entity that is merged into the survivor are vested in the survivor;
5. The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;
6. The articles of incorporation or organic document of the survivor is amended to the extent provided in the plan of merger;
7. The articles of incorporation or organic document of a survivor that is created by the merger becomes effective; and

8. The membership interests of each domestic or foreign corporation that is a party to the merger and the eligible interests in an eligible entity that is a party to the merger that are to be converted under the plan of merger into membership interests, eligible interests or other securities, obligations, rights to acquire membership interests, eligible interests or other securities, cash, other property, or any combination of the foregoing, are converted, and the former holders of such membership interests or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under the organic law of the eligible entity.

B. Upon a merger's becoming effective, a foreign corporation or a foreign eligible entity that is the survivor of the merger is deemed to appoint the clerk of the Commission as its agent for service of process in a proceeding to enforce the rights of members of each domestic corporation that is a party to the merger.

C. No corporation that is required by law to be a domestic corporation may, by merger, cease to be a domestic corporation, but every such corporation, even though a corporation of some other state, the United States, or another country, shall also be a domestic corporation of the Commonwealth.

Code 1950, § 13.1-245; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. [925](#).

§13.1-897.1. Abandonment of a merger.

A. Unless otherwise provided in a plan of merger or in the laws under which a foreign corporation or a domestic or foreign eligible entity that is a party to a merger is organized or by which it is governed, after the plan has been adopted and approved as required by this article, and at any time before the certificate of merger has become effective, the merger may be abandoned by a domestic corporation that is a party thereto without action by members in accordance with any procedures set forth in the plan of merger or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger.

B. If a merger is abandoned under subsection A after articles of merger have been filed with the Commission but before the certificate of merger has become effective, a statement that the merger has been abandoned in accordance with this section, executed on behalf of a party to the merger, shall be delivered to the Commission for filing prior to the effective date of the certificate of merger. Upon filing, the statement shall take effect and the merger shall be deemed abandoned and shall not become effective.

2007, c. [925](#).

§13.1-898. Repealed.

Repealed by Acts 2007, c. [925](#), cl. 2.

§13.1-898.2. Domestication.

A. A foreign corporation may become a domestic corporation if the laws of the jurisdiction in which the foreign corporation is incorporated authorize it to domesticate in another jurisdiction. The laws of the Commonwealth shall govern the effect of domesticating in the Commonwealth pursuant to this article.

B. A domestic corporation not required by law to be a domestic corporation may become a foreign corporation if the jurisdiction in which the corporation intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved in the manner provided in this article. The laws of the jurisdiction in which the corporation domesticates shall govern the effect of domesticating in that jurisdiction.

C. The plan of domestication shall set forth:

1. A statement of the jurisdiction in which the corporation is to be domesticated;
2. The terms and conditions of the domestication; and
3. For a foreign corporation that is to become a domestic corporation, as a referenced attachment, amended and restated articles of incorporation that comply with the requirements of § [13.1-819](#) as they will be in effect upon consummation of the domestication.

D. The plan of domestication may include any other provision relating to the domestication.

E. The plan of domestication may also include a provision that the board of directors may amend the plan at any time prior to issuance of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication. Where a plan of domestication is required to be submitted to the members for their approval, an amendment made subsequent to the submission of the plan to the members of the corporation shall not alter or change any of the terms or conditions of the plan if such alteration or change would adversely affect the members of any class of the corporation.

2003, c. [374](#); 2007, c. [925](#); 2012, c. [130](#).

§13.1-898.3. Action on plan of domestication by a domestic corporation.

A. When the members of a domestic corporation have voting rights, a plan of domestication shall be adopted in the following manner:

1. The board of directors of the corporation shall adopt the plan of domestication.
2. After adopting a plan of domestication, the board of directors shall submit the plan of domestication for approval by the members.
3. For a plan of domestication to be approved:
 - a. The board of directors shall recommend the plan to the members unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the members with the plan; and
 - b. The members shall approve the plan as provided in subdivision 6 of this subsection.
4. The board of directors may condition its submission of the plan of domestication to the members on any basis.
5. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § [13.1-842](#) at which the plan of domestication is to be submitted for approval. The notice shall state that a purpose of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan.
6. Unless this Act or the board of directors, acting pursuant to subdivision 4 of this subsection, requires a greater vote, the plan of domestication shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subdivision or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.
7. Voting by a class of members as a separate voting group is required on a plan of domestication if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would entitle the class to vote as a separate voting group on the proposed amendment under § [13.1-887](#).

B. When a domestic corporation has no members, or no members have voting rights, a plan of domestication shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

2003, c. [374](#); 2007, c. [925](#).

§13.1-898.4. Articles of domestication.

A. After the domestication of a foreign corporation is approved in the manner required by the laws of the jurisdiction in which the corporation is incorporated, the corporation shall file with the Commission articles of domestication setting forth:

1. The name of the corporation immediately prior to the filing of the articles of domestication and, if that name is unavailable for use in the Commonwealth or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of § [13.1-829](#);

2. The plan of domestication;

3. The original jurisdiction of the corporation and the date the corporation was incorporated in that jurisdiction, and each subsequent jurisdiction and the date the corporation was domesticated in each such jurisdiction, if any, prior to the filing of the articles of domestication; and

4. A statement that the domestication is permitted by the laws of the jurisdiction in which the corporation is incorporated and that the corporation has complied with those laws in effecting the domestication.

B. If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

C. The certificate of domestication shall become effective pursuant to § [13.1-806](#).

D. A foreign corporation's existence as a domestic corporation shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign corporation have been complied with and that the corporation has been incorporated under this Act.

E. If the foreign corporation is authorized to transact business in the Commonwealth under Article 14 (§ [13.1-919](#) et seq.), its certificate of authority shall be canceled auto-

matically on the effective date of the certificate of domestication issued by the Commission.

2003, c. [374](#); 2007, c. [925](#); 2012, c. [130](#).

§13.1-898.5. Surrender of articles of incorporation upon domestication.

A. Whenever a domestic corporation has adopted and approved, in the manner required by this article, a plan of domestication providing for the corporation to be domesticated under the laws of another jurisdiction, the corporation shall file with the Commission articles of incorporation surrender setting forth:

1. The name of the corporation;
2. The jurisdiction in which the corporation is to be domesticated and the name of the corporation upon its domestication under the laws of that jurisdiction;
3. The plan of domestication;
4. A statement that the articles of incorporation surrender are being filed in connection with the domestication of the corporation as a foreign corporation to be incorporated under the laws of another jurisdiction and that the corporation is surrendering its charter under the laws of the Commonwealth;
5. Where the members of the corporation have voting rights, a statement:
 - a. That the plan was adopted by the unanimous consent of the members; or
 - b. That the plan was submitted to the members by the board of directors in accordance with this Act, and a statement of:
 - (1) The existence of a quorum of each voting group entitled to vote separately on the plan; and
 - (2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group;
6. Where the corporation has no members, or no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office;

7. A statement that the corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in the Commonwealth;

8. A mailing address to which the clerk may mail a copy of any process served on the clerk under subdivision 7; and

9. A commitment by the corporation to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

B. If the Commission finds that the articles of incorporation surrender comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation surrender.

C. The corporation shall automatically cease to be a domestic corporation when the certificate of incorporation surrender becomes effective.

D. If the former domestic corporation intends to continue to transact business in the Commonwealth, then, within 30 days after the effective date of the certificate of incorporation surrender, it shall deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth pursuant to § [13.1-921](#) together with a copy of its instrument of domestication and articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated or domesticated.

E. Service of process on the clerk of the Commission is service of process on a former domestic corporation that has surrendered its charter pursuant to this section. Service on the clerk shall be made in accordance with § [12.1-19.1](#) and service on the former domestic corporation may be made in any other manner permitted by law.

2003, c. [374](#); 2007, c. [925](#); 2015, c. [623](#).

§13.1-898.6. Effect of domestication.

A. When a foreign corporation's certificate of domestication in the Commonwealth becomes effective, with respect to that corporation:

1. The title to all real estate and other property remains in the corporation without reversion or impairment;

2. The liabilities remain the liabilities of the corporation;

3. A proceeding pending may be continued by or against the corporation as if the domestication did not occur;
4. The articles of incorporation attached to the articles of domestication constitute the articles of incorporation of the corporation; and
5. The corporation is deemed to:
 - a. Be incorporated under the laws of the Commonwealth for all purposes;
 - b. Be the same corporation as the corporation that existed under the laws of the jurisdiction or jurisdictions in which it was originally incorporated or formerly domiciled; and
 - c. Have been incorporated on the date it was originally incorporated or organized.
- B. Any member or director of a foreign corporation that domesticates into the Commonwealth who, prior to the domestication, was liable for the liabilities or obligations of the corporation is not released from those liabilities or obligations by reason of the domestication.

2003, c. [374](#); 2007, c. [925](#).

§13.1-898.7. Abandonment of domestication.

- A. Unless otherwise provided in a plan of domestication of a domestic corporation to become a foreign corporation, after the plan has been approved and adopted as required by this article, and at any time before the certificate of incorporation surrender has become effective, the domestication may be abandoned by the domestic corporation without action by its members in accordance with any procedures set forth in the plan of domestication or, if no such procedures are set forth in the plan of domestication, in the manner determined by the board of directors.
- B. If a domestication is abandoned as provided under subsection A after articles of incorporation surrender have been filed with the Commission but before the certificate of incorporation surrender has become effective, written notice that the domestication has been abandoned in accordance with this section shall be filed with the Commission prior to the effective date of the certificate of incorporation surrender. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.
- C. If the domestication of a foreign corporation into the Commonwealth is abandoned in accordance with the laws of the jurisdiction in which the foreign

corporation is incorporated after articles of domestication have been filed with the Commission but before the certificate of domestication has become effective, written notice that the domestication has been abandoned shall be filed with the Commission prior to the effective time and date of the certificate of domestication. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

2003, c. [374](#); 2007, c. [925](#); 2015, c. [623](#).

§13.1-899. Sale of assets in regular course of business.

Unless the articles of incorporation provide otherwise, no approval of the members of a corporation entitled to vote is required:

1. To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;
2. To mortgage, pledge or dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets whether or not in the usual and regular course of business; or
3. To transfer any or all of the corporation's assets to one or more domestic or foreign eligible entities all of whose eligible interests are owned by the corporation.

Code 1950, §§ 13-232, 13.1-246; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-900. Sale of assets other than in regular course of business.

A. A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its assets, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors adopts and its members approve the proposed transaction.

B. Where there are members having voting rights, a disposition, other than a disposition described in § [13.1-899](#), shall be authorized in the following manner:

1. The board of directors shall adopt a resolution authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the members for their approval. The board of directors shall also submit to the members a recommendation that the members approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a

recommendation, in which case the board of directors shall transmit to the members the basis for that determination.

2. The board of directors may condition its submission of the proposed transaction on any basis.

3. The corporation shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § [13.1-842](#). The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain or be accompanied by a copy or summary of the agreement pursuant to which the disposition will be effected. If only a summary of the agreement is sent to members, the corporation shall also send a copy of the agreement to any member who requests it.

4. Unless the board of directors, acting pursuant to subdivision 2 of this subsection, requires a greater vote, the disposition to be authorized shall be approved by more than two-thirds of all the votes cast on the disposition at a meeting at which a quorum exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the disposition by each voting group entitled to vote on the disposition at a meeting at which a quorum of the voting group exists.

5. Unless the parties to the disposition have agreed otherwise, after a disposition of assets has been approved by members, and at any time before the disposition has been consummated, it may be abandoned, subject to any contractual rights, without further member action in accordance with the procedure set forth in the resolution proposing the disposition or, if none is set forth, by the board of directors.

C. For a transaction to be authorized where there are no members, or no members having voting rights, the proposed transaction shall be authorized upon receiving the vote of a majority of the directors in office.

D. A disposition of assets in the course of dissolution under Article 13 (§ [13.1-902](#) et seq.) is not governed by this section.

Code 1950, §§ 13-232, 13.1-246; 1956, c. 428; 1985, c. 522; 1991, c. 110; 2007, c. [925](#).

§13.1-901. Sale of certain real property by incorporated educational institutions.

In all cases where an incorporated educational institution, or its board of directors, or trustees, for its benefit, owns or holds more than 1,000 acres of land in one or more tracts outside of a city or incorporated town, such board of trustees or directors may, notwithstanding any provision in its charter, or in the deed, will or muniment of title under which such real estate is held, by a majority vote of all of the members of such board, sell and convey all of such real estate in excess of 1,000 acres, the portion to be sold to embrace both land and buildings as may be determined by the board.

Code 1950, § 13.1-246.1; 1973, c. 476; 1985, c. 522.

§13.1-902. Dissolution by directors and members.

A. Where there are members having voting rights, a corporation's board of directors may propose dissolution for submission to the members.

B. For a proposal to dissolve to be adopted:

1. The board of directors shall recommend dissolution to the members unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the members; and

2. The members entitled to vote shall approve the proposal to dissolve as provided in subsection E.

C. The board of directors may condition its submission of the proposal for dissolution on any basis.

D. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § [13.1-842](#). The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

E. Unless the board of directors, acting pursuant to subsection C, requires a greater vote, dissolution to be authorized shall have been approved by more than two-thirds of all the votes cast on the proposal to dissolve at a meeting at which a quorum exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast by each voting group entitled to vote on the proposed dissolution at a meeting at which a quorum of the voting group exists.

Code 1950, § 13.1-248; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-903. Dissolution by directors.

Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

Code 1950, § 13.1-248; 1956, c. 428; 1985, c. 522.

§13.1-904. Articles of dissolution.

A. At any time after dissolution is approved, the corporation may dissolve by filing with the Commission articles of dissolution setting forth:

1. The name of the corporation.
2. The date dissolution was authorized.
3. Where there are members having voting rights, either (i) a statement that dissolution was authorized by unanimous consent of the members, or (ii) a statement that the proposed dissolution was submitted to the members by the board of directors in accordance with this article and a statement of (a) the existence of a quorum of each voting group entitled to vote separately on dissolution and (b) either the total number of votes cast for and against dissolution by each voting group entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution separately by each voting group and a statement that the number cast for dissolution by each voting group was sufficient for approval by that voting group.
4. Where there are no members, or no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the dissolution was authorized and a statement of the fact that dissolution was authorized by the vote of a majority of the directors in office.

B. If the Commission finds that the articles of dissolution comply with the requirements of law and that the corporation has paid all required fees and taxes imposed by laws administered by the Commission, it shall issue a certificate of dissolution.

C. A corporation is dissolved upon the effective date of the certificate of dissolution.

D. For purposes of §§ [13.1-902](#) through [13.1-908.2](#), "dissolved corporation" means a corporation whose articles of dissolution have become effective; the term includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

Code 1950, §§ 13.1-252, 13.1-253; 1956, c. 428; 1974, c. 452; 1975, c. 500; 1985, c. 522; 2003, c. [596](#); 2007, c. [925](#).

§13.1-905. Revocation of dissolution.

A. A corporation may revoke its dissolution at any time prior to the effective date of its certificate of termination of corporate existence.

B. Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless, where members have votes, that authorization permitted revocation by action by the board of directors alone, in which event the board of directors may revoke the dissolution without member action.

C. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by filing with the Commission articles of revocation of dissolution that set forth:

1. The name of the corporation;
2. The effective date of the dissolution that was revoked;
3. The date that the revocation of dissolution was authorized;
4. If the corporation's board of directors revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
5. If member action was required to revoke the dissolution, the information required by subdivision 3 of subsection A of § [13.1-904](#).

D. If the Commission finds that the articles of revocation of dissolution comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of revocation of dissolution.

E. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

Code 1950, § 13.1-251; 1956, c. 428; 1985, c. 522.

§13.1-906. Effect of dissolution.

A. A dissolved corporation continues its corporate existence but may not transact any business except that appropriate to wind up and liquidate its business and affairs, including:

1. Collecting its assets;
2. Disposing of its properties;
3. Discharging or making provision for discharging its liabilities;
4. Distributing its remaining property; and
5. Doing every other act necessary to wind up and liquidate its business and affairs.

B. Dissolution of a corporation does not:

1. Transfer title to the corporation's property;
2. Subject its directors to standards of conduct different from those prescribed in [§ 13.1-870](#);
3. Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;
4. Prevent commencement of a proceeding by or against the corporation in its corporate name;
5. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
6. Terminate the authority of the registered agent of the corporation.

1985, c. 522; 2007, c. [925](#).

§13.1-907. Distribution and plan of distribution of assets.

A. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

1. All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;
2. Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;
3. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic

or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Act or as a court may direct;

4. Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

5. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether issuing shares or not, as may be specified in a plan of distribution adopted as provided in this Act or as a court may direct.

B. A plan providing for the distribution of assets, not inconsistent with the provisions of this Act, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Act requires a plan of distribution. A plan shall be adopted in accordance with the procedures established in § [13.1-902](#) or [13.1-903](#), as the case may be.

Code 1950, §§ 13-237, 13.1-249, 13.1-250; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-908. Known claims against dissolved corporation.

A. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

B. The dissolved corporation shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:

1. Provide a reasonable description of the claim that the claimant may be entitled to assert;

2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an instrument of indebtedness;

3. Provide a mailing address where a claim may be sent;

4. State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which confirmation of the claim is required to be delivered to the dissolved corporation; and

5. State that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not delivered by the deadline.

C. A claim against the dissolved corporation is barred to the extent that it is not admitted:

1. If the dissolved corporation delivered written notice to the claimant in accordance with subsection B and the claimant does not deliver written confirmation of the claim to the dissolved corporation by the deadline; or

2. If the dissolved corporation delivered written notice to the claimant that his claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within 90 days from the delivery of written confirmation of the claim to the dissolved corporation.

D. For purposes of this section, "claim" does not include (i) a contingent liability or a claim based on an event occurring after the effective date of dissolution or (ii) a liability or claim the ultimate maturity of which is more than 60 days after the delivery of written notice to the claimant pursuant to subsection B.

E. If a liability exists but the full extent of any damages is or may not be ascertainable, and a proceeding to enforce the claim is commenced pursuant to subdivision C 2, the claimant may amend the pleadings after filing to include any damages that occurred or are alleged to have occurred after filing, and the court having jurisdiction of such claim may continue such proceeding during its pendency if it appears that further damages are or may be still occurring.

1985, c. 522; 2007, c. [925](#).

§13.1-908.1. Other claims against dissolved corporation.

A. A dissolved corporation may also (i) deliver notice of its dissolution to any known claimant with a liability or claim that pursuant to subsection D of § [13.1-908](#) is not treated as a claim for purposes of § [13.1-908](#) and (ii) publish notice of its dissolution one time in a newspaper of general circulation in the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located. The notice of dissolution shall request that persons with claims against the dissolved corporation present them in accordance with the notice.

B. The notice shall:

1. Describe the information that is required to be included in a claim and provide a mailing address to which the claim may be sent; and
2. State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of limitations or three years after the date of delivery of notice to the claimant, or the date of publication of the notice, as appropriate.

C. If the dissolved corporation provides notice of its dissolution in accordance with this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation prior to the earlier of the expiration of any applicable statute of limitations or three years after the date on which notice was delivered to the claimant or published, as appropriate:

1. A claimant who was not given written notice under § [13.1-908](#);
 2. A claimant whose claim was timely sent to the dissolved corporation but not acted on; and
 3. A claimant whose claim pursuant to subsection D of § [13.1-908](#) is not treated as a claim for purposes of § [13.1-908](#).
- D. A claim that is not barred by subsection C of § [13.1-908](#) or subsection C of this section may be enforced:

1. Against the dissolved corporation, to the extent of its undistributed assets; or
2. Except as provided in subsection D of § [13.1-908.2](#), if the assets have been distributed in liquidation, against a member of the dissolved corporation to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

2007, c. [925](#); 2015, c. [611](#).

§13.1-908.2. Court proceedings.

A. A dissolved corporation that has published a notice under § [13.1-908.1](#) may file an application with the circuit court of the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located for a determination of the amount and form of security to be

provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § [13.1-908.1](#).

B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

D. Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved corporation's obligations with respect to claims that do not meet the definition of a claim in subsection D of § [13.1-908](#), and such claims may not be enforced against a member who received assets in liquidation.

2007, c. [925](#).

§13.1-908.3. Director duties.

A. The board of directors shall cause the dissolved corporation to apply its remaining assets to discharge or make reasonable provision for the payment of claims and make distributions of assets to members after payment or provision for claims.

B. Directors of a dissolved corporation that has disposed of claims under § [13.1-908](#), [13.1-908.1](#), or [13.1-908.2](#) shall not be liable for breach of subsection A with respect to claims against the dissolved corporation that are barred or satisfied under § [13.1-908](#), [13.1-908.1](#), or [13.1-908.2](#).

2007, c. [925](#).

§13.1-909. Grounds for judicial dissolution.

A. The circuit court in any city or county described in subsection C may dissolve a corporation:

1. In a proceeding by a member or director if it is established that:

- a. The directors are deadlocked in the management of the corporate affairs and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the members generally, because of the deadlock, and either that the members are unable to break the deadlock or there are no members having voting rights;
 - b. The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
 - c. The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired;
 - d. The corporate assets are being misapplied or wasted; or
 - e. The corporation is unable to carry out its purposes;
2. In a proceeding by a creditor if it is established that:
- a. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or
 - b. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;
3. In a proceeding by the corporation to have its voluntary dissolution continued under court supervision;
4. Upon application by the board of directors when it is established that circumstances make it impossible to obtain a representative vote by members on the question of dissolution and that the continuation of the business of the corporation is not in the interest of the members but it is in their interest that the assets and business be liquidated; or
5. When the Commission has instituted a proceeding for the involuntary termination of a corporate existence and entered an order finding that the corporate existence of the corporation should be terminated but that liquidation of its business and affairs should precede the entry of an order of termination of corporate existence.
- B. The circuit court in the city or county named in subsection C shall have full power to liquidate the assets and business of the corporation at any time after the termination of corporate existence, pursuant to the provisions of this article upon the application of any person, for good cause, with regard to any assets or business that

may remain. The jurisdiction conferred by this clause may also be exercised by any such court in any city or county where any property may be situated whether of a domestic or a foreign corporation that ceased to exist.

C. Venue for a proceeding brought under this section lies in the city or county where the corporation's principal office is or was last located, or, if none in the Commonwealth, where its registered office is or was last located.

D. It is not necessary to make directors or members parties to a proceeding to be brought under this section unless relief is sought against them individually.

E. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with such powers and duties as the court may direct, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

Code 1950, §§ 13.1-257, 13.1-260, 13.1-261; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. [925](#).

§13.1-910. Receivership or custodianship.

A. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage while the proceeding is pending, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

B. The court may appoint an individual, a domestic corporation, or a foreign corporation, authorized to transact business in the Commonwealth, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

C. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

1. The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court, and (ii) may sue and defend in his own name as receiver of the corporation in all courts of the Commonwealth; and

2. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interest of its members and creditors.

D. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interest of the corporation, its members, and creditors.

E. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

Code 1950, §§ 13.1-258, 13.1-259; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-911. Decree of dissolution.

A. If after a hearing the court determines that one or more grounds for judicial dissolution described in § [13.1-909](#) exist, it may enter a decree directing that the corporation shall be dissolved. The clerk of the court shall deliver a certified copy of the decree to the Commission, which shall enter an order of involuntary dissolution.

B. After the order of involuntary dissolution has been entered, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with §§ [13.1-906](#) and [13.1-907](#) and the notification of claimants in accordance with §§ [13.1-908](#), [13.1-908.1](#), and [13.1-908.2](#). When all of the assets of the corporation have been distributed, the court shall so advise the Commission, which shall enter an order of termination of corporate existence.

Code 1950, §§ 13.1-262, 13.1-263; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-912. Articles of termination of corporate existence.

A. When a corporation has distributed all of its assets and voluntary dissolution proceedings have not been revoked, it shall file articles of termination of corporate existence with the Commission. The articles shall set forth:

1. The name of the corporation;
2. That all the assets of the corporation have been distributed; and
3. That the dissolution of the corporation has not been revoked.

B. If the Commission finds that the articles of termination of corporate existence comply with the requirements of law and that all required fees have been paid, it shall by

order issue a certificate of termination of corporate existence. Upon the issuance of such certificate, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this Act.

C. The statement "that all the assets of the corporation have been distributed" means that the corporation has divested itself of all its assets by the payment of claims or by assignment to a trustee or trustees as directed by § [13.1-907](#). If any certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative who is entitled to a share in the distribution of the assets cannot be found, the corporation may thereupon, and without awaiting the one year mentioned in § [55-210.7](#), pay such person's share to the State Treasurer as abandoned property on complying with all applicable requirements of § [55-210.12](#) except subdivision B 4 of that section.

1985, c. 522; 1986, c. 529; 2004, c. [162](#); 2007, c. [925](#).

§13.1-913. Termination of corporate existence by incorporators or initial directors.

A majority of the initial directors or, if initial directors were not named in the articles of incorporation and have not been elected, the incorporators of a corporation that has not commenced business may dissolve the corporation and terminate its corporate existence by filing with the Commission articles of termination of corporate existence that set forth:

1. The name of the corporation;
2. That the corporation has not commenced business;
3. That no debt of the corporation remains unpaid;
4. That the net assets of the corporation remaining after winding up have been distributed; and
5. That a majority of the initial directors authorized the dissolution or that initial directors were not named in the articles of incorporation and have not been elected and a majority of the incorporators authorized the dissolution.

1985, c. 522; 1986, c. 234; 2007, c. [925](#).

§13.1-914. Automatic termination of corporate existence.

A. If any domestic corporation fails to file its annual report or pay its annual registration fee in a timely manner as required by this chapter, the Commission shall mail to each such corporation a notice of the impending termination of its corporate existence. Whether or not such notice is mailed, if any corporation fails to file its annual report or pay its annual registration fee on or before the last day of the fourth month immediately following its annual report or annual registration fee due date each year, the corporate existence of the corporation shall be automatically terminated as of that day.

B. If any domestic corporation whose registered agent has filed with the Commission his statement of resignation pursuant to § [13.1-835](#) fails to file a statement of change pursuant to § [13.1-834](#) within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of the impending termination of its corporate existence. If the corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending termination notice was mailed, the corporate existence of the corporation shall be automatically terminated as of that day.

C. The properties and affairs of a corporation whose corporate existence has been terminated pursuant to this section shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the corporation, (ii) pay, satisfy, and discharge its liabilities and obligations, and (iii) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in accordance with § [13.1-907](#).

D. No officer, director, or agent of a corporation shall have any personal obligation for any of the liabilities of the corporation whether such liabilities arise in contract, tort, or otherwise, solely by reason of the termination of the corporation's existence pursuant to this section.

Code 1950, § 13.1-254; 1956, c. 428; 1970, c. 4; 1980, c. 185; 1985, cc. 522, 528; 1987, c. 2; 1988, c. 405; 1991, c. 125; 1997, c. [216](#); 2000, c. [52](#); 2007, c. [925](#); 2010, c. [753](#).

§13.1-915. Involuntary termination of corporate existence.

A. The corporate existence of a corporation may be terminated involuntarily by order of the Commission when it finds that the corporation (i) has continued to exceed or abuse the authority conferred upon it by law; (ii) has failed to maintain a registered

office or a registered agent in the Commonwealth as required by law; (iii) has failed to file any document required by this Act to be filed with the Commission; or (iv) has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth. Upon termination, the properties and affairs of the corporation shall pass automatically to its directors as trustees in liquidation. The trustees then shall proceed to collect the assets of the corporation, and pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in accordance with § [13.1-907](#). A corporation whose existence is terminated pursuant to clause (iv) shall not be eligible for reinstatement for a period of not less than one year.

B. Any corporation convicted of the offense listed in clause (iv) of subsection A shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

Code 1950, § 13.1-256; 1956, c. 428; 1958, c. 506; 1968, c. 116; 1976, c. 350; 1985, c. 522; 1991, c. 310; 2007, c. [925](#); 2008, cc. [588](#), [770](#).

§13.1-916. Reinstatement of a corporation that has ceased to exist.

A. A corporation that has ceased to exist pursuant to this article may apply to the Commission for reinstatement within five years thereafter unless the corporate existence was terminated by order of the Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law or (ii) entered pursuant to § [13.1-911](#) and the circuit court's decree directing dissolution contains no provision of reinstatement of corporate existence.

B. To have its corporate existence reinstated, the corporation shall provide the Commission with the following:

1. An application for reinstatement, which shall include the identification number issued by the Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit

signed by an agent of any member's interests stating that after diligent search by such agent, no officer or director can be found;

2. A reinstatement fee of \$10;

3. All annual registration fees and penalties that were due before the corporation ceased to exist and that would have been assessed or imposed to the date of reinstatement if the corporation's existence had not been terminated;

4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;

5. If the name of the corporation does not comply with the provisions of § [13.1-829](#) at the time of reinstatement, articles of amendment to the articles of incorporation to change the corporation's name to a name that satisfies the provisions of § [13.1-829](#), with the fee required by this chapter for the filing of articles of amendment; and

6. If the corporation's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § [13.1-834](#).

C. If the corporation complies with the provisions of this section, the Commission shall enter an order of reinstatement of corporate existence. Upon entry of the order of reinstatement, the corporate existence shall be deemed to have continued from the date of termination as if termination had never occurred, and any liability incurred by the corporation or a director, officer, or other agent after the termination and before the reinstatement is determined as if the termination of the corporation's existence had never occurred.

Code 1950, § 13.1-255; 1956, c. 428; 1958, c. 564; 1976, c. 350; 1985, c. 522; 1986, c. 234; 1988, c. 405; 2004, c. [601](#); 2005, c. [379](#); 2006, c. [663](#); 2007, c. [925](#); 2015, c. [623](#).

§13.1-917. Survival of remedy after termination of corporate existence.

The termination of corporate existence shall not take away or impair any remedy available to or against the corporation, its directors, officers or members, for any right or claim existing, or any liability incurred, prior to such termination. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have

power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

Code 1950, § 13.1-264; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-918. Repealed.

Repealed by Acts 1988, c. 405.

§13.1-919. Authority to transact business required.

A. A foreign corporation may not transact business in the Commonwealth until it obtains a certificate of authority from the Commission.

B. The following activities, among others, do not constitute transacting business within the meaning of subsection A:

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;
3. Maintaining bank accounts;
4. Selling through independent contractors;
5. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the Commonwealth before they become contracts;
6. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;
7. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;
8. Owning, without more, real or personal property;
9. Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;
10. For a period of less than 90 consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films which are sent outside of the Commonwealth for processing, editing, marketing and distribution; or

11. Serving, without more, as a general partner of or as a partner in a partnership that is a general partner of a domestic or foreign limited partnership that does not otherwise transact business in the Commonwealth.

C. The list of activities in subsection B is not exhaustive.

Code 1950, §§ 13.1-265 to 13.1-265.2; 1956, c. 428; 1962, c. 239; 1980, c. 630; 1985, c. 522; 2007, c. [925](#).

§13.1-920. Consequences of transacting business without authority.

A. A foreign corporation transacting business in the Commonwealth without a certificate of authority may not maintain a proceeding in any court in the Commonwealth until it obtains a certificate of authority.

B. Notwithstanding subsections A and C, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in the Commonwealth.

C. The successor to a foreign corporation that transacted business in the Commonwealth without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in the Commonwealth until the foreign corporation or its successor obtains a certificate of authority.

A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court shall further stay the proceeding until the foreign corporation or its successor obtains the certificate.

D. If a foreign corporation transacts business in the Commonwealth without a certificate of authority, each officer, director, and employee who does any of such business in the Commonwealth knowing that a certificate of authority is required shall be liable for a penalty of not less than \$500 and not more than \$5,000. Any such penalty may be imposed by the Commission or by any court in the Commonwealth before which an action against the corporation may lie, after the corporation and the individual have been given notice and an opportunity to be heard.

E. Suits, actions and proceedings may be begun against a foreign corporation that transacts business in the Commonwealth without a certificate of authority by serving process on any director, officer or agent of the corporation doing such business, or, if none can be found, on the clerk of the Commission or on the corporation in any

other manner permitted by law. If any foreign corporation transacts business in the Commonwealth without a certificate of authority, it shall by transacting such business be deemed to have thereby appointed the clerk of the Commission its attorney for service of process. Service upon the clerk shall be made in accordance with § [12.1-19.1](#).

Code 1950, §§ 13-218, 13.1-281; 1956, c. 428; 1981, c. 320; 1985, c. 522; 1986, c. 571; 1990, c. 325; 1991, c. 672; 2007, c. [925](#).

§13.1-921. Application for certificate of authority.

A. A foreign corporation may apply to the Commission for a certificate of authority to transact business in the Commonwealth. The application shall be made on forms prescribed and furnished by the Commission. The application shall set forth:

1. The name of the corporation, and if the corporation is prevented by § [13.1-924](#) from using its name in the Commonwealth, a designated name that satisfies the requirements of subsection B of § [13.1-924](#);
2. The name of the state or other jurisdiction under whose laws it is incorporated, and if the corporation was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization, or formation; and (iv) the entity identification number issued to it by the Commission;
3. The date of incorporation and period of duration;
4. The street address of the foreign corporation's principal office;
5. The address of the proposed registered office of the foreign corporation in the Commonwealth, including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located, and the name of its proposed registered agent in the Commonwealth at such address and that the registered agent is either (a) an individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar or (b) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office; and

6. The names and usual business addresses of the current directors and principal officers of the foreign corporation.

B. The foreign corporation shall deliver with the completed application a copy of its articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws it is incorporated.

C. If the Commission finds that the application complies with the requirements of law, and that all required fees have been paid, it shall issue a certificate of authority to transact business in the Commonwealth.

Code 1950, §§ 13.1-269, 13.1-270; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1994, c. [348](#); 2001, cc. [517](#), [541](#); 2002, c. [607](#); 2004, c. [274](#); 2007, c. [925](#); 2015, c. [623](#).

§13.1-922. Amended certificate of authority.

A. A foreign corporation authorized to transact business in the Commonwealth shall obtain an amended certificate of authority from the Commission:

1. If it changes its corporate name or the state or other jurisdiction of its incorporation; or

2. To abandon or change the designated name adopted by the corporation for use in the Commonwealth pursuant to subsection B of § [13.1-924](#).

B. The requirements of § [13.1-921](#) for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

C. Whenever the articles of incorporation of a foreign corporation that is authorized to transact business in the Commonwealth are amended, within 30 days after the amendment becomes effective, the foreign corporation shall file with the Commission a copy of such amendment duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated.

Code 1950, §§ 13.1-275 to 13.1-277; 1956, c. 428; 1958, c. 564; 1985, c. 522; 1986, c. 571; 1987, c. 431; 2007, c. [925](#); 2015, c. [623](#).

§13.1-923. Effect of certificate of authority.

A. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in the Commonwealth, subject, however, to the right of the Commonwealth to revoke the certificate as provided in this Act.

B. A foreign corporation holding a valid certificate of authority shall have no greater rights and privileges than a domestic corporation. The certificate of authority shall not be deemed to authorize it to exercise any of its corporate powers or purposes that a foreign corporation is forbidden by law to exercise in the Commonwealth.

C. This Act does not authorize the Commonwealth to regulate the organization or internal affairs of a foreign corporation authorized to transact business in the Commonwealth.

Code 1950, §§ 13.1-266, 13.1-271; 1956, c. 428; 1985, c. 522; 2007, c. [925](#).

§13.1-924. Corporate name of foreign corporation.

A. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such foreign corporation satisfies the requirements of § [13.1-829](#).

B. If the corporate name of a foreign corporation does not satisfy the requirements of § [13.1-829](#), to obtain or maintain a certificate of authority to transact business in the Commonwealth, if its real name is unavailable, the foreign corporation may use a designated name that is available, and that satisfies the requirements of § [13.1-829](#), if it informs the Commission of the designated name.

Code 1950, §§ 13.1-267, 13.1-268, 13.1-277; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, cc. 232, 571; 2003, c. [592](#); 2005, c. [379](#); 2007, c. [925](#); 2012, c. [63](#).

§13.1-925. Registered office and registered agent of foreign corporation.

A. Each foreign corporation authorized to transact business in the Commonwealth shall continuously maintain in the Commonwealth:

1. A registered office, which may be the same as any of its places of business.

2. A registered agent, who shall be:

a. An individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office;

provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the corporation at its last known address any process, notice or demand that is served on the registered agent.

Code 1950, § 13.1-272; 1956, c. 428; 1958, c. 564; 1985, c. 522; 1994, c. [348](#); 2000, c. [162](#); 2001, cc. [517](#), [541](#); 2007, c. [925](#).

§13.1-926. Change of registered office or registered agent of a foreign corporation.

A. A foreign corporation authorized to transact business in the Commonwealth may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the foreign corporation;
2. The address of its current registered office;
3. If the current registered office is to be changed, the post office address, including street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the corporation will be in compliance with the requirements of § [13.1-925](#).

B. A statement of change shall forthwith be filed with the Commission by a foreign corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § [13.1-925](#).

C. A foreign corporation's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally

changed. A foreign corporation's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § [13.1-925](#). In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office address of the foreign corporation on or before the business day following the day on which the statement is filed.

Code 1950, § 13.1-273; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, c. 622; 2003, c. [597](#); 2007, c. [925](#); 2010, c. [434](#).

§13.1-927. Resignation of registered agent of foreign corporation.

A. The registered agent of a foreign corporation may resign the agency appointment by signing and filing with the Commission a statement of resignation accompanied by a certification that the registered agent shall mail a copy thereof to the principal office of the corporation by certified mail on or before the business day following the day on which the statement is filed. The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

1985, c. 522; 2007, c. [925](#); 2010, c. [434](#).

§13.1-928. Service of process on foreign corporation.

A. The registered agent of a foreign corporation authorized to transact business in the Commonwealth shall be an agent of such corporation upon whom any process, notice, order or demand required or permitted by law to be served upon the corporation may be served. The registered agent may by instrument in writing, acknowledged before a notary public, designate a natural person or persons in the office of the registered agent upon whom any such process, notice, order or demand may be served. Whenever any such person accepts service of process, a photographic copy of such instrument shall be attached to the return.

B. Whenever a foreign corporation authorized to transact business in the Commonwealth fails to appoint or maintain a registered agent in the Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the

registered office, then the clerk of the Commission shall be an agent of the corporation upon whom service may be made in accordance with § [12.1-19.1](#).

C. Nothing in this section shall limit or affect the right to serve any process, notice, order or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

Code 1950, §§ 13-214 to 13-217, 13.1-274; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, cc. 571, 622; 1991, c. 672; 2001, cc. [517](#), [541](#); 2007, c. [925](#).

§13.1-928.1. Merger of foreign corporation authorized to transact business in Commonwealth.

A. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it is incorporated, and such corporation is the surviving entity of the merger, it shall, within 30 days after such merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated; however, the filing shall not be required when a foreign corporation merges with a domestic corporation, the foreign corporation's articles of incorporation are not amended by said merger, and the articles of merger filed on behalf of the domestic corporation pursuant to § [13.1-896](#) contain a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign corporation is incorporated and that the foreign corporation has complied with that law in effecting the merger.

B. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the laws of which it is incorporated, and such corporation is not the surviving entity of the merger or, whenever such a foreign corporation is a party to a consolidation so permitted, the surviving or resulting domestic or foreign corporation, limited liability company, business trust, partnership, or limited partnership shall, if not continuing to transact business in the Commonwealth, within 30 days after such merger or consolidation becomes effective, deliver to the Commission a copy of the instrument of merger or consolidation duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it was incorporated and comply in behalf of the predecessor corporation with the provisions of § [13.1-929](#). If a surviving or resulting

corporation or limited liability company, business trust, partnership, or limited partnership is to continue to transact business in the Commonwealth and has not received a certificate of authority to transact business in the Commonwealth, within such 30 days, deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth, together with a duly authenticated copy of the instrument of merger or consolidation and also, in case of a merger, a copy of its articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated.

C. Upon the merger or consolidation of two or more foreign corporations any one of which owns property in the Commonwealth, all such property shall pass to the surviving or resulting corporation except as otherwise provided by the laws of the state by which it is governed, but only from the time when a duly authenticated copy of the instrument of merger or consolidation is filed with the Commission.

1986, c. 571; 1990, c. 283; 2006, c. [663](#); 2007, c. [925](#); 2015, c. [623](#).

§13.1-928.2. Entity conversion of foreign corporation authorized to transact business in Commonwealth.

A. Whenever a foreign corporation that is authorized to transact business in the Commonwealth converts to another type of entity, the surviving or resulting entity shall, within 30 days after such entity conversion becomes effective, file with the Commission a copy of the instrument of entity conversion duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws such entity conversion was effected; and

1. If the surviving or resulting entity is not continuing to transact business in the Commonwealth or is not a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership, then, within 30 days after such entity conversion, it shall comply on behalf of the predecessor corporation with the provisions of § [13.1-929](#); or

2. If the surviving or resulting entity is a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership and is to continue to transact business in the Commonwealth, then, within such 30 days, it shall deliver to the Commission an application for a certificate of registration to transact business in the Commonwealth or, in the case of a foreign registered limited liability partnership, a statement of registration.

B. Upon the entity conversion of a foreign corporation that is authorized to transact business in the Commonwealth, all property in the Commonwealth owned by the foreign corporation shall pass to the surviving or resulting entity except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of entity conversion is filed with the Commission.

2004, c. [274](#).

§13.1-929. Withdrawal of foreign corporation.

A. A foreign corporation authorized to transact business in the Commonwealth may not withdraw from the Commonwealth until it obtains a certificate of withdrawal from the Commission.

B. A foreign corporation authorized to transact business in the Commonwealth may apply to the Commission for a certificate of withdrawal. The application shall be on a form prescribed and furnished by the Commission and shall set forth:

1. The name of the foreign corporation and the name of the state or other jurisdiction under whose laws it is incorporated;
2. If applicable, a statement that the foreign corporation was a party to a merger permitted by the laws of the state or other jurisdiction under whose law it was incorporated and that it was not the surviving entity of the merger, has consolidated with another entity, or has converted to another type of entity under the laws of the state or other jurisdiction under whose law it was incorporated;
3. That the foreign corporation is not transacting business in the Commonwealth and that it surrenders its authority to transact business in the Commonwealth;
4. That the foreign corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;
5. A mailing address to which the clerk of the Commission may mail a copy of any process served on him under subdivision 4; and
6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

C. The Commission shall not allow any foreign corporation to withdraw from the Commonwealth unless such corporation files with the Commission a statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate or a statement that no such returns are required to be filed or taxes are required to be paid. In such case the corporation may file returns and pay taxes before they would otherwise be due. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of withdrawal.

D. Before any foreign corporation authorized to transact business in the Commonwealth terminates its corporate existence, it shall file with the Commission an application for withdrawal. Whether or not such application is filed, the termination of the corporate existence of such foreign corporation shall not take away or impair any remedy available against such corporation for any right or claim existing or any liability incurred prior to such termination. Any such action or proceeding against such foreign corporation may be defended by such corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. The right of a foreign corporation that has terminated its corporate existence to institute and maintain in its corporate name actions, suits or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its incorporation.

E. Service of process on the clerk of the Commission is service of process on a foreign corporation that has withdrawn pursuant to this section. Service upon the clerk shall be made in accordance with § [12.1-19.1](#), and service upon the foreign corporation may be made in any other manner permitted by law.

Code 1950, §§ 13.1-278, 13.1-278.1; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, c. 529; 1991, c. 672; 2007, c. [925](#); 2012, c. [130](#); 2015, c. [623](#).

§13.1-930. Automatic revocation of certificate of authority.

A. If any foreign corporation fails to file its annual report or pay its annual registration fee in a timely manner as required by this chapter, the Commission shall mail to each such corporation notice of the impending revocation of its certificate of authority to transact business in the Commonwealth. Whether or not such notice is mailed, if any foreign corporation fails to file its annual report or pay its annual registration fee on or before the last day of the fourth month immediately following its annual report or annual registration fee due date each year, such foreign corporation

shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of authority shall be automatically revoked as of that day.

B. Every foreign corporation authorized to transact business in the Commonwealth shall pay the annual registration fee required by law on or before the foreign corporation's annual registration fee due date determined in accordance with subsection A of § [13.1-936.1](#) of each year.

C. If any foreign corporation whose registered agent has filed with the Commission his statement of resignation pursuant to § [13.1-927](#) fails to file a statement of change pursuant to § [13.1-926](#) within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the foreign corporation of impending revocation of its certificate of authority. If the foreign corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending revocation notice was mailed, the foreign corporation shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of authority shall be automatically revoked as of that day.

D. The automatic revocation of a foreign corporation's certificate of authority pursuant to this section constitutes the appointment of the clerk of the Commission as the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § [12.1-19.1](#).

E. Revocation of a foreign corporation's certificate of authority pursuant to this section does not terminate the authority of the registered agent of the corporation.

Code 1950, § 13.1-279; 1956, c. 428; 1970, c. 4; 1985, cc. 522, 528; 1987, c. 2; 1988, c. 405; 1991, c. 125; 1997, c. [216](#); 2000, c. [52](#); 2007, c. [925](#); 2010, c. [753](#).

§13.1-931. Involuntary revocation of certificate of authority.

A. The certificate of authority to transact business in the Commonwealth of any foreign corporation may be revoked by order of the Commission when it finds that the corporation:

1. Has continued to exceed the authority conferred upon it by law;

2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;
3. Has failed to file any document required by this Act to be filed with the Commission;
4. No longer exists under the laws of the state or country of its incorporation; or
5. Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

A certificate revoked pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

B. Any foreign corporation convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

D. The authority of a foreign corporation to transact business in the Commonwealth ceases on the date shown on the order revoking its certificate of authority.

E. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk of the Commission the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § [12.1-19.1](#).

F. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Code 1950, § 13.1-280; 1956, c. 428; 1958, c. 506; 1985, c. 522; 1991, c. 672; 1995, c. [76](#); 2007, c. [925](#); 2008, cc. [588](#), [770](#); 2015, c. [623](#).

§13.1-931.1. Reinstatement of foreign corporation whose certificate of authority has been withdrawn or revoked.

A. A foreign corporation whose certificate of authority to transact business in the Commonwealth has been withdrawn or revoked may be relieved of the withdrawal or revocation and have its certificate of authority reinstated by the Commission within five years after the date of withdrawal or revocation unless the certificate of authority was revoked by order of the Commission pursuant to subdivision A 1 of § [13.1-931](#).

B. To have its certificate of authority reinstated, a foreign corporation shall provide the Commission with the following:

1. An application for reinstatement, which shall include the identification number issued by the Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit signed by an agent of any member's interests stating that after diligent search by such agent, no officer or director can be found;
2. A reinstatement fee of \$10;
3. All annual registration fees and penalties that were due before the certificate of withdrawal was issued or the certificate of authority was revoked and that would have been assessed or imposed to the date of reinstatement if the corporation had not withdrawn or had its certificate of authority revoked;
4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;
5. A duly authenticated copy of any amendments or corrections made to the articles of incorporation or other constituent documents of the foreign corporation and any mergers entered into by the foreign corporation from the date of withdrawal or revocation of its certificate of authority to the date of its application for reinstatement, along with an application for an amended certificate of authority if required as a result of an amendment or a correction, and all fees required by this chapter for the filing of such instruments;
6. If the name of the foreign corporation does not comply with the provisions of § [13.1-924](#) at the time of reinstatement, an application for an amended certificate of authority to adopt a designated name for use in the Commonwealth that satisfies the requirements of § [13.1-924](#), with the fee required by this chapter for the filing of an application for an amended certificate of authority; and

7. If the foreign corporation's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § [13.1-926](#).

C. If the foreign corporation complies with the provisions of this section, the Commission shall enter an order of reinstatement, reinstating the foreign corporation's certificate of authority to transact business in the Commonwealth.

1987, c. 431; 1988, c. 405; 2004, c. [274](#); 2007, c. [925](#); 2015, c. [623](#).

§13.1-932. Corporate records.

A. A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, if any.

D. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

E. A corporation shall keep a copy of the following records:

1. Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to members referred to in subdivision L 5 of § [13.1-804](#) regarding facts on which a filed document is dependent;
2. Its bylaws or restated bylaws and all amendments to them currently in effect;
3. Resolutions adopted by its board of directors creating one or more classes of members, and fixing their relative rights, preferences, and limitations;
4. The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;
5. All written communications to members generally within the past three years;
6. A list of the names and business addresses of its current directors and officers; and
7. Its most recent annual report delivered to the Commission under § [13.1-936](#).

Code 1950, § 13.1-228; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2007, c. [925](#).

§13.1-933. Inspection of records by members.

A. Subject to subsection C of § [13.1-934](#), a member of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection E of § [13.1-932](#) if he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy.

B. A member of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection C and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy:

1. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection A;

2. Accounting records of the corporation; and

3. The record of members.

C. A member may inspect and copy the records identified in subsection B only if:

1. He has been a member of record for at least six months immediately preceding his demand;

2. His demand is made in good faith and for a proper purpose;

3. He describes with reasonable particularity his purpose and the records that he desires to inspect; and

4. The records are directly connected with his purpose.

D. The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

E. This section does not affect:

1. The right of a member to inspect records if the member is in litigation with the corporation, to the same extent as any other litigant; or

2. The power of a court, independently of this Act, to compel the production of corporate records for examination.

1985, c. 522; 2007, c. [925](#).

§13.1-934. Scope of inspection right.

A. A member's agent or attorney has the same inspection and copying rights as the member he represents.

B. The right to copy records under § [13.1-933](#) includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the member.

C. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production, reproduction, and transmission of the records.

D. The corporation may comply with a member's demand to inspect the record of members under subdivision B 3 of § [13.1-933](#) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

1985, c. 522; 2007, c. [925](#).

§13.1-935. Court-ordered inspection.

A. If a corporation does not allow a member who complies with subsection A of § [13.1-933](#) to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

B. If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections B and C of § [13.1-933](#) may apply to the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. If the court orders inspection and copying of the records demanded, it may also order the corporation to pay the member's costs, including reasonable counsel fees,

incurred to obtain the order if the member proves that the corporation refused inspection without a reasonable basis for doubt about the right of the member to inspect the records demanded.

D. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

1985, c. 522.

§13.1-935.1. Inspection of records by directors.

A. A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of his duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

B. The circuit court of the city or county where the corporation's principal office or, if none in the Commonwealth, its registered office is located may order inspection and copying of the books, records, and documents upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

C. If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation and may also order the corporation to reimburse the director for his reasonable costs, including reasonable counsel fees, incurred in connection with the application if the director proves that the corporation refused inspection without a reasonable basis for doubt about the director's right to inspect the records demanded.

2007, c. [925](#).

§13.1-936. Annual report of domestic and foreign corporations.

A. Each domestic corporation, and each foreign corporation authorized to transact business in the Commonwealth, shall file, within the time prescribed by this section, an annual report setting forth:

1. The name of the corporation, the address of its principal office and the state or country under whose laws it is incorporated;
2. The address of the registered office of the corporation in the Commonwealth, including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located, and the name of its registered agent in the Commonwealth at such address; and
3. The names and post office addresses of the directors and the principal officers of the corporation.

B. The report shall be made on forms prescribed and furnished by the Commission, and shall supply the information as of the date of the report.

C. Except as otherwise provided in this subsection, the annual report of a domestic or foreign corporation shall be filed with the Commission on or before the last day of the twelfth month next succeeding the month in which it was incorporated or authorized to transact business in the Commonwealth, and on or before such date in each year thereafter. The report shall be filed no earlier than three months prior to its due date each year. If the report appears to be incomplete or inaccurate, the Commission shall return it for correction or explanation. Otherwise the Commission shall file it in the clerk's office. At the discretion of the Commission the annual report due date for a corporation may be extended, on a monthly basis for a period of not less than one month nor more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual report due dates of corporations as equally as practicable throughout the year on a monthly basis.

Code 1950, §§ 13-9, 13-11, 13-32, 13-213, 13.1-282, 13.1-283; 1956, c. 428; 1958, c. 418; 1975, c. 500; 1981, c. 523; 1985, c. 522; 1987, c. 2; 1997, c. [216](#); 2007, c. [925](#); 2010, c. [753](#).

§13.1-936.1. Annual registration fees to be paid by domestic and foreign corporations; penalty for failure to pay timely.

A. Every domestic corporation and every foreign corporation authorized to conduct its affairs in the Commonwealth shall pay into the state treasury on or before the last day of the twelfth month next succeeding the month in which it was incorporated or authorized to conduct its affairs in the Commonwealth, and by such date in each year thereafter, an annual registration fee of \$25. At the discretion of the Commission, the annual registration fee due date for a corporation may be extended, on a monthly

basis for a period of not less than one month nor more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual registration fee due dates of corporations as equally as practicable throughout the year on a monthly basis.

The annual registration fee shall be irrespective of any specific license tax or other tax or fee imposed by law upon the corporation for the privilege of carrying on its business in the Commonwealth or upon its franchise, property or receipts. Nonstock corporations incorporated before 1970 which were not liable for the annual registration fee therefor shall not be liable for an annual registration fee hereafter.

B. Each year, the Commission shall ascertain from its records each domestic corporation and each foreign corporation authorized to conduct its affairs in the Commonwealth, as of the first day of the second month next preceding the month in which it was incorporated or authorized to conduct its affairs in the Commonwealth and shall assess against each such corporation the annual registration fee herein imposed. In any year in which a corporation's annual registration fee due date is extended pursuant to subsection A, the annual registration fee assessment shall be increased by a prorated amount to cover the period of extension. A statement of the assessment, when made, shall be forwarded by the clerk of the Commission to the Comptroller and to each such corporation.

C. Any domestic or foreign corporation that fails to pay the annual registration fee herein imposed within the time prescribed shall incur a penalty of \$10, which shall be added to the amount of the annual registration fee due. The penalty shall be in addition to any other penalty or liability imposed by law.

D. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the clerk of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 5 (§ [8.9A-501](#) et seq.) of Title 8.9A, this title, except for Chapters 5 (§ [13.1-501](#) et seq.) and 8 (§ [13.1-557](#) et seq.) and Article 6 (§ [55-142.1](#) et seq.) of Chapter 6 of Title 55, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year.

1988, c. 405; 1991, c. 311; 1997, c. [216](#); 2007, c. [925](#); 2010, c. [753](#).

§13.1-936.2. Collection of unpaid bills for registration fees.

The registration fee with penalty and interest shall be enforceable, in addition to existing remedies for the collection of taxes, levies and fees, by action in equity, in the name of the Commonwealth, in the appropriate circuit court. Venue shall be in accordance with § [8.01-261](#).

1988, c. 405.

§13.1-937. Application to existing corporations.

Unless otherwise provided, the provisions of this chapter shall apply to all domestic and foreign corporations existing at the time this chapter takes effect and their members. The charter of every corporation heretofore or hereafter organized in this Commonwealth shall be subject to the provisions of this chapter. In the case of foreign corporations, the certificate of authority to transact business in this Commonwealth issued by the Commission under any prior act of this Commonwealth shall continue in effect subject to the provisions hereof.

Code 1950, §§ 13.1-203, 13.1-290, 13.1-290.1; 1956, c. 428; 1966, c. 387; 1975, c. 500; 1985, c. 522.

§13.1-938. Application to certain social, patriotic and benevolent societies incorporated before year 1900; reports by such societies.

The charter of every social, patriotic and benevolent society incorporated by an act of the General Assembly of Virginia prior to the year 1900 for the purpose of perpetuating the memory of men in the military, naval and civil service of the Colonies and of the Continental Congress shall be deemed to have remained, and to be, in full force and effect notwithstanding the provisions of § [13.1-937](#) or any other statute enacted after January 1, 1950, or regulation pursuant thereto requiring the filing of any report or reports with the Commission. All such reports which under such statutes should have been so filed shall be filed with the Commission on or before August 1, 1986. Such corporation hereafter shall be deemed to hold its charter subject to the provisions of the Constitution of Virginia now in effect, and the laws passed in pursuance thereof.

1985, c. 522.

§13.1-939. Saving provision.

A. Except as provided in subsection B, the repeal of a statute by this Act does not affect:

1. The operation of the statute or any action taken under it before its repeal;
2. Any ratification, right, remedy, privilege, obligation or liability acquired, accrued, or incurred under the statute before its repeal;
3. Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal; or
4. Any proceeding commenced, or reorganization or dissolution authorized by the board of directors, under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

B. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by this Act, the penalty or punishment if not already imposed shall be imposed in accordance with this Act.

C. If any provision of this chapter is deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., the provisions of this chapter shall control to the maximum extent permitted by 15 U.S.C. § 7002(a)(2).

Code 1950, § 13.1-292; 1956, c. 428; 1985, c. 522; 2007, c. [925](#); 2010, c. [171](#).

§13.1-940. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§13.1-941. Repealed.

Repealed by Acts 2002, c. [607](#).

§13.1-941.01. Conversion to a domestic stock corporation.

A domestic corporation may convert to a domestic stock corporation organized under Chapter 9 (§ [13.1-601](#) et seq.) in accordance with the provisions of this article.

2002, c. [607](#); 2015, c. [623](#).

§13.1-942. Articles of restatement.

A. A corporation converting to a domestic stock corporation shall file with the Commission articles of restatement in accordance with § [13.1-889](#).

B. In addition to the information required by subsection D of § [13.1-889](#), if the corporation has one or more classes of members, the articles of restatement shall set forth (i) the manner and basis of converting the membership interests of each class of

members of the corporation into shares or other securities, obligations, rights to acquire shares, or other securities, cash, other property, or any combination of the foregoing or (ii) a statement that the membership interests of the members will be canceled without consideration as a result of the corporation's conversion to a domestic stock corporation.

C. The articles of restatement shall set forth the text of the amended and restated articles of incorporation that comply with the requirements of Chapter 9 (§ [13.1-601](#) et seq.) as they will be in effect immediately upon the consummation of the conversion.

D. If the Commission finds that the articles of restatement comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of restatement in accordance with § [13.1-889](#).

1989, c. 609; 2015, c. [623](#).

§13.1-943. Fees.

Upon the filing of the articles of restatement to convert to a domestic stock corporation, in addition to the fees required by § [13.1-816](#) for filing articles of restatement, a corporation shall also pay a fee equal to that required for a newly chartered stock corporation authorized to issue the same number of shares, as set forth in subsection A of § [13.1-615.1](#).

1989, c. 609; 2015, c. [623](#).

§13.1-944. Effect of conversion.

A. When a conversion under this article becomes effective:

1. The corporation continues its existence as a domestic stock corporation subject to the provisions of Chapter 9 (§ [13.1-601](#) et seq.);
2. The directors of the corporation continue in office until their terms expire and new directors are elected by the shareholders;
3. The title to all real estate and other property remains in the domestic stock corporation without reversion or impairment;
4. The liabilities remain the liabilities of the domestic stock corporation;
5. A pending proceeding may be continued by or against the domestic stock corporation as if the conversion did not occur;

6. The amended and restated articles of incorporation set forth in the articles of restatement shall constitute the articles of incorporation of the domestic stock corporation;

7. The membership interests, if any, of the corporation are reclassified into shares or other property, or canceled, in accordance with the articles of restatement, and the members of the corporation are entitled only to the rights provided in the articles of restatement;

8. The domestic stock corporation is deemed to:

a. Be a domestic stock corporation for all purposes;

b. Be the same corporation without interruption as the converting corporation that existed prior to the conversion; and

c. Have been incorporated on the date that the converting corporation was originally incorporated; and

9. The corporation shall cease to be a corporation organized under the provisions of this chapter.

B. Any member of a corporation that converts to a domestic stock corporation who, prior to the conversion, was liable for the liabilities or obligations of the corporation is not released from those liabilities or obligations by reason of the conversion.

1989, c. 609; 2015, c. [623](#).

§13.1-944.1. Definitions.

In this article:

"Articles of organization" has the same meaning specified in § [13.1-1002](#).

"Converting entity" means the domestic corporation that adopts a plan of entity conversion pursuant to this article.

"Corporation" has the same meaning specified in § [13.1-803](#).

"Limited liability company" has the same meaning specified in § [13.1-1002](#).

"LLC membership interest" has the same meaning as membership interest in § [13.1-1002](#).

"Member" when used with respect to a corporation has the meaning as specified in § [13.1-803](#), and when used with respect to a limited liability company has the same meaning specified in § [13.1-1002](#).

"Membership interest" has the same meaning specified in § [13.1-803](#).

"Person" has the same meaning specified in § [13.1-803](#).

"Resulting entity" means the limited liability company that is in existence immediately after consummation of an entity conversion pursuant to this article.

2012, c. [706](#).

§13.1-944.2. Entity conversion.

A domestic corporation may become a domestic limited liability company pursuant to a plan of entity conversion that is adopted and approved by the corporation in accordance with the provisions of this article.

2012, c. [706](#); 2016, c. [288](#).

§13.1-944.3. Plan of entity conversion.

A. To become a domestic limited liability company, a domestic corporation shall adopt a plan of entity conversion setting forth:

1. A statement of the corporation's intention to convert to a limited liability company;
2. The terms and conditions of the conversion, including the manner and basis of converting the membership interests, if any, of the corporation into LLC membership interests of the resulting entity;
3. If the corporation has no members, the designation of each person who is to become a member of the limited liability company upon conversion, provided that no person shall be designated as a member of the resulting entity without the person's prior consent;
4. As a separate attachment to the plan, the full text of the articles of organization of the resulting entity as they will be in effect upon consummation of the conversion; and
5. Any other provision relating to the conversion that may be desired.

B. The plan of entity conversion may also include a provision that the board of directors may amend the plan before the effective time and date of the certificate of

entity conversion. An amendment made after the submission of the plan to the members shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the membership interests of the corporation, unless the amendment has been approved by the members in the manner set forth in § [13.1-944.4](#).

2012, c. [706](#); 2016, c. [288](#).

§13.1-944.4. Action on plan of entity conversion.

A. Where the corporation has no members, or no members having voting rights, the plan shall be adopted upon receiving the vote of at least two-thirds of the directors in office.

B. Where there are members of the corporation having voting rights:

1. The plan of entity conversion shall be adopted by the board of directors;
2. After adopting the plan of entity conversion, the board of directors shall submit the plan to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the plan, unless the board of directors determines that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the members the basis for that determination; and
3. The voting members shall approve the plan as provided in subdivision C 3.

C. When a plan of entity conversion is to be approved by the members in accordance with subsection B:

1. The board of directors may condition its submission of the plan of entity conversion to the members on any basis;
2. The corporation shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § [13.1-842](#) at which the plan of entity conversion is to be submitted for approval. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan; and
3. Unless this chapter or the board of directors, acting pursuant to subdivision 1, requires a greater vote, the plan of entity conversion shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate

voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

2012, c. [706](#).

§13.1-944.5. Articles of entity conversion.

A. After the plan of entity conversion of a corporation into a limited liability company has been adopted and approved as required by this article, the converting entity shall deliver to the Commission for filing articles of entity conversion setting forth:

1. The name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the converting entity is to be changed, which name shall satisfy the requirements of the laws of the Commonwealth;
2. The date on which the corporation was originally incorporated, organized, or formed; its original name, entity type, and jurisdiction of incorporation, organization, or formation; and, for each subsequent change of entity type or jurisdiction of incorporation, organization, or formation made before the filing of the articles of entity conversion, the effective date of the change and the corporation's name, entity type, and jurisdiction of incorporation, organization, or formation upon consummation of the change;
3. The plan of entity conversion, including the full text of the articles of organization of the resulting entity that comply with the requirements of Chapter 12 (§ [13.1-1000](#) et seq.), as they will be in effect upon consummation of the conversion;
4. The date the plan of entity conversion was approved; and
5. A statement:
 - a. That the plan was adopted by the vote of at least two-thirds of the directors in office, including the reason member approval was not required;
 - b. That the plan was adopted by the unanimous consent of the members having voting rights; or
 - c. That the plan was proposed by the board of directors and submitted to the members in accordance with this chapter, and a statement of:
 - (1) The existence of a quorum of each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

B. If the Commission finds that the articles of entity conversion comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of entity conversion.

2012, c. [706](#); 2015, c. [623](#); 2016, c. [288](#).

§13.1-944.6. Effect of entity conversion.

A. When an entity conversion under this article becomes effective, with respect to that entity:

1. The title to all real estate and other property remains in the resulting entity without reversion or impairment;
2. The liabilities remain the liabilities of the resulting entity;
3. A pending proceeding may be continued by or against the resulting entity as if the conversion did not occur;
4. The articles of organization attached to the articles of entity conversion constitute the articles of organization of the resulting entity;
5. The membership interests, if any, of the corporation are reclassified into LLC membership interests in accordance with the plan of entity conversion, and the members of the converting entity are entitled only to the rights provided in the plan of entity conversion;
6. The resulting entity is deemed to:
 - a. Be a limited liability company for all purposes;
 - b. Be the same entity without interruption as the converting entity that existed before the conversion; and
 - c. Have been organized on the date that the converting entity was originally incorporated, organized, or formed; and
7. The corporation shall cease to be a corporation when the certificate of entity conversion becomes effective.

B. Any member of a converting entity who, before the conversion, was liable for the liabilities or obligations of the converting entity is not released from those liabilities or obligations by reason of the conversion.

2012, c. [706](#); 2015, c. [623](#); 2016, c. [288](#).

§13.1-944.7. Abandonment of entity conversion.

A. Unless otherwise provided in a plan of entity conversion of a domestic corporation to become a limited liability company, after the plan has been approved and adopted as required by this article, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned by the corporation without action by the members in accordance with any procedures set forth in the plan or, if no procedures are set forth in the plan of entity conversion, in the manner determined by the board of directors.

B. If an entity conversion is abandoned under subsection A after articles of entity conversion have been filed with the Commission but before the certificate of entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section shall be delivered to the Commission for filing before the effective time and date of the certificate of entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

2012, c. [706](#); 2015, c. [623](#); 2016, c. [288](#).

§13.1-945. Property title records.

A. Whenever the records in the office of the clerk of the Commission reflect that a domestic or foreign corporation has changed or corrected its name, merged into a domestic or foreign limited liability company, corporation, business trust, limited partnership or partnership, converted into a domestic or foreign limited liability company, business trust, limited partnership or partnership, or domesticated in or from another jurisdiction, the clerk of the Commission, upon request, shall issue a certificate reciting such change, correction, merger, conversion or domestication. The certificate may be admitted to record in the deed books, in accordance with § [17.1-227](#), of any clerk's office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever a foreign corporation has changed or corrected its name, merged into another business entity, converted into another type of business entity, or domesticated in another jurisdiction, and it cannot or chooses not to obtain a certificate reciting such change, correction, merger, conversion or domestication from the clerk of the Commission pursuant to subsection A, a similar certificate by any competent authority of the foreign corporation's jurisdiction of incorporation may be admitted to record in the deed books, in accordance with § [17.1-227](#), of any clerk's office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

2007, c. [771](#).

§13.1-946. Reserved.

Reserved.

Virginia Nuclear Energy Consortium

§67-1400. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authority" means the Virginia Nuclear Energy Consortium Authority established pursuant to this chapter.

"Board" means the board of directors of the Authority.

"Consortium" means the nonstock, nonprofit corporation established by the Authority pursuant to § [67-1404](#).

"Member" means a member of the Consortium.

2013, cc. [57](#), [394](#).

§67-1401. Virginia Nuclear Energy Consortium Authority established.

There is hereby created and constituted a political subdivision of the Commonwealth to be known as the Virginia Nuclear Energy Consortium Authority (the Authority).

The Authority's exercise of powers conferred by this chapter shall be deemed to be the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

2013, cc. [57](#), [394](#).

§67-1402. Purposes; powers of Authority.

A. The Authority is established for the purposes of making the Commonwealth a national and global leader in nuclear energy and serving as an interdisciplinary study, research, and information resource for the Commonwealth on nuclear energy issues.

B. The Authority is granted all powers necessary or convenient for the carrying out of its statutory purposes, including, but not limited to, the following rights, powers, and duties to:

1. Adopt, use, and alter at will a corporate seal;
2. Acquire, purchase, hold, use, lease, or otherwise dispose of property, real, personal, or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority;
3. Adopt bylaws for the management and regulation of its affairs;
4. Develop and adopt a strategic plan for carrying out the purposes set out in this chapter;
5. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this chapter, including agreements with any person or federal agency;
6. Consult with the General Assembly; federal, state, and local agencies; nonprofit organizations; private industry; and other potential developers and users of nuclear energy;
7. Promote and facilitate agreements among public and private institutions of higher education in the Commonwealth and other research entities to carry out research projects relating to nuclear energy;
8. Disseminate information and research results;
9. Identify and support, in cooperation with Virginia's nuclear entities and the public and private sectors, the development of education programs related to Virginia's nuclear industry;
10. Provide for the establishment of the Consortium by the Board as provided in [§ 67-1404](#);

11. Develop a policy regarding any interest in intellectual property that may be acquired or developed by the Consortium;
12. In order to fund and support the activities of the Authority and the Consortium, apply for, solicit, and accept from any source, including any agency of the federal government, the Commonwealth, or any other state, any municipality, county, or other political subdivision thereof, any member, or any private corporation or other entity, (i) grants, including grants made available pursuant to federal legislation, (ii) aid, or (iii) contributions of money, property, or other things of value, which shall be held, used, and applied for the purposes set out by this chapter;
13. Facilitate the collaboration of members toward the attainment of grants and the expenditure of funds in accomplishing the purposes set out by this chapter;
14. Encourage, facilitate, and support the application, commercialization, and transfer of new nuclear energy technologies;
15. Provide public information and communication about nuclear energy and related educational and job opportunities;
16. Provide advice, assistance, and services to institutions of higher education and to other persons providing services or facilities for nuclear research or graduate education;
17. Foster innovative partnerships and relationships among the Commonwealth, the Commonwealth's public institutions of higher education, private companies, federal laboratories, and not-for-profit organizations to accomplish the purposes set out by this chapter; and
18. Do all acts and things necessary or convenient to carry out the powers granted to it by law.

2013, cc. [57](#), [394](#).

§67-1403. Board of the Authority.

A. The Authority shall be governed by a board of directors consisting of 17 members appointed as follows:

1. The Director of the Department of Mines, Minerals and Energy or his designee;
2. The President and Chief Executive Officer of the Virginia Economic Development Partnership or his designee;
3. The Chancellor of the Virginia Community College System or his designee;

4. The President of Virginia Commonwealth University or his designee;
5. The President of the University of Virginia or his designee;
6. The President of Virginia Polytechnic Institute and State University or his designee;
7. The President of George Mason University or his designee;
8. Two individuals to represent an institution of higher education in the Commonwealth not already represented on the Board, at least one of which shall be a private institution of higher education;
9. Six individuals, each to represent a single business entity located in the Commonwealth that is engaged in activities directly related to the nuclear energy industry;
10. One individual to represent a nuclear energy-related nonprofit organization; and
11. One individual to represent a Virginia-based federal research laboratory.

B. The members of the Board described in subdivisions A 1 through A 7 shall serve terms coincident with their terms of office.

C. The 10 members of the Board described in subdivisions A 8 through A 11 shall be appointed by the Governor. The original terms of five of such members shall end on June 30, 2015, and the original term of the five other such members shall end on June 30, 2017, all as designated by the Governor. After the initial staggering of terms, such members shall be appointed for terms of four years. Vacancies in the membership of the Board shall be filled in the same manner as the original appointments for the unexpired portion of the term. Members of the Board described in subdivisions A 8 through A 11 may serve two successive terms on the Board.

D. Any appointment to fill a vacancy on the Board shall be made for the unexpired term of the member whose death, resignation, or removal created the vacancy.

E. Meetings of the Board shall be held at the call of the chairman or of any seven members. Nine members of the Board shall constitute a quorum for the transaction of the business of the Authority. An act of the majority of the members of the Board present at any regular or special meeting at which a quorum is present shall be an act of the Board.

F. Immediately after appointment, the members of the Board shall enter upon the performance of their duties.

G. The Board shall annually elect from among its members a chairman, a vice-chairman, and a treasurer. The Board shall also elect annually a secretary, who need not be a member of the Board, and may also elect such other subordinate officers who need not be members of the Board, as it deems proper. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Board. In the absence of both the chairman and vice-chairman, the Board shall appoint a chairman pro tempore, who shall preside at such meetings.

H. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth shall be deemed to have forfeited or shall have forfeited his or her office or employment by reason of acceptance of membership on the Board or by providing service to the Authority or to the Consortium.

I. On or before November 15 of each year, the Authority shall submit its updated strategic plan, an annual summary of its activities, and recommendations for the support and expansion of the nuclear energy industry in Virginia to the Governor and the Chairmen of the House Appropriations Committee, the Senate Finance Committee, and the House and Senate Commerce and Labor Committees.

2013, cc. [57](#), [394](#).

§67-1404. Establishment of the Consortium.

A. The Board shall provide for the formation, by January 1, 2014, of a nonstock corporation under Chapter 10 (§ [13.1-801](#) et seq.) of Title 13.1, not organized for profit, which corporation shall include in its name the words "Virginia Nuclear Energy Consortium," or some variation thereof that is approved by the Board.

B. The Consortium shall be established for the purpose of conducting activities useful in (i) making the Commonwealth a leader in nuclear energy; (ii) serving as an interdisciplinary study, research, and information resource for the Commonwealth on nuclear energy issues; and (iii) carrying out the provisions of this chapter, including raising money on behalf of the Authority in the corporate and nonprofit community and from other nonstate sources.

C. The membership of the Consortium shall be open to:

1. Public or private institutions of higher education in the Commonwealth;
2. Virginia-based federal research laboratories;

3. Nuclear energy-related nonprofit organizations;
 4. Business entities with operating facilities located in the Commonwealth that are engaged in activities directly related to the nuclear energy industry; and
 5. Other individuals or entities whose membership is approved by the board of directors of the Consortium through a process established by the bylaws of the Consortium.
- D. The board of directors of the Consortium shall consist of members selected and approved by the Consortium pursuant to a process established by its bylaws.
- E. The board of directors of the Consortium shall appoint an executive director to serve as the principal administrative officer of the Consortium. The executive director shall carry out the specific duties assigned to him by the board of directors, develop appropriate policies and procedures for the operation of the Consortium; employ such persons and secure such services as may be required to carry out the purposes of the Consortium; expend funds as authorized by the Authority; and accept moneys from federal or private sources on behalf of the Authority, including moneys contributed by Consortium members to the Authority, for cost-sharing on nuclear energy research or projects. The executive director and any other employee of the Consortium (i) shall be compensated in the manner provided by the board of directors of the Authority, (ii) shall not be subject to the provisions of the Virginia Personnel Act (§ [2.2-2900](#) et seq.), and (iii) shall not be deemed to be an officer or employee for purposes of the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.).
- F. The articles of incorporation of the Consortium shall provide that upon dissolution the net assets of the Consortium shall be transferred to the Authority.
- G. The Consortium shall not be deemed to be a state or governmental agency, advisory agency, public body, or agency or instrumentality for purposes of Chapters 8 (§ [2.2-800](#) et seq.), 18 (§ [2.2-1800](#) et seq.), 24 (§ [2.2-2400](#) et seq.), 29 (§ [2.2-2900](#) et seq.), 31 (§ [2.2-3100](#) et seq.), 37 (§ [2.2-3700](#) et seq.), 38 (§ [2.2-3800](#) et seq.), 43 (§ [2.2-4300](#) et seq.), 44 (§ [2.2-4400](#) et seq.), 45 (§ [2.2-4500](#) et seq.), 46 (§ [2.2-4600](#) et seq.), and 47 (§ [2.2-4700](#) et seq.) of Title 2.2, Chapter 14 (§ [30-130](#) et seq.) of Title 30, or Chapter 1 (§ [51.1-124.1](#) et seq.) of Title 51.1.
- H. The board of directors of the Consortium shall adopt, alter, and repeal bylaws governing the manner in which its business shall be transacted and the manner in which the activities of the Consortium shall be conducted.

I. The Consortium shall report on all of its non-proprietary activities at least twice a year to the Authority.

2013, cc. [57](#), [394](#).

§67-1405. Moneys of Authority.

All moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give such security for such deposits, if required by the Authority. The moneys in such accounts shall be paid out on the warrant or other orders of such persons as the Authority may authorize to execute such warrants or orders.

2013, cc. [57](#), [394](#).

§67-1406. Audits; external reviews.

A. The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the financial accounts of the Authority. The audit report and any non-proprietary information provided to the auditor in connection with the audit shall be made available to the public, upon request, in accordance with the provisions of the Freedom of Information Act (§ [2.2-3700](#) et seq.).

B. The Authority, if it receives state funds, shall be subject to periodic external review either (i) under the provisions of the Legislative Program Review and Evaluation Act (§ [30-64](#) et seq.) or (ii) by an entity appointed for that purpose by the Governor.

2013, cc. [57](#), [394](#).

Virginia Personnel Act

§2.2-2900. Short title; purpose.

This chapter shall be known and may be cited as the "Virginia Personnel Act."

The purpose of this chapter is to ensure for the Commonwealth a system of personnel administration based on merit principles and objective methods of appointment, promotion, transfer, layoff, removal, discipline, and other incidents of state employment.

Code 1950, § 2-78; 1966, c. 677, § 2.1-110; 1970, c. 546; 2001, c. [844](#).

§2.2-2901. Appointments, promotions and tenure based upon merit and fitness.

A. In accordance with the provisions of this chapter all appointments and promotions to and tenure in positions in the service of the Commonwealth shall be based upon merit and fitness, to be ascertained, as far as possible, by the competitive rating of qualifications by the respective appointing authorities.

Persons holding positions in the service of the Commonwealth on July 1, 1952, shall be deemed to be holding their positions as though they had received appointment under the terms of this chapter.

B. Persons who leave the service of the Commonwealth for service in any of the armed forces of the United States shall be entitled to be restored to such positions upon the termination of their service with the armed forces, provided such persons, except for good cause shown, have filed an application for restoration to such positions within 90 calendar days following such termination of military service, accompanied by a certificate attesting that the military duty was satisfactorily performed. Such persons shall thereafter hold such positions as though they had received appointment under the terms of this chapter, except as to any such position which, in the meantime, may have been abolished. Any such former employee returning to, or applying for, employment in the state service, as provided by this section, shall be considered as having at least as favorable a status with reference to this chapter as he would have occupied if his service had been continuous.

C. No establishment of a position or rate of pay, and no change in rate of pay shall become effective except on order of the appointing authority and approval by the Governor. This subsection shall not apply to any position the compensation of which is at a rate of \$1,200 per annum or less.

D. In order to attract and retain professional auditors, accountants and staff members in the service of the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission may establish scales of pay for such positions notwithstanding the provisions of this chapter. Such scales when established and certified to the Department of Human Resource Management and the Comptroller shall be applicable in the stead of the scales established under the personnel plan.

E. The governing boards of public institutions of higher education shall establish policies for the designation of administrative and professional faculty positions at such institutions. Those designations shall be reserved for positions that require a high level of administrative independence, responsibility, and oversight within the

organization or specialized expertise within a given field as defined by the governing board. The authority under this subsection to establish policies for the designation of administrative and professional faculty positions shall be granted only to those institutions that meet the conditions prescribed in subsection A of § [23.1-1002](#).

Code 1950, § 2-79; 1956, c. 380; 1966, c. 677, § 2.1-111; 1968, c. 784; 1972, c. 582; 1973, c. 507; 2000, cc. [66](#), [657](#); 2001, c. [844](#); 2005, cc. [933](#), [945](#).

§2.2-2902. Use of tobacco products by state employees.

No employee of or applicant for employment with the Commonwealth shall be required, as a condition of employment, to smoke or use tobacco products on the job, or to abstain from smoking or using tobacco products outside the course of his employment, provided that this section shall not apply to those classes of employees to which § [27-40.1](#) or § [51.1-813](#) is applicable.

1989, c. 511, § 15.1-29.18; 1997, c. 587, § 2.1-111.1; 2001, c. [844](#).

§2.2-2902.1. Rights of state employees to contact elected officials.

Nothing in this chapter or Chapter 12 (§ [2.2-1200](#) et seq.) of this title shall be construed to prohibit or otherwise restrict the right of any state employee to express opinions to state or local elected officials on matters of public concern, nor shall a state employee be subject to acts of retaliation because the employee has expressed such opinions.

For the purposes of this section "matters of public concern" means those matters of interest to the community as a whole, whether for social, political, or other reasons and shall include discussions that disclose any (i) evidence of corruption, impropriety, or other malfeasance on the part of government officials; (ii) violations of law; or (iii) incidence of fraud, abuse, or gross mismanagement.

2005, c. [483](#).

§2.2-2903. Grade or rating increase and other preferences for veterans and their surviving spouses and children, and members of the National Guard.

A. In a manner consistent with federal and state law, if any veteran, or surviving spouse, or child, or member of the National Guard applies for employment with the Commonwealth that is based on the passing of any written examination, the grade or rating of the veteran, surviving spouse, or child on such examination shall be increased by five percent. However, if the veteran has a service-connected disability rating fixed by the U.S. Department of Veterans Affairs, his grade or rating shall be

increased by 10 percent on such written examination. Such increases shall apply only if the veteran passes such examination.

B. In a manner consistent with federal and state law, if any veteran, surviving spouse, or child, applies for employment with the Commonwealth that is not based on the passing of any examination, the veteran, surviving spouse, or child, shall be given preference by the Commonwealth during the selection process, provided that the veteran, surviving spouse, or child, meets all of the knowledge, skill, and ability requirements for the available position. Additional consideration shall also be given to veterans who have a service-connected disability rating fixed by the U.S. Department of Veterans Affairs. The Department of Human Resource Management shall develop and distribute guidelines as an addendum to the Hiring Policy for Executive Branch agencies to provide guidance to agencies to comply with the preference of this section.

C. A member of the National Guard applying for a position or job classification under this chapter and possessing the necessary qualifications for such position or job classification shall be entitled to a separate preference as provided in this subsection. When a member of the National Guard or a veteran has applied for a position or job classification that requires an assessment using numerical ratings, points equal to five percent of the total points available from the assessment device or devices shall be added to the passing score of the applicant member of the National Guard or veteran. In an assessment not using numerical ratings, consideration shall be afforded to a member of the National Guard provided that member meets all of the knowledge, skill, and ability requirements for the available position.

The preference under this subsection shall not be applied for a position that is limited to state employees. In addition, the preference provided by this subsection shall not be applied if any other applicant for the position or job classification is (i) a veteran or (ii) a former prisoner of war.

D. If any veteran, or surviving spouse, or child, or member of the National Guard is denied employment with the Commonwealth, he shall be entitled, to the extent permitted by law, to request and inspect information regarding the reasons for such denial.

E. As used in this section, unless the context requires a different meaning:

"Child" means any surviving child or children under the age of 27 years of a veteran as defined herein who was killed in the line of duty.

"Member of the National Guard" means a person who (i) is presently serving as a member of the Virginia National Guard and (ii) has satisfactorily completed required initial active-duty service.

"Surviving spouse" means the surviving spouse of a veteran as defined herein who was killed in the line of duty.

"Veteran" means any person who has received an honorable discharge and (i) has provided more than 180 consecutive days of full-time, active-duty service in the armed forces of the United States or reserve components thereof, including the National Guard, or (ii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

Code 1950, § 2-80; 1952, c. 119; 1966, c. 677, § 2.1-112; 1985, c. 115; 1997, c. [309](#); 2001, c. [844](#); 2005, c. [413](#); 2007, cc. [336](#), [605](#); 2012, cc. [266](#), [269](#), [287](#).

§2.2-2903.1. State employees ordered to active military service.

A. As used in this section, unless the context requires a different meaning:

"Active military duty" means federally funded military duty as (i) a member of the armed forces of the United States on active duty pursuant to Title 10 U.S.C. or (ii) a member of the Virginia National Guard on active duty pursuant to either Title 10 or Title 32 U.S.C.

"State employee" means any person who is regularly employed full time on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, no more often than biweekly, in whole or in part, by the Commonwealth or any department, institution or agency thereof.

B. For any state employee who has been ordered to active military service in the armed forces of the United States or in the organized reserve forces of any of the armed services of the United States or of the Virginia National Guard, the Commonwealth shall allow the use of accrued annual leave for active military duty according to personnel policies developed by the Department of Human Resource Management.

2003, c. [789](#).

§2.2-2904. Classification of persons who have passed certified professional secretary examination.

Clerical personnel who have passed all parts of the certified professional secretary examination, evidenced by certification by the Institute for Certifying Secretaries, a department of the National Secretaries Association (International), or the professional legal secretary examination, evidenced by certification by the Certifying Board of the National Association of Legal Secretaries (International), shall be assured that this certification will be taken into consideration when opportunity for promotion becomes available.

1975, c. 393, § 2.1-114.1; 1977, c. 104; 2001, c. [844](#).

§2.2-2905. Certain officers and employees exempt from chapter.

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
4. Officers elected by popular vote or by the General Assembly or either house thereof;
5. Members of boards and commissions however selected;
6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the National Guard;
10. Student employees in institutions of learning and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees, and employees compensated on an hourly or daily basis;

12. County, city, town, and district officers, deputies, assistants, and employees;
13. The employees of the Virginia Workers' Compensation Commission;
14. The officers and employees of the Virginia Retirement System;
15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History, the New College Institute, the Southern Virginia Higher Education Center, and The Library of Virginia, and approved by the Director of the Department of Human Resource Management as requiring specialized and professional training;
16. Employees of the Virginia Lottery;
17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
18. Employees of the Virginia Commonwealth University Health System Authority;
19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ [2.2-3000](#) et seq.);
20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve in this exempt capacity;
21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ [2.2-3000](#) et seq.);
22. Officers and employees of the Virginia Port Authority;
23. Employees of the Virginia College Savings Plan;

24. Directors of state facilities operated by the Department of Behavioral Health and Developmental Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to § [37.2-707](#). Such employees shall remain subject to the provisions of the State Grievance Procedure (§ [2.2-3000](#) et seq.);

25. Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as state employees for purposes of participation in the Virginia Retirement System, health insurance, and all other employee benefits offered by the Commonwealth to its classified employees;

26. Employees of the Virginia Indigent Defense Commission;

27.(Effective October 1, 2016) Any chief of a campus police department that has been designated by the governing body of a public institution of higher education as exempt, pursuant to § [23.1-809](#); and

28.(Effective July 1, 2018) The Chief Executive Officer, agents, officers, and employees of the Virginia Alcoholic Beverage Control Authority.

Code 1950, § 2-84; 1966, c. 677, § 2.1-116; 1973, c. 401; 1981, c. 8; 1982, c. 582; 1984, cc. 290, 703; 1985, c. 596; 1987, c. 531; 1989, c. 560; 1990, c. 937; 1992, Sp. Sess., c. 5; 1993, c. 510; 1994, cc. [48](#), [64](#), [653](#); 1995, c. [757](#); 1996, cc. [53](#), [905](#), [933](#), [995](#), [1046](#); 1997, cc. [232](#), [711](#), [785](#), [861](#); 1999, c. [576](#); 2000, cc. [66](#), [382](#), [400](#), [657](#), [720](#); 2001, c. [844](#); 2002, cc. [271](#), [572](#); 2003, c. [652](#); 2005, c. [716](#); 2007, c. [192](#); 2009, cc. [424](#), [554](#), [589](#), [596](#), [813](#), [840](#); 2013, c. [571](#); 2014, c. [225](#); 2015, cc. [38](#), [221](#), [730](#).

Virginia Petroleum Products Franchise Act

§59.1-21.8. Short title.

This chapter may be cited as the "Virginia Petroleum Products Franchise Act."

1973, c. 423.

§59.1-21.9. Findings of General Assembly.

The General Assembly finds and declares that since the distribution and sales through franchise arrangements of petroleum products in the Commonwealth of Virginia vitally affect the economy of the Commonwealth, the public interest, welfare,

and transportation, and since the preservation of the rights, responsibilities, and independence of the small businesses in the Commonwealth is essential to economic vitality, it is necessary to define the relationships and responsibilities of the parties to certain agreements pertaining thereto. Consistent with these findings and declarations, the provisions of § [59.1-21.15:2](#), which do not relate to the termination or nonrenewal of petroleum franchises governed by federal law, advance the interests of the Commonwealth, and its citizens, by facilitating the purchase of retail service stations by their occupying lessee-franchisees, thereby insuring the motoring public greater access to service stations and petroleum products and furthering a more dynamic and full-service-oriented retail marketplace, while also considering the interests of the franchisor and, if applicable, the property owner, with regard to such service station premises.

1973, c. 423; 1990, c. 907; 2014, c. [222](#).

§59.1-21.10. Definitions.

As used in this chapter, the following terms shall have the following meanings unless the context requires otherwise:

"Dealer" means any person who purchases motor fuel for sale to the general public for ultimate consumption. "Dealer" shall not mean any person, including any affiliate of such person, who (i) purchases motor fuel for sale, consignment, or distribution to another; (ii) receives motor fuel on consignment for consignment or distribution to his own motor fuel accounts or to accounts of his supplier; or (iii) who is an employee of, or merely serves as a common carrier providing transportation service, for such person.

"Designated family member" means the adult spouse, adult child or stepchild, or adult brother or sister of the dealer who is designated in the franchise agreement as the successor to the dealer's interest under the agreement and who shall become the dealer upon the completion of the succession.

"Franchise" or "franchise agreement" means any agreement, express or implied, between a refiner and a dealer under which a refiner authorizes or permits a dealer to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by such refiner. "Franchise" or "franchise agreement" shall also mean any agreement, express or implied, under which a dealer is granted the right to occupy leased marketing premises, which premises are to be

employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by such refiner.

"Franchise fee" means any fee or charge that a dealer is required to pay or agrees to pay for the right to enter into a franchise agreement or to become a dealer at the premises to which the franchise agreement relates. The term "franchise fee" shall not include reasonable actual costs and expenses incurred by the refiner in effecting the assignment, transfer, or sale.

"Franchisor" means a refiner who authorizes or permits, under a franchise, a dealer to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

"Jobber/distributor" means any person, including any affiliate of such person, who (i) purchases motor fuel for sale, consignment, or distribution to another; or (ii) receives motor fuel on consignment for consignment or distribution to his own motor fuel accounts or to accounts of his supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.

"Newly remodeled facility" means a retail outlet, marketing premises, or leased marketing premises which, within an 18-month period, has been rebuilt, renovated, or reconstructed at a cost of (i) for facilities remodeled before January 1, 2004, a minimum of \$560,000; or (ii) for facilities remodeled on or after January 1, 2004, a minimum of \$560,000 plus an amount reflecting the annual rate of inflation, such amount to be calculated on January 1 of each year by the Commissioner of the Department of Agriculture and Consumer Services by referring to the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics.

"Operation of a retail outlet" means the ownership or option to buy a properly zoned parcel of property for which a permit to build a retail outlet has been granted.

"Petroleum products" or "motor fuel" means gasoline and diesel fuel of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

"Profit" means the net gain, for income tax purposes, realized by the dealer upon the assignment, transfer, or sale of the franchise agreement.

"Refiner" means any person engaged in the refining of crude oil to produce motor fuel and includes any affiliate of such person.

"Retail" means the sale of petroleum products for purposes other than resale.

"Retail outlet," "marketing premises," or "leased marketing premises" means the premises at which petroleum products are sold to the general public.

"Trial franchise" means the same as provided in the Petroleum Marketing Practices Act (15 U.S.C. § 2803 et seq.).

1973, c. 423; 1979, c. 306; 1990, c. 907; 2003, c. [410](#); 2005, c. [839](#); 2012, c. [351](#).

§59.1-21.11. Required provisions pertaining to agreements between refiners and dealers.

Every agreement between a refiner and a dealer shall be subject to the following provisions, whether or not expressly set forth therein:

1. The dealer shall not be required to keep his retail outlet open for business for more than sixteen consecutive hours per day, nor more than six days per week. This subdivision shall not be construed to prevent any retail outlet being open when required to be open to conform to any local, state or federal law or regulation, nor shall this subdivision be construed to prevent any retail outlet from being open for business for more than sixteen consecutive hours per day or more than six days per week when the dealer determines that market conditions warrant such operation. This subdivision shall not apply to retail outlets which participate in the travel services signing program of the Virginia Department of Transportation.
2. The right of either party to trial by jury or to the interposition of counterclaims or cross claims shall not be waived.
3. In the absence of any express agreement, the dealer shall not be required to participate financially in the use of any premium, coupon, give-away, or rebate in the operation of a retail outlet. The refiner may require the dealer to distribute to customers premiums, coupons, or give-aways which are furnished to the dealer at the expense of the refiner.
4. No agreement or franchise subject to the provisions of this chapter shall limit, restrict, or impair the number of retail outlets which an individual dealer may operate for the same refiner, nor may any agreement or franchise establish working hours for the dealer. However, an agreement or franchise may require the dealer to be involved in the operation of the business of the dealer's retail outlet or retail outlets for not more than an average of sixty hours per month. Notwithstanding the provisions of this subdivision, a refiner may impose a requirement in a trial franchise

only, that a dealer be on the marketing premises of the dealer's retail outlet or retail outlets for a reasonable number of hours per week not to exceed twenty hours per week.

5. No transfer or assignment of a franchise by a dealer to a qualified transferee or assignee shall be unreasonably disapproved by the refiner. A refiner shall have forty-five days, after the date of submission by a proposed transferee or assignee of all personal and financial information required by the refiner's reasonable and uniform standards, within which to notify a dealer in writing that a proposed transferee or assignee meets or fails to meet the refiner's reasonable and uniform qualifications. If the proposed transferee or assignee fails to meet the refiner's reasonable and normal qualifications, the notice to the dealer shall state with specificity the reasons for such failure.

6. The term of the initial agreement between the refiner and the dealer relating to specific marketing premises shall not be less than one year; the term of all subsequent agreements between the refiner and the dealer, relating to the same marketing premises, shall not be for less than three years. The rental provisions in any such agreement or franchise shall be based on commercially fair and reasonable standards, uniformly applied to all similarly situated dealers of the same refiner in the same geographic area.

7. A refiner may require a dealer to pay a fee or charge for the privilege of honoring a credit card issued by the refiner and used by customers of the dealer in purchasing at retail products and services at retail outlets which bear the brand name or trademark of the refiner only if such refiner has deducted the cost of extending retail credit from the tankwagon price charged dealers, has notified the dealer in writing of such deduction and such fee is a part of a program designed (i) to induce retail purchases for cash or (ii) to separate the cost of extending retail credit from the tankwagon price paid by the dealer. The amount of any such fee or charge shall be directly related to the actual cost incurred by the refiner in the extension of retail credit. Notwithstanding the provisions of subsection A of § [59.1-21.12](#), any refiner who violates the provisions of this subdivision shall be civilly liable for damages in treble the amount of the damages sustained by the complaining party as a result of the violation.

8. A dealer shall have the right, effective upon his death, permanent and total disability, or retirement, to have his interests under a franchise agreement with a refiner

assigned to a designated family member who has been approved by the refiner in accordance with the refiner's reasonable and uniform standards for personal and financial condition unless the refiner shows that the designated family member no longer meets the reasonable and uniform standards at the time of the previous approval. All franchise agreements shall contain a provision identifying the designated family member who is entitled to succeed to the interests of the dealer under the agreement upon his death, permanent and total disability, or retirement. The foregoing shall not prohibit a refiner from requiring that the designated family member accept a trial franchise within twenty-one days of the dealer's death, permanent and total disability, or retirement and that the designated family member attend a training program offered by the refiner.

A dealer and the refiner may mutually agree to change the designated family member entitled to succeed to the dealer's interests under a franchise agreement. The designated family member shall provide, upon the request of the refiner, personal and financial information that is reasonably necessary to determine whether the succession should be honored. The refiner shall not be obligated to accept a designated family member under this subdivision who does not meet the reasonable and uniform standards uniformly imposed by the refiner; however, any refusal to accept the designated family member as a successor dealer shall be given by the refiner in writing to the dealer, not later than ninety days after the date of the designation of the designated family member by the dealer, and shall state with specificity the reasons for such refusal.

9. a. No refiner shall condition approval of an assignment, transfer, sale, or renewal of a franchise agreement on the payment by the dealer, or the proposed successor dealer, of a franchise fee or penalty unless the assignment, transfer, or sale is of a franchise agreement covering a new or newly remodeled facility.

b. A refiner may require a dealer to pay a franchise fee or penalty, as hereinafter provided, upon the assignment, transfer, or sale of a franchise agreement covering a new facility within the first three years of the initial term of the franchise agreement, or upon the assignment, transfer or sale of a franchise agreement covering a newly remodeled facility within the first three years after the completion of the remodeling:

(1) An amount not to exceed sixty percent of the profit realized by the dealer if the assignment, transfer, or sale takes place within the first twelve-month period.

(2) An amount not to exceed twenty-five percent of the profit realized by the dealer if the assignment, transfer, or sale takes place within the second twelve-month period.

(3) An amount not to exceed ten percent of the profit realized by the dealer if the assignment, transfer, or sale takes place within the third twelve-month period.

c. Nothing in this section shall authorize a refiner to impose a franchise fee or penalty upon an assignment, transfer, or sale to a family member pursuant to subdivision 8 of this section.

d. In the case of a new facility, a franchise fee may be charged at the time the first franchise agreement is entered into.

10. Any provision in any agreement or franchise purporting to waive any right or remedy under this chapter or any applicable provisions of the Petroleum Marketing Practices Act (15 U.S.C. § 2802 et seq.) shall be null and void.

1973, c. 423; 1979, c. 306; 1982, c. 350; 1985, c. 498; 1987, c. 535; 1990, c. 907; 1991, c. 199 .

§59.1-21.11:1. Waiver of constitutional rights prohibited.

Any provision in any agreement or franchise subject to the provisions of this chapter purporting to waive or to directly or indirectly limit the constitutional rights of a dealer (i) to petition any governmental authority or body or (ii) lawfully to seek or oppose any governmental or regulatory action with respect to any matter, notwithstanding any contrary position taken by the franchisor thereon, shall be null and void.

1994, c. [170](#).

§59.1-21.12. Civil action for violation of chapter.

A. Any person who violates any provision of this chapter shall be civilly liable for liquidated damages of \$10,000 and reasonable attorney's fees, plus provable damages caused as a result of such violation, and be subject to such other remedies, legal or equitable, including injunctive relief, as may be available to the party damaged by such violation. Such action shall be brought in the circuit court of the jurisdiction wherein the franchised premises are located. For the purposes of subdivisions 5 and 9 of § [59.1-21.11](#), a proposed transferee, assignee, or designated family member who is not approved as a dealer by a refiner shall have legal standing to challenge a refiner's compliance with the provisions of this section relating to assignment.

B. No action may be brought under the provisions of this chapter for a cause of action which arises more than two years prior to the date on which such action is brought.

1973, c. 423; 1990, c. 907; 2003, c. [410](#).

§59.1-21.13. Obligation of refiner to repurchase upon termination, etc., of agreement.

In the event of any termination, cancellation, or failure to renew whether by mutual agreement or otherwise, a refiner shall make or cause to be made a good faith offer to repurchase from the dealer, his heirs, successors, and assigns, at the current wholesale prices any and all merchantable products purchased by such dealer from the refiner; provided, that in such event the refiner shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer; and provided further, that such repurchase obligation is conditioned upon there being no other claims or liens against such products by or on behalf of other creditors of the dealer.

1973, c. 423; 1979, c. 306; 1990, c. 907 .

§59.1-21.14. Producer or refiner not to terminate, etc., agreement without notice and reasonable cause; nonrenewal by franchisor.

A. A producer or refiner shall not terminate, cancel, or fail to renew a petroleum products franchise unless he furnishes prior written notification pursuant to this paragraph to each dealer affected thereby. Such notification shall contain a statement of intention to terminate, cancel, or not renew with the reasons therefor; the date on which such action shall take effect; and shall be sent to such dealer by certified mail not less than sixty days prior to the date on which such petroleum products franchise will be terminated, canceled, or not renewed. In circumstances where it would not be reasonable to provide advance notice of sixty days, the producer or refiner shall provide notice at the earliest date as is reasonably practicable. Termination, cancellation, or failure to renew shall be effective immediately upon notice given by certified mail to the dealer at his last known address in situations involving:

1. Failure of the dealer to open for business during reasonable business hours for five consecutive days, or
2. Criminal conduct or violations of law by the dealer involving moral turpitude, or
3. Bankruptcy, an assignment for the benefit of creditors by the dealer, or a petition for reorganization by the dealer, or

4. Condemnation or other taking of the premises, in whole or in part, pursuant to the power of eminent domain, or

5. Mutual agreement of the parties to terminate the franchise, or

6. Death, incapacity, or permanent and total disability of the dealer.

B. A producer or refiner shall not terminate, cancel, or fail to renew, a petroleum products franchise, except for reasonable cause.

C. Reasonable cause shall include, but not be limited to:

1. A failure of the dealer to comply substantially with the express provisions of such petroleum products franchise, or

2. A failure of the dealer to act in good faith in carrying out the terms of such petroleum products franchise, and federal and state laws, which shall include, but not be limited to:

(a) Adulteration of the producer's or refiner's products, or

(b) Misbranding of gasoline, or

(c) Misleading or deceiving consumers, or

(d) Trademark violations, or

(e) False or deceptive representations to the producer or refiner, or

3. Receipt and documentation by the supplier of repeated customer complaints uncorrected by the dealer within a reasonable time, or

4. A total withdrawal by the producer or refiner from the sale of motor fuels in commerce for sale in the county, city or standard statistical metropolitan area in which the franchise is situated, or

5. The occurrence of any of the situations set out in subsection A hereof, not requiring sixty days' notice.

D. A franchisor may elect not to renew a franchise which involves the lease by the franchisor to the franchisee of premises, in the event the franchisor:

1. Sells or leases such premises to other than a subsidiary or affiliate of the franchisor for any use; or

2. Sells or leases such premises to a subsidiary or affiliate of the franchisor, except such subsidiary or affiliate shall not use such premises for the retail sale of motor fuels; or
 3. Converts such premises to a use other than the retail sale of motor fuels; or
 4. Has leased such premises from a person not the franchisee and such lease is terminated, canceled or not renewed; or
 5. Determines, in the case of any retail service station opened after July 1, 1979, under a franchise term of at least three years, in good faith and in the normal course of business that renewal of the petroleum products franchise is likely to be uneconomical to the producer or refiner despite any reasonable changes or reasonable additions to the provisions of the franchise which may be acceptable to the dealer.
- E. The provisions of this section shall apply to any petroleum products franchise entered into or renewed on and after July 1, 1976.

1973, c. 423; 1976, c. 645; 1979, c. 306; 1997, c. [801](#).

§59.1-21.15. Disclosures to be made by refiner before conclusion of agreement.

A refiner shall disclose to any prospective dealer the following information, before any franchise agreement is concluded:

1. The gallonage volume history, if any, of the location under negotiation for and during the three-year period immediately past or for the entire period which the location has been supplied by the refiner, whichever is shorter.
2. The name and last known address of the previous dealer or dealers for the last three years, or for and during the entire period which the location has been supplied by the refiner, whichever is shorter.
3. Any legally binding commitments for the sale, demolition, or other disposition of the location.
4. The training programs, if any, and the specific goods and services the refiner will provide for and to the dealer.
5. Full disclosure of any and all obligations which will be required of the dealer.
6. Full disclosure of all restrictions on the sale, transfer, and termination of the agreement.

1973, c. 423; 1979, c. 306; 1990, c. 907 .

§59.1-21.15:1. Continued rights of dealers upon sale or assignment of franchise agreement.

Any franchise between a dealer and a refiner located in Planning District 8 in effect on or after January 1, 2008, which franchise is sold or assigned to a third party shall require such acquiring third party, and its successors, assigns, affiliates and subsidiaries, to comply with, provide, grant, and make available to the dealer and to any successor of the dealer any and all rights, privileges, or protections provided for in this chapter and required of or enforceable against the assigning refiner-franchisor except for such sale or assignment. With respect to the requirements of § [59.1-21.16:2](#), the one and one-half mile restriction shall only apply to a franchise location which is sold or assigned on or after January 1, 2008.

2008, c. [837](#).

§59.1-21.15:2. Franchisor's obligation to offer leased marketing premises to occupying dealer.

A. As used in this section, unless the context requires otherwise:

"Bona fide offer" means an offer by the franchisor to the dealer that approximates the fair market value of the leased marketing premises under an objectively reasonable analysis, and:

1. In the case of the franchisor offering to the dealer a right of first refusal regarding an offer to purchase the marketing premises that has been made to the franchisor by a third party regarding the leased marketing premises, the offer made by such third party shall be a bona fide offer acceptable to the franchisor, and may not be an offer that has been unfairly or improperly established by either the franchisor or the third party offer; or
2. In the case of service station premises that the franchisor leases from a third party, and providing the lease allows the assignment of such lease by the franchisor, the franchisor's lease rights in the station premises shall be transferred or assigned to the dealer, with the franchisor making a bona fide offer with regard to the sale of structures located on the station's premises, including all pumps, dispensers, storage tanks, piping, and all other equipment located upon the premises necessary for the continued operation of a service station.

If the leased marketing premises occupied by a dealer are to be part of a sale of multiple properties owned or controlled by the franchisor, a bona fide offer shall

reasonably allocate a portion of the total price for the multiple properties intended to be sold to the leased marketing premises occupied by the dealer in order to allow the dealer to exercise the dealer's right of first refusal regarding the leased marketing premises occupied by the dealer. In making such allocation, the purpose shall be to determine the fair market value of the leased marketing premises under an objectively reasonable analysis.

A bona fide offer shall (i) include the sale of all structures located on the leased marketing premises, including all pumps, dispensers, storage tanks, piping, and all other equipment located upon the premises necessary for the continued operation of a service station if the dealer exercises the dealer's right to buy; (ii) not include a requirement that the dealer enter into a supply agreement with the selling franchisor or with any other party and, to the extent that a bona fide offer acceptable to the franchisor from a third party contains such a supply agreement, it shall not be applicable to the dealer; and (iii) not, unless freely negotiated by the dealer, release the continuing obligations of the franchisor with regard to any environmental obligations regarding the service station premises nor require the dealer to assume such obligations of the franchisor with regard to the dealer's purchase of the premises or acquisition of the franchisor's rights in the premises. In conjunction with the dealer's acquisition of the rights of the franchisor in the leased marketing premises, such environmental tests, surveys, and other due diligence investigations shall be conducted as are customary in such transactions.

"Leased marketing premises" means marketing premises owned, leased, or controlled by a franchisor and that the dealer is authorized or permitted, under the petroleum franchise, to employ, to occupy, or both in connection with the sale, consignment, or distribution of petroleum products.

"Supply agreement" means an agreement, oral or written, under which a party is to supply, and a dealer is required to buy, petroleum products.

B. In the case of leased marketing premises owned by a franchisor, or in which a franchisor owns a leasehold interest, which premises are occupied by a dealer, the franchisor shall not sell, transfer, or assign to another person the franchisor's interest in the premises unless the franchisor has first either made a bona fide offer to sell, transfer, or assign to the dealer the franchisor's interest in the premises, other than signs displaying the refiner's insignia and any other trademarked, service marked, copyrighted, or patented items of the franchisor, or, if applicable, offered to the dealer a

right of first refusal of any bona fide offer acceptable to the franchisor made by another person to acquire the franchisor's interest in the premises.

C. Nothing in this section shall be deemed to require a franchisor to continue an existing franchise relationship, or to renew a franchise relationship, if not otherwise required by federal law.

D. Nothing in this section shall be deemed to require a franchisor to continue to supply petroleum products to a dealer if the dealer exercises its right to acquire the interests of the franchisor in the premises.

E. The bona fide offer required to be made to the dealer by the franchisor shall:

1. Be in writing;
2. Set forth fully and completely all terms and conditions of the offer being made by the franchisor;
3. In the case of a bona fide offer being made by a third party to acquire the interests of the franchisor in the property, which offer is acceptable to the franchisor, also contain a full copy of the proposal of the third party, or the contract or its equivalent between the franchisor and the third party if such a contract exists, to include all schedules, attachments, addenda, or their equivalent; and
4. In the case of leased marketing premises that the franchisor leases from a third party or parties, also contain a full copy of the underlying lease, including all schedules, attachments, addenda, or their equivalent.

F. After receipt of the bona fide offer from the franchisor, the dealer shall have a period of not less than 60 days within which to exercise the dealer's rights as established under this section, which exercise shall be effective upon delivering written notice of such exercise to the franchisor. After exercise of the dealer's rights, the closing on, and transfer of, the leased marketing premises shall occur (i) within 60 days after the dealer's exercise of such rights or (ii) on or before the closing date established within the bona fide offer regarding which the dealer has exercised the dealer's right of first refusal under this section, whichever date occurs later.

G. The provisions of this section shall apply only to the sale, assignment, or transfer of a franchisor's interest in or to any leased marketing premises located only in Planning District 8, and shall not apply to leased marketing premises owned or controlled by a jobber/distributor.

2014, c. [222](#).

§59.1-21.16. Authority of Attorney General under § 59.1-68.2 not limited.

Nothing in this chapter shall be construed as limiting the authority of the Attorney General under the provisions of § [59.1-68.2](#).

1973, c. 423.

§59.1-21.16:1. Expired.

Expired.

§59.1-21.16:2. Operation of retail outlet by refiner; apportionment of fuels during periods of shortage; rules and regulations.

A. After July 1, 1979, no refiner of petroleum products shall operate any major brand, secondary brand, or unbranded retail outlet in the Commonwealth of Virginia with company personnel, a parent company, or under a contract with any person, firm, or corporation, managing a service station on a fee arrangement with the refiner; however, such refiner may operate such retail outlet with the aforesaid personnel, parent, person, firm, or corporation if such outlet is located not less than one and one-half miles from the nearest retail outlet operated by any dealer or jobber/distributor, as measured by the most direct surface transportation route from the gas pump at the refiner's facility that is nearest a gas pump at the dealer's or jobber/distributor's facility; and provided, that once in operation, no refiner shall be required to change or cease operation of any retail outlet by the provisions of this section.

During the period July 1, 1990, through June 30, 1991, no refiner may construct and operate with company personnel as defined in this section any new major brand, secondary brand, or unbranded retail outlet in the Commonwealth of Virginia, except on any property purchased or under option to purchase by March 1, 1990.

B. Every refiner of petroleum products shall apportion all gasoline and diesel fuel among their purchasers during periods of shortages on an equitable basis.

C. No new lease, lease renewal, new supply contract, or new supply contract renewal under this chapter shall impose purchase or sales quotas.

D. The provisions of this section shall not be applicable to retail outlets operated by producers or refiners on July 1, 1979.

1979, c. 306; 1984, c. 720; 1990, c. 907; 1995, c. [664](#); 2003, c. [410](#); 2012, c. [351](#).

§59.1-21.17. Effective date of chapter.

The provisions of this chapter shall be applicable to franchise agreements entered into on and after July 1, 1973.

1973, c. 423.

§59.1-21.18. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§59.1-21.18:1. Exclusions.

Franchise agreements subject to the provisions of this chapter shall not be subject to any requirement contained within Chapter 8 (§ [13.1-557](#) et seq.) of Title 13.1.

1978, c. 670.

Virginia Post-Disaster Anti-Price Gouging Act

§59.1-525. Title.

This chapter may be cited as the Virginia Post-Disaster Anti-Price Gouging Act.

2004, cc. [798](#), [817](#).

§59.1-526. Definitions.

As used in this chapter:

"Disaster" means any "disaster," "emergency," or "major disaster," as those terms are used and defined in § [44-146.16](#), that results in the declaration of a state of emergency by the Governor or the President of the United States.

"Goods," "services," and "supplier" have the same meanings as are set forth for those terms in § [59.1-198](#).

"Necessary goods and services" means any necessary good or service for which consumer demand does, or is likely to, increase as a consequence of the disaster, and includes, but is not limited to, water, ice, consumer food items or supplies, property or services for emergency cleanup, emergency supplies, communication supplies and services, medical supplies and services, home heating fuel, building materials and services, tree removal supplies and services, freight, storage services, housing, lodging, transportation, and motor fuels.

"Time of disaster" means the shorter of (i) the period of time when a state of emergency declared by the Governor or the President of the United States as the result of a disaster, emergency, or major disaster, as those terms are used and defined in § [44-146.16](#), is in effect or (ii) 30 days after the occurrence of the disaster, emergency, or major disaster that resulted in the declaration of the state of emergency; however, if the state of emergency is extended or renewed within 30 days after such an occurrence, then such period shall be extended to include the 30 days following the date the state of emergency was extended or renewed.

2004, cc. [798](#), [817](#); 2006, c. [362](#); 2008, cc. [121](#), [157](#).

§59.1-527. Prohibitions.

During any time of disaster, it shall be unlawful for any supplier to sell, lease, or license, or to offer to sell, lease, or license, any necessary goods and services at an unconscionable price within the area for which the state of emergency is declared. Actual sales at the increased price shall not be required for the increase to be considered unconscionable. In determining whether a price increase is unconscionable, the following shall be considered:

1. Whether the price charged by the supplier grossly exceeded the price charged by the supplier for the same or similar goods or services during the 10 days immediately prior to the time of disaster, provided that, with respect to any supplier who was offering a good or service at a reduced price immediately prior to the time of disaster, the price at which the supplier usually offers the good or service shall be used as the benchmark for these purposes;
2. Whether the price charged by the supplier grossly exceeded the price at which the same or similar goods or services were readily obtainable by consumers in the trade area during the 10 days immediately prior to the time of disaster;
3. Whether the increase in the amount charged by the supplier was attributable solely to additional costs incurred by the supplier in connection with the sale of the goods or services, including additional costs imposed by the supplier's source. Proof that the supplier incurred such additional costs during the time of disaster shall be prima facie evidence that the price increase was not unconscionable; and
4. Whether the increase in the amount charged by the supplier was attributable solely to a regular seasonal or holiday adjustment in the price charged for the good or service. Proof that the supplier regularly increased the price for a particular good or

service during portions of the period covered by the time of disaster would be prima facie evidence that the price increase was not unconscionable during those periods.

2004, cc. [798](#), [817](#).

§59.1-528. Complaint investigations.

In the event that the Attorney General, any attorney for the Commonwealth, or the attorney for any county, city, or town investigates a complaint for a violation of § [59.1-527](#) and determines that the supplier has not violated the section, and if the supplier requests, the Attorney General, any attorney for the Commonwealth, or the attorney for any county, city, or town shall promptly issue a signed statement indicating that a violation of § [59.1-527](#) has not been found. Subject to the disclosures allowed by this section, it shall be the duty of the Attorney General, the attorney for the Commonwealth, or the attorney for any city, county or town, or their designees, that investigates any complaint for violation of § [59.1-527](#) to maintain the confidentiality of all evidence, testimony, documents, or other results of such investigations, including the names of the complainant, and the individual, corporation or other entity that is the subject of the investigation. Nothing herein contained shall be construed to prevent the presentation and disclosure of any such investigative evidence in an action or proceeding brought under this chapter.

2004, cc. [798](#), [817](#).

§59.1-529. Enforcement; penalties.

Any violation of this chapter shall constitute a prohibited practice under the provisions of § [59.1-200](#) and shall be subject to any and all of the enforcement provisions of Chapter 17 (§ [59.1-196](#) et seq.) of this title, except that § [59.1-204](#) notwithstanding, nothing in this chapter shall create a private cause of action in favor of any person aggrieved by a violation of this chapter.

2004, cc. [798](#), [817](#).

§59.1-529.1. Emergency orders; penalties.

A. Upon finding that during a time of disaster a supplier is selling, leasing, or licensing, or offering to sell, lease, or license, a necessary good or service within the area for which the state of emergency is declared at such an unconscionable price that such selling, leasing, or licensing, or offering to sell, lease, or license presents an imminent and substantial danger of endangering the public welfare by creating public panic, the Governor is authorized to issue for a period not to exceed 30 days,

without hearing, an emergency order directing the supplier to reduce the price of the necessary good or service to the prevailing price in the local market. The confidentiality of all evidence, testimony, documents, or other results of investigations leading to issuance of the emergency order, including the names of the complainant and the person that is the subject of the investigation, shall be maintained.

B. The supplier to whom such emergency order is issued shall be notified by certified mail, return receipt requested, sent to the last known address of the supplier, and by personal delivery by an agent of the Governor.

C. If the supplier who has been issued such an emergency order is not complying with the terms thereof, the Governor shall notify the Attorney General, who shall immediately investigate as provided for under this chapter.

2006, c. [451](#).

Virginia Prisoner Litigation Reform Act

§8.01-689. Short title.

This chapter shall be known and may be cited as the "Virginia Prisoner Litigation Reform Act."

2002, c. [871](#).

§8.01-690. Applicability provisions.

The provisions of this chapter shall apply to all pro se civil actions for money damages brought under the laws of this Commonwealth, or for injunctive, declaratory or mandamus relief, brought by prisoners incarcerated in any state or local correctional facility, or operated pursuant to the Corrections Private Management Act (§ [53.1-261](#) et seq.).

2002, c. [871](#).

§8.01-691. Payment of filing fees and costs by prisoners; when in forma pauperis status granted.

A prisoner seeking in forma pauperis status shall provide the court with a certified copy of his inmate trust account for the preceding twelve months. Any prisoner granted leave to proceed in forma pauperis shall nonetheless make payments, in equal installments as the court directs, towards satisfaction of the filing fee and costs. If

the court determines the prisoner has had no deposits in his inmate trust account for the preceding six months, the court shall permit the prisoner to proceed without paying the filing fee and costs. However, the filing fee and costs shall be taxed as costs at the end of the case. Any prisoner failing to make any payment when due shall have his case dismissed without prejudice.

2002, c. [871](#).

§8.01-692. When in forma pauperis status denied.

The court shall deny in forma pauperis status to any prisoner who has had three or more cases or appeals dismissed by any federal or state court for being frivolous, malicious, or for failure to state a claim, unless the prisoner shows that he is in imminent danger of serious physical injury at the time of filing his motion for judgment or the court determines that it would be manifest injustice to deny in forma pauperis status.

2002, c. [871](#).

§8.01-693. Venue of prisoner actions.

Notwithstanding any other provision of law, no prisoner action shall be filed except in the city or county in which the prison is located where the prisoner was housed when his cause of action arose. When an action is filed in an improper venue, upon motion of the defendant or the court sua sponte, the court shall transfer the case to the proper venue.

2002, c. [871](#).

§8.01-694. Service of process; time for response.

In any action in which any defendant is the Commonwealth or one of its officers, employees, or agents, upon the grant of in forma pauperis status or receipt of the filing fee and costs, the court shall serve the Office of the Attorney General with a copy of the motion for judgment and all necessary supporting papers. The Office of the Attorney General shall have no fewer than thirty days from receipt in which to file responsive pleadings. The prisoner's failure to state his claims in a written motion for judgment plainly stating facts sufficient to support his cause of action, accompanied by all necessary supporting documentation, may be grounds for dismissal of the action.

2002, c. [871](#); 2009, c. [372](#).

§8.01-695. When argument held; when discovery permitted.

Oral argument on any motion in any prisoner civil action shall be heard orally only at the request of the court; whenever possible, the court shall rule upon the record before it. No prisoner shall be permitted to request subpoenas for witnesses or documents, or file discovery requests, until the court has ruled upon any demurrer, plea or motion to dismiss. Where a case proceeds past the initial dispositive motions, the court shall require the prisoner seeking discovery to demonstrate that his requests are relevant and material to the issues in the case. No subpoena for witnesses or documents shall issue unless a judge of the court has reviewed the subpoena request and specifically authorized a subpoena to issue. The court shall exercise its discretion in determining the scope of the subpoena and may condition its issuance on such terms as the court finds appropriate. The court shall take into account the burden placed upon the object of the subpoena in relation to the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation.

2002, c. [871](#); 2006, c. [435](#).

§8.01-696. Summary judgment; pro se prisoner civil action.

Notwithstanding the provisions of § [8.01-420](#), any time after commencement of a pro se prisoner civil action, a party may move for summary judgment on all issues based upon the pleadings, any admissions, and supporting affidavits. The adverse party may serve supporting affidavits within 10 days after service of the motion. The judgment sought shall be rendered forthwith if the pleadings, admissions, and affidavits show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.

2006, c. [435](#).

§8.01-697. Access to Department of Corrections records.

All records maintained by the Department of Corrections in the name of individual prisoners, including prisoner medical records, shall be the property of the Department. Notwithstanding the provisions of § [32.1-127.1:03](#), in any civil suit subject to this chapter, where the Commonwealth, an agency of the Commonwealth, an employee of the Commonwealth, or a private contractor providing services to the Department of Corrections is named as a defendant, the Director of the Department may share any records maintained by the Department in the name of the prisoner filing suit with counsel representing the above-named defendants.

2006, c. [435](#).

Virginia Professional Limited Liability Company Act

§13.1-1100. Reservation of power to amend or repeal.

The General Assembly shall have the power to amend or repeal all or part of this chapter at any time and all domestic and foreign professional limited liability companies subject to this chapter shall be governed by the amendment or repeal.

1992, c. 574 .

§13.1-1101. Legislative purpose.

It is the legislative intent to provide for the association of a group of individuals and professional corporations, professional limited liability companies, or other business entities formed to provide professional services as a limited liability company to render the same professional service to the public for which those individuals or other business entities are required by law to be licensed or to obtain other legal authorization from the Commonwealth of Virginia.

1992, c. 574 .

§13.1-1101.1. Practice of certain professions by limited liability companies.

Unless otherwise prohibited by law or regulation, the professional services defined in subsection A of § [13.1-1102](#) may be rendered in this Commonwealth by:

1. A limited liability company organized as a professional limited liability company pursuant to the provisions of this chapter;
2. A foreign limited liability company that has obtained a certificate of authority pursuant to the provisions of this chapter;
3. A limited liability company organized pursuant to the provisions of Chapter 12 (§ [13.1-1000](#) et seq.) of this title; or
4. A foreign limited liability company that has obtained a certificate of authority pursuant to the provisions of Chapter 12 (§ [13.1-1000](#) et seq.) of this title.

2003, c. [678](#).

§13.1-1102. Definitions.

A. As used in this chapter:

"Professional business entity" means any entity as defined in § [13.1-603](#) that is duly licensed or otherwise legally authorized under the laws of the Commonwealth or the laws of the jurisdiction under whose laws the entity is formed to render the same professional service as that for which a professional corporation or professional limited liability company may be organized, including, but not limited to, (i) a professional limited liability company as defined in this subsection, (ii) a professional corporation as defined in subsection A of § [13.1-543](#), or (iii) a partnership that is registered as a registered limited liability partnership under § [50-73.132](#), all of the partners of which are duly licensed or otherwise legally authorized to render the same professional services as those for which the partnership was organized.

"Professional limited liability company" means a limited liability company whose articles of organization set forth a sole and specific purpose permitted by this chapter and that is either (i) organized under this chapter for the sole and specific purpose of rendering professional service other than that of architects, professional engineers, land surveyors, or landscape architects, or using a title other than that of certified interior designers and, except as expressly otherwise permitted by this chapter, that has as its members only individuals or professional business entities that are duly licensed or otherwise legally authorized to render the same professional service as the professional limited liability company or (ii) organized under this chapter for the sole and specific purpose of rendering professional service of architects, professional engineers, land surveyors, or landscape architects or using the title of certified interior designers, or any combination thereof, and at least two-thirds of whose membership interests are held by persons duly licensed within the Commonwealth to perform the services of an architect, professional engineer, land surveyor, or landscape architect, or by persons legally authorized within the Commonwealth to use the title of certified interior designer; or (iii) organized under this chapter for the sole and specific purpose of rendering the professional services of one or more practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ [54.1-2900](#) et seq.) of Title 54.1, or one or more nurse practitioners, licensed under Chapter 29 (§ [54.1-2900](#) et seq.) of Title 54.1, or one or more optometrists licensed under the provisions of Chapter 32 (§ [54.1-3200](#) et seq.) of Title 54.1, or one or more physical therapists and physical therapist assistants licensed under the provisions of Chapter 34.1 (§ [54.1-3473](#) et seq.) of Title 54.1, or one or more practitioners of the behavioral science professions, licensed under the provisions of Chapter 35 (§ [54.1-3500](#) et seq.), 36 (§ [54.1-3600](#) et seq.) or 37 (§ [54.1-3700](#) et seq.) of Title 54.1, or one or more

practitioners of audiology or speech pathology, licensed under the provisions of Chapter 26 (§ [54.1-2600](#) et seq.) of Title 54.1, or one or more clinical nurse specialists who render mental health services licensed under Chapter 30 (§ [54.1-3000](#) et seq.) of Title 54.1 and registered with the Board of Nursing, or any combination of practitioners of the healing arts, of optometry, physical therapy, the behavioral science professions, and audiology or speech pathology and all of whose members are individuals or professional business entities duly licensed or otherwise legally authorized to perform the services of a practitioner of the healing arts, nurse practitioners, optometry, physical therapy, the behavioral science professions, audiology or speech pathology or of a clinical nurse specialist who renders mental health services; however, nothing herein shall be construed so as to allow any member of the healing arts, optometry, physical therapy, the behavioral science professions, audiology or speech pathology or a nurse practitioner or clinical nurse specialist to conduct that person's practice in a manner contrary to the standards of ethics of that person's branch of the healing arts, optometry, physical therapy, the behavioral science professions, or audiology or speech pathology, or nursing as the case may be.

"Professional services" means any type of personal service to the public that requires as a condition precedent to the rendering of that service or the use of that title the obtaining of a license, certification, or other legal authorization and shall be limited to the personal services rendered by pharmacists, optometrists, physical therapists and physical therapist assistants, practitioners of the healing arts, nurse practitioners, practitioners of the behavioral science professions, veterinarians, surgeons, dentists, architects, professional engineers, land surveyors, landscape architects, certified interior designers, public accountants, certified public accountants, attorneys at law, insurance consultants, audiologists or speech pathologists and clinical nurse specialists. For the purposes of this chapter, the following shall be deemed to be rendering the same professional services:

1. Architects, professional engineers, and land surveyors; and
2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ [54.1-2900](#) et seq.) of Title 54.1, nurse practitioners, licensed under Chapter 29 (§ [54.1-2900](#) et seq.) of Title 54.1, optometrists, licensed under the provisions of Chapter 32 (§ [54.1-3200](#) et seq.) of Title 54.1, physical therapists, licensed under the provisions of Chapter 34.1 (§ [54.1-3473](#) et seq.) of Title 54.1, practitioners of the behavioral science professions, licensed under the provisions of Chapters 35 (§ [54.1-](#)

[3500](#) et seq.), 36 (§ [54.1-3600](#) et seq.), and 37 (§ [54.1-3700](#) et seq.) of Title 54.1, and clinical nurse specialists who render mental health services licensed under Chapter 30 (§ [54.1-3000](#) et seq.) of Title 54.1 and registered with the Board of Nursing.

B. Persons who practice the healing art of performing professional clinical laboratory services within a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if such persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical laboratory sciences and (ii) are tenured faculty members of an accredited medical school that is an "institution" as that term is defined in § [23.1-1100](#).

C. Except as expressly otherwise provided, all terms defined in § [13.1-1002](#) shall have the same meanings for purposes of this chapter.

1992, c. 574; 1993, c. 113; 1994, c. [349](#); 1996, c. [265](#); 1999, c. [83](#); 2000, cc. [194](#), [688](#), [763](#); 2003, c. [678](#); 2008, c. [265](#); 2009, c. [309](#); 2017, c. [314](#).

§13.1-1103. Who may become a member.

One or more individuals or professional business entities (i) duly licensed or otherwise legally authorized to render the same professional services other than those of architects, professional engineers or land surveyors, or to use a title other than those of certified landscape architects or certified interior designers, of which at least one is duly licensed or otherwise legally authorized to render such professional services within the Commonwealth or (ii) complying with the provisions of § [13.1-1111](#) and duly licensed to render within the Commonwealth the professional services of architects, professional engineers or land surveyors, or legally authorized to use within the Commonwealth the title of certified landscape architects or certified interior designers, or any combination thereof, may become members of a limited liability company for pecuniary profit under the provisions of Chapter 12 (§ [13.1-1000](#) et seq.) of this title, for the sole and specific purpose of rendering the same and specific professional service, subject to any laws, not inconsistent with the provisions of this chapter, which are applicable to the practice of that profession in the limited liability company form.

1992, c. 574; 1994, c. [349](#); 1997, c. [133](#); 2000, c. [763](#).

§13.1-1104. Use of initials "P.L.C.," "PLC," "P.L.L.C." or "PLLC" in company name.

Any professional limited liability company as defined in § [13.1-1102](#) may, but is not required to, use the initials "P.L.C.," "PLC," "P.L.L.C." or "PLLC," or the phrase

"professional limited company," "a professional limited company," "professional limited liability company," or "a professional limited liability company," at the end of its limited liability company name. Such initials or phrase may be used in the place of any words or abbreviation required by subsection A of § [13.1-1012](#).

1992, c. 574; 1996, c. [265](#); 2002, c. [608](#); 2003, c. [592](#).

§13.1-1105. Certificate of authority for foreign professional limited liability company.

A. Notwithstanding any other provision of this chapter, a foreign professional limited liability company, organized under the laws of a jurisdiction other than the Commonwealth of Virginia to perform a professional service of the type defined in § [13.1-1102](#), may apply for and obtain a certificate of authority to render those professional services in Virginia on the following terms and conditions:

1. Only members, managers, employees, and agents licensed or otherwise legally qualified by this Commonwealth may perform the professional service in Virginia.
2. The professional limited liability company must meet every requirement of this chapter except for the requirement that all of its members and managers be licensed to perform the professional service in this Commonwealth.
3. The powers of any foreign professional limited liability company admitted under this section shall not exceed the powers permitted to domestic professional limited liability companies under this chapter.

B. In order to qualify, a foreign professional limited liability company shall make application to the Commission as provided in § [13.1-1052](#) and shall make the application for and secure any certificate of authority, registration or registration certificate may be required by §§ [13.1-1111](#), [13.1-1112](#) or § [13.1-1113](#) and, in addition, shall be required to set forth the name and address of each member, manager, employee, and agent of the limited liability company who will be providing the professional service in this Commonwealth and whether those members, managers, employees, and agents are licensed, or otherwise legally qualified, to perform the professional service in Virginia.

1992, c. 574; 1996, c. [265](#).

§13.1-1106. Merger with foreign professional limited liability company or foreign professional corporation.

Any limited liability company organized under this chapter may merge with one or more foreign professional limited liability companies that have obtained a certificate of registration to transact business in the Commonwealth pursuant to § [13.1-1105](#), or one or more foreign professional corporations that have obtained a certificate of authority to transact business in the Commonwealth pursuant to § [13.1-544.2](#), only if the professional limited liability companies and the professional corporations are organized to render the same professional services, provided that (i) the merger is permitted by the laws of the jurisdiction under which each such foreign professional limited liability company or foreign professional corporation is organized, (ii) if the surviving or new professional business entity is a professional limited liability company organized and operating under the laws of the Commonwealth, all of its members and managers shall be licensed or otherwise legally authorized to render the same professional service as the limited liability company, provided that if such service is that of architects, professional engineers, land surveyors or certified landscape architects, or any combination thereof, at least two-thirds of its membership interests shall be held by individuals or professional business entities that are licensed or otherwise legally authorized within the Commonwealth to render the applicable service, and (iii) if the surviving or new professional business entity is a professional corporation organized and operating under the laws of the Commonwealth, all of its shareholders shall be licensed or otherwise legally authorized to render the same professional service as the professional corporation, provided that if such service is that of architects, professional engineers, land surveyors or certified landscape architects, or any combination thereof, at least two-thirds of its shares shall be held by individuals who are licensed or otherwise legally authorized within the Commonwealth to render the applicable service.

1992, c. 574; 1994, c. [349](#); 2008, c. [509](#).

§13.1-1107. How limited liability company may render professional services; nonprofessional employees and agents; members and managers need not be employees, etc.

No limited liability company organized under this chapter may render professional services except through its members, managers, employees, independent contractors, and agents who are duly licensed or otherwise legally authorized to render those professional services, and only members, managers, employees, independent contractors, and agents licensed or otherwise legally qualified by this Commonwealth may perform the professional service in Virginia. However, this provision shall not be

interpreted to preclude clerks, secretaries, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional service to the public for which a license or other legal authorization is required from acting as employees, managers and agents of a professional limited liability company and performing their usual duties or from acting as employees, independent contractors, managers or agents of a professional limited liability company. Nothing contained in this chapter shall be interpreted to require that the right of an individual to be a member or manager of a limited liability company organized under this chapter, or to organize that limited liability company, is dependent upon the present or future existence of an employment relationship between that individual and that limited liability company, or that individual's present or future active participation in any capacity in the production of the income of that limited liability company or in the performance of the services rendered by that limited liability company.

1992, c. 574; 1994, c. [349](#); 2003, c. [786](#).

§13.1-1108. Professional law limited liability company may qualify as executor, administrator or in other fiduciary capacity.

A professional limited liability company engaged in the practice of law, as a part of the practice of law, may act as an executor, trustee or administrator of an estate, guardian for an infant, or in any other fiduciary capacity. Any member, manager, employee or agent of a professional limited liability company engaged in the practice of law who is duly licensed as an attorney in the Commonwealth may perform necessary fiduciary responsibilities on behalf of the professional limited liability company.

1992, c. 574 .

§13.1-1109. Professional relationships not affected; liability for debts, etc., of limited liability company, its members, managers, employees, and agents.

The provisions of this chapter shall not be construed to alter or affect the professional relationship between a person furnishing professional services and a person receiving that service either with respect to liability arising out of that professional service or the confidential relationship between the person rendering the professional service and the person receiving that professional service, if any, and all confidential relationships enjoyed under the laws of this Commonwealth, whether now in existence, or hereafter enacted, shall remain inviolate. A member, manager, agent or employee of a professional limited liability company shall not, by reason of

being any member, manager, agent or employee of a professional limited liability company, be personally liable for any debts or claims against, or the acts or omissions of the professional limited liability company or of another member, manager, agent or employee of the professional limited liability company, but the professional limited liability company shall be liable for the acts or omissions of its members, managers, agents, employees and servants to the same extent to which any other limited liability company would be liable for the acts or omissions of its members, managers, agents, employees and servants while they are engaged in carrying on the limited liability company business.

1992, c. 574 .

§13.1-1110. Professional limited liability company not to engage in other business; investment of funds.

No professional limited liability company organized under this chapter may engage in any business other than the rendering of the professional services for which it was specifically organized; however, nothing in this chapter or in any other provisions of existing law applicable to limited liability companies shall be interpreted to prohibit that limited liability company from investing its funds in real estate, mortgages, stocks, bonds or any other type of investments, from owning real or personal property, or from exercising any other investment power granted to limited liability companies under this title and not in conflict with the provisions of this chapter.

1992, c. 574; 1996, c. [265](#).

§13.1-1111. Qualifications of members and managers; special provisions for limited liability companies rendering service of architects, professional engineers, land surveyors and landscape architects, and using the title of certified interior designers.

Not less than two-thirds of the membership interests of a professional limited liability company rendering the services of architects, professional engineers, land surveyors, or landscape architects, or using the title of certified interior designers, or any combination thereof, shall be held by individuals duly licensed or professional business entities legally authorized to render the services of architects, professional engineers, land surveyors, or landscape architects, or by individuals or professional business entities legally authorized to use the title of certified interior designers, and the remainder of the membership interests may be held only by individuals who are employees of the professional limited liability company whether or not those

employees are licensed to render professional services or authorized to use a title. For those professional limited liability companies using the title of certified interior designers and providing the services of architects, professional engineers or land surveyors, or any combination thereof, not less than two-thirds of the membership interests of the professional limited liability company shall be held by individuals who are duly licensed. No other professional limited liability company, except for a professional limited liability company engaged in the practice of accounting as described in § [13.1-1112](#), may have as a member anyone other than an individual or a professional business entity that is duly licensed or otherwise legally authorized to render the same professional services as those for which the professional limited liability company was organized.

As an additional prerequisite for a professional limited liability company's engaging in the practice of the professions of architecture, professional engineering, land surveying, or landscape architecture, or using the title of certified interior designer, or any combination thereof, that professional limited liability company shall secure a certificate of authority, which may be renewable and may be either general or limited, from the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects. The certificate of authority shall be issued or renewed by the Board when in its discretion the professional limited liability company is in compliance with rules and regulations which shall be promulgated by the Board consistent with its jurisdiction to provide adequate safeguards for the public's health, welfare and safety. The fees for a certificate of authority as described above shall be the same fees as provided for in Chapter 4 (§ [54.1-400](#) et seq.) of Title 54.1.

1992, c. 574; 1998, c. [27](#); 2000, cc. [191](#), [763](#); 2009, c. [309](#).

§13.1-1112. Special provision for limited liability company engaged in practice of accounting.

Before any professional limited liability company may engage in the practice of accounting in this Commonwealth, it shall first obtain and maintain any registration required for that professional limited liability company by Chapter 44 (§ [54.1-4400](#) et seq.) of Title 54.1. Not less than fifty-one percent of the membership interests of a professional limited liability company rendering the services of accounting shall be held by individuals or professional business entities duly licensed or otherwise legally authorized to render the services of accounting, and the remainder of the

membership interests may be held only by individuals who are employees of the professional limited liability company, whether or not those employees are licensed or otherwise authorized to render professional services.

1992, c. 574; 2000, c. [191](#).

§13.1-1113. Registration certificate required for limited liability company engaged in practice of law.

Before any professional limited liability company may engage in the practice of law in this Commonwealth, it shall first obtain and maintain a registration certificate required for that professional limited liability company by Chapter 39 (§ [54.1-3900](#) et seq.) of Title 54.1.

1992, c. 574 .

§13.1-1114. Repealed.

Repealed by Acts 1994, c. [349](#).

§13.1-1115. Transfer of membership interests.

A. No member of a professional limited liability company organized under this chapter may sell, assign in whole or in part, or otherwise transfer that member's membership interest in the professional limited liability company except to (i) the professional limited liability company, (ii) another individual or professional business entity that is eligible to be a member of that professional limited liability company, or (iii) a qualified charitable remainder trust as described in subsection B. In the case of a professional limited liability company rendering the services of architects, professional engineers, land surveyors and certified landscape architects, or any combination thereof, no person or professional business entity which is not duly licensed or otherwise legally authorized to render one of those services will be eligible unless at least two-thirds of the remaining membership interests after the sale or transfer are held by persons or professional business entities duly licensed or otherwise legally authorized to perform one of those services.

B. As used in this section, "qualified charitable remainder trust" means a trust meeting the requirements of § 664 of the United States Internal Revenue Code of 1986, as amended, and which meets all of the following conditions:

1. Has one or more current income beneficiaries, all of which are eligible to be members in the professional limited liability company under § [13.1-1103](#).
2. Has a trustee or independent special trustee who:

- a. Is eligible to have a membership interest in the professional limited liability company under § [13.1-1103](#); and
 - b. Has exclusive authority over the membership interests while such interests are held in the trust.
3. Has one or more irrevocably designated charitable remaindermen, all of which must at all times be domiciled or maintain a local chapter in the Commonwealth of Virginia.
4. When transferring any assets during the term of the trust to charitable organizations, the distributions are made only to charitable organizations described in § 170(c) of the Internal Revenue Code that are domiciled or maintain a local chapter in this Commonwealth.

1992, c. 574; 1999, c. [100](#).

§13.1-1116. Disqualification of member, manager, agent or employee.

If any member, manager, agent or employee of a professional limited liability company organized under this chapter who has been rendering professional service to the public becomes legally disqualified to render those professional services within this Commonwealth, that member, manager, agent or employee shall immediately sever all employment with, and financial interests in, that professional limited liability company except that the member, manager, agent or employee may be a member subject to the provisions of this chapter. A professional limited liability company's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of organization and the cancellation of its existence by the State Corporation Commission.

1992, c. 574; 2009, c. [201](#).

§13.1-1117. Conversion into nonprofessional company; disposition of membership interests of deceased or disqualified members.

A. A professional limited liability company organized under this chapter shall continue until dissolved in accordance with other provisions of this chapter or the provisions of Article 9 (§ [13.1-1046](#) et seq.) of Chapter 12 of this title.

B. Whenever all members of a professional limited liability company licensed under this chapter cease at any one time and for any reason to be licensed, certified or registered in the particular field of endeavor for which the professional limited liability company was organized, or by the vote of the holders of at least two-thirds of its

membership interests, the professional limited liability company thereupon shall be treated as converted into, and shall operate henceforth solely as, a limited liability company under applicable provisions of this title, exclusive of this chapter, but may be reconverted upon removal of the disability or by the vote of the holders of at least two-thirds of its membership interests.

C. Following the occurrence of any event that terminates the continued membership of a member in a professional limited liability company, including a disqualification that terminates a member's membership as provided in § [13.1-1116](#), the limited liability company shall pay to the former member or the former member's successor in interest the value of the interest of the former member. The time of payment and value of the interest of the former member shall be determined in the manner provided in writing in the articles of organization or an operating agreement of the limited liability company, and to the extent not so provided in the articles of organization or an operating agreement, the payment shall be made within one year following the occurrence of the event that terminates the former member's membership and for the book value of the interest, determined as of the end of the month immediately preceding the event that terminated the membership of the former member. If applicable, the book value shall be determined from the books and records of the limited liability company in accordance with the generally accepted accounting principles on the accrual method of accounting. No subsequent adjustment of this book value, whether by the limited liability company itself, by federal income tax audit made and agreed to, or by a court decision which has become final, shall alter the amount of the payment to be made.

D. An arrangement or provision in the articles of organization, operating agreement or by contract may be made to transfer any membership interest held by a disqualified charitable remainder trust to the professional limited liability company or to persons qualified to hold such an interest under § [13.1-1103](#), whether made before or after the disqualification of a charitable remainder trust, provided that the membership interest involved shall have been so transferred within one year following such disqualification.

1992, c. 574; 1995, c. [168](#); 1996, c. [265](#); 1999, c. [100](#); 2009, c. [763](#).

§13.1-1118. Management.

Unless the articles of organization or an operating agreement provides for management of a professional limited liability company by a manager or managers,

management of a professional limited liability company shall be vested in its members. If the articles of organization or an operating agreement provides for management of a professional limited liability company by a manager or managers, the manager shall be an individual or professional business entity duly licensed or otherwise legally authorized to render the same professional services within this Commonwealth that the professional limited liability company was organized for the purpose of rendering. Only members or managers duly licensed or otherwise legally authorized to render the same professional services within this Commonwealth shall supervise and direct the provision of professional services within this Commonwealth, or delegate to their agents, officers, and employees or delegate by a management agreement or another agreement with, or otherwise to, other persons managerial duties and tasks related to the professional limited liability company's operations.

1992, c. 574; 2007, c. [629](#).

§13.1-1119. Repealed.

Repealed by Acts 2002, ch. 346 .

§13.1-1120. Income and property taxes.

All professional limited liability companies organized or qualifying under the provisions of this chapter shall be treated for income tax purposes under the provisions of Chapter 3 (§ [58.1-300](#) et seq.) of Title 58.1 in the manner determined under § [58.1-301](#), and property owned by professional limited liability companies shall be taxed in the actual form in which it may exist and not as capital.

1992, c. 574 .

§13.1-1121. Merger.

A professional limited liability company operating pursuant to the terms of this chapter may merge with one or more corporations, limited liability companies, or domestic partnerships only if the surviving corporation, limited liability company, or domestic partnership is a professional corporation, a professional limited liability company, or a domestic partnership all of the partners of which are professional corporations, professional limited liability companies, or individuals duly licensed or otherwise legally authorized to render the same professional services as those for which the surviving professional corporation, professional limited liability company or domestic partnership was incorporated or organized.

1992, c. 574; 1996, c. [265](#); 2008, c. [509](#).

§13.1-1122. Application of Chapter 12 of this title.

The provisions of Chapter 12 (§ [13.1-1000](#) et seq.) of this title shall be applicable to professional limited liability companies organized under the provisions of this chapter. Where a conflict arises between the provisions found in Chapter 12 (§ [13.1-1000](#) et seq.) of this title and this chapter, this chapter shall control.

1992, c. 574 .

§13.1-1123. Coordination with other provisions of Virginia Code.

For purposes of all sections of this Code other than sections in Chapter 7 (§ [13.1-542](#) et seq.) and in this chapter, whenever the term "professional corporation" is used, that term shall be deemed to include a professional limited liability company and wherever the terms "shareholder," "employee," "officer" or "agent" are used those terms shall be deemed to include, as appropriate, the terms member, manager, employee and agent.

1992, c. 574; 2007, cc. [233](#), [639](#).

Virginia Public Procurement Act

§2.2-4300. Short title; purpose; declaration of intent.

A. This chapter may be cited as the Virginia Public Procurement Act.

B. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. This chapter shall apply whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration.

C. To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing

contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. Public bodies may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

1982, c. 647, § 11-35; 1983, c. 593; 1984, c. 764; 1986, cc. 149, 212, 559; 1994, cc. [661](#), [918](#); 1995, c. [18](#); 1996, cc. [683](#), [1019](#); 1997, cc. [85](#), [488](#), [785](#), [861](#), [863](#); 1998, cc. [121](#), [132](#); 1999, cc. [230](#), [248](#), [735](#); 2000, cc. [29](#), [382](#), [400](#), [642](#), [644](#), [666](#), [703](#); 2001, cc. [392](#), [409](#), [736](#), [753](#), [774](#), [844](#).

§2.2-4301. Definitions.

As used in this chapter:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is the method of contractor selection set forth in § [2.2-4302.2](#).

"Competitive sealed bidding" is the method of contractor selection set forth in § [2.2-4302.1](#).

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" means the same as that term is defined in § [2.2-4379](#).

"Design-build contract" means the same as that term is defined in § [2.2-4379](#).

"Employment services organization" means an organization that provides employment services to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

"Goods" means all material, equipment, supplies, printing, and automated data processing hardware and software.

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

"Job order contracting" means a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. The contractor may be selected through either competitive sealed bidding or competitive negotiation depending on the needs of the public body procuring the construction services. A minimum amount of work may be specified in the contract. The contract term and the project amount shall not exceed the limitations specified in § [2.2-4303.2](#).

"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services.

"Potential bidder or offeror," for the purposes of §§ [2.2-4360](#) and [2.2-4364](#), means a person who, at the time a public body negotiates and awards or proposes to award a

contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also include the services of an economist procured by the State Corporation Commission.

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter. "Public body" shall include (i) any independent agency of the Commonwealth, and (ii) any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.

"Public contract" means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been pre-qualified, if required.

"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

1982, c. 647, § 11-37; 1984, cc. 279, 764; 1985, c. 164; 1987, cc. 176, 218, 474; 1989, cc. 309, 323; 1991, c. 559; 1996, cc. [460](#), [683](#); 2000, cc. [621](#), [638](#), [643](#), [644](#), [647](#), [665](#), [692](#), [703](#); 2001, cc. [395](#), [675](#), [844](#); 2003, cc. [185](#), [644](#), [895](#), [994](#), [1006](#); 2004, c. [458](#); 2006, c. [206](#); 2008, c. [371](#); 2009, cc. [495](#), [562](#), [564](#); 2010, c. [440](#); 2011, cc. [24](#), [332](#), [555](#); 2012, c. [632](#); 2013, cc. [482](#), [518](#), [540](#), [543](#), [583](#); 2015, cc. [760](#), [776](#); 2017, cc. [699](#), [704](#).

§2.2-4302. Implementation.

This chapter may be implemented by ordinances, resolutions or regulations consistent with this chapter and with the provisions of other applicable law promulgated by any public body empowered by law to undertake the activities described in this chapter. Any such public body may act by and through its duly designated or authorized officers or employees.

1982, c. 647, § 11-36; 2001, c. [844](#).

§2.2-4302.1. Process for competitive sealed bidding.

The process for competitive sealed bidding shall include the following:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. No Invitation to Bid for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;
2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, public bodies may publish in a newspaper of general circulation. Posting on the Department of General Services' central electronic procurement website shall be required of any state public

body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity;

3. Public opening and announcement of all bids received;
4. Evaluation of bids based upon the requirements set forth in the Invitation to Bid, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability; and
5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

For the purposes of subdivision 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § [38.2-1913](#).

2013, cc. [482](#), [583](#); 2016, c. [754](#).

§2.2-4302.2. Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for Proposal for construction authorized by this

chapter shall condition a successful offeror's eligibility on having a specified experience modification factor;

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and

3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. In the case of a proposal for information technology, as defined in § [2.2-2006](#), a public body shall not require an offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or

4. For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with § [2.2-4342](#), proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § [2.2-1132](#), until after the qualified offerors are ranked for negotiations. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the public body, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

B. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the contract.

For the purposes of subdivision A 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § [38.2-1913](#).

2013, cc. [518](#), [540](#), [543](#), [583](#); 2014, cc. [217](#), [630](#); 2015, cc. [350](#), [570](#), [760](#), [776](#); 2016, cc. [174](#), [175](#), [295](#), [362](#), [754](#).

§2.2-4303. Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. Goods, services other than professional services, and insurance may be procured by competitive sealed bidding or competitive negotiation.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of

things other than professional services set forth in § [2.2-4302.2](#). The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances:

1. By any public body on a fixed price design-build basis or construction management basis as provided in Chapter 43.1 (§ [2.2-4378](#) et seq.); or
2. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services'

central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for:

1. Goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$100,000; and
2. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000.

However, such small purchase procedures shall provide for competition wherever practicable.

Such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$60,000.

Where small purchase procedures are adopted for construction, the procedures shall not waive compliance with the Uniform State Building Code.

For state public bodies, purchases under this subsection that are expected to exceed \$30,000 shall require the (a) written informal solicitation of a minimum of four bidders or offerors and (b) posting of a public notice on the Department of General Services' central electronic procurement website or other appropriate websites. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

H. Upon a determination made in advance by a public body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. Purchase of information technology and telecommunications goods and nonprofessional services from a public auction sale shall be permitted by any authority, department, agency, or institution of the Commonwealth if approved by the Chief Information Officer of the Commonwealth. The writing shall document the basis for this determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions.

I. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

1982, c. 647, § 11-41; 1985, c. 164; 1986, cc. 332, 559; 1987, c. 456; 1988, cc. 40, 640; 1989, c. 296; 1991, c. 73; 1993, c. 242; 1996, cc. [827](#), [965](#), [1019](#); 1999, c. [178](#); 2000, cc. [637](#), [647](#), [664](#), [692](#); 2001, cc. [395](#), [844](#); 2003, cc. [644](#), [895](#); 2004, cc. [706](#), [874](#), [906](#); 2005, c. [394](#); 2006, cc. [464](#), [510](#); 2008, c. [78](#); 2009, c. [123](#); 2010, c. [567](#); 2011, cc. [332](#), [594](#), [612](#), [681](#); 2012, cc. [805](#), [836](#); 2013, cc. [502](#), [583](#); 2015, cc. [760](#), [776](#); 2016, cc. [228](#), [604](#); 2017, cc. [699](#), [704](#).

§2.2-4303.1. Architectural and professional engineering term contracting; limitations.

A. A contract for architectural or professional engineering services relating to multiple construction projects may be awarded by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

Such contracts may be renewable for four additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

B. The sum of all projects performed in a one-year contract term shall not exceed \$500,000, except that for:

1. A state agency, as defined in § [2.2-4347](#), the sum of all projects performed in a one-year contract term shall not exceed \$1 million;

2. Any locality with a population in excess of 78,000 or school division within such locality, or any authority, sanitation district, metropolitan planning organization, transportation district commission, or planning district commission, or any city within Planning District 8, the sum of all projects performed in a one-year contract term shall not exceed \$6 million and those awarded for any airport as defined in § [5.1-1](#) and aviation transportation projects, the sum of all such projects shall not exceed \$1.5 million;

3. Architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term shall not exceed \$2 million. Such contract may be renewable for two additional one-year terms at the option of the Director; and

4. Environmental location, design, and inspection work regarding highways and bridges by the Commissioner of Highways, the initial contract term shall be limited to two years or when the cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each one-year contract term shall not exceed \$5 million.

C. Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one offeror, provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. Such procedures shall prohibit requiring the selected contractors to compete for individual projects based on price.

D. The fee for any single project shall not exceed \$150,000; however, for architectural or engineering services for airports as defined in § [5.1-1](#) and aviation transportation projects, the project fee of any single project shall not exceed \$500,000, except that for:

1. A state agency as defined in § [2.2-4347](#), the project fee shall not exceed \$200,000, as may be determined by the Director of the Department of General Services or as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ [23.1-1000](#) et seq.); and

2. Any locality with a population in excess of 78,000 or school division within such locality, or any authority, transportation district commission, or sanitation district, or any city within Planning District 8, the project fee shall not exceed \$2.5 million.

The limitations imposed upon single-project fees pursuant to this subsection shall not apply to environmental, location, design, and inspection work regarding high-ways and bridges by the Commissioner of Highways or architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation.

E. For the purposes of subsection B, any unused amounts from one contract term shall not be carried forward to any additional term, except as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ [23.1-1000](#) et seq.).

2016, c. [294](#); 2017, cc. [343](#), [555](#).

§2.2-4303.2. Job order contracting; limitations.

A. A job order contract may be awarded by a public body for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first. Contractors may be selected through either competitive sealed bidding or competitive negotiation.

B. Such contracts may be renewable for two additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed \$5 million. Individual job orders shall not exceed \$500,000.

C. For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.

D. Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection B is prohibited.

E. No public body shall issue or use a job order, under a job order contract, solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in § [54.1-400](#). However, professional architectural or engineering services

may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$25,000 per job order, and (iii) do not exceed \$75,000 per contract term.

F. Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass.

2015, cc. [760](#), [776](#).

§2.2-4304. Joint and cooperative procurement.

A. Any public body may participate in, sponsor, conduct, or administer a joint procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction.

B. In addition, a public body may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriffs' Association even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies, except for:

1. Contracts for architectural or engineering services; or
2. Construction, except for the installation of artificial turf and track surfaces, including all associated and necessary construction, which shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § [2.2-4303](#).

In instances where any authority, department, agency, or institution of the Commonwealth desires to purchase information technology and telecommunications goods and services from another public body's contract and the procurement was conducted on behalf of other public bodies, such purchase shall be permitted if approved by the Chief Information Officer of the Commonwealth. Any public body that enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions

A 9 and A 10 of § [2.2-4343](#) shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

C. Subject to the provisions of §§ [2.2-1110](#), [2.2-1111](#), [2.2-1120](#) and [2.2-2012](#), any authority, department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or administer a joint procurement arrangement in conjunction with public bodies, private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services, and construction.

A public body may purchase from any authority, department, agency or institution of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in this chapter and the administrative policies and procedures established to implement this chapter shall be permitted, if approved by the Director of the Division of Purchases and Supply.

Pursuant to § [2.2-2012](#), such approval is not required if the procurement arrangement is for telecommunications and information technology goods and services of every description. In instances where the procurement arrangement is for telecommunications and information technology goods and services, such arrangement shall be permitted if approved by the Chief Information Officer of the Commonwealth. However, such acquisitions shall be procured competitively.

Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

D. As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

1. Any authority, department, agency, or institution of the Commonwealth may purchase goods and nonprofessional services, other than telecommunications and information technology, from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the

director of the Division of Purchases and Supply of the Department of General Services;

2. Any authority, department, agency, or institution of the Commonwealth may purchase telecommunications and information technology goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the Chief Information Officer of the Commonwealth; and

3. Any county, city, town, or school board may purchase goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.

1982, c. 647, § 11-40; 1984, c. 330; 1987, c. 583; 1991, c. 645; 1996, cc. [261](#), [280](#), [1019](#); 2001, c. [844](#); 2003, cc. [651](#), [895](#), [981](#), [1021](#); 2004, cc. [874](#), [906](#), [911](#), [936](#); 2005, c. [394](#); 2006, c. [100](#); 2010, c. [736](#); 2015, cc. [352](#), [760](#), [776](#); 2016, c. [629](#); 2017, c. [636](#).

§2.2-4305. Competitive procurement by localities on state-aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building by any local governing body or subdivision thereof for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under subsection D of § [2.2-4303](#) or Chapter 43.1 (§ [2.2-4378](#) et seq.). The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

1982, c. 647, § 11-41.1; 1983, c. 436; 1987, c. 456; 1989, c. 296; 1997, c. [163](#); 2001, c. [844](#); 2010, c. [382](#); 2017, cc. [699](#), [704](#).

§2.2-4306. Repealed.

§§ [2.2-4306](#) through [2.2-4308](#). Repealed by Acts 2017, cc. [699](#) and 704, cl. [2](#).

§2.2-4308.1. Purchase of owner-controlled insurance in construction projects.

A. Notwithstanding any other provision of law to the contrary, a public body may purchase at its expense an owner-controlled insurance program in connection with any public construction contract where the amount of the contract or combination of contracts is more than \$100 million, provided that no single contract valued at less than

\$50 million shall be combined pursuant to this section. The public body shall provide notice if it intends to use an owner-controlled insurance program, including the specific coverages of such program, in any request for proposal, invitation to bid, or other applicable procurement documents.

B. A public body shall not require a provider of architecture or professional engineering services to participate in the owner-controlled insurance program, except to the extent that the public body may elect to secure excess coverage. No contractor or subcontractor shall be required to provide insurance coverage for a construction project if that specified coverage is included in an owner-controlled insurance program in which the contractor or subcontractor is enrolled.

C. For the purposes of this section, "owner-controlled insurance program" means a consolidated insurance program or series of insurance policies issued to a public body that may provide for some or all of the following types of insurance coverage for any contractor or subcontractor working on or at a public construction contract or combination of such contracts: general liability, property damage, workers' compensation, employer's liability, pollution or environmental liability, excess or umbrella liability, builder's risk, and excess or contingent professional liability.

2006, cc. [569](#), [605](#).

§2.2-4308.2. Registration and use of federal employment eligibility verification program required; debarment.

A. For purposes of this section, "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

B. Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract.

C. Any such employer who fails to comply with the provisions of subsection B shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program.

2011, cc. [573](#), [583](#).

§2.2-4309. Modification of the contract.

A. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Governor or his designee, in the case of state agencies, or the governing body, in the case of political subdivisions. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. Nothing in this section shall prevent any public body from placing greater restrictions on contract modifications.

D. The provisions of this section shall not limit the amount a party to a public contract may claim or recover against a public body pursuant to § [2.2-4363](#) or any other applicable statute or regulation. Modifications made by a political subdivision that fail to comply with this section are voidable at the discretion of the governing body, and the unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in § [2.2-4363](#).

1982, c. 647, §§ 11-45, 11-55; 1984, c. 764; 1985, c. 286; 1987, cc. 194, 248; 1989, c. 235; 1990, c. 395; 1991, c. 175; 1993, cc. 110, 505, 638, 971; 1996, cc. [145](#), [897](#), [902](#), [950](#), [1038](#); 1998, cc. [222](#), [619](#), [666](#), [697](#), [791](#); 1999, cc. [160](#), [194](#), [1021](#), [1024](#); 2000, cc. [242](#), [637](#), [664](#), [696](#), [927](#); 2001, c. [844](#); 2015, c. [569](#).

§2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned, and service disabled veteran-owned business and employment services organization.

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity, which list shall include all companies and organizations certified by the Department.

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions. The programs established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § [15.2-965.1](#), and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment services organization procurement to the Department of Small Business and Supplier Diversity in a form specified by the Department of Small Business and Supplier Diversity. Contracts and subcontracts awarded to employment services organizations shall be credited toward the small business, women-owned, and minority-owned business contracting and subcontracting goals of state agencies and contractors. The Department of Small Business and Supplier Diversity shall make information on service disabled veteran-owned procurement available to the Department of Veterans Services upon request.

C. Whenever there exists (i) a rational basis for small business or employment services organization enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women-owned and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law. Any enhancement or remedial measure authorized by the Governor pursuant to this subsection for state public bodies may allow for small businesses certified by the Department of Small Business and Supplier Diversity or a subcategory of small businesses established as a part of the enhancement program to have a price preference over noncertified businesses competing for the same contract award on designated procurements, provided that the bid of the

certified small business or the business in such subcategory of small businesses established as a part of an enhancement program does not exceed the low bid by more than five percent.

D. In awarding a contract for services to a small, women-owned, or minority-owned business that is certified in accordance with § [2.2-1606](#), or to a business identified by a public body as a service disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial program as provided in subsection C, the public body shall include in every such contract of more than \$10,000 the following:

"If the contractor intends to subcontract work as part of its performance under this contract, the contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses."

E. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

F. As used in this section:

"Employment services organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

"Minority individual" means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

"Minority-owned business" means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university as defined in § [2.2-1604](#), regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

"Service disabled veteran" means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

"Service disabled veteran business" means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

"Small business" means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

"Women-owned business" means a business that is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

1982, c. 647, §§ 11-44, 11-48; 1984, c. 279; 2000, c. [628](#); 2001, c. [844](#); 2003, c. [226](#); 2004, cc. [865](#), [891](#); 2006, cc. [831](#), [921](#); 2007, c. [787](#); 2008, cc. [521](#), [767](#); 2009, c. [869](#); 2013, c. [482](#); 2015, cc. [733](#), [765](#), [775](#); 2016, c. [525](#); 2017, cc. [397](#), [407](#), [578](#).

§2.2-4310.1. Awards as a result of any authorized enhancement or remedial measure; requirements.

A. Any enhancement or remedial measure authorized by the Governor pursuant to subsection C of § [2.2-4310](#) for state public bodies shall include a provision that the procurement shall be conducted in accordance with such enhancement or remedial measure for businesses certified by the Department of Small Business and Supplier Diversity. If such enhancement or remedial measure provides for an award priority for such businesses, then the contract shall be awarded in accordance with such priority if such priority business participated in the solicitation and requirements are met. If an award is not made based on the foregoing, then the contract shall be awarded in accordance with the next award priority and so on until a contract is awarded based on the established award priority.

B. If an award is not made pursuant to subsection A, the procurement award may be made without regard to such enhancement or remedial measure.

2016, c. [681](#).

§2.2-4310.2. State agency's goals for participation by small businesses; requirements.

Any state agency's goals under § [2.2-4310](#) for participation by small businesses shall include within the goals a minimum of three percent participation by service disabled veteran businesses as defined in §§ [2.2-2001](#) and [2.2-4310](#) when contracting for information technology goods and services.

As used in this section, "information technology" and "state agency" mean the same as those terms are defined in § [2.2-2006](#).

2016, c. [682](#).

§2.2-4310.3. Fiscal data pertaining to certain enhancement or remedial measures.

The Department of General Services shall make available a dashboard of purchase order reports from the Commonwealth's statewide electronic procurement system known as eVA. The dashboard shall include aggregated data showing (i) current fiscal year purchase orders, (ii) purchase orders from the previous fiscal year, and (iii) other relevant data derived from any enhancement or remedial measure implemented by the Governor pursuant to subsection C of § [2.2-4310](#).

2016, c. [578](#).

§2.2-4311. Employment discrimination by contractor prohibited; required contract provisions.

All public bodies shall include in every contract of more than \$10,000 the following provisions:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

1982, c. 647, § 11-51; 2000, c. [628](#); 2001, c. [844](#).

§2.2-4311.1. Compliance with federal, state, and local laws and federal immigration law; required contract provisions.

All public bodies shall provide in every written contract that the contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

2008, cc. [598](#), [702](#).

§2.2-4311.2. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth.

A. All public bodies shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

B. Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

C. Any bidder or offeror described in subsection B that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Director of the Department of General Services or his designee or by the chief executive of a local governing body.

D. Any business entity described in subsection A that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

E. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

2010, c. [634](#).

§2.2-4312. Drug-free workplace to be maintained by contractor; required contract provisions.

All public bodies shall include in every contract over \$10,000 the following provisions:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

2000, c. [417](#), § 11-51.1; 2001, c. [844](#).

§2.2-4313. Petition for recycled goods and products; periodic review of procurement standards.

A. Any person who believes that particular goods or products with recycled content are functionally equivalent to the same goods or products produced from virgin

materials may petition the Department of General Services or other appropriate agency of the Commonwealth to include the recycled goods or products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation that establishes that the goods or products (i) contain recycled content and (ii) can meet the performance standards set forth in the applicable specifications. If the Department of General Services or other agency of the Commonwealth that receives the petition determines that the documentation demonstrates that the goods or products with recycled content will meet the performance standards set forth in the applicable specifications, it shall incorporate the goods or products into its procurement process.

B. The Department of General Services and all agencies of the Commonwealth shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of goods and products with recycled content and shall, in developing new procedures and specifications, encourage the use of goods and products with recycled content.

1993, c. 223, § 11-41.01; 2001, c. [844](#).

§2.2-4314. Petition for procurement of less toxic goods and products; periodic review of procurement standards.

A. As used in this section:

"Goods and products" means goods and products that are used or consumed by an agency of the Commonwealth in the performance of its statutory functions. The term shall include, but not be limited to (i) cleaning materials, (ii) paints and coatings, (iii) solvents, (iv) adhesives, (v) inks, and (vi) pesticides and herbicides. The term shall not include: (i) fuels, (ii) food and beverages, (iii) furniture and fixtures, (iv) tobacco products, and (v) packaging and containers.

"Less toxic goods and products" means goods and products that (i) are functionally equivalent to and (ii) contain, emit, produce, or generate, less toxic or hazardous substances, or other toxic or hazardous substances that pose less of a hazard to public health and safety, or both, than goods and products procured by the Department of General Services or other agency of the Commonwealth.

"Toxic or hazardous substance" means (i) a chemical identified on the Toxic Chemical List established pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq. (P.L. 99-499) or (ii) a chemical listed pursuant

to §§ 101 (14) or 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (P.L. 92-500).

B. Any person who manufactures, sells, or supplies goods or products may petition the Department of General Services or other appropriate agency of the Commonwealth for the inclusion of the less toxic goods and products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation that establishes that the goods or products meet the performance standards set forth in the applicable specifications. If the Department of General Services or other agency of the Commonwealth that receives the petition determines that the documentation establishes that the less toxic goods or products meet the performance standards set forth in the applicable specifications, it shall incorporate such goods or products into its procurement process.

C. The Department of General Services and all agencies of the Commonwealth shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of less toxic goods and products. However, nothing in this section shall require the Department or other agencies to purchase, test or evaluate any particular goods or products. Nor shall this section require the Department to purchase goods or products other than those that would be purchased under regular procurement procedures.

1994, c. [946](#), § 11-41.02; 2001, c. [844](#).

§2.2-4315. Use of brand names.

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

1982, c. 647, § 11-49; 2001, c. [844](#).

§2.2-4316. Comments concerning specifications.

Every public body awarding public contracts shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests

for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

1982, c. 647, § 11-50; 2001, c. [844](#).

§2.2-4317. Prequalification generally; prequalification for construction.

A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body. The process shall be consistent with the provisions of this section.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § [2.2-4342](#).

In all instances in which the public body requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the public body shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by a public body denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § [2.2-4357](#).

C. A public body may deny prequalification to any contractor only if the public body finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
2. The contractor does not have appropriate experience to perform the construction project in question;
3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;
4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the public body has not contracted with a contractor in any prior construction contracts, the public body may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. A public body may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ [2.2-4367](#) et seq.) of this chapter, (ii) the Virginia Governmental Frauds Act (§ [18.2-498.1](#) et seq.), (iii) Chapter

4.2 (§ [59.1-68.6](#) et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. The contractor failed to provide to the public body in a timely manner any information requested by the public body relevant to subdivisions 1 through 6 of this subsection.

D. If a public body has a prequalification ordinance that provides for minority participation in municipal construction contracts, that public body may also deny prequalification based on minority participation criteria. However, nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.

E. A state public body shall deny prequalification to any contractor who fails to register and participate in the E-Verify program as required by § [2.2-4308.2](#).

F. The provisions of subsections B, C, and D shall not apply to prequalification for contracts let under § [33.2-209](#), [33.2-214](#), or [33.2-221](#).

1982, c. 647, § 11-46; 1994, c. [918](#); 1995, c. [527](#); 2001, c. [844](#); 2007, c. [154](#); 2011, cc. [573](#), [583](#).

§2.2-4318. Negotiation with lowest responsible bidder.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein.

1982, c. 647, § 11-53; 2001, c. [844](#).

§2.2-4319. Cancellation, rejection of bids; waiver of informalities.

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. A public body shall not cancel or reject an

Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. A public body may waive informalities in bids.

1982, c. 647, § 11-42; 1998, c. [753](#); 2001, c. [844](#).

§2.2-4320. Exclusion of insurance bids prohibited.

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to a public body in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude a public body from debaring a prospective insurer pursuant to § [2.2-4321](#).

1996, c. [989](#), § 11-44.1; 2001, c. [844](#).

§2.2-4321. Debarment.

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing for state agencies and institutions by the agency designated by the Governor and for political subdivisions by their governing bodies. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for a public body.

1982, c. 647, § 11-46.1; 2001, c. [844](#).

§2.2-4321.1. Prohibited contracts; exceptions; determination by Department of Taxation; appeal; remedies.

A. No state agency shall contract for goods or services with a nongovernmental source if the source, or any affiliate of the source, is subject to the provisions of (i) § [58.1-612](#) and fails or refuses to collect and remit the tax on its sales delivered by any means to locations within the Commonwealth or (ii) Article 2 (§ [58.1-320](#) et seq.) or Article 10 (§ [58.1-400](#) et seq.) of Chapter 3 of Title 58.1 and fails or refuses to remit any tax due thereunder. The provisions of clause (ii) shall not apply to any person that has (a) entered into a payment agreement with the Department of Taxation to pay the tax and is not delinquent under the terms of the agreement or (b) appealed the assessment of the tax in accordance with law and such appeal is pending.

B. A state agency may contract for goods or services with a source prohibited under subsection A in the event of an emergency or where the nongovernmental source is the sole source of such goods or services.

C. The determination of whether a source is a prohibited source shall be made by the Department of Taxation after providing the prohibited source with notice and an opportunity to respond to the proposed determination. The Department of Taxation shall notify the Department of General Services of its determination.

D. The Department of General Services shall post public notice of all prohibited sources on its public internet procurement website and on other appropriate websites.

E. The remedies provided in Article 5 (§ [2.2-4357](#) et seq.) of this chapter shall not apply to any determination made pursuant to this section and the sole remedy for any adverse determination shall be as provided in subsection F.

F. Any source aggrieved by a determination of the Department of Taxation made under this section may apply to the Tax Commissioner for correction of the determination. The Tax Commissioner shall respond within 30 days of receipt of the application for corrective action. Within 10 days after receipt of the Tax Commissioner's response, the aggrieved source may appeal to the Circuit Court for the City of Richmond. If it is determined that the determination of the Department of Taxation was arbitrary, capricious, or not in accordance with law, the sole relief shall be restoration of the source's eligibility to contract with state agencies. No claim for damages or attorney's fees shall be awarded.

G. Any action of the Department of Taxation, the Department of General Services, or of any state agency under this section shall be exempt from the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

H. For the purposes of this section, "state agency" means any authority, board, department, instrumentality, institution, agency or other unit of state government. State agency shall not include any public institution of higher education or any county, city or town or any local or regional governmental authority.

2003, cc. [994](#), [1006](#); 2006, c. [408](#).

§2.2-4321.2. Public works contract requirements.

A. As used in this section:

"Public works" means the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, used, or leased by a state agency.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

B. Except as provided in subsection F or as required by federal law, each state agency, when engaged in procuring products or services or letting contracts for construction, manufacture, maintenance, or operation of public works paid for in whole or in part by state funds, or when overseeing or administering such procurement, construction, manufacture, maintenance, or operation, shall ensure that neither the state agency nor any construction manager acting on behalf of the state agency shall, in its bid specifications, project agreements, or other controlling documents:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or related public works projects; or
2. Otherwise discriminate against bidders, offerors, contractors, subcontractors, or operators for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related public works projects.

Nothing in this subsection shall prohibit contractors or subcontractors from voluntarily entering into agreements described in subdivision 1.

C. A state agency issuing grants, providing financial assistance, or entering into cooperative agreements for the construction, manufacture, maintenance, or operation of public works shall ensure that neither the bid specifications, project agreements, nor other controlling documents therefor awarded by recipients of grants or financial assistance or by parties to cooperative agreements, nor those of any construction manager acting on behalf of such recipients, shall:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or related projects; or
2. Otherwise discriminate against bidders, offerors, contractors, subcontractors, or operators for becoming or refusing to become or remain signatories or otherwise to

adhere to agreements with one or more labor organizations, on the same or other related projects.

D. If an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of any of them performs in a manner contrary to the provisions of subsection B or C, the state agency awarding the contract, grant, or assistance shall be entitled to injunctive relief to prevent any violation of this section.

E. Any interested party, which shall include a bidder, offeror, contractor, subcontractor, or operator, shall have standing to challenge any bid specification, project agreement, neutrality agreement, controlling document, grant, or cooperative agreement that violates the provisions of this section. Furthermore, such interested party shall be entitled to injunctive relief to prevent any violation of this section.

F. The provisions of this section shall not:

1. Apply to any public-private agreement for any construction or infrastructure project in which the private body, as a condition of its investment or partnership with the state agency, requires that the private body have the right to control its labor relations policy and perform all work associated with such investment or partnership in compliance with all collective bargaining agreements to which the private party is a signatory and is thus legally bound with its own employees and the employees of its contractors and subcontractors in any manner permitted by the National Labor Relations Act, 29 U.S.C. § 151 et seq., or the Railway Labor Act, 45 U.S.C. § 151 et seq.;
2. Prohibit an employer or any other person covered by the National Labor Relations Act or the Railway Labor Act from entering into agreements or engaging in any other activity protected by law; or
3. Be interpreted to interfere with the labor relations of persons covered by the National Labor Relations Act or the Railway Labor Act.

2012, cc. [685](#), [732](#).

§2.2-4322. Acceptance of bids submitted to the Department of Transportation.

In a procurement by the Department of Transportation by competitive sealed bidding for highway construction and maintenance contracts, the Department may accept bids in response to an Invitation to Bid at the Department's central office or at district offices or other satellite locations designated in the Invitation to Bid, in accordance with specifications adopted by the Department. An Invitation to Bid may

authorize agents of the Department to accept from bidders on a voluntary basis a supplemental submission referencing the total bid amount on a form prescribed by the Department. Information contained in any supplemental submission may be made available to the public by the Department after the time for receiving bids has expired and before the public opening and announcement of all sealed bids.

1997, c. [164](#), § 11-45.1; 2001, c. [844](#).

§2.2-4323. Purchase programs for recycled goods; agency responsibilities.

A. All state agencies shall implement a purchase program for recycled goods and shall coordinate their efforts so as to achieve the goals and objectives established in subsection C as well as those set forth in §§ [10.1-1425.6](#), [10.1-1425.7](#), [10.1-1425.8](#), [2.2-4313](#), [2.2-4324](#), and [2.2-4326](#).

B. The Department of Environmental Quality shall advise the Department of General Services concerning the designation of recycled goods. In cooperation with the Department of General Services, the Department of Environmental Quality shall increase the awareness of state agencies as to the benefits of using such products.

C. The Department of General Services shall:

1. Ensure that the Commonwealth's procurement guidelines for state agencies promote the use of recycled goods.
2. Promote the Commonwealth's interest in the use of recycled products to vendors.
3. Make agencies aware of the availability of recycled goods, including those that use post-consumer and other recovered materials processed by Virginia-based companies.

D. All state agencies shall, to the greatest extent possible, adhere to the procurement program guidelines for recycled products to be established by the Department of General Services.

1994, c. [553](#), § 11-47.01; 2001, c. [844](#); 2011, cc. [594](#), [681](#).

§2.2-4323.1. Purchase of flags of the United States and the Commonwealth by public bodies.

Notwithstanding any provision of law to the contrary, whenever a state or local public body or school division purchases a flag of the United States or a flag of the Commonwealth for public use, such flag shall be made in the United States from articles, materials, or supplies that are grown, produced, and manufactured in the United States, if available.

2016, cc. [289](#), [297](#).

§2.2-4324. Preference for Virginia products with recycled content and for Virginia firms.

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

B. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information posted on this website.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

D. For the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

1982, c. 647, § 11-47; 1993, c. 109; 2001, cc. [323](#), [844](#); 2005, c. [894](#); 2011, c. [343](#).

§2.2-4325. Preference for Virginia coal used in state facilities.

In determining the award of any contract for coal to be purchased for use in state facilities with state funds, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible

bidder offering coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

1987, cc. 81, 91, § 11-47.1; 2001, c. [844](#).

§2.2-4326. Preference for recycled paper and paper products used by state agencies.

A. In determining the award of any contract for paper and paper products to be purchased for use by agencies of the Commonwealth, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than ten percent greater than the bid price of the low responsive and responsible bidder offering a product that does not qualify under subsection B.

B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

1989, c. 442, § 11-47.2; 1990, cc. 449, 857; 2001, c. [844](#).

§2.2-4327. Preference for community reinvestment activities in contracts for investment of funds.

Notwithstanding any other provision of law, any county, town, or city that is authorized to and has established affordable housing programs may provide by resolution that in determining the award of any contract for time deposits or investment of its funds, the treasurer or director of finance of such county, town, or city may consider, in addition to the typical criteria, the investment activities of qualifying institutions that enhance the supply of, or accessibility to, affordable housing within the jurisdiction, including the accessibility of such housing to employees of the county, town, or city or employees of the local school board. No more than 50 percent of the funds of the county, town, or city, calculated on the basis of the average daily balance of the general fund during the previous fiscal year, may be deposited or invested by considering such investment activities as a factor in the award of a contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (§ [2.2-4400](#) et seq.) and all local terms and conditions for security, liquidity and rate of return.

For the purposes of this section, affordable housing means the same as that term is defined in § [15.2-2201](#).

1993, c. 937, § 11-47.3; 1995, c. [206](#); 1997, c. [176](#); 1999, c. [708](#); 2001, c. [844](#); 2007, c. [681](#).

§2.2-4328. Preference for local products and firms; applicability.

A. The governing body of a county, city or town may, in the case of a tie bid, give preference to goods, services and construction produced in such locality or provided by persons, firms or corporations having principal places of business in the locality, if such a choice is available; otherwise the tie shall be decided by lot, unless § [2.2-4324](#) applies.

B. The provisions of this section shall apply only to bids submitted pursuant to a written Invitation to Bid.

1994, c. [882](#), § 11-47.4; 2001, c. [844](#).

§2.2-4329. Expired.

Expired.

§2.2-4329.1. Energy forward pricing mechanisms.

A. As used in this section, unless the context requires a different meaning:

"Energy" means natural gas, heating oil, propane, diesel fuel, unleaded fuel, and any other energy source except electricity.

"Forward pricing mechanism" means either: (i) a contract or financial instrument that obligates a public body to buy or sell a specified quantity of energy at a future date at a set price or (ii) an option to buy or sell the contract or financial instrument.

B. Notwithstanding any other law to the contrary but subject to available appropriation, a public body may use forward pricing mechanisms for budget risk reduction.

C. Forward pricing mechanism transactions shall be made only under the following conditions:

1. The quantity of energy affected by the forward pricing mechanism shall not exceed the estimated energy use for the public body for the same period, which shall not exceed 48 months from the trade date of the transaction; and

2. A separate account shall be established for operational energy for each public body using a forward pricing mechanism.

D. Before exercising the authority under this section, the public body shall develop written policies and procedures governing the use of forward pricing mechanisms and disclosure of the same to the public.

E. Before exercising authority under subsection B, the public body shall establish an oversight process that provides for review of the public body's use of forward pricing mechanisms. The oversight process shall include internal or external audit reviews; annual reports to, and review by, an internal investment committee; and internal management control.

2012, cc. [204](#), [359](#).

§2.2-4330. Withdrawal of bid due to error.

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

B. One of the following procedures for withdrawal of a bid shall be selected by the public body and stated in the advertisement for bids:

1. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or

2. Where the public body opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the public body or designated official his original work papers, documents and materials used in the preparation of the bid at or prior to the time fixed for the opening of bids. The work papers shall be delivered by the bidder in person or by registered mail. The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed.

Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of § [2.2-4342](#).

C. A public body may establish procedures for the withdrawal of bids for other than construction contracts.

D. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

E. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

F. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

G. The public body shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the public body denies the withdrawal of a bid under the provisions of this section, it shall state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time

that the notice is provided, the public body shall return all work papers and copies thereof that have been submitted by the bidder.

1982, c. 647, § 11-54; 1985, c. 286; 1994, c. [897](#); 1999, c. [344](#); 2001, c. [844](#); 2011, c. [717](#).

§2.2-4331. Contract pricing arrangements.

A. Except as prohibited in this section, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.

B. Except in case of emergency affecting the public health, safety, or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.

C. The following contract pricing arrangements shall not be prohibited by this section:

1. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims; or

2. A cost plus a percentage of the private investment made by a private entity as a basis for the procurement of commercial or financial consulting services related to a qualifying transportation facility under the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or a qualifying project under the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) where the commercial or financial consulting services are sought to solicit or to solicit and evaluate proposals for the qualifying transportation facility or the qualifying project. As used in this section, "private entity" and "qualifying transportation facility" mean the same as those terms are defined in § [33.2-1800](#) and "qualifying project" means the same as that term is defined in § [56-575.1](#).

1982, c. 647, § 11-43; 2001, c. [844](#); 2013, c. [496](#).

§2.2-4332. Workers' compensation requirements for construction contractors and subcontractors.

A. No contractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth or any of its political subdivisions unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 and (ii) provides prior to the award of contract, on a form fur-

nished by the department, agency, or institution of the Commonwealth or political subdivision thereof, evidence of such coverage.

B. The Department of General Services shall provide the form to such departments, agencies, institutions, and political subdivisions. Failure of a department, agency, institution or political subdivision to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2.

1993, c. 642, § 11-46.3; 2001, c. [844](#).

§2.2-4333. Retainage on construction contracts.

A. In any public contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

1982, c. 647, § 11-56; 2001, c. [844](#).

§2.2-4334. Deposit of certain retained funds on certain contracts with local governments; penalty for failure to timely complete.

A. Any county, city, town or agency thereof or other political subdivision of the Commonwealth when contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the Bid Proposal an option for the contractor to use an escrow account procedure for utilization of the political subdivision's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the Bid Proposal and Contract shall be executed and submitted to the political subdivision within fifteen calendar

days after notification. If the escrow agreement form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

B. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an escrow agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The escrow agreement and all regulations adopted by the political subdivision entering into the contract shall be substantially the same as that used by the Virginia Department of Transportation.

C. This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

D. Any such public contract for construction with a county, city, town or agency thereof or other political subdivision of the Commonwealth, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

E. Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

1989, c. 1, § 11-56.1; 2001, c. [844](#).

§2.2-4335. Public construction contract provisions barring damages for unreasonable delays declared void.

A. Any provision contained in any public construction contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the public body, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract that:

1. Allows a public body to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;
2. Requires notice of any delay by the party claiming the delay;
3. Provides for liquidated damages for delay; or
4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against a public body for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the public body and shall pay it for a percentage of all costs incurred by the public body in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the public body shall be equal to the percentage of the contractor's total delay claim for which the public body's denial is determined through litigation or arbitration to have been made in bad faith.

1991, c. 701, § 11-56.2; 2001, cc. [324](#), [844](#).

§2.2-4336. Bid bonds.

A. Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Article 2 (§ [33.2-208](#) et seq.) of Chapter 2 of Title 33.2 that are in excess of \$250,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § [2.2-4317](#). However, a locality may waive the requirement for prequalification of a bidder with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the local governing body that waiving the requirement is in the best interests of the locality. A locality shall not enter into more than 10 such contracts per year.

C. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

D. Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for nontransportation-related projects or \$250,000 for transportation-related projects authorized under Article 2 (§ [33.2-208](#) et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

1982, c. 647, § 11-57; 1984, c. 160; 2001, c. [844](#); 2006, c. [925](#); 2011, c. [789](#); 2017, c. [789](#).

§2.2-4337. Performance and payment bonds.

A. Except as provided in subsection H, upon the award of any (i) public construction contract exceeding \$500,000 awarded to any prime contractor; (ii) construction contract exceeding \$500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by a public body; (iii) construction contract exceeding \$500,000 in which the performance of labor or the furnishing of materials will be paid with public funds; or (iv) transportation-related projects exceeding \$350,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects authorized under Article 2 (§ [33.2-208](#) et seq.) of Chapter 2 of Title 33.2, such bond shall be in a form and amount satisfactory to the public body.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. For transportation-related projects authorized under Article 2 (§ [33.2-208](#) et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body.

As used in this subdivision, "labor or materials" includes public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the performance and payment bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § [2.2-4317](#). However, a locality may waive the requirement for prequalification of a contractor with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the local governing body that waiving the requirement is in the best interests of the locality. A locality shall not enter into more than 10 such contracts per year.

C. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

D. If the public body is the Commonwealth, or any agency or institution thereof, the bonds shall be payable to the Commonwealth of Virginia, naming also the agency or institution thereof. Bonds required for the contracts of other public bodies shall be payable to such public body.

E. Each of the bonds shall be filed with the public body that awarded the contract, or a designated office or official thereof.

F. Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below \$500,000 for nontransportation-related projects or \$350,000 for transportation-related projects authorized under

Article 2 (§ [33.2-208](#) et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

G. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

H. The performance and payment bond requirements of subsection A for transportation-related projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by a public body if the bidder provides evidence, satisfactory to the public body, that a surety company has declined an application from the contractor for a performance or payment bond.

1982, c. 647, § 11-58; 1984, c. 160; 2001, c. [844](#); 2002, cc. [556](#), [643](#), [682](#); 2006, cc. [694](#), [925](#); 2011, c. [789](#); 2012, c. [783](#); 2017, c. [789](#).

§2.2-4338. Alternative forms of security.

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check, cashier's check, or cash escrow in the face amount required for the bond.

B. If approved by the Attorney General in the case of state agencies, or the attorney for the political subdivision in the case of political subdivisions, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond.

C. The provisions of this section shall not apply to the Department of Transportation.

1982, c. 647, § 11-61; 1989, c. 260; 1991, c. 574; 1992, c. 765; 1996, cc. [77](#), [827](#); 2001, c. [844](#); 2013, c. [141](#).

§2.2-4339. Bonds on other than construction contracts.

A public body may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

1982, c. 647, § 11-62; 2001, c. [844](#).

§2.2-4340. Action on performance bond.

No action against the surety on a performance bond shall be brought unless within five years after completion of the work on the project to the satisfaction of the Department of Transportation, in cases where the public body is the Department of Transportation, or, in all other cases, within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

1982, c. 647, § 11-59; 1996, c. [827](#); 2001, c. [844](#).

§2.2-4341. Actions on payment bonds; waiver of right to sue.

A. Any claimant who has a direct contractual relationship with the contractor and who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 90 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and

executed after such person has performed labor or furnished material in accordance with the contract documents.

1982, c. 647, § 11-60; 2001, cc. [412](#), [844](#); 2003, c. [255](#); 2011, c. [544](#).

§2.2-4342. Public inspection of certain records.

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § [2.2-4317](#) shall not be subject to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

1982, c. 647, § 11-52; 1984, c. 705; 1994, c. [918](#); 2001, c. [844](#).

§2.2-4343. Exemption from operation of chapter for certain transactions.

A. The provisions of this chapter shall not apply to:

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ [62.1-128](#) et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.
2. The Virginia Retirement System for selection of services related to the management, purchase or sale of authorized investments, actuarial services, and disability determination services. Selection of these services shall be governed by the standard set forth in § [51.1-124.30](#).
3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § [2.2-4514](#), and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.
4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.
5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the respective public institution of higher education pursuant to § [23.1-2210](#), [23.1-2306](#), [23.1-2604](#), or [23.1-2803](#). However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ [64.2-1100](#) et seq.) as required by §§ [23.1-2210](#), [23.1-2306](#), [23.1-2604](#), and [23.1-2803](#).
6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § [23.1-706](#).

7. Public institutions of higher education for the purchase of items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § [2.2-2012](#) apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ [2.2-4305](#), [2.2-4311](#), [2.2-4315](#), [2.2-4330](#), [2.2-4333](#) through [2.2-4338](#), [2.2-4343.1](#), and [2.2-4367](#) through [2.2-4377](#) and Chapter 43.1 (§ [2.2-4378](#) et seq.).

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § [2.2-4300](#), remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

11. Any school division whose school board has adopted, by policy or regulation, alternative policies and procedures that are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by the school board, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of § [2.2-4300](#), remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § [2.2-4303](#), §§ [2.2-4305](#), [2.2-4311](#), [2.2-4315](#), [2.2-4317](#), [2.2-4330](#), [2.2-4333](#) through [2.2-4338](#), [2.2-4343.1](#), and [2.2-4367](#) through [2.2-4377](#), and Chapter 43.1 (§ [2.2-4378](#) et seq.) shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services through competitive negotiation set forth in §§ [2.2-4303.1](#) and [2.2-4303.2](#) shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § [22.1-212.2:2](#) shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ [2.2-4311](#) and [2.2-4367](#) through [2.2-4377](#).

13. A public body that is also a utility operator may purchase services through or participate in contracts awarded by one or more utility operators that are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ [56-265.14](#) et seq.). A purchase of services under this subdivision may deviate from the procurement procedures set forth in this chapter upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is awarded based on competitive principles.

14. Procurement of any construction or planning and design services for construction by a Virginia nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit corporation or organization is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether those federal procedures are in conformance with the provisions of this chapter.

15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

16. The Eastern Virginia Medical School in the selection of services related to the management and investment of its endowment and other institutional funds. The selection of these services shall, however, be governed by the Uniform Prudent Management of Institutional Funds Act (§ [64.2-1100](#) et seq.).

17. The Department of Corrections in the selection of pre-release and post-incarceration services and the Department of Juvenile Justice in the selection of pre-release and post-commitment services.

18. The University of Virginia Medical Center to the extent provided by subdivision A 3 of § [23.1-2213](#).

19. The purchase of goods and services by a local governing body or any authority, board, department, instrumentality, institution, agency or other unit of state government when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § [2.2-4310](#) or by a chief administrative officer of a county, city or town pursuant to § [15.2-965.1](#).

20. The contract by community services boards or behavioral health authorities with an administrator or management body pursuant to a joint agreement authorized by § [37.2-512](#) or [37.2-615](#).

21. [Expired].

22. The purchase of Virginia-grown food products for use by a public body where the annual cost of the product is not expected to exceed \$100,000.

23. The Virginia Industries for the Blind when procuring components, materials, supplies, or services for use in commodities and services furnished to the federal government in connection with its operation as an AbilityOne Program-qualified nonprofit agency for the blind under the Javits-Wagner-O'Day Act, [41](#) U.S.C. §§ 8501-8506, provided that the procurement is accomplished using procedures that ensure that funds are used as efficiently as practicable. Such procedures shall require documentation of the basis for awarding contracts. Notwithstanding the provisions of § [2.2-1117](#), no public body shall be required to purchase such components, materials, supplies, services, or commodities.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements,

notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

1982, c. 647, §§ 11-35, 11-39, 11-40; 1983, c. 593; 1984, cc. 159, 330, 764, § 11-40.2; 1985, c. 74; 1986, cc. 149, 212, 559; 1987, c. 583; 1991, c. 645; 1994, cc. [661](#), [918](#); 1995, c. [18](#); 1996, cc. [261](#), [280](#), [683](#), [1019](#); 1997, cc. [85](#), [488](#), [785](#), [861](#), [863](#); 1998, cc. [121](#), [132](#); 1999, cc. [230](#), [248](#), [735](#), [910](#), § 11-40.4; 2000, cc. [29](#), [382](#), [400](#), [642](#), [644](#), [666](#), [703](#); 2001, cc. [392](#), [409](#), [736](#), [753](#), [774](#), [844](#); 2002, cc. [87](#), [478](#), [491](#), [582](#), [595](#); 2003, cc. [226](#), [1008](#); 2004, cc. [145](#), [865](#), [891](#); 2006, c. [656](#); 2007, cc. [434](#), [697](#); 2008, c. [184](#); 2009, cc. [737](#), [767](#); 2010, c. [694](#); 2011, c. [23](#); 2012, cc. [803](#), [805](#), [835](#), [836](#); 2013, cc. [583](#), [762](#), [794](#); 2015, cc. [760](#), [776](#); 2016, cc. [296](#), [465](#); 2017, cc. [87](#), [625](#), [699](#), [704](#).

§2.2-4343.1. Permitted contracts with certain religious organizations; purpose; limitations.

A. It is the intent of the General Assembly, in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, to authorize public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

C. Public bodies, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. Public bodies shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that the public body does not discriminate against faith-based organizations.

E. A faith-based organization contracting with a public body (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for religious worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000 e-1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

The public body shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization a notice in bold face type that states: "Neither the public body's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or

religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."

2001, c. [774](#), § 11-35.1; 2005, c. [928](#).

§2.2-4344. Exemptions from competition for certain transactions.

A. Any public body may enter into contracts without competition for:

1. The purchase of goods or services that are produced or performed by:

a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or

b. Employment services organizations that offer transitional or supported employment services serving individuals with disabilities.

2. The purchase of legal services, provided that the pertinent provisions of Chapter 5 (§ [2.2-500](#) et seq.) remain applicable, or expert witnesses or other services associated with litigation or regulatory proceedings.

B. An industrial development authority or regional industrial facility authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § [15.2-4902](#) or "facility" as defined in § [15.2-6400](#).

C. A community development authority formed pursuant to Article 6 (§ [15.2-5152](#) et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without competition with respect to the exercise of any of its powers permitted by § [15.2-5158](#). However, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § [15.2-5158](#) are used as payment for such contract.

D. The State Inspector General may enter into contracts without competition to obtain the services of licensed health care professionals or other experts to assist in carrying out the duties of the Office of the State Inspector General.

1982, c. 647, § 11-45; 1984, c. 764; 1987, cc. 194, 248; 1989, c. 235; 1990, c. 395; 1991, c. 175; 1993, cc. 110, 505, 638, 971; 1996, cc. [145](#), [897](#), [902](#), [950](#), [1038](#); 1998,

cc. [222](#), [619](#), [666](#), [697](#), [791](#); 1999, cc. [160](#), [194](#), [1021](#), [1024](#); 2000, cc. [242](#), [696](#), [927](#); 2001, c. [844](#); 2008, c. [52](#); 2009, cc. [813](#), [840](#); 2011, cc. [798](#), [871](#); 2012, c. [632](#).

§2.2-4345. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.

A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § [32.1-325](#), provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.
2. The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ [32.1-276.2](#) et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.
3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ [30-146](#) and [30-148](#), to publish the Code of Virginia or the Virginia Administrative Code.
4. (Effective until January 15, 2018) The Department of Alcoholic Beverage Control for the purchase of alcoholic beverages.
4. (Effective January 15, 2018) The Virginia Alcoholic Beverage Control Authority for the purchase of alcoholic beverages.
5. The Department for Aging and Rehabilitative Services, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code with statewide experience in

Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.

6. The Department of Health for (a) child restraint devices, pursuant to § [46.2-1097](#); (b) health care services with Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c) contracts with laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the provisions of Chapter 58 (§ [15.2-5800](#) et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

11. Richmond Eye and Ear Hospital Authority, any authorities created under Chapter 53 (§ [15.2-5300](#) et seq.) of Title 15.2 and any hospital or health center commission created under Chapter 52 (§ [15.2-5200](#) et seq.) of Title 15.2 in the exercise of any power conferred under their respective authorizing legislation, provided that these

entities shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of Assembly of 2000, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

13. Public bodies for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

14. Public bodies administering public assistance and social services programs as defined in § [63.2-100](#), community services boards as defined in § [37.2-100](#), or any public body purchasing services under the Children's Services Act (§ [2.2-5200](#) et seq.) or the Virginia Juvenile Community Crime Control Act (§ [16.1-309.2](#) et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § [2.2-4303](#).

15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter 471, as amended, of the Acts of Assembly of 1964.

B. No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under subsection D of § [2.2-4303](#) or Chapter 43.1 (§ [2.2-4378](#) et seq.). The procedure

for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

1982, c. 647, § 11-45; 1984, c. 764; 1987, cc. 194, 248; 1989, c. 235; 1990, c. 395; 1991, c. 175; 1993, cc. 110, 505, 638, 971; 1996, cc. [145](#), [897](#), [902](#), [950](#), [1038](#); 1998, cc. [222](#), [619](#), [666](#), [697](#), [791](#); 1999, cc. [160](#), [194](#), [1021](#), [1024](#); 2000, cc. [242](#), [696](#), [927](#); 2001, c. [844](#); 2002, cc. [87](#), [478](#), [747](#); 2006, c. [658](#); 2011, c. [538](#); 2012, cc. [803](#), [835](#); 2015, cc. [38](#), [366](#), [730](#); 2017, cc. [699](#), [704](#).

§2.2-4346. Other exemptions for certain transactions.

The following public bodies may enter into contracts as provided in this section.

A. Contracts for certain essential election materials and services are exempted from the requirements of Articles 1 (§ [2.2-4300](#) et seq.), 2 (§ [2.2-4303](#) et seq.), and 5 (§ [2.2-4357](#) et seq.) of this chapter pursuant to § [24.2-602](#).

B. Any local school board may authorize any of its public schools or its school division to enter into contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation announcements will be available for purchase or rental by students, parents, faculty or other persons using nonpublic money through the use of competitive negotiation as provided in this chapter; competitive sealed bidding is not necessarily required for such contracts. The Superintendent of Public Instruction may provide assistance to public school systems regarding this chapter and other related laws.

C. The Virginia Racing Commission may designate an entity to administer and promote the Virginia Breeders Fund created pursuant to § [59.1-372](#) without competitive procurement.

1982, c. 647, §§ 11-41, 11-45; 1984, c. 764; 1985, c. 164; 1986, cc. 332, 559; 1987, cc. 194, 248, 456; 1988, cc. 40, 640; 1989, cc. 235, 296; 1990, c. 395; 1991, cc. 73, 175; 1992, c. 105, § 11-40.3; 1993, cc. 110, 242, 505, 638, 971; 1996, cc. [145](#), [827](#), [897](#), [902](#), [950](#), [965](#), [1019](#), [1038](#); 1998, c. [222](#), [619](#), [666](#), [697](#), [791](#); 1999, cc. [160](#), [178](#), [194](#), [1021](#), [1024](#); 2000, cc. [242](#), [637](#), [647](#), [664](#), [692](#), [696](#), [927](#); 2001, c. [844](#).

§2.2-4347. Definitions.

As used in this article, unless the context requires a different meaning:

"Contractor" means the entity that has a direct contract with any "state agency" as defined herein, or any agency of local government as discussed in § [2.2-4352](#).

"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty days after receipt of a proper invoice by the state agency or its agent or forty-five days after receipt by the local government or its agent responsible under the contract for approval of such invoices for the amount of payment due, or (b) thirty days after receipt of the goods or services by the state agency or forty-five days after receipt by the local government, whichever is later.

"State agency" means any authority, board, department, instrumentality, institution, agency or other unit of state government. The term shall not include any county, city or town or any local or regional governmental authority.

"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

1984, c. 736, § 11-62.1; 1990, c. 824; 1992, c. 75; 2001, c. [844](#).

§2.2-4348. Exemptions.

The provisions of this article shall not apply to (i) the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission or (ii) payments for services provided under the state plan for medical assistance identified as potentially fraudulent, abusive, or erroneous in accordance with the program established pursuant to § [32.1-319.1](#) and delayed until such time as the claim can be validated.

1984, c. 736, § 11-62.9; 2001, c. [844](#); 2017, c. [750](#).

§2.2-4349. Retainage to remain valid.

Notwithstanding the provisions of this article, the provisions of § [2.2-4333](#) relating to retainage shall remain valid.

1984, c. 736, § 11-62.8; 2001, c. [844](#).

§2.2-4350. Prompt payment of bills by state agencies.

A. Every state agency that acquires goods or services, or conducts any other type of contractual business with nongovernmental, privately owned enterprises shall

promptly pay for the completely delivered goods or services by the required payment date.

Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ [2.2-4800](#) et seq.).

B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

1984, c. 736, §§ 11-62.2, 11-62.3; 1992, c. 75; 2001, c. [844](#).

§2.2-4350.1. Prohibition on payment without an appropriation; prohibition on IOUs.

A. As used in this section, "IOU" means a document issued by a governmental entity or representative (i) that acknowledges a debt but that does not specify all repayment terms, such as the repayment date, and (ii) when moneys are not available to pay a current debt.

B.1. Notwithstanding any other provision of law, unless the General Assembly has appropriated funds to pay for a good or service or to make payment on a debt, no state department, agency, or other state entity nor any state official, officer, employee, or agent shall (i) attempt to pay for the good or service or attempt to make payment on the debt; (ii) issue any document or paper that guarantees payment, or purports to pay, for the good or service or guarantees payment, or purports to make payment, on the debt; or (iii) in any other way attempt to pay, guarantee payment, or purport to pay for the same.

2. The prohibition on payment under subdivision 1 shall not apply (i) to payments required by federal law or (ii) if funds are lawfully available.

C. In addition, in no case shall any (i) state department, agency, or other state entity or (ii) state official, officer, or employee in performing the duties of his position furnish an IOU in exchange for any good or service, as a means to pay for any good or service, or in lieu of a payment on a debt.

2015, c. [673](#).

§2.2-4351. Defect or impropriety in the invoice or goods and/or services received.

In instances where there is a defect or impropriety in an invoice or in the goods or services received, the state agency shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods or services.

1984, c. 736, § 11-62.4; 2001, c. [844](#).

§2.2-4352. Prompt payment of bills by localities.

Every agency of local government that acquires goods or services, or conducts any other type of contractual business with a nongovernmental, privately owned enterprise, shall promptly pay for the completed delivered goods or services by the required payment date. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of the goods or services; or (ii) if a date is not established by contract, not more than forty-five days after goods or services are received or not more than forty-five days after the invoice is rendered, whichever is later.

Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial executions or deliveries to the extent that the contract provides for separate payment for partial execution or delivery.

Within twenty days after the receipt of the invoice or goods or services, the agency shall notify the supplier of any defect or impropriety that would prevent payment by the payment date.

Unless otherwise provided under the terms of the contract for the provision of goods or services, every agency that fails to pay by the payment date shall pay any finance charges assessed by the supplier that shall not exceed one percent per month.

The provisions of this section shall not apply to the late payment provisions in any public utility tariffs or public utility negotiated contracts.

1985, c. 454, § 11-62.10; 2001, c. [844](#).

§2.2-4353. Date of postmark deemed to be date payment is made.

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of this chapter.

1984, c. 736, § 11-62.6; 2001, c. [844](#).

§2.2-4354. Payment clauses to be included in contracts.

Any contract awarded by any state agency, or any contract awarded by any agency of local government in accordance with § [2.2-4352](#), shall include:

1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the state agency or local government for work performed by the subcontractor under that contract:
 - a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or
 - b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the state agency or agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.
4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the state agency or agency of local government. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

1990, c. 824, § 11-62.11; 1992, c. 110; 2001, c. [844](#).

§2.2-4355. Interest penalty; exceptions.

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by a state agency to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged a state agency pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § [58.1-1812](#).

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between a state agency and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § [2.2-4333](#) pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ [2.2-4800](#) et seq.), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

1984, c. 736, § 11-62.5; 1985, c. 101; 1992, c. 75; 2001, c. [844](#).

§2.2-4356. Comptroller to file annual report.

The Comptroller shall file an annual report with the Governor, the Senate Committee on Finance, the House Committees on Finance and Appropriations on November 1 for the preceding fiscal year including (i) the number and dollar amounts of late payments by departments, institutions and agencies, (ii) the total amount of interest paid and (iii) specific steps being taken to reduce the incidence of late payments.

1984, c. 736, § 11-62.7; 1985, c. 101; 1997, c. [165](#); 2001, c. [844](#).

§2.2-4357. Ineligibility.

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the public body shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § [2.2-4365](#), if available, or in the alternative by instituting legal action as provided in § [2.2-4364](#).

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

1982, c. 647, § 11-63; 1998, c. [753](#); 2001, c. [844](#).

§2.2-4358. Appeal of denial of withdrawal of bid.

A. A decision denying withdrawal of bid under the provisions of § [2.2-4330](#) shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of § [2.2-4365](#), if available, or in the alternative by instituting legal action as provided in § [2.2-4364](#).

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § [2.2-4330](#), prior to appealing, shall deliver to the public body a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

1982, c. 647, § 11-64; 1985, c. 164; 1999, c. [1008](#); 2001, c. [844](#).

§2.2-4359. Determination of nonresponsibility.

A. Following public opening and announcement of bids received on an Invitation to Bid, the public body shall evaluate the bids in accordance with element 4 of the process for competitive sealed bidding set forth in § [2.2-4302.1](#). At the same time, the public body shall determine whether the apparent low bidder is responsible. If the public body so determines, then it may proceed with an award in accordance with element 5 of the process for competitive sealed bidding set forth in § [2.2-4302.1](#). If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the public body shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written

determination of responsibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received the rebuttal information. At the same time, the public body shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § [2.2-4365](#), if available, or in the alternative by instituting legal action as provided in § [2.2-4364](#).

The provisions of this subsection shall not apply to procurements involving the pre-qualification of bidders and the rights of any potential bidders under such pre-qualification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § [2.2-4364](#) or [2.2-4365](#), it is determined that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § [2.2-4364](#) or both.

If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § [2.2-4360](#).

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § [2.2-4360](#).

D. Nothing contained in this section shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

1982, c. 647, § 11-65; 1997, c. [864](#); 1998, c. [753](#); 1999, c. [1008](#); 2001, c. [844](#); 2013, c. [583](#).

§2.2-4360. Protest of award or decision to award.

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the public body, or an official designated by the public body, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § [2.2-4303](#). However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § [2.2-4342](#), then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § [2.2-4342](#), or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by invoking administrative procedures meeting the standards of § [2.2-4365](#), if available, or in the alternative by instituting legal action as provided in § [2.2-4364](#). Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing

contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where a public body, an official designated by that public body, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 6 (§ [2.2-4367](#) et seq.) of this chapter, the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder.

1982, c. 647, § 11-66; 1985, c. 164; 1997, c. [864](#); 2000, c. [641](#); 2001, c. [844](#).

§2.2-4361. Effect of appeal upon contract.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that a protest or appeal has been filed.

1982, c. 647, § 11-67; 2001, c. [844](#).

§2.2-4362. Stay of award during protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § [2.2-4360](#), or the filing of a timely legal action as provided in § [2.2-4364](#), no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

1982, c. 647, § 11-68; 1997, c. [864](#); 2001, c. [844](#).

§2.2-4363. Contractual disputes.

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

B. Each public body shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the public body.

If the public body has established administrative procedures meeting the standards of § [2.2-4365](#), such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor.

C. If, however, the public body fails to include in its contracts a procedure for consideration of contractual claims, the following procedure shall apply:

1. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or at the beginning of the work upon which the claim is based.

2. No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the public body's chief administrative officer or his designee. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the public body fails to render a decision within 90 days of submission of the claim. Failure of the public body to render a decision within 90 days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the public body's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.

D. A contractor may not invoke administrative procedures meeting the standards of § [2.2-4365](#), if available, or institute legal action as provided in § [2.2-4364](#), prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract or, if no time is specified, then within the time provided by subsection C. A failure of the public body to render a final decision within the time provided in subsection C shall be deemed a final decision denying the claim by the public body.

E. The decision of the public body shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the public body by invoking administrative procedures meeting the standards of § [2.2-4365](#), if available, or in the alternative by instituting legal action as provided in § [2.2-4364](#).

1982, c. 647, § 11-69; 2001, cc. [106](#), [844](#); 2005, c. [815](#).

§2.2-4364. Legal actions.

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not

to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § [2.2-4317](#). In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § [2.2-4301](#), is found by the court to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § [2.2-4358](#) may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § [2.2-4303](#), whose protest of an award or decision to award under § [2.2-4360](#) is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to this chapter or § [33.2-1103](#), except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § [2.2-4365](#), if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.

G. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor.

1982, c. 647, § 11-70; 1985, c. 164; 1994, c. [918](#); 1995, c. [527](#); 1997, c. [864](#); 1998, cc. [205](#), [753](#); 1999, c. [1008](#); 2001, c. [844](#).

§2.2-4365. Administrative appeals procedure.

A. A public body may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § [2.2-4317](#). No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.

B. Any party to the administrative procedure, including the public body, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.

1982, c. 647, § 11-71; 1994, cc. [660](#), [918](#); 2001, c. [844](#).

§2.2-4366. Alternative dispute resolution.

Public bodies may enter into agreements to submit disputes arising from contracts entered into pursuant to this chapter to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures entered into by the Commonwealth, or any department, institution, division, commission, board or

bureau thereof, shall be nonbinding and subject to § [2.2-514](#), as applicable. Alternative dispute resolution procedures entered into by school boards shall be non-binding.

1995, c. [760](#), § 11-71.1; 2001, c. [844](#).

§2.2-4367. Purpose.

The provisions of this article supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.), the Virginia Governmental Frauds Act (§ [18.2-498.1](#) et seq.), and Articles 2 (§ [18.2-438](#) et seq.) and 3 (§ [18.2-446](#) et seq.) of Chapter 10 of Title 18.2.

The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

1982, c. 647, § 11-72; 1987, Sp. Sess., c. 1; 2001, c. [844](#).

§2.2-4368. Definitions.

As used in this article:

"Immediate family" means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

"Official responsibility" means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

"Pecuniary interest arising from the procurement" means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.).

"Procurement transaction" means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Public employee" means any person employed by a public body, including elected officials or appointed members of governing bodies.

1982, c. 647, § 11-73; 1987, Sp. Sess., c. 1; 2001, c. [844](#).

§2.2-4369. Proscribed participation by public employees in procurement transactions.

Except as may be specifically allowed by subdivisions B 1, 2, and 3 of § [2.2-3112](#), no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;
3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

1982, c. 647, § 11-74; 1985, c. 565; 1987, Sp. Sess., c. 1; 1997, c. [83](#); 2001, c. [844](#); 2003, c. [694](#); 2017, cc. [829](#), [832](#).

§2.2-4370. Disclosure of subsequent employment.

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor.

1982, c. 647, § 11-76; 2001, c. [844](#).

§2.2-4371. Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors prohibited.

A. No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or

subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The public body may recover the value of anything conveyed in violation of this subsection.

B. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

1982, c. 647, §§ 11-75, 11-77; 2001, c. [844](#).

§2.2-4372. Kickbacks.

A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

1982, c. 647, § 11-78; 2001, c. [844](#).

§2.2-4373. Participation in bid preparation; limitation on submitting bid for same procurement.

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public

body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

1997, c. [68](#), § 11-78.1; 2001, c. [844](#).

§2.2-4374. Purchase of building materials, etc., from architect or engineer prohibited.

A. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in § [2.2-3101](#).

B. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in § [2.2-3101](#).

C. The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

1982, c. 647, § 11-79; 1993, c. 202; 1994, c. [882](#); 1996, c. [827](#); 2001, c. [844](#).

§2.2-4375. Certification of compliance required; penalty for false statements.

A. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.

B. Any public employee required to submit a certification as provided in subsection A who knowingly makes a false statement in the certification shall be punished as provided in § [2.2-4377](#).

1992, c. 761, § 11-79.1; 2001, c. [844](#).

§2.2-4376. Misrepresentations prohibited.

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

1992, c. 761, § 11-79.2; 2001, c. [844](#).

§2.2-4376.1. Contributions and gifts; prohibition during procurement process.

A. No bidder or offeror who has submitted a bid or proposal to an executive branch agency that is directly responsible to the Governor for the award of a public contract pursuant to this chapter, and no individual who is an officer or director of such a bidder or offeror, shall knowingly provide a contribution, gift, or other item with a value greater than \$50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, during the period between the submission of the bid and the award of the public contract under this chapter. The provisions of this section shall apply only for public contracts where the stated or expected value of the contract is \$5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding.

B. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

2010, c. [732](#); 2011, c. [624](#).

§2.2-4377. Penalty for violation.

Any person convicted of a willful violation of any provision of this article shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

1982, c. 647, § 11-80; 2001, c. [844](#).

Virginia Public Records Act

§42.1-76. Legislative intent; title of chapter.

The General Assembly intends by this chapter to establish a single body of law applicable to all public officers and employees on the subject of public records management and preservation and to ensure that the procedures used to manage and preserve public records will be uniform throughout the Commonwealth.

This chapter may be cited as the Virginia Public Records Act.

1976, c. 746.

§42.1-76.1. Notice of Chapter.

Any person elected, reelected, appointed, or reappointed to the governing body of any agency subject to this chapter shall (i) be furnished by the agency or public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment, or reappointment and (ii) read and become familiar with the provisions of this chapter.

2006, c. [60](#).

§42.1-77. Definitions.

As used in this chapter:

"Agency" means all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and includes the offices of constitutional officers.

"Archival quality" means a quality of reproduction consistent with established standards specified by state and national agencies and organizations responsible for establishing such standards, such as the Association for Information and Image Management, the American National Standards Institute, and the National Institute of Standards and Technology.

"Archival record" means a public record of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law that is identified on a Library of Virginia approved records retention and disposition schedule as having sufficient informational value to be permanently maintained by the Commonwealth.

"Archives" means the program administered by The Library of Virginia for the preservation of archival records.

"Board" means the State Library Board.

"Conversion" means the act of moving electronic records to a different format, especially data from an obsolete format to a current format.

"Custodian" means the public official in charge of an office having public records.

"Disaster plan" means the information maintained by an agency that outlines recovery techniques and methods to be followed in case of an emergency that impacts the agency's records.

"Electronic record" means a public record whose creation, storage, and access require the use of an automated system or device. Ownership of the hardware, software, or media used to create, store, or access the electronic record has no bearing on a determination of whether such record is a public record.

"Essential public record" means records that are required for recovery and reconstruction of any agency to enable it to resume its core operations and functions and to protect the rights and interests of persons.

"Librarian of Virginia" means the State Librarian of Virginia or his designated representative.

"Lifecycle" means the creation, use, maintenance, and disposition of a public record.

"Metadata" means data describing the context, content, and structure of records and their management through time.

"Migration" means the act of moving electronic records from one information system or medium to another to ensure continued access to the records while maintaining the records' authenticity, integrity, reliability, and usability.

"Original record" means the first generation of the information and is the preferred version of a record. Archival records should to the maximum extent possible be original records.

"Preservation" means the processes and operations involved in ensuring the technical and intellectual survival of authentic records through time.

"Private record" means a record that does not relate to or affect the carrying out of the constitutional, statutory, or other official ceremonial duties of a public official, including the correspondence, diaries, journals, or notes that are not prepared for, utilized for, circulated, or communicated in the course of transacting public business.

"Public official" means all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the state government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the state government or its political subdivisions.

"Public record" or "record" means recorded information that documents a transaction or activity by or with any public officer, agency or employee of an agency. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business. The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record.

For purposes of this chapter, "public record" shall not include nonrecord materials, meaning materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications.

"Records retention and disposition schedule" means a Library of Virginia-approved timetable stating the required retention period and disposition action of a records series. The administrative, fiscal, historical, and legal value of a public record shall be considered in appraising its appropriate retention schedule. The terms "administrative," "fiscal," "historical," and "legal" value shall be defined as:

1. "Administrative value": Records shall be deemed of administrative value if they have continuing utility in the operation of an agency.
2. "Fiscal value": Records shall be deemed of fiscal value if they are needed to document and verify financial authorizations, obligations, and transactions.
3. "Historical value": Records shall be deemed of historical value if they contain unique information, regardless of age, that provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.
4. "Legal value": Records shall be deemed of legal value if they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

1976, c. 746; 1977, c. 501; 1981, c. 637; 1987, c. 217; 1990, c. 778; 1994, cc. [390](#), [955](#); 1998, cc. [427](#), [470](#); 2005, c. [787](#); 2006, c. [60](#).

§42.1-78. Confidentiality safeguarded.

Any records made confidential by law shall be so treated. Records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter. Records in the custody of The Library of Virginia which are required to be closed to the public shall be open for public access 75 years after the date of creation of the record. No provision of this chapter shall be construed to authorize or require the opening of any records ordered to be sealed by a court. All records deposited in the archives that are not made confidential by law shall be open to public access.

1976, c. 746; 1979, c. 110; 1990, c. 778; 1994, c. [64](#); 2006, c. [60](#).

§42.1-79. Records management function vested in The Library of Virginia.

A. The archival and records management function shall be vested in The Library of Virginia. The Library of Virginia shall be the official custodian and trustee for the Commonwealth of all public records of whatever kind, and regardless of physical form or characteristics, that are transferred to it from any agency. As the Commonwealth's official repository of public records, The Library of Virginia shall assume ownership and administrative control of such records on behalf of the Commonwealth. The Library of Virginia shall own and operate any equipment necessary to manage and retain control of electronic archival records in its custody, but may, at its discretion, contract with third-party entities to provide any or all services related to managing archival records on equipment owned by the contractor, by other third parties, or by The Library of Virginia.

B. The Librarian of Virginia shall name a State Archivist who shall perform such functions as the Librarian of Virginia assigns.

C. Whenever legislation affecting public records management and preservation is under consideration, The Library of Virginia shall review the proposal and advise the General Assembly on the effects of its proposed implementation.

1976, c. 746; 1986, c. 565; 1990, c. 778; 1994, c. [64](#); 1998, c. [427](#); 2005, c. [787](#); 2006, c. [60](#).

§42.1-79.1. Repealed.

Repealed by Acts 2005, c. [787](#), cl. 2.

§42.1-80. Repealed.

Repealed by Acts 2003, c. [177](#).

§42.1-82. Duties and powers of Library Board.

A. The State Library Board shall:

1. Issue regulations concerning procedures for the disposal, physical destruction or other disposition of public records containing social security numbers. The procedures shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or undecipherable by any means.

2. Issue regulations and guidelines designed to facilitate the creation, preservation, storage, filing, reformatting, management, and destruction of public records by agencies. Such regulations shall mandate procedures for records management and include recommendations for the creation, retention, disposal, or other disposition of public records.

B. The State Library Board may establish advisory committees composed of persons with expertise in the matters under consideration to assist the Library Board in developing regulations and guidelines.

1976, c. 746; 1977, c. 501; 1981, c. 637; 1990, c. 778; 1994, cc. [64](#), [955](#); 2003, cc. [914](#), [918](#); 2005, c. [787](#); 2006, c. [60](#).

§42.1-83. Repealed.

Repealed by Acts 2006, c. [60](#), cl. 2.

§42.1-84. Repealed.

Repealed by Acts 2005, c. [787](#), cl. 2.

§42.1-85. Records Management Program; agencies to cooperate; agencies to designate records officer.

A. The Library of Virginia shall administer a records management program for the application of efficient and economical methods for managing the lifecycle of public records consistent with regulations and guidelines promulgated by the State Library Board, including operation of a records center or centers. The Library of Virginia shall establish procedures and techniques for the effective management of public records, make continuing surveys of records and records keeping practices, and recommend improvements in current records management practices, including the use of space, equipment, software, and supplies employed in creating, maintaining, and servicing records.

B. Any agency with public records shall cooperate with The Library of Virginia in conducting surveys. Each agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of such agency. The agency shall be responsible for ensuring that its public records are preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic records as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration. Any public official who converts or migrates an electronic record shall ensure that it is an accurate copy of the original record. The converted or migrated record shall have the force of the original.

C. Each state agency and political subdivision of this Commonwealth shall designate as many as appropriate, but at least one, records officer to serve as a liaison to The Library of Virginia for the purposes of implementing and overseeing a records management program, and coordinating legal disposition, including destruction, of obsolete records. Designation of state agency records officers shall be by the respective agency head. Designation of a records officer for political subdivisions shall be by the governing body or chief administrative official of the political subdivision. Each entity responsible for designating a records officer shall provide The Library of Virginia with the name and contact information of the designated records officer, and shall ensure that such information is updated in a timely manner in the event of any changes.

D. The Library of Virginia shall develop and make available training and education opportunities concerning the requirements of and compliance with this chapter for records officers in the Commonwealth.

1976, c. 746; 1990, c. 778; 1994, c. [64](#); 1998, c. [427](#); 2006, c. [60](#).

§42.1-86. Essential public records; security recovery copies; disaster plans.

A. In cooperation with the head of each agency, The Library of Virginia shall establish and maintain a program for the selection and preservation of essential public records. The program shall provide for preserving, classifying, arranging, and indexing essential public records so that such records are made available to the public. The program shall provide for making recovery copies or designate as recovery copies existing copies of such essential public records.

B. Recovery copies shall meet quality standards established by The Library of Virginia and shall be made by a process that accurately reproduces the record and forms a durable medium. A recovery copy may also be made by creating a paper or electronic copy of an original electronic record. Recovery copies shall have the same force and

effect for all purposes as the original record and shall be as admissible in evidence as the original record whether the original record is in existence or not. Recovery copies shall be preserved in the place and manner prescribed by the State Library Board and the Governor.

C. The Library of Virginia shall develop a plan to ensure preservation of public records in the event of disaster or emergency as defined in § [44-146.16](#). This plan shall be coordinated with the Department of Emergency Management and copies shall be distributed to all agency heads. The plan shall be reviewed and updated at least once every five years. The personnel of the Library shall be responsible for coordinating emergency recovery operations when public records are affected. Each agency shall ensure that a plan for the protection and recovery of public records is included in its comprehensive disaster plan.

1976, c. 746; 1980, c. 365; 1990, c. 778; 1994, c. [64](#); 1998, c. [427](#); 2005, c. [787](#); 2006, c. [60](#).

§42.1-86.1. Disposition of public records.

A. No agency shall sell or give away public records. No agency shall destroy or discard a public record unless (i) the record appears on a records retention and disposition schedule approved pursuant to § [42.1-82](#) and the record's retention period has expired; (ii) a certificate of records destruction, as designated by the Librarian of Virginia, has been properly completed and approved by the agency's designated records officer; and (iii) there is no litigation, audit, investigation, request for records pursuant to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.), or renegotiation of the relevant records retention and disposition schedule pending at the expiration of the retention period for the applicable records series. After a record is destroyed or discarded, the agency shall forward the original certificate of records destruction to The Library of Virginia.

B. No agency shall destroy any public record created before 1912 without first offering it to The Library of Virginia.

C. Each agency shall ensure that records created after July 1, 2006 and authorized to be destroyed or discarded in accordance with subsection A, are destroyed or discarded in a timely manner in accordance with the provisions of this chapter; provided, however, such records that contain identifying information as defined in clauses (iii) through (ix), or clause (xii) of subsection C of § [18.2-186.3](#), shall be destroyed within six months of the expiration of the records retention period.

1990, c. 778; 1998, c. [427](#); 2005, c. [787](#); 2006, cc. [60](#), [909](#).

§42.1-87. Archival public records.

A. Custodians of archival public records shall keep them in fire-resistant, environmentally controlled, physically secure rooms designed to ensure proper preservation and in such arrangement as to be easily accessible. Current public records should be kept in the buildings in which they are ordinarily used. It shall be the duty of each agency to consult with The Library of Virginia to determine the best manner in which to store long-term or archival electronic records. In entering into a contract with a third-party storage provider for the storage of public records, an agency shall require the third-party to cooperate with The Library of Virginia in complying with rules and regulations promulgated by the Board.

B. Public records deemed unnecessary for the transaction of the business of any state agency, yet deemed to be of archival value, may be transferred with the consent of the Librarian of Virginia to the custody of the Library of Virginia.

C. Public records deemed unnecessary for the transaction of the business of any county, city, or town, yet deemed to be of archival value, shall be stored either in The Library of Virginia or in the locality, at the decision of the local officials responsible for maintaining public records. Archival public records shall be returned to the locality upon the written request of the local officials responsible for maintaining local public records. Microfilm shall be stored in The Library of Virginia but the use thereof shall be subject to the control of the local officials responsible for maintaining local public records.

D. Record books deemed archival should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever the public records of any public official are in need of repair, restoration or rebinding, a judge of the court of record or the head of such agency or political subdivision of the Commonwealth may authorize that the records in need of repair be removed from the building or office in which such records are ordinarily kept, for the length of time necessary to repair, restore or rebind them, provided such restoration and rebinding preserves the records without loss or damage to them. Before any restoration or repair work is initiated, a treatment proposal from the contractor shall be submitted and reviewed in consultation with The Library of Virginia. Any public official who causes a record book to be copied shall attest it and shall certify an oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

E. Nothing in this chapter shall be construed to divest agency heads of the authority to determine the nature and form of the records required in the administration of their several departments or to compel the removal of records deemed necessary by them in the performance of their statutory duty.

1976, c. 746; 1994, cc. [64](#), [955](#); 2005, c. [787](#); 2006, c. [60](#).

§42.1-88. Custodians to deliver all records at expiration of term; penalty for noncompliance.

Any custodian of any public records shall, at the expiration of his term of office, appointment or employment, deliver to his successor, or, if there be none, to The Library of Virginia, all books, writings, letters, documents, public records, or other information, recorded on any medium kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for a period of ten days after a request is made in writing by the successor or Librarian of Virginia to deliver the public records as herein required shall be guilty of a Class 3 misdemeanor.

1976, c. 746; 1994, c. [64](#); 1998, c. [427](#).

§42.1-89. Petition and court order for return of public records not in authorized possession.

The Librarian of Virginia or his designated representative such as the State Archivist or any public official who is the custodian of public records in the possession of a person or agency not authorized by the custodian or by law to possess such public records shall petition the circuit court in the city or county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such records. The court shall order such public records be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the plaintiff shall request that the court enforce such order through its contempt power and procedures.

1975, c. 180; 1976, c. 746; 1998, c. [427](#).

§42.1-90. Seizure of public records not in authorized possession.

A. At any time after the filing of the petition set out in § [42.1-89](#) or contemporaneous with such filing, the person seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed

to issue an order directed at the sheriff or other proper officer, as the case may be, commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth.

B. The judge aforesaid shall issue an order of seizure upon receipt of an affidavit from the petitioner which alleges that the material at issue may be sold, secreted, removed out of this Commonwealth or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if permitted to remain out of the petitioner's possession.

C. The aforementioned order of seizure shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner.

1975, c. 180; 1976, c. 746.

§42.1-90.1. Auditing.

The Librarian may, in his discretion, conduct an audit of the records management practices of any agency. Any agency subject to the audit shall cooperate and provide the Library with any records or assistance that it requests. The Librarian shall compile a written summary of the findings of the audit and any actions necessary to bring the agency into compliance with this chapter. The summary shall be a public record, and shall be made available to the agency subject to the audit, the Governor, and the chairmen of the House and Senate Committees on General Laws and the House Appropriations and Senate Finance Committees of the General Assembly.

2006, c. [60](#).

§42.1-91. Repealed.

Repealed by Acts 2006, c. [60](#), cl. 2.

Virginia Public Telephone Information Act

§59.1-424. Short title.

This chapter may be cited as the "Virginia Public Telephone Information Act."

1989, c. 703 .

§59.1-425. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Alternate operator services provider" means a telecommunications company, other than a local exchange company or interexchange company certificated by the State Corporation Commission or an affiliate or agent of such a company, which provides intrastate long distance operator assisted services where human or automated call intervention is necessary for obtaining billing information from the end-user.

However, this exception for local exchange companies and interexchange companies applies only where the rates charged are those of the local exchange company or interexchange company on file with the State Corporation Commission.

"Person" means individual and entity.

"Public telephone equipment provider" means any person who makes available for public use telephone equipment with access to the public switched network where a charge is made to the user for such use and intrastate local or long distance service is provided through such equipment by an alternate operator services provider. This includes but is not limited to hotels, motels, airports, baccalaureate institutions of higher education, hospitals, and coin-operated telephone equipment either privately owned or furnished by local exchange and interstate long distance telephone companies.

1989, c. 703.

§59.1-426. Notice requirements of article.

A. Any public telephone equipment provider shall conspicuously display the identity of the company which will normally make the charge for any intrastate long distance calls or local operator-assisted calls not handled by the local exchange telephone company placed from such equipment.

B. 1. Public telephone equipment providers shall disclose on the telephone equipment the method to gain access to other intrastate long distance or local services. The notice shall also explain how to reach the local exchange telephone company operator unless the local exchange company operator can be reached by dialing "0."

2. A notice shall be conspicuously posted on or near the equipment stating "For long distance rates, dial" All alternate operator service companies shall provide a toll free number to provide rate information and shall be able to quote a specific rate for

each call upon inquiry. The posting of this notice shall be the responsibility of the subscriber to the alternate operator service.

C. The alternate operator service shall preannounce to the person placing the call the identity of the provider handling the intrastate toll or operator-assisted local call and the rate for the operator-assisted local call before a cost is incurred by the person placing the call.

D. No alternate operator service provider may bill for a call placed using a credit card issued by a local exchange telephone company or interexchange carrier without the express consent of the person placing the call.

E. No provider of operator services, whether or not certificated by the State Corporation Commission, shall enter into any contract or agreement with a customer which provides or permits call blocking of (i) the local exchange operator, (ii) other operator service providers' 950 or 800 numbers used to gain access to such carriers' networks, (iii) other operator service providers' [1-0-XXX-0+](#) numbers used to gain access to such carriers' networks, unless a waiver is first obtained from the State Corporation Commission, or (iv) emergency telephone numbers, such as 911.

F. Any person who adds a charge for use of telephone equipment in placing local or long distance calls shall conspicuously disclose the amount of the charge.

G. Every public telephone equipment provider, other than a telephone company certificated by the State Corporation Commission, owning coin-operated telephones shall conspicuously post on its coin-operated telephones a notice stating the local emergency telephone number and the complete address of the telephone. The letter size of the emergency number and address shall be at least one-quarter of an inch in height.

1989, c. 703; 1990, cc. 346, 357 .

§59.1-427. Enforcement; penalties.

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § [59.1-200](#) and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act, Chapter 17 (§ [59.1-196](#) et seq.) of this title.

1989, c. 703 .

§59.1-428. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

Virginia Real Estate Cooperative Act

§55-424. Title.

This chapter shall be known and may be cited as the Virginia Real Estate Cooperative Act.

1982, c. 277.

§55-425. Applicability.

A. This chapter applies to all cooperatives created within this Commonwealth after July 1, 1982. Unless the declaration provides that the entire chapter is applicable, such a cooperative is subject only to §§ [55-429](#) and [55-430](#) if the cooperative contains only units restricted to nonresidential use or contains no more than three units and is not subject to any development rights.

B. Except as provided in subsection C, §§ [55-426](#), [55-429](#), [55-430](#), [55-434](#), [55-440](#), [55-457](#), [55-459](#) subsection A, subdivisions 1 through 6 and 11 through 17, §§ [55-468](#), [55-472](#), [55-474](#), [55-484](#), [55-492](#) and [55-493](#) shall apply to all cooperatives created in this Commonwealth before July 1, 1982. Those sections apply only with respect to events and circumstances occurring after July 1, 1982, and do not invalidate existing provisions of the cooperative documents of those cooperatives. With regard to any cooperative created before July 1, 1982, § [55-429](#) applies only to real estate acquired by that cooperative's association on or after that date. For the purposes of this section, a cooperative was created before July 1, 1982, if the cooperative was conveyed to the association before that date.

C. If a cooperative created within this Commonwealth before July 1, 1982, contains no more than three units and is not subject to any development rights, it is subject only to §§ [55-429](#) and [55-430](#) unless the declaration is amended to make any or all the sections enumerated in subsection B apply to that cooperative.

D. This chapter does not apply to cooperatives or cooperative interests located outside this Commonwealth, but the public offering statement provisions as given in §§ [55-476](#) through [55-483](#) apply to all contracts for the disposition of cooperative interests signed in this Commonwealth by any party, unless exempt under subsection B of § [55-476](#). The agency regulations provisions under Article 5 (§ [55-496](#) et seq.) of this chapter apply to any offering thereof in this Commonwealth.

E. This chapter does not apply to any cooperatives which receive federal funding pursuant to the public housing or section 8 program under the United States Housing Act of 1937, as amended.

F. This chapter does not apply to any cooperative which, when acquired by an association, is subject to a mortgage or deed of trust securing an indebtedness owed to any government or governmental authority to which the association has contractual obligations in addition to those set forth in such mortgage or deed of trust.

1982, c. 277; 1983, c. 312; 1986, cc. 368, 557.

§55-426. Definitions.

When used in this chapter or in the declaration and bylaws, unless specifically provided otherwise or the context requires a different meaning, the following terms shall have the meanings respectively set forth:

"Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director or employer of the person; (ii) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

"Allocated interests" means the common expense liability and the ownership interest and votes in the association allocated to each cooperative interest.

"Association" or "proprietary lessees' association" means the proprietary lessees' association organized under § [55-458](#).

"Capital components" means those items, whether or not a part of the common elements, for which the association has the obligation for repair, replacement, or restoration and for which the executive board determines funding is necessary.

"Common elements" means all portions of a cooperative other than the units.

"Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

"Common expense liability" means liability for common expenses allocated to each cooperative interest pursuant to § [55-444](#).

"Conversion building" means a building that at any time before creation of the cooperative was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"Cooperative" means real estate owned by an association, each of the members of which is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit.

"Cooperative interest" means an ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease. For purposes of this act, a declarant is treated as the owner of any cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § [55-444](#) until that cooperative interest has been created and conveyed to another person.

"Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his or its cooperative interest not previously disposed of; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of a cooperative under Article 5 (§ [55-496](#) et seq.) of this chapter.

"Declaration" means any instruments, however denominated, that create a cooperative and any amendments to those instruments.

"Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a cooperative; (ii) create units, common elements, or limited common elements within a cooperative; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a cooperative.

"Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a cooperative interest, but does not include the transfer or release of a security interest.

"Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

"Identifying number" means a symbol or address that identifies only one unit in a cooperative.

"Leasehold cooperative" means a cooperative in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the cooperative or reduce its size.

"Limited common element" means a portion of the common elements allocated by the declaration or by operation of § [55-439](#) paragraph 2 or 4 for the exclusive use of one or more but fewer than all of the units.

"Master association" means an organization described in § [55-456](#), whether or not it is also an association described in § [55-458](#).

"Offering" means any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a cooperative interest, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a cooperative not located in the Commonwealth, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the cooperative is located.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity. In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

"Proprietary lease" means an agreement with the association pursuant to which a proprietary lessee has a possessory interest in a unit.

"Proprietary lessee" means a person who owns a cooperative interest, other than as security for an obligation, and the declarant with respect to cooperative interests or potential cooperative interests to which allocated interests have been allocated pur-

suant to § [55-444](#) until that cooperative interest has been created and conveyed to another person.

"Purchaser" means any person, other than a declarant or a person in the business of selling cooperative interests for his own account, who by means of a voluntary transfer acquires or contracts to acquire a cooperative interest other than as security for an obligation.

"Real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures, and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

"Residential purposes" means use for dwelling or recreational purposes, or both.

"Security interest" means an interest in real or personal property, created by contract or conveyance, which secures payment or performance of an obligation. "Security interest" includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

"Special declarant rights" means rights reserved for the benefit of a declarant to: (i) complete improvements described in the public offering statement pursuant to subdivision A 2 of § [55-478](#); (ii) exercise any development right pursuant to § [55-446](#); (iii) maintain sales offices, management offices, signs advertising the cooperative, and models; (iv) use easements through the common elements for the purpose of making improvements within the cooperative or within real estate which may be added to the cooperative; (v) make the cooperative part of a larger cooperative or group of cooperatives; (vi) make the cooperative subject to a master association as specified in § [55-456](#); or (vii) appoint or remove any officer of the association, any master association or any executive board member during any period of declarant control.

"Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a cooperative or a specified portion thereof.

"Unit" means a physical portion of the cooperative designated for separate occupancy under a proprietary lease.

1982, c. 277; 2005, c. [436](#).

§55-427. Variation by agreement.

Except as expressly provided in this chapter, provisions of this chapter, may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the declaration.

1982, c. 277.

§55-428. Property classification of cooperative interests; taxation.

A. A cooperative interest is real estate for all purposes. Unless waived by a proprietary lessee, a cooperative interest is subject to the provisions of §§ [34-1](#) through [34-34](#), regarding the homestead exemption.

B. Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for the payment of those taxes.

C. When the highest and best use of any parcel improved by a multi-unit cooperative apartment complex is achieved by sale of the cooperative apartment units as individual units, the fair market value of the parcel shall be determined by aggregating the fair market value of all taxable real estate which is part of the parcel including, without limitation, each cooperative apartment unit and common elements. The fair market value of each such cooperative apartment unit shall be established by determining its fair market value for sale as an individual unit, determined in the same manner, mutatis mutandis, as the fair market value of condominium units. Tax bills shall be issued for each individual cooperative apartment unit.

No assessment of any parcel improved by a multi-unit cooperative apartment complex, whether the assessment was made before or after the adoption of this subsection, shall be held to be invalid because of the use of the method described in this subsection to determine the assessment.

D. Any duly authorized real estate assessor, board of assessors, or department of real estate assessments may require that all declarants, associations, master associations and proprietary lessees' associations in the county or city subject to local taxation furnish to such assessor, board or department on or before a time specified a statement

listing all transfers of the cooperative apartment units over a specified period of time and a statement listing all owners and proprietary lessees of the cooperative apartment units as of a specified date. Each such statement shall be certified as to its accuracy by the declarant, association, master association or proprietary lessees' association for which the statement is furnished, or a duly authorized agent thereof. Any statement required by this subsection shall be kept confidential in accordance with the provisions of § [58.1-3](#).

E. Notwithstanding any other provision of law, the provisions of subsections C and D of this section shall apply to all cooperatives created in this Commonwealth, whether created before, on, or after July 1, 1982. However, subsections C and D shall not apply to any multi-unit cooperative apartment complex, the cooperative apartment units of which have been continually in use as such since December 31, 1967.

F. Any residential cooperative association, the members of which are owners of cooperative interests in a cooperative under this chapter, shall not be deemed to be a business for any state and local purposes, including, but not limited to, liability for payment of sales, meals, hotel, motel or gross receipts taxes and business licenses, to the extent that it collects payments from residents of the cooperative. The provisions of this subsection are declaratory of existing law.

G. Any tangible personal property owned by a residential cooperative association that would be considered household goods and personal effects if owned and used by an individual or by a family or household incident to maintaining an abode shall be considered household goods and personal effects owned and used by an individual or by a family or household incident to maintaining an abode for purposes of § [58.1-3504](#) and any local ordinance authorized thereby. The provisions of this subsection are declaratory of existing law.

1982, c. 277; 1988, c. 412; 2002, c. [34](#); 2003, c. [351](#).

§55-429. Applicability of local ordinances, regulations and building codes; county and municipal authority.

A. No zoning or other land use ordinance shall prohibit cooperatives as such by reason of the form of ownership inherent therein. Neither shall any cooperative be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership.

B. Subdivision and site plan ordinances in any county, city or town in the Commonwealth shall apply to any cooperative in the same manner as such ordinances would apply to a physically identical project or development under a different form of ownership. Nevertheless, the declarant need not apply for or obtain subdivision approval to record cooperative instruments against a portion of the land that may be submitted to the cooperative if the site plan approval for the land being submitted to the cooperative has first been obtained.

C. During development of a cooperative containing additional land or withdrawable land, phase lines created by the cooperative instruments shall not be considered property lines for purposes of subdivision. If the cooperative may no longer be expanded by the addition of additional land, then the owner of the land not part of the cooperative shall subdivide such land prior to its conveyance, unless such land is subject to an approved site plan as provided in subsection B, or prior to modification of such approved site plan. In the event of any conveyance of land within phase lines of the cooperative, the cooperative and any lot created by such conveyance shall be deemed to comply with the local subdivision ordinance, provided such land is subject to an approved site plan.

D. Counties, cities and towns may provide by ordinance that proposed cooperatives comprised of conversion buildings and the use thereof, which do not conform to the zoning, land use and site plan regulations of the respective county or city in which the property is located, shall secure a special use permit, a special exception or variance, as the case may be, prior to such property becoming a cooperative. A request for such a special use permit, special exception or variance filed on or after July 1, 1982, shall be granted if the applicant can demonstrate to the reasonable satisfaction of the local authority that the nonconformities are not likely to be adversely affected by the proposed conversion. No action on any such request shall be unreasonably delayed. In the event of an approved conversion, counties, cities, towns, sanitary districts or other political subdivisions may impose such charges and fees as are lawfully imposed by such political subdivisions as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the political subdivision as a result of the conversion.

E. Nothing in this section shall be construed to permit application of any provision of the Uniform Statewide Building Code (§ [36-97](#) et seq.) or any local ordinances

regulating the design and construction of roads, sewer and water lines, stormwater management facilities, or other public infrastructure, which is not expressly applicable to cooperatives by reason of the form of ownership inherent therein to a cooperative in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.

1982, c. 277; 2004, c. [242](#).

§55-430. Eminent domain.

A. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the proprietary lessee with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award for such unit must include compensation to the proprietary lessee for the value of his cooperative interest. Upon acquisition, unless the decree otherwise provides, that cooperative interest's allocated interests are automatically reallocated to the remaining cooperative interests in proportion to the respective allocated interests of those cooperative interests before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

B. Except as provided in subsection A, if part of a unit is acquired by eminent domain, the award for such unit must compensate the proprietary lessee for the reduction in value of his cooperative interest. Unless the decree provides otherwise, upon acquisition (i) that cooperative interest's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and (ii) the portion of the allocated interests divested from the cooperative interest of which the partially acquired unit is a part is automatically reallocated to that cooperative interest and the remaining units in proportion to the respective allocated interests of those cooperative interests before the taking, with the cooperative interest of which the partially acquired unit is a part participating in the reallocation on the basis of its reduced allocated interests.

C. If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the pro-

prietary lessees of the units to which that limited common element was allocated at the time of acquisition.

D. The court decree shall be recorded in every city or county in which any portion of the cooperative is located.

1982, c. 277.

§55-431. General principles of law applicable.

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performances or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

1982, c. 277.

§55-432. Construction against implicit repeal.

This chapter, being a general act intended as a unified coverage of its subject matter, shall not be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

1982, c. 277.

§55-433. Uniformity of application and construction.

This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to cooperatives in this Commonwealth.

1982, c. 277.

§55-434. Unconscionable agreement or term of contract.

A. The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made may (i) refuse to enforce the contract; (ii) enforce the remainder of the contract without the unconscionable clause; or (iii) limit the application of any unconscionable clause in order to avoid an unconscionable result.

B. Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

1. The commercial setting of the negotiations;
2. Whether a party has knowingly taken advantage of the inability of the other party to reasonably protect his interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;
3. The effect and purpose of the contract or clause; and
4. If a sale, any gross disparity at the time of contracting between the amount charged for the cooperative interest and the value of the cooperative interest measured by the price at which similar cooperative interests were readily obtainable in similar transactions, but a disparity between the contract price and the value of the cooperative interest measured by the price at which similar cooperative interests were readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

1982, c. 277.

§55-435. Obligation of good faith.

Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

1982, c. 277.

§55-436. Remedies to be liberally administered.

A. The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

B. Any right or obligation declared by this chapter is enforceable by judicial proceeding.

1982, c. 277.

§55-437. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§55-438. Creation of cooperative ownership.

A cooperative may be created pursuant to this chapter only by recording a declaration executed in the same manner as a deed, and by conveying to the association the real estate subject to that declaration. The declaration must be recorded in every city or county in which any portion of the cooperative is located, and must be indexed in

the grantee's index in the name of the cooperative and the association and in the grantor's index in the name of each person executing the declaration.

1982, c. 277.

§55-439. Unit boundaries.

Except as provided by the declaration:

1. If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors or ceilings are a part of the common elements.
2. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.
3. Subject to the provisions of paragraph 2, all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit.
4. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

1982, c. 277.

§55-440. Construction and validity of declaration and bylaws.

- A. All provisions of the declaration and bylaws are severable.
- B. The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws or rules and regulations adopted pursuant to subdivision A 1 of [§ 55-459](#).
- C. In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

D. Title to a cooperative interest is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

1982, c. 277.

§55-441. Description of units.

A description of a unit which sets forth the name of the cooperative, the recording data for the declaration, the city or county in which the cooperative is located, and the identifying number of the unit, is a legally sufficient description of that unit and all rights, obligations and interests appurtenant to that unit which were created by the declaration or bylaws.

1982, c. 277.

§55-442. Contents of declaration.

A. The declaration must contain:

1. The names of the cooperative, which must include the word "cooperative" or be followed by the words "a cooperative," and the association;
2. The name of every city or county in which any part of the cooperative is situated;
3. A legally sufficient description of the real estate included in the cooperative;
4. A statement of the maximum number of units which the declarant reserves the right to create;
5. A description, which may be by plats or plans, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;
6. A description of any limited common elements, other than those specified in paragraphs 2 and 4 of § [55-439](#);
7. A description of any real estate, except real estate subject to development rights, which may be allocated subsequently as limited common elements, other than limited common elements specified in paragraphs 2 and 4 of § [55-439](#), together with a statement that they may be so allocated;
8. A description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to

which each of those rights applies, and a time limit within which each of those rights must be exercised;

9. If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards, and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

10. Any other conditions or limitations under which the rights described in paragraph 8 may be exercised or will lapse;

11. An allocation to each cooperative interest of the allocated interests in the manner described in § [55-444](#);

12. Any restrictions on (i) use and occupancy of the units; (ii) alienation of the cooperative interests; and (iii) the amount for which a cooperative interest may be sold or the amount that may be received by a proprietary lessee upon sale, condemnation or casualty loss to the unit or the cooperative or termination of the cooperative;

13. The recording data for recorded easements and licenses appurtenant to or included in the cooperative or to which any portion of the cooperative is or may become subject by virtue of a reservation in the declaration; and

14. All matters required by §§ [55-443](#), [55-444](#), [55-445](#), [55-451](#), [55-452](#) and subsection D of § [55-460](#).

B. The declaration may contain any other matters the declarant deems appropriate.

1982, c. 277.

§55-443. Leasehold cooperatives.

A. The expiration or termination of any lease which may terminate the cooperative or reduce its size, or a memorandum thereof, shall be recorded. The declaration shall state:

1. The recording data for the lease or a statement of where the complete lease may be inspected;

2. The date on which the lease is scheduled to expire;
 3. A legally sufficient description of the real estate subject to the lease;
 4. Any right of the proprietary lessees to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;
 5. Any right of the proprietary lessees to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and
 6. Any rights of the proprietary lessees to renew the lease and the conditions, if any, of any renewal, or a statement that they do not have those rights.
- B. Acquisition of the leasehold interest of any proprietary lessee by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all proprietary lessees subject to that reversion or remainder are acquired.
- C. If the expiration or termination of a lease decreases the number of units in a cooperative, the allocated interests shall be reallocated in accordance with subsection A of § [55-444](#) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

1982, c. 277.

§55-444. Allocation of ownership interests, votes and common expense liabilities.

- A. The declaration shall allocate an ownership interest in the association a fraction or percentage of the common expenses of the association and a portion of the votes in the association, or to each cooperative interest in the cooperative, and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of cooperative interests owned by the declarant or an affiliate of the declarant.
- B. If units may be added to or withdrawn from the cooperative, the declaration must state the formulas to be used to reallocate the allocated interests among all cooperative interests included in the cooperative after the addition or withdrawal.

C. The declaration may provide: (i) that different allocations of votes shall be made to the cooperative interests on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor may cooperative interests constitute a class because they are owned by a declarant.

D. Except for minor variations due to rounding, the sum of the common expense liabilities allocated at any time to all the cooperative interests must equal 1 if stated as a fraction or 100 percent if stated as a percentage. In the event of a discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

E. Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of the ownership interest in the association made without the possessory interest in the unit to which that interest is related, is void.

1982, c. 277.

§55-445. Limited common elements.

A. Except for the limited common elements described in paragraphs 2 and 4 of § [55-439](#), the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the proprietary lessees whose units are affected.

B. Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the proprietary lessees between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it. The amendment shall be recorded in the names of the parties and the cooperative.

C. A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with subdivision A 7 of § [55-442](#). The allocations shall be made by amendments to the declaration.

1982, c. 277.

§55-446. Exercise of development rights.

A. To exercise any development right reserved under subdivision A 8 of § [55-442](#), the declarant shall prepare, execute and record an amendment to the declaration as specified in § [55-453](#). The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection B, reallocate the allocated interests among all cooperative interests. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by § [55-445](#).

B. Development rights may be reserved within any real estate added to the cooperative if the amendment adding that real estate includes all matters required by § [55-442](#) or § [55-443](#) as the case may be. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to subdivision A 8 of § [55-442](#).

C. Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements or both:

1. If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of the cooperative interest of which that unit is a part among the other cooperative interests as if that unit had been taken by eminent domain.

2. If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the cooperative interest of which that unit is a part among the cooperative interests created by the subdivision in any reasonable manner prescribed by the declarant.

D. If the declaration provides, pursuant to subdivision A 8 of § [55-442](#), that all of or a portion of the real estate is subject to the development right of withdrawal:

1. If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a cooperative interest has been conveyed to a purchaser; and

2. If a portion or portions are subject to withdrawal, no portion may be withdrawn after a cooperative interest in that portion has been conveyed to a purchaser.

1982, c. 277.

§55-447. Alterations of units.

Subject to the provisions of the declaration and other provisions of law, a proprietary lessee:

1. May make any improvements or alterations to his unit that do not impair the structural integrity or the electrical or mechanical systems of any portion of the cooperative;
2. May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the cooperative, other than the interior of the unit, without permission of the association;
3. After acquiring a cooperative interest of which an adjoining unit or an adjoining part of an adjoining unit is a part, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or electrical or mechanical systems of any portion of the cooperative. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

1982, c. 277.

§55-448. Relocation of boundaries between adjoining units.

A. Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the proprietary lessees of those units. If the proprietary lessees of the adjoining units have specified a reallocation between their cooperative interests of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines within thirty days that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those proprietary lessees, contains words of conveyance between them, and upon recordation, is indexed in the name of the grantor and the grantee.

B. The association shall prepare and record amendments to the declaration including any plans necessary to show or describe the altered boundaries between adjoining units and their sizes and identifying numbers. All costs for such preparation and recordation shall be borne by the proprietary lessees involved.

1982, c. 277.

§55-449. Subdivision of units.

A. If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a proprietary lessee to subdivide a unit, the association shall prepare, execute and record an amendment to the declaration, subdividing that unit. All costs for such preparation, execution and recordation shall be borne by the proprietary less-ees involved.

B. The amendment to the declaration must (i) be executed by the proprietary lessee of the unit to be subdivided; (ii) assign an identifying number to each unit created; and (iii) reallocate the allocated interests formerly allocated to the cooperative interest of which the subdivided unit is a part to the new cooperative interests in any reasonable manner prescribed by the proprietary lessee of the cooperative interest of which the subdivided unit is a part.

1982, c. 277.

§55-450. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a proprietary lessee of liability in case of his willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to any representation in the public offering statement.

1982, c. 277.

§55-451. Use for sales purposes.

A declarant may maintain sales offices, management offices and models in units or on common elements in the cooperative only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location and relocation thereof. Any sales office, management office or model not designated a unit by the declaration is a common element, and if a declarant ceases to have an ownership interest in the association, he ceases to have any rights with regard thereto, unless it is removed promptly from the cooperative in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the cooperative. The provisions of this section are subject to the provisions of other state law and to local ordinances.

1982, c. 277.

§55-452. Easement rights.

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

1982, c. 277.

§55-453. Amendment of declaration.

A. Except in cases of amendments that may be executed by a declarant under § [55-446](#), the association under § [55-430](#), subsection C of § [55-443](#), subsection C of § [55-445](#), subsection A of § [55-448](#), or § [55-449](#), or certain proprietary lessees under subsection B of § [55-445](#), subsection A of § [55-448](#), subsection B of § [55-449](#), or subsection B of § [55-454](#) and except as limited by subsection D, the declaration may be amended only by vote or agreement of proprietary lessees of cooperative interests to which at least two-thirds of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

B. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

C. Every amendment to the declaration must be recorded in every city or county in which any portion of the cooperative is located and is effective only upon recordation. An amendment shall be indexed in the grantee's index in the name of the cooperative and the association and in the grantor's index in the name of the parties executing the amendment.

D. The declaration may be amended to extend the time limit within which special declarant rights imposed by the declaration pursuant to subdivision A 8 of § [55-442](#) may be exercised only by vote or agreement of proprietary lessees of cooperative interests to which at least two-thirds of the votes in the association are allocated to cooperative interests not owned by a declarant, or any larger percentage the declaration specifies. Except to the extent expressly permitted or required by this subsection or other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit, the allocated interests of a cooperative interest or the uses to which any unit is restricted, in the absence of unanimous consent of the proprietary lessees.

E. If the time limit specified in the declaration for the creation of cooperative interests or the exercise of special declarant rights has expired, with the approval of the persons entitled to cast at least two-thirds of the votes in the association, other than any votes allocated to cooperative interests owned by the declarant, or any larger percentage as the declaration specifies, the declaration may be amended to (i) revive and reinstate any or all of the expired rights to create additional cooperative interests and any or all of the expired special declarant rights, and (ii) vest in any person, including the original declarant, any or all of the powers, rights, privileges, and authority to which a declarant is entitled under this chapter regarding the exercise of the revived and reinstated rights with respect to any parcel of real estate that is a common element or any additional real estate that such amendment permits to be added to the cooperative. In no event, however, shall any such amendment extend or renew a period of declarant control of the association or provide a new period of declarant control.

F. Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

1982, c. 277; 2008, c. [628](#); 2009, c. [221](#).

§55-454. Termination of cooperative ownership.

A. Except in the case of a taking of all the units by eminent domain or in the case of foreclosure of a security interest against the entire cooperative which has priority over the declaration, cooperative ownership may be terminated only by agreement of proprietary lessees of cooperative interests to which at least four-fifths of the votes in the association are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the cooperative are restricted exclusively to nonresidential uses.

B. An agreement to terminate must be evidenced by the execution of a termination agreement or ratification thereof in the same manner as a deed by the requisite number of proprietary lessees. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every city or county in which a portion of the cooperative is situated and is effective only upon recordation.

C. The association, on behalf of the proprietary lessees, may contract for the sale of real estate in the cooperative, but the contract is not binding until approved pursuant to subsections A and B. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Except to the extent that any provisions in the declaration limit the amount that may be received by a proprietary lessee upon termination, as set forth in subdivision A 12 of § [55-442](#), proceeds of the sale must be distributed to holders of liens against the association and, against the cooperative interests and to proprietary lessees, all as their interests may appear, in accordance with subsections D and E. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each proprietary lessee and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each proprietary lessee and his successors in interest remain liable for all assessments and other obligations imposed on proprietary lessees by this chapter or the declaration.

D. Following termination of the cooperative, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for proprietary lessees and holders of liens against the association and the cooperative interests, as their interests may appear. The declaration may provide that all creditors of the association have priority over any interests of proprietary lessees and creditors of proprietary lessees. In that event, following termination, creditors of the association holding liens on the cooperative which were recorded or docketed before termination may enforce their liens in the same manner as any lienholder, and all other creditors of the association are to be treated as if they had perfected liens against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have such priority:

1. The lien of each creditor of the association, which was perfected against the association before termination, becomes a lien against each cooperative interest upon termination as of the date the lien was perfected;
2. All other creditors of the association are to be treated as if they had perfected liens against the cooperative interests immediately before termination;
3. The amounts of the liens of the association's creditors described in paragraphs 1 and 2 above against each of the cooperative interests must be proportionate to the

ratio which that cooperative interest's common expense liability bears to the common expense liability of all the cooperative interests;

4. The lien of each creditor of each proprietary lessee which was perfected before termination continues as a lien against that proprietary lessee's cooperative interest as of the date the lien was perfected; and

5. The assets of the association shall be distributed to all proprietary lessees and all lienholders against their cooperative interests as their interests may appear in the order described above, and creditors of the association are not entitled to payment from any proprietary lessee in excess of the amount of the creditor's lien against that proprietary lessee's cooperative interest.

E. The respective interests of proprietary lessees referred to in subsections C and D are as follows:

1. Except as provided in paragraph 2, the respective interests of proprietary lessees are the fair market values of their cooperative interests immediately before the termination, as determined by one or more independent appraisers selected by the association. Appraisers selected shall hold a designation awarded by a major, nation-wide testing or certifying professional appraisal society or association. The decision of the independent appraisers shall be distributed to the proprietary lessees and becomes final unless disapproved within thirty days after distribution by proprietary lessees of cooperative interests to which twenty-five percent of the votes in the association are allocated. The proportion of any proprietary lessee's interest to that of all proprietary lessees is determined by dividing the fair market value of that proprietary lessee's cooperative interest by the total fair market values of all the cooperative interests.

2. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all proprietary lessees are their respective ownership interests in the association immediately before the termination.

1982, c. 277; 1983, c. 96.

§55-455. Rights of secured lenders.

The declaration may require that all or a specified number or percentage of the lenders holding security interests encumbering the cooperative interests approve specified actions of the proprietary lessees or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (i) deny or

delegate control over the general administrative affairs of the association by the proprietary lessees or the executive board, (ii) prevent the association or the executive board from commencing, intervening in or settling any litigation or proceeding, or (iii) receive and distribute any insurance proceeds except pursuant to § [55-470](#).

1982, c. 277.

§55-456. Master associations.

A. If the declaration provides that any of the powers described in § [55-460](#) are to be exercised by or may be delegated to a profit or nonprofit corporation or unincorporated association which exercises those or other powers on behalf of one or more cooperatives or for the benefit of the proprietary lessees of one or more cooperatives, all provisions of this chapter applicable to associations apply to any such corporation or unincorporated association, except as modified by this section.

B. Unless a master association is acting in the capacity of an association described in § [55-458](#), it may exercise the powers set forth in subdivision A 2 of § [55-459](#) only to the extent expressly permitted in the declarations of the cooperatives which are part of the master association or expressly described in the delegations of power from those cooperatives to the master association.

C. If the declaration of any cooperative provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers expressly so delegated in accordance therewith.

D. The rights and responsibilities of proprietary lessees with respect to the association set forth in §§ [55-460](#), [55-465](#), [55-466](#), [55-467](#) and [55-469](#) apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise proprietary lessees within the meaning of this chapter.

E. Notwithstanding the provisions of subsection F of § [55-460](#) with respect to the election of the executive board of an association by all proprietary lessees after the period of declarant control ends, and even if a master association is also an association as described in § [55-458](#), the certificate of incorporation or other instrument creating the master association and the declaration of each cooperative, the powers of which are assigned by the declaration or delegated to the master association, may

provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

1. All proprietary lessees of all cooperatives subject to the master association may elect all members of that executive board.
2. All members of the executive boards of all cooperatives subject to the master association may elect all members of that executive board.
3. All proprietary lessees of each cooperative subject to the master association may elect specified members of that executive board.
4. All proprietary lessees of the executive board of each cooperative subject to the master association may elect specified members of that executive board.

1982, c. 277.

§55-457. Merger or consolidation of cooperatives.

A. Any two or more cooperatives, by agreement of the proprietary lessees as provided in subsection B, may be merged or consolidated into a single cooperative. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant cooperative is, for all purposes, the legal successor of all of the preexisting cooperatives. The operations and activities of all associations of the preexisting cooperatives shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations.

B. An agreement of two or more cooperatives to merge or consolidate pursuant to subsection A must be evidenced by an agreement prepared, executed, recorded and certified by the president of the association of each of the preexisting cooperatives following approval by proprietary lessees of cooperative interests to which are allocated the percentage of votes in each cooperative required to terminate that cooperative. Any such agreement must be recorded in every city or county in which a portion of the cooperative is located and is not effective until recorded.

C. Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the cooperative interests of the resultant cooperative either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interest of the new cooperative which are allocated to all of the cooperative interests comprising each of the preexisting cooperatives and providing that the portion of the percentages

allocated to each cooperative interest formerly comprising a part of the preexisting cooperative must be equal to the percentages of allocated interests allocated to that cooperative interest by the declaration of the preexisting cooperative.

1982, c. 277.

§55-458. Organization of the association.

An association must be organized no later than the date the first cooperative interest in the cooperative is conveyed. The membership of the association at all times shall consist exclusively of all the proprietary lessees or, following termination of the cooperative, of all former proprietary lessees entitled to distributions of proceeds under § [55-454](#) or their heirs, successors or assigns. The association shall be organized as a stock or nonstock corporation, trust, trustee, unincorporated association or partnership.

1982, c. 277.

§55-459. Powers of the association.

A. Except as provided in subsection B, and subject to the provisions of the declaration, the association, even if unincorporated, may:

1. Adopt and amend bylaws and rules and regulations;
2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from proprietary lessees;
3. Hire and discharge managing agents and other employees, agents and independent contractors;
4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more proprietary lessees on matters affecting the cooperative;
5. Make contracts and incur liabilities;
6. Regulate the use, maintenance, repair, replacement and modification of common elements;
7. Cause additional improvements to be made as a part of the common elements;
8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, but part of the cooperative may be conveyed, or all or part of the cooperative may be subjected to a security interest only pursuant to § [55-469](#);

9. Grant easements, leases, licenses and concessions through or over the common elements;
10. Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in paragraphs 2 and 4 of § [55-439](#) and for services provided to proprietary lessees;
11. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy fines not to exceed fifty dollars for each instance for violations of the declaration, bylaws and rules and regulations of the association;
12. Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by § [55-484](#) or statements of unpaid assessments;
13. Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;
14. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;
15. Exercise any other powers conferred by the declaration or bylaws;
16. Exercise all other powers that may be exercised in this Commonwealth by legal entities of the same type as the association; and
17. Exercise any other powers necessary and proper for the governance and operation of the association.

B. The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

1982, c. 277.

§55-460. Executive board members and officers.

A. Except as provided in the declaration, the bylaws, subsection B or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise (i) if appointed by the declarant, the care required of fiduciaries of the proprietary lessees and (ii) if elected by the proprietary lessees, ordinary and reasonable care.

B. The executive board may not act on behalf of the association to amend the declaration, to terminate the cooperative, to elect members of the executive board, except as provided in the declaration pursuant to subsection F, or to determine the qualifications, powers and duties or terms of office of executive board members. The executive board may fill vacancies in its membership for the unexpired portion of any term.

C. Within 30 days after adoption of any proposed budget for the cooperative, the executive board shall provide a summary of the budget to all the proprietary lessees and shall set a date for a meeting of the proprietary lessees to consider ratification of the budget. Such meeting shall be held not less than 14 nor more than 30 days after mailing of the summary. The meeting place, date, and time shall be provided with the budget summary. Unless at that meeting a majority of all the proprietary lessees or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the proprietary lessees shall be continued until such time as the proprietary lessees ratify a subsequent budget proposed by the executive board.

D. Subject to subsection E, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) 60 days after conveyance of 75 percent of the cooperative interests which may be created to proprietary lessees other than a declarant; (ii) two years after all declarants have ceased to offer cooperative interests for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

E. Not later than 60 days after conveyance of 25 percent of the cooperative interests which may be created to proprietary lessees other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be

elected by proprietary lessees other than the declarant. Not later than 60 days after conveyance of 50 percent of the cooperative interests which may be created to proprietary lessees other than a declarant, not less than 33 1/3 percent of the members of the executive board must be elected by proprietary lessees other than the declarant.

F. Unless the declaration provides for the selection of one or more independent members of the executive board, no later than the termination of any period of declarant control, the proprietary lessees shall elect an executive board of at least three members, at least a majority of whom must be proprietary lessees. To the extent the declaration so provides, the members of the executive board appointed by the declarant may continue to serve out their terms and the declarant may continue to appoint a minority of the members of the executive board until all of the development rights reserved by the declarant have been exercised or have expired. In addition, the declaration may provide for the selection of one or more independent members of the executive board, who are neither proprietary lessees nor affiliated directly or indirectly in any way with the declarant, by a vote of two-thirds of the members of the executive board. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

G. Notwithstanding any provision of the declaration or bylaws to the contrary, the proprietary lessees, by a two-thirds vote of all persons entitled to vote at any meeting of the proprietary lessees at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

1982, c. 277; 2004, c. [242](#).

§55-461. Transfer of special declarant rights.

A. No special declarant rights created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in every city or county in which any portion of the cooperative is located. The instrument is not effective unless executed by the transferee.

B. Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

1. A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this chapter. Lack

of privity does not deprive any proprietary lessee of standing to maintain an action to enforce any obligation of the transferor.

2. If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the cooperative.

3. If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

4. A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

C. Unless otherwise provided in a security agreement, in case of foreclosure of a security agreement, tax sale, judicial sale, sale by a trustee under a security agreement or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code, of any cooperative interests owned by a declarant or of real estate in a cooperative subject to development rights:

1. A person acquiring all the cooperative interests or real estate being foreclosed or sold shall succeed, but only upon his request, to all special declarant rights related to that property held by that declarant or only to any rights reserved in the declaration pursuant to § [55-451](#) and held by that declarant to maintain models, sales offices and signs.

2. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

D. Upon foreclosure, tax sale, judicial sale, sale by a trustee under a security agreement or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code, of all cooperative interests or real estate in a cooperative owned by a declarant:

1. The declarant ceases to have any special declarant rights, and

2. The period of declarant control as provided in subsection D of § [55-460](#) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

E. The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

1. A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration.

2. A successor to any special declarant right, other than a successor described in paragraphs 3 or 4, who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by this chapter or the declaration:

a. On a declarant which relate to his exercise or non-exercise of special declarant rights; or

b. On his transferor, other than:

(1) Misrepresentations by any previous declarant;

(2) Warranty obligations on improvements made by any previous declarant, or made before the cooperative was created;

(3) Breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or

(4) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

3. A successor to only a right reserved in the declaration to maintain models, sales offices and signs pursuant to § [55-451](#), if he is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant, except the obligation to provide a current public offering statement, any liability arising as a result thereof and obligations under Article 5 (§ [55-496](#) et seq.) of this chapter.

4. A successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title to cooperative interests or real estate subject to development rights under subsection C, may declare his intention in a recorded instrument to hold those

rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any cooperative interest or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with the provisions of subsection D of § [55-460](#) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under subsection D of § [55-460](#).

F. Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

1982, c. 277.

§55-462. Termination of contracts and leases of declarant.

If entered into before the executive board elected by the proprietary lessees pursuant to subsection F of § [55-460](#) takes office, (i) any management contract, employment contract or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the proprietary lessees at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the proprietary lessees pursuant to subsection F of § [55-460](#) takes office upon not less than 90 days' notice to the other party. Notwithstanding the foregoing, a management contract that is not unconscionable between an association directly or indirectly providing assisted living or nursing services to proprietary lessees and a declarant or an affiliate of a declarant may not be terminated while a member of the executive board appointed by the declarant continues to serve unless such termination is approved by a vote of a majority of the members of the executive board and a majority vote of the proprietary lessees, other than the declarant.

This section does not apply to any proprietary lease or any lease the termination of which would terminate the cooperative or reduce its size, unless the real estate subject to that lease was included in the cooperative for the purpose of avoiding the right of the association to terminate a lease under this section. Nor shall this section apply

to any contract, incidental to the disposition of a cooperative interest, to provide to a proprietary lessee for the duration of such proprietary lessee's life, or for any term in excess of one year, nursing services, medical services, other health-related services, board and lodging and care as necessary, or any combination of such services. The rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the declaration, bylaws or proprietary leases requiring that the proprietary lessees be parties to such contracts.

1982, c. 277; 1985, c. 83; 2004, c. [242](#).

§55-463. Bylaws.

A. The bylaws of the association must provide for:

1. The number of members of the executive board and the titles of the officers of the association;
2. Election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify;
3. The qualifications, powers and duties, terms of office and manner of electing and removing executive board members and officers and filling vacancies;
4. Which, if any, of its powers and responsibilities the executive board or officers may delegate to other persons or to a managing agent;
5. Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association; and
6. The method of amending the bylaws.

B. Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate, including provision for the arbitration of disputes or other means of alternative dispute resolution in accordance with subsection B of § [55-492](#).

1982, c. 277; 1993, c. 849 .

§55-464. Upkeep of cooperative.

A. Except to the extent otherwise provided by the declaration, by subsection B hereof, or by subsection G of § [55-470](#), the association is responsible for maintenance, repair and replacement of the common elements, and each proprietary lessee is responsible for maintenance, repair and replacement of his unit. Each proprietary lessee shall afford to the association and the other proprietary lessees and to their agents or

employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the proprietary lessee responsible for the damage or the association if it is responsible, is liable for the prompt repair and all costs associated with the repair thereof.

B. In addition to the liability that a declarant as a proprietary lessee has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other proprietary lessee and no other portion of the cooperative is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

1982, c. 277.

§55-464.1. Common elements; notice of pesticide application.

Associations shall post notification of all pesticide applications in or upon the common elements. Such notice shall consist of conspicuous signs placed in or upon the common elements where the pesticide will be applied at least forty-eight hours prior to the application.

1999, c. [65](#).

§55-465. Meetings.

A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board or by twenty percent or any lower percentage specified in the bylaws of the proprietary lessees. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the proprietary lessee. The notice of any meeting must state the time and place of the meeting and the items on the agenda including the general nature of any proposed amendment to the declaration or bylaws, any budget changes and any proposal to remove a director or officer.

1982, c. 277.

§55-466. Quorums.

A. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast twenty percent of the votes which may

be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

B. Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting.

1982, c. 277.

§55-467. Voting; proxies.

A. If only one of the multiple proprietary lessees of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to the cooperative interest of which that unit is a part. If more than one of the multiple proprietary lessees are present, the votes allocated to that cooperative interest may be cast only in accordance with the agreement of a majority in interest of the multiple proprietary lessees, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple proprietary lessees casts the votes allocated to that cooperative interest without protest being made promptly to the person presiding over the meeting by any of the other proprietary lessees of the cooperative interest.

B. Votes allocated to a cooperative interest may be cast pursuant to a proxy duly executed by a proprietary lessee. If there is more than one proprietary lessee of a unit, each proprietary lessee of the unit may vote or register protest to the casting of votes by the other proprietary lessees of the unit through a duly executed proxy. A proprietary lessee may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

C. If the declaration requires that votes on specified matters affecting the cooperative be cast by lessees other than proprietary lessees of leased units: (i) the provisions of subsections A and B apply to lessees as if they were proprietary lessees; (ii) proprietary lessees who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were proprietary lessees. Proprietary lessees must also be given notice, in the manner provided in § [55-465](#), of all meetings at which lessees may be entitled to vote.

D. All votes allocated to a cooperative interest owned by the association shall be deemed present for quorum purposes at all duly called meetings of the association and shall be deemed cast in the same proportions as the votes cast by proprietary lessees, other than the association.

1982, c. 277; 2004, c. [242](#).

§55-468. Tort and contract liability.

Neither the association nor any proprietary lessee except the declarant is liable for that declarant's torts in connection with any part of the cooperative which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any proprietary lessee. If the wrong occurred during any period of declarant control, and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any proprietary lessee: (i) for all tort losses not covered by insurance suffered by the association or that proprietary lessee, and (ii) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorney's fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

A proprietary lessee is not precluded from bringing an action contemplated by this subsection because he is a proprietary lessee or a member or officer of the association. Liens resulting from judgments against the association are governed by § [55-474](#).

1982, c. 277.

§55-469. Conveyance or encumbrance of the cooperative.

A. Part of the cooperative may be conveyed, and all or part of the cooperative may be subjected to a security interest by the association if persons entitled to cast at least eighty percent of the votes in the association, including a simple majority of the votes allocated to cooperative interests not owned by a declarant, or any larger percentage the declaration specifies, agree to that action. If fewer than all the units or limited common elements are to be conveyed or subjected to a security interest, then all the proprietary lessees of those units, or the units to which those limited common

elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

B. An agreement to convey a part of the cooperative or subject it to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of proprietary lessees. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every city or county in which a portion of the cooperative is situated, and is effective only upon recordation.

C. The association, on behalf of the proprietary lessees, may contract to convey a part of the cooperative or subject it to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections A and B. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance including the power to execute deeds or other instruments.

D. Any purported conveyance, encumbrance or other voluntary transfer of the cooperative, unless made pursuant to this section or pursuant to subsection C of § [55-454](#), is void.

E. A conveyance or encumbrance of the cooperative pursuant to this section does not deprive any unit of its rights of access and support.

1982, c. 277.

§55-470. Insurance.

A. Commencing not later than the time of the first conveyance of a cooperative interest to a person other than a declarant, the association shall maintain to the extent reasonably available:

1. Property insurance on the common elements and units insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent of the actual cash value of the insured property at the time the insurance is purchased and at each

renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and

2. Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements and units.

B. If the insurance described in subsection A is not reasonably available, the association shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all proprietary lessees. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the proprietary lessees.

C. Insurance policies carried pursuant to subsection A must provide that:

1. Each proprietary lessee is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;

2. The insurer waives its right to subrogation under the policy against any proprietary lessee or member of his household;

3. No act or omission by any proprietary lessee, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

4. If, at the time of a loss under the policy, there is other insurance in the name of a proprietary lessee covering the same risk covered by the policy, the association's policy provides primary insurance.

D. Any loss covered by the property policy under subdivision A 1 of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for the association, proprietary lessees and lien holders as their interests may appear. Subject to the provisions of subsection G, the proceeds must be disbursed first for the repair or restoration of the damaged property. The association, proprietary lessees and lien holders are not entitled to receive payment of any portion of the proceeds unless

there is a surplus of proceeds after the property has been completely repaired or restored, or the cooperative is terminated.

E. An insurance policy issued to the association does not prevent a proprietary lessee from obtaining insurance for his own benefit.

F. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any proprietary lessee or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each proprietary lessee and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known address.

G. Any portion of the cooperative for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless: (i) the cooperative is terminated; (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) eighty percent of the proprietary lessees, including every proprietary lessee of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire cooperative is not repaired or replaced: (i) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the cooperative; and (ii) except to the extent that other persons will be distributees, the insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the proprietary lessees of those units and the proprietary lessees of the units to which those limited common elements were allocated, or to lien holders, as their interests may appear, and the remainder of the proceeds must be distributed to all the proprietary lessees or lien holders, as their interests may appear, in proportion to the common expense liabilities of all the cooperative interests. If the proprietary lessees vote not to rebuild any unit, the allocated interests of the cooperative interest of which that unit is a part are automatically reallocated upon the vote as if the unit had been condemned under subsection A of § [55-430](#), and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection,

§ [55-454](#) governs the distribution of insurance proceeds if the cooperative is terminated.

H. The provisions of this section may be varied or waived in the case of a cooperative whose units are all restricted to nonresidential use.

1982, c. 277.

§55-471. Assessments for common expenses.

A. Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

B. Except for assessments under subsections C, D, E, and F, all common expenses must be assessed against all the cooperative interests in accordance with the allocations set forth in the declaration pursuant to subsection A of § [55-444](#).

Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent per year.

C. To the extent required by the declaration:

1. Any common expense associated with the maintenance, repair or replacement of a limited common element must be assessed against the cooperative interests for the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

2. Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the cooperative interests for the units benefited; and

3. The costs of insurance must be assessed in proportion to risk, and the costs of utilities must be assessed in proportion to usage.

D. Assessments to pay a judgment against the association may be made only against the cooperative interests in the cooperative at the time the judgment was entered, in proportion to their common expense liabilities.

E. If any common expense is caused by the negligence or other misconduct of any proprietary lessee, or of his family members, tenants or other invitees, the association may assess that expense exclusively against his cooperative interest.

F. Notwithstanding any other provision in this section, in any cooperative where permanent residency is, in general, restricted to individuals age 55 and over and the primary purpose of the association is to provide services and amenities to the residents of the cooperative that are consistent with the services and amenities typically provided to residents of full service senior housing communities in the United States, the declaration may provide, or may be amended to provide by vote or agreement of proprietary lessees of cooperative interests to which at least two-thirds of the votes in the association are allocated (or any larger majority the declaration specifies), that:

1. Common expenses may be assessed against all cooperative interests in accordance with the standards in general use from time to time among full service senior housing communities in the United States for the purpose of fairly and equitably establishing the fees and charges imposed on their residents to pay for all common expenses of such senior housing communities, including the expenses of providing services and amenities, such standards to be determined by the executive board of the association, acting reasonably;

2. Common expenses may be assessed against any cooperative interest which has been created pursuant to the declaration but as to which construction of the unit appurtenant thereto has not been completed; provided, that nothing contained herein shall relieve the declarant of its obligations under subsection B of § [55-464](#); and

3. Common expenses may be assessed against any cooperative interest as to which the unit appurtenant thereto has been completed until the unit is initially permanently occupied; provided, however, that all such cooperative interests shall pay all direct expenses of the association related to such cooperative interests and any common expenses which directly benefit such cooperative interest, in each case, determined in accordance with the provisions set forth in the declaration or the association's by-laws; provided, however, that if neither the declaration nor the by-laws contain provision therefor, then such expenses shall be paid in accordance with the allocations set forth in the declaration pursuant to subsection A of § [55-444](#).

G. If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

1982, c. 277; 2008, c. [627](#).

§55-471.1. Reserves for capital components.

A. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the executive board shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year; and
3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect.

2005, c. [436](#).

§55-472. Remedies for nonpayment of assessments.

A. The association has a lien on a cooperative interest for any assessment levied against that cooperative interest or fines imposed against its owner from the time the assessment or fines become due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to subdivisions A 11 and A 12 of § [55-459](#) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Upon nonpayment of the assessment, the proprietary lessee may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section. The association's lien may be foreclosed: (i) by judicial sale

in like manner as a mortgage on real estate; or (ii) by power of sale as provided in subsection I.

B. A lien under this section is prior to all other liens and encumbrances on a cooperative interest except: (i) liens and encumbrances on the cooperative which the association creates, assumes or takes subject to; (ii) any first security interest encumbering only the cooperative interest of a proprietary lessee and perfected before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the cooperative or the cooperative interest. The lien is also prior to the security interests described in (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to subsection A of [§ 55-459](#) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The lien under this section is not subject to homestead or other exemptions.

C. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

D. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation or filing of any claim of lien for assessment under this section is required.

E. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.

F. This section does not prohibit actions to recover sums for which subsection A creates a lien or prohibit an association from taking a transfer in lieu of foreclosure.

G. A judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

H. The association upon written request shall furnish to a proprietary lessee a statement setting forth the amount of unpaid assessments against his cooperative interest. The statement must be in recordable form. The statement must be furnished

within ten business days after receipt of the request and is binding on the association, the executive board and every proprietary lessee.

I. The association, upon nonpayment of assessments and compliance with this subsection, may sell the cooperative interest. Sale may be at a public sale or by private negotiation and at any time and place, but every aspect of the sale, including the method, advertising, time, place and terms, must be reasonable. The association shall give to the proprietary lessee and any sublessees of the proprietary lessee reasonable written notice of the time and place of any public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice must also be sent to any other person who has a recorded interest in the cooperative interest which would be cut off by the sale, but only if the interest was on record seven weeks before the date specified in the notice as the date of any public sale, or seven weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. Sale may not be held until five weeks after the sending of the notice. The association may buy at any public sale, and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

J. The proceeds of a sale under subsection I shall be applied in the following order:

1. The reasonable expenses of sale;
2. The reasonable expenses of securing possession before sale; holding, maintaining and preparing the cooperative interest for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and to the extent provided for by agreement between the association and the proprietary lessee, reasonable attorney's fees and other legal expenses incurred by the association;
3. Satisfaction in the order of priority of any prior claims of record;
4. Satisfaction of the association's lien;
5. Satisfaction in the order of priority of any subordinate claim of record; and
6. Remittance of any excess to the proprietary lessee. Unless otherwise agreed, the proprietary lessee is liable for any deficiency.

K. If a cooperative interest is sold under subsection I, a good faith purchaser for value acquires the proprietary lessee's interest in the cooperative interest free of the

association's debt which gave rise to the lien under which the sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with the requirements of this section. The person conducting the sale under subsection I shall execute a conveyance to the purchaser sufficient to convey the cooperative interest which states that the conveyance is executed by him, after a foreclosure by power of sale of the association's lien and that he has power to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by subsection I are sufficient proof of the facts recited and of his authority to sign. Further proof of authority is not required even though the association is named as grantee in the conveyance.

L. At any time before the association has disposed of the cooperative interest or entered into a contract for its disposition under the power of sale, the proprietary lessee or the holder of any subordinate security interest may cure the proprietary lessee's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor.

1982, c. 277; 1990, c. 831 .

§55-473. Other liens affecting the cooperative.

A. Regardless of whether his cooperative interest is subject to the claims of the association's creditors, no property of a proprietary lessee other than his cooperative interest is subject to those claims.

B. If the association receives notice of an impending foreclosure on all or any portion of the association's real estate, the association shall promptly transmit a copy of that notice to each proprietary lessee of a unit located within the real estate to be foreclosed. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

1982, c. 277.

§55-473.1. Limitation of assumption of debt and encumbrances.

Unless approved by persons entitled to cast at least 80 percent of the votes in the association, including a simple majority of the votes allocated to cooperative interests not owned by a declarant or any larger percentage the declaration specifies:

(i) the association shall not assume or take subject to any debt, inclusive of any principal and interest accrued thereon, incurred in the original acquisition, development or construction of or the conversion of the cooperative in excess of the amounts disclosed in the public offering statement pursuant to § [55-478](#) or § [55-479](#), nor shall the cooperative or any proprietary lessee's interest be encumbered by a security interest for any greater amount incurred for such purposes and (ii) the declarant may not amend the public offering statement to change the amounts disclosed after conveyance of the first unit to a proprietary lessee. Notwithstanding the foregoing, the amounts disclosed may not be subject to adjustment such that the association or the proprietary lessees are subjected to the construction or market risks of the declarant. 2004, c. [242](#).

§55-474. Association records.

The association shall keep financial records sufficiently detailed to enable the association to comply with § [55-484](#). All financial and other records shall be made reasonably available for examination by any proprietary lessee and his authorized agents. 1982, c. 277.

§55-475. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

1982, c. 277.

§55-476. Applicability; waiver.

A. This article applies to all cooperative interests subject to this chapter, except as provided in subsection B or as modified or waived by agreement of purchasers of cooperative interests in a cooperative in which all units are restricted to non-residential use.

B. Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

1. A gratuitous disposition of a cooperative interest;
2. A disposition pursuant to court order;
3. A disposition by a government or governmental agency;
4. A disposition by foreclosure or transfer in lieu of foreclosure;
5. A disposition to a person in the business of selling cooperative interests who intends to offer those cooperative interests to purchasers; or
6. A disposition that may be canceled at any time and for any reason by the purchaser without penalty.

1982, c. 277.

§55-477. Liability for public offering statement; requirements.

A. Except as provided in subsection B, a declarant, prior to the offering of any cooperative interest to the public, shall prepare a public offering statement conforming to the requirements of §§ [55-478](#), [55-479](#), [55-480](#) and [55-481](#).

B. A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant or to a person in the business of selling cooperative interests who intends to offer cooperative interests in the cooperative for his own account. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection A.

C. Any declarant or other person in the business of selling cooperative interests who offers a cooperative interest for his own account to a purchaser shall deliver a public offering statement in the manner prescribed in subsection A of § [55-483](#). The person who prepared all or a part of the public offering statement is liable under §§ [55-483](#), [55-492](#), [55-500](#) and [55-501](#) for any false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the public offering statement which he prepared. If a declarant did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

D. If a unit is part of a cooperative and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this Commonwealth, a single public offering statement, conforming to the requirements of §§ [55-478](#), [55-479](#), [55-480](#) and [55-481](#) as those requirements relate to each regime in which the unit is located, and to any other requirements imposed under the laws of this Commonwealth, may be prepared and delivered in lieu of providing two or more public offering statements.

1982, c. 277.

§55-478. Public offering statement; general provisions.

A. Except as provided in subsection B, a public offering statement must contain or fully and accurately disclose:

1. The name and principal address of the declarant and of the cooperative;
2. A general description of the cooperative, including to the extent possible, the types, number, declarant's schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the cooperative;
3. The number of units in the cooperative;
4. Copies and a brief narrative description of the significant features of the declaration and any other recorded covenants, conditions, restrictions and reservations affecting the cooperative; the bylaws and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing; and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under § [55-462](#);
5. Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:
 - a. A description of provisions made in the budget for reserves for repairs and replacement;
 - b. A statement of any other reserves;

- c. The projected common expense assessment by category of expenditures for the association;
 - d. The projected monthly common expense assessment for each type of unit; and
 - e. The projected debt, inclusive of principal and any accrued interest, loan fees and other similar charges, assumed or to be assumed by the association and an estimate of the payments necessary to service such debt.
6. Any services not reflected in the budget that the declarant provides, or expenses that he pays and that he expects may become at any subsequent time a common expense of the association, and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;
7. Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;
8. A description of any liens, defects or encumbrances on or affecting the title to the cooperative;
9. A description of any financing offered or arranged by the declarant;
10. The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages;
11. A statement that:
- a. Within 10 days after receipt of a public offering statement a purchaser, before conveyance, may cancel any contract for purchase of a cooperative interest from a declarant;
 - b. If a declarant fails to provide a public offering statement to a purchaser before conveying a cooperative interest, that purchaser may recover from the declarant 10 percent of the sales price of the cooperative interest, plus 10 percent of the share, proportionate to his common expense liability, of the indebtedness of the association secured by mortgages or deeds of trust encumbering the cooperative; and
12. A statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the cooperative of which a declarant has actual knowledge;

13. A statement that any deposit made in connection with the purchase of a cooperative interest will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to § [55-483](#) together with the name and address of the escrow agent;

14. Any restrictions on: (i) use and occupancy of the units; (ii) alienation of the cooperative interests; or (iii) the amount for which a cooperative interest may be sold or on the amount that may be received by a proprietary lessee upon sale, condemnation or casualty loss to the unit or the cooperative or termination of the cooperative;

15. A description of the insurance coverage provided for the benefit of proprietary lessees;

16. Any current or expected fees or charges to be paid by proprietary lessees for the use of the common elements and other facilities related to the cooperative;

17. The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to § [55-494](#);

18. A brief narrative description of any zoning and other land use requirements affecting the cooperative;

19. A specified or maximum amount, if any, of acquisition, development or construction debt, inclusive of principal and any accrued interest, loan fees and other similar charges, assumed or to be assumed by the association and whether there will be a security interest encumbering the cooperative to secure repayment;

20. All unusual and material circumstances, features and characteristics of the cooperative and the units;

21. Whether the proprietary lessees will be entitled, for federal, state and local income tax purposes, to a pass-through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative;

22. A statement as to the effect on every proprietary lessee if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.

B. If a cooperative composed of not more than three units is not subject to any development rights, and no power is reserved to a declarant to make the cooperative part

of a larger cooperative, group of cooperatives or other real estate, a public offering statement may, but need not include, the information otherwise required by subdivisions A 9, A 10, A 15 through A 19 and the narrative descriptions of documents required by subdivision A 4.

C. A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

D. The declarant shall provide a copy of the public offering statement and all amendments thereto to the association, and the association shall maintain them in its records.

1982, c. 277; 2004, c. [242](#); 2005, c. [436](#).

§55-479. Public offering statement; cooperatives subject to development rights.

If the declaration provides that a cooperative is subject to any development rights, the public offering statement must disclose, in addition to the information required by § [55-478](#) :

1. The maximum number of units and the maximum number of units per acre that may be created;
2. A statement of how many or what percentage of the units which may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;
3. If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use;
4. A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;
5. A statement of the maximum extent to which each cooperative interest's allocated interests may be changed by the exercise of any development right described in paragraph 4;
6. A statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the cooperative will be compatible with existing buildings and improvements in the cooperative in terms of

architectural style, quality of construction and size, or a statement that no assurances are made in those regards;

7. General descriptions of all other improvements that may be made, and limited common elements that may be created within any part of the cooperative pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

8. A statement of any limitations as to the locations of any building or other improvement that may be made within any part of the cooperative pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

9. A statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the cooperative, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;

10. A statement that the proportion of limited common elements to units created pursuant to any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the cooperative, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

11. A statement that all restrictions in the declaration affecting use and occupancy of units and alienation of cooperative interests will apply to any units and cooperative interests created pursuant to any development right reserved by the declarant, a statement of any differentiations that may be made as to those units and cooperative interests, or a statement that no assurances are made in that regard;

12. A specified or maximum amount, if any, of acquisition, development or construction debt, inclusive of principal and any accrued interest, loan fees and other similar charges, assumed or to be assumed by the association for each phase of the development and whether there will be a security interest encumbering the cooperative to secure repayment. If no such amount can be specified, a statement that no amount may be assumed unless approved by persons entitled to cast at least 80 percent of the votes in the association, including a simple majority of the votes alloc-

ated to cooperative interests not owned by a declarant, or any larger percentage the declaration specifies; and

13. A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

1982, c. 277; 2004, c. [242](#).

§55-480. Public offering statement; time shares.

If the declaration provides that ownership of cooperative interests or occupancy of any units is or may be in time shares, the public offering statement shall disclose, in addition to the information required by § [55-478](#) :

1. The number and identity of units in which time shares may be created;
2. The total number of time shares that may be created;
3. The minimum duration of any time shares that may be created; and
4. The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in § [55-473](#).

1982, c. 277.

§55-481. Public offering statement; cooperatives containing conversion building.

A. The public offering statement of a cooperative containing any conversion building must contain, in addition to the information required by § [55-478](#) :

1. A statement by the declarant, based on a report prepared by an independent, registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;
2. A statement by the declarant of the expected useful life of each item reported on in paragraph 1, or a statement that no representations are made in that regard; and
3. A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

B. This section applies only to buildings containing units that may be occupied for residential use.

1982, c. 277.

§55-482. Public offering statement; cooperative securities.

If an interest in a cooperative is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this chapter if he delivers to the purchaser and files with the agency a copy of the public offering statement filed with the Securities and Exchange Commission. A cooperative interest is not a security under the provisions of the Securities Act, §§ [13.1-501](#) through [13.1-527.3](#).

1982, c. 277.

§55-483. Purchaser's right to cancel.

A. A person required to deliver a public offering statement pursuant to subsection C of § [55-477](#) shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of that cooperative interest and not later than the date of any contract of sale. The purchaser may cancel the contract within ten days after signing the contract.

B. If a purchaser elects to cancel a contract pursuant to subsection A, he may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by pre-paid United States mail to the offeror or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

C. If a person required to deliver a public offering statement pursuant to subsection C of § [55-477](#) fails to provide a purchaser, to whom a cooperative interest is conveyed with that public offering statement and all amendments thereto as required by subsection A, the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to ten percent of the sales price of the cooperative interest, plus ten percent of the share, proportionate to his common expense liability, of the indebtedness of the association secured by mortgages or deeds of trust encumbering the cooperative. Execution of a purchase agreement for a cooperative interest which makes reference to the public offering statement and wherein the purchaser acknowledges receipt thereof shall be sufficient proof that the declarant has fully satisfied this requirement.

1982, c. 277.

§55-484. Resales of cooperative interests.

A. Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under subsection B of § [55-476](#), a proprietary lessee shall furnish to a purchaser before execution of any contract for sale of a cooperative interest, or otherwise before conveyance, a copy of the declaration, the bylaws, the rules or regulations of the association and a certificate containing:

1. A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the cooperative interest;
2. A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling proprietary lessee;
3. A statement of any other fees payable by proprietary lessees;
4. A statement of any capital expenditures anticipated by the association for the current and next two succeeding fiscal years;
5. The current reserve study report or a summary thereof and a statement of the status and amount of any reserve or replacement fund and of any portions of those reserves designated by the association for any specified projects;
6. The most recent regularly prepared balance sheet and income and expense statement, if any, of the association, including the amount of any debt owed by the association or to be assumed by the association, inclusive of principal and any accrued interest, loan fees and other similar charges;
7. The current operating budget of the association;
8. A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;
9. A statement describing any insurance coverage provided for the benefit of proprietary lessees;
10. A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration;
11. A statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto or any other portion of the cooperative;

12. A statement of the remaining term of any leasehold estate affecting the cooperative and the provisions governing any extension or renewal thereof;

13. Except where no public offering statement was prepared, a statement that the public offering statement and any amendments thereto are records of the association available for inspection by the purchaser;

14. An accountant's statement, if any was prepared, as to the deductibility for federal income taxes purposes by the proprietary lessee of real estate taxes and interest paid by the association;

15. A statement of any restrictions in the declaration affecting the amount that may be received by a proprietary lessee upon sale, condemnation or loss to the unit or the cooperative on termination of the cooperative; and

16. Certification, if applicable, that the proprietary lessees' association has filed with the Common Interest Community Board the annual report required by § [55-504.1](#); which certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing.

B. The association, within 10 days after a request by a proprietary lessee, shall furnish a certificate containing the information necessary to enable the proprietary lessee to comply with this section. A proprietary lessee providing a certificate pursuant to subsection A is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

C. A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A proprietary lessee is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs.

1982, c. 277; 1997, c. [222](#); 1998, c. [463](#); 2004, c. [242](#); 2005, c. [436](#); 2008, cc. [851](#), [871](#).

§55-485. Escrow of deposits.

A. Any deposit made in connection with the purchase or reservation of a cooperative interest from a person required to deliver a public offering statement pursuant to subsection C of § [55-477](#) shall be placed in escrow and held either in this Commonwealth or in the state where the unit which is a part of that cooperative interest

is located in an account designated solely for that purpose by a title insurance company, attorney or real estate broker licensed under the laws of this Commonwealth, an independent bonded escrow company or an institution whose accounts are insured by a governmental agency or instrumentality until: (i) delivered to the declarant at closing; (ii) delivered to the declarant because of purchaser's default under a contract to purchase the cooperative interest; or (iii) refunded to the purchaser.

B. Any deposit made in connection with the purchase of a cooperative interest from a person not required to deliver a public offering statement shall be placed in escrow in the same manner as prescribed in subsection A of this section. Upon receipt of the certificate called for in § [55-484](#), should the purchaser elect to void the contract, the seller may deduct the actual charges by the association for preparation of the certificate. Otherwise, the deposit shall be promptly returned to the purchaser.

1982, c. 277.

§55-486. Release of liens.

A. In the case of a sale of a cooperative interest where delivery of a public offering statement is required pursuant to subsection C of § [55-477](#), a seller shall, before conveying a cooperative interest, record or furnish to the purchaser releases of all liens affecting the unit which is a part of that cooperative interest and any limited common element assigned thereto, except liens solely against the unit and any limited common element assigned thereto, which the purchaser expressly agrees to take subject to or assume. Releases of liens shall be made pursuant to §§ [55-66.3](#) through [55-66.6](#). This subsection does not apply to any real estate which a declarant has the right to withdraw.

B. Before conveying real estate to the association the declarant shall have that real estate released from: (i) all liens the foreclosure of which would deprive proprietary lessees of any right of access to or easement of support of their units, and (ii) all other liens on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens in specified amounts.

1982, c. 277; 2004, c. [242](#).

§55-487. Conversion buildings.

A. A declarant of a cooperative containing conversion buildings shall give each of the tenants of a conversion building formal notice of the conversion at the time the cooperative is registered by the agency. This notice shall advise each tenant of (i) the

offering price of the cooperative interests for the unit he occupies, (ii) the projected common expense assessments against that cooperative interest for at least the first year of the cooperative's operation, (iii) any relocation services, public or private, of which the declarant is aware, (iv) any measure taken or to be taken by the declarant to reduce the incidence of tenant dislocation, and (v) the details of the relocation plan, if any is provided by the declarant, to assist tenants in relocating. No tenant or subtenant may be required to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Until the expiration of the 120-day period, the declarant shall have no right of access to the unit except as provided herein and in subsection A of § [55-248.18](#) and except that, upon 45 days' written notice to the tenant, the declarant may enter the unit in order to make additional repairs, decorations, alterations or improvements, provided (i) the making of the same does not constitute an actual or constructive eviction of the tenant; and (ii) such entry is made either with the consent of the tenant or only at times when the tenant is absent from the unit. Failure to give notice as required by this section is a defense to an action for possession. The declarant shall also provide general notice to the tenants of the cooperative or proposed cooperative at the time of application to the agency, in addition to the formal notice required by this subsection.

B. For 60 days after delivery or mailing of the formal notice described in subsection A, the person required to give the notice shall offer to convey the cooperative interest for each unit or proposed unit occupied for residential use to the tenant who leases the unit associated with that cooperative interest. A specific statement of the purchase price and the amount of any initial or special cooperative fee due from the purchaser on or before settlement of the purchase contract and the basis of such fee shall be given to the tenant. If a tenant fails to purchase the cooperative interest during that 60-day period, the offeror may not offer to dispose of an interest in that cooperative interest during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any cooperative interest in a conversion building if the unit which is part of that cooperative interest will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

C. If a seller, in violation of subsection B, conveys a cooperative interest to a purchaser for value who has no knowledge of the violation, that conveyance extinguishes any right a tenant may have under subsection B to purchase that cooperative interest if the deed states that the seller has complied with subsection B, but does not affect the right of a tenant to recover damages from the seller for a violation of subsection B.

D. If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, and otherwise complies with the provisions of §§ [55-248.6](#) and [55-248.15](#), the notice also constitutes a notice to vacate as specified by §§ [55-222](#), [55-248.6](#), and [55-248.15](#). The details of the relocation plan, if any is provided by the declarant for assisting tenants in relocating, shall also be provided to the tenant.

E. Any county, city or town may require by ordinance that the declarant of a conversion cooperative file with that governing body all information which is required by the agency pursuant to § [55-498](#) and a copy of the formal notice required by subsection A. Such information shall be filed with that governing body when the application for registration is filed with the agency, and such copy of the formal notice shall be filed with that governing body whenever it is sent to tenants. No fee shall be imposed for such filings with a governing body.

F. The governing body of any county utilizing the urban county executive form of optional government (§§ [15.2-800](#) through [15.2-858](#)) or the county manager plan of optional government (§§ [15.2-702](#) through [15.2-749](#)), or of any city or town adjoining any such county, may require by ordinance that the declarant of any residential cooperative containing conversion buildings converted from multi-family rental use shall reimburse any tenant displaced by the conversion for amounts actually expended to relocate as a result of such dislocation. The reimbursement shall not be required to exceed the amount to which the tenant would have been entitled to receive under §§ [25.1-407](#) and [25.1-415](#) if the real estate comprising the condominium had been condemned by the Department of Highways and Transportation.

G. Any county, city or town may require by ordinance that elderly or disabled tenants, occupying as their residence up to twenty percent of the apartments or units in a cooperative containing conversion buildings at the time of issuance of the general notice required by subsection A hereof, be offered leases or extensions of leases on the apartments or units they occupy or on other apartments or units of at least equal size and overall quality for up to three years beyond the date of such notice.

The terms and conditions thereof shall be as agreed upon by the lessor and the lessee, provided that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable apartments or units in the same market area as such conversion building.

Such leases or extensions shall not be required, however, in the case of any apartments or units which will, in the course of the conversion, be substantially altered in physical layout, restricted exclusively to nonresidential use, or be converted in such a manner as to require relocation of the tenant in premises outside of the project being converted.

H. For the purposes of this section:

"Agency" means the Common Interest Community Board.

"Disabled" means suffering from a severe, chronic physical or mental impairment which results in substantial functional limitations.

"Elderly" means not less than 62 years of age.

I. Nothing in this section permits termination of a lease by a declarant in violation of its terms.

1982, c. 277; 1983, c. 310; 1984, c. 321; 1985, c. 69; 1993, c. 634; 2008, cc. [851](#), [871](#).

§55-488. Express warranties of quality.

A. Express warranties made by any seller to a purchaser of a cooperative interest, if relied upon by the purchaser, are created as follows:

1. Any affirmation of fact or promise which relates to the unit, its use or rights appurtenant thereto, area improvements to the cooperative that would directly benefit the unit or the right to use or have the benefit of facilities not located in the cooperative, creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;
2. Any model or description of the physical characteristics of the cooperative, including plans and specifications of or for improvements, creates an express warranty that the cooperative will conform to the model or description;
3. Any description of the quantity or extent of the real estate comprising the cooperative, including plats or surveys, creates an express warranty that the cooperative will conform to the description, subject to customary tolerances; and

4. A provision that a buyer of a cooperative interest may put a unit which is part of that cooperative interest only to a specified use is an express warranty that the specified use is lawful.

B. Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty is necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

C. Any conveyance of a cooperative interest transfers to the purchaser all express warranties of quality made by previous sellers.

1982, c. 277.

§55-489. Implied warranties of quality.

A. A declarant and any person in the business of selling cooperative interests for his own account warrant that a unit will be in at least as good condition at the earlier of the time of the conveyance of a cooperative interest or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

B. A declarant and any person in the business of selling cooperative interests for his own account impliedly warrant that a unit and the common elements in the cooperative are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him or made by any person before the creation of the cooperative, will be:

1. Free from defective materials; and

2. Constructed in accordance with applicable law, according to sound engineering and construction standards and in a workmanlike manner.

C. In addition, a declarant and any person in the business of selling cooperative interests for his own account warrant to a purchaser of a cooperative interest for a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

D. Warranties imposed by this section may be excluded or modified as specified in [§ 55-490](#).

E. For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.

F. Any conveyance of a cooperative interest transfers to the purchaser all of the declarant's implied warranties of quality.

1982, c. 277.

§55-490. Exclusion or modification of implied warranties of quality.

A. Except as limited by subsection B with respect to a purchaser of a cooperative interest for a unit that may be used for residential use, implied warranties of quality: (i) may be excluded or modified by agreement of the parties; and (ii) are excluded by expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

B. With respect to a purchaser of a cooperative interest for a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, nor shall any disclaimer of implied warranties of quality be effective as to defects in materials or construction as to any unit, brought to the attention of the declarant within two years from the date of the first conveyance of the cooperative interest associated with such unit, or as to any such defect in the common elements brought to the attention within two years (i) after that common element has been completed or, if later, (ii) after the first cooperative interest has been conveyed in the cooperative. The first conveyance of a cooperative interest associated with a unit situated in real estate subject to development rights shall be treated as the first conveyance of a cooperative interest in the cooperative for the purposes of the preceding sentence as to any such defects in the common elements within that real estate. A declarant and any person in the business of selling cooperative interests for his own account may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into became a part of the basis of the bargain.

1982, c. 277.

§55-491. Statute of limitations for warranties.

A. A judicial proceeding for breach of any obligation arising under § [55-488](#) or § [55-489](#) must be commenced within six years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser of the cooperative interest for that unit.

B. Subject to subsection C, a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

1. As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed, or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

2. As to each common element, at the time the common element is completed or, if later: (i) as to a common element that may be added to the cooperative or portion thereof, at the time the first cooperative interest for a unit therein is conveyed to a bona fide purchaser; or (ii) as to a common element within any other portion of the cooperative, at the first time a cooperative interest in the cooperative is conveyed to a bona fide purchaser.

C. If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the cooperative, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

1982, c. 277.

§55-492. Effect of violation on rights of action; attorney's fees; arbitration of disputes.

A. If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration of bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this chapter. The court, in an appropriate case, may award reasonable attorney's fees.

B. A declaration may provide for the arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ [8.01-577](#) et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be held in the county or city in which the development is located or as mutually agreed by the parties.

1982, c. 277; 1993, c. 849 .

§55-493. Labeling of promotional material.

No promotional material may be displayed or delivered to prospective purchasers which describes or portrays improvements that are not in existence, unless the

description or portrayal of the improvement in the promotional [material] is conspicuously labeled or identified either as "MUST BE BUILT" or "NEED NOT BE BUILT."

1982, c. 277.

§55-494. Declarant's obligation to complete and restore.

A. The declarant shall complete all improvements depicted on any site plan or other graphic representation included in the public offering statement or in any promotional material distributed by or for the declarant unless that improvement is labeled "NEED NOT BE BUILT."

B. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the cooperative, of any portion of the cooperative affected by the exercise of rights reserved pursuant to or created by §§ [55-446](#), [55-447](#), [55-448](#), [55-449](#), [55-451](#) and [55-452](#).

1982, c. 277.

§55-495. Substantial completion of units.

In the case of a sale of a cooperative interest where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that cooperative interest may be conveyed, except pursuant to subsection B of § [55-498](#), until the declaration is recorded and the unit which is a part of that cooperative interest is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent, registered architect, surveyor or engineer, or by issuance of a certificate of occupancy authorized by law.

1982, c. 277.

§55-496. Administrative agency.

This chapter shall be administered by the Common Interest Community Board, which herein is called the "agency."

1982, c. 277; 2008, cc. [851](#), [871](#).

§55-497. Registration required.

A declarant may not offer or dispose of a cooperative interest intended for residential use unless the cooperative and the cooperative interest are registered with the agency. A cooperative consisting of no more than three units which is not subject to development rights is exempt from the requirements of this section.

1982, c. 277.

§55-498. Application for registration; approval of uncompleted unit.

A. An application for registration must contain the information and be accompanied by any reasonable fees required by the agency's regulations. A declarant promptly shall file amendments to report any factual or expected material change in any document or information contained in his application.

B. If a declarant files with the agency a declaration or proposed declaration, or an amendment or proposed amendment to a declaration, creating units for which he proposes to convey cooperative interests before the units are substantially completed in the manner required by § [55-495](#), the declarant shall also file with the agency:

1. A verified statement showing all costs involved in completing the buildings containing those units;
2. A verified estimate of the time of completion of construction of the buildings containing those units;
3. Satisfactory evidence of sufficient funds to cover all costs to complete the buildings containing those units;
4. A copy of the executed construction contract and any other contracts for the completion of the buildings containing those units;
5. A 100 percent payment and performance bond covering the entire cost of construction of the buildings containing those units;
6. Plans for the units;
7. If purchasers' funds are to be utilized for the construction of the cooperative, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business within the state which provides that:
 - a. Disbursements of purchasers' funds may be made from time to time to pay for construction of the cooperative, architectural, engineering, finance and legal fees, and other costs for the completion of the cooperative in proportion to the value of the work completed by the contractor as certified by an independent, registered architect or engineer, on bills submitted and approved by the lender of construction funds or the escrow agent;
 - b. Disbursement of the balance of purchasers' funds remaining after completion of the cooperative shall be made only when the escrow agent or lender receives

satisfactory evidence that the period for filing mechanic's and materialman's liens has expired, or that the right to claim those liens has been waived, or that adequate provision has been made for satisfaction of any claimed mechanic's or materialman's lien; and

c. Any other restriction relative to the retention and disbursement of purchasers' funds required by the agency; and

8. Any other materials or information the agency may require by its regulations.

The agency may not register the units described in the declaration or the amendment unless the agency determines, on the basis of the material submitted by the declarant and any other information available to the agency, that there is a reasonable basis to expect that the cooperative interests to be conveyed will be completed by the declarant following conveyance.

1982, c. 277.

§55-499. Receipt of application; order or registration.

A. The agency shall acknowledge receipt of an application for registration within five business days after receiving it. Within sixty days after receiving the application, the agency shall determine whether:

1. The application and the proposed public offering statement satisfy the requirements of this chapter and the agency's regulations;

2. The declaration and bylaws comply with this chapter; and

3. It is likely that the improvements the declarant has undertaken to make can be completed as represented.

B. If the agency makes a favorable determination, it shall issue promptly an order registering the cooperative. Otherwise, unless the declarant has consented in writing to a delay, the agency shall issue promptly an order rejecting registration.

1982, c. 277.

§55-500. Cease and desist order.

If the agency determines, after notice and hearing, that any person has disseminated or caused to be disseminated orally or in writing any false or misleading promotional materials in connection with a cooperative, or that any person has otherwise violated any provision of this chapter or the agency's rules, regulations or orders, the agency may issue an order to cease and desist from that conduct to comply with the

provisions of this chapter and the agency's rules, regulations and orders, or to take affirmative action to correct conditions resulting from that conduct or failure to comply.

1982, c. 277.

§55-501. Revocation of registration.

A. The agency, after notice stating the deficiency complained of and hearing, may issue an order revoking the registration of a cooperative upon determination that a declarant or any officer or principal of a declarant has:

1. Failed to comply with a cease and desist order issued by the agency affecting that cooperative;
2. Concealed, diverted or disposed of any funds or assets of any person in a manner impairing rights of purchasers of cooperative interests in that cooperative;
3. Failed to perform any stipulation or agreement made to induce the agency to issue an order relating to that cooperative;
4. Intentionally misrepresented or failed to disclose a material fact in the application for registration; or
5. Failed to meet any of the conditions described in §§ [55-498](#) and [55-499](#) necessary to qualify for registration.

B. Without the consent of the agency a declarant shall not convey, cause to be conveyed, or contract for the conveyance of any cooperative interest while an order revoking the registration of the cooperative is in effect.

C. In appropriate cases the agency, in its discretion, may issue a cease and desist order in lieu of an order of revocation.

1982, c. 277.

§55-502. General powers and duties of agency.

A. The agency may adopt, amend and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this chapter, but the agency may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this chapter. The agency may prescribe forms and procedures for submitting information to the agency.

B. If it appears that any person has engaged, is engaging or is about to engage in any act or practice in violation of this chapter or any of the agency's regulations or orders, the agency without prior administrative proceedings may bring suit in the appropriate court to enjoin that act or practice or for other appropriate relief. The agency is not required to post a bond or prove that no adequate remedy at law exists.

C. The agency may intervene in any action or suit involving the powers or responsibilities of a declarant in connection with any cooperative for which an application for registration is on file.

D. The agency may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this chapter.

E. The agency may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards and uniform administrative practices, and may develop information that may be useful in the discharge of the agency's duties.

F. In issuing any cease and desist order or order rejecting or revoking registration of a cooperative, the agency shall state the basis for the adverse determination and the underlying facts.

G. The agency, in its sound discretion, may require bonding, escrow of portions of sales proceeds or other safeguards it may prescribe by its regulations to guarantee completion of all improvements labeled "MUST BE BUILT" pursuant to § [55-494](#).

1982, c. 277.

§55-503. Investigative powers of agency.

A. The agency may initiate public or private investigations within or outside this Commonwealth to determine whether any representation in any document or information filed with the agency is false or misleading or whether any person has engaged, is engaging or is about to engage in any unlawful act or practice.

B. In the course of any investigation or hearing, the agency may subpoena witnesses and documents, administer oaths and affirmations and adduce evidence. If a person fails to comply with a subpoena or to answer questions propounded during the investigation or hearing, the agency may apply to the appropriate court for a contempt order or injunctive or other appropriate relief to secure compliance.

1982, c. 277.

§55-504. Annual report and amendments.

A. A declarant, within thirty days after the anniversary date of the order of registration, shall file annually a report to bring up-to-date the material contained in the application for registration and the public offering statement. This provision does not relieve the declarant of the obligation to file amendments pursuant to subsection B.

B. A declarant shall file promptly amendments to the public offering statement with the agency.

C. If an annual report reveals that a declarant owns or controls cooperative interests representing less than twenty-five percent of the voting power in the association and that a declarant has no power to increase the number of units in the cooperative or to cause a merger or confederation of the cooperative with other cooperatives, the agency shall issue an order relieving the declarant of any further obligation to file annual reports. Thereafter, so long as the declarant is offering any cooperative interests for sale, the agency has jurisdiction over the declarant's activities, but has no other authority to regulate the cooperative.

1982, c. 277.

§55-504.1. Annual report by associations.

A. The association shall file an annual report in a form and at such time as prescribed by regulations of the agency. The filing of the annual report required by this section shall commence upon the termination of any declarant control period reserved pursuant to § [55-460](#). The annual report shall be accompanied by a fixed fee in an amount established by the agency.

B. The agency may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the agency.

C. The association shall also remit to the agency an annual payment as follows:

1. The lesser of:

a. \$1,000 or such other amount as established by agency regulation; or

b. Five hundredths of one percent (0.05%) of the association's gross assessment income during the preceding year.

2. For the purposes of subdivision 1 b, no minimum payment shall be less than \$10.00.

D. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § [55-529](#).

1993, c. 958; 2008, cc. [851](#), [871](#); 2009, c. [557](#); 2012, cc. [481](#), [797](#).

§55-505. Agency regulation of public offering statement.

A. The agency at any time may require a declarant to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

B. The public offering statement may not be used for any promotional purpose before registration and afterwards only if it is used in its entirety. No person may advertise or represent that the agency has approved or recommended the cooperative, the disclosure statement or any of the documents contained in the application for registration.

C. In the case of a cooperative situated wholly outside of this Commonwealth, no application for registration or proposed public offering statement, filed with the agency, which has been approved by an agency in the state where the cooperative is located and substantially complies with the requirements of this chapter, may be rejected by the agency on the grounds of noncompliance with any different or additional requirements imposed by this chapter or by the agency's regulations. However, the agency may require additional documents or information in particular cases to assure adequate and accurate disclosure to prospective purchasers.

1982, c. 277.

§55-506. Penalties.

Any person who willfully violates §§ [55-478](#), [55-481](#), [55-482](#), [55-485](#), [55-487](#), [55-498](#), [55-504](#), or any rule adopted under, or order issued pursuant to § [55-502](#), or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact, shall be guilty of a misdemeanor and may be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is the larger, but not more than \$50,000; or he may be imprisoned for not more than 6 months; or both, for each offense.

1982, c. 277.

Virginia Regional Industrial Facilities

Act

§15.2-6400. Definitions.

As used in this chapter the following words have the meanings indicated:

"Authority" means any regional facility authority organized and existing pursuant to this chapter.

"Board" means the board of directors of an authority.

"Facility" means any structure or park, including real estate and improvements as applicable, for manufacturing, warehousing, distribution, office, or other industrial, residential, recreational or commercial purposes. A facility specifically includes structures or parks that are not owned by an authority or its member localities, but are subject to a cooperative arrangement pursuant to subdivision 13 of § [15.2-6405](#).

"Governing bodies" means the boards of supervisors of counties and the councils of cities and towns which are members of an authority.

"Member localities" means the counties, cities, and towns, or combination thereof, which are members of an authority.

"Region" means the area within the boundaries of the member localities.

1997, cc. [276](#), 587, § 15.1-1710; 1999, cc. [540](#), [804](#), [820](#), [837](#), [882](#); 2000, cc. [892](#), [915](#), [960](#), [965](#); 2001, cc. [391](#), [404](#); 2003, c. [874](#); 2004, cc. [603](#), [640](#); 2007, cc. [941](#), [947](#); 2009, c. [616](#).

§15.2-6401. Findings; purpose; governmental functions.

A. The economies of many localities within the region have not kept pace with those of the rest of the Commonwealth. Individual localities in the region often lack the financial resources to assist in the development of economic development projects. Providing a mechanism for localities in the region to cooperate in the development of facilities will assist the region in overcoming this barrier to economic growth. The creation of regional industrial facility authorities will assist this area of the Commonwealth in achieving a greater degree of economic stability.

B. The purpose of a regional industrial facility authority is to enhance the economic base for the member localities by developing, owning, and operating one or more facilities on a cooperative basis involving its member localities.

C. The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the region and other areas of the Commonwealth, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience and prosperity.

1997, cc. [276](#), 587, § 15.1-1711.

§15.2-6402. Procedure for creation of authorities.

The governing bodies of any three or more localities within the region, provided that two or more of the localities are cities or counties or a combination thereof, may, in conformance with the procedure set forth herein, create a regional industrial facility authority by adopting ordinances proposing to create an authority which shall (i) set forth the name of the proposed regional industrial facility authority (which shall include the words "industrial facility authority"); (ii) name the member localities; (iii) contain findings that the economic growth and development of the locality and the comfort, convenience and welfare of its citizens require the development of facilities and that joint action through a regional industrial facility authority by the localities which are to be members of the proposed authority will facilitate the development of the needed facilities; and (iv) authorize the execution of an agreement establishing the respective rights and obligations of the member localities with respect to the authority consistent with the provisions of this chapter. However, with regard to Planning Districts 2, 3, 10, 11 and 12, the governing bodies of any two or more localities within the region, provided that one or more of the localities is a city or county, may adopt such an ordinance. Such ordinances shall be filed with the Secretary of the Commonwealth. Upon certification by the Secretary of the Commonwealth that the ordinances required by this chapter have been filed and, upon the basis of the facts set forth therein, satisfy such requirements, the proposed authority shall be and constitute an authority for all of the purposes of this chapter, to be known and designated by the name stated in the ordinances. Upon the issuance of such certificate, the authority shall be deemed to have been lawfully and properly created and established and authorized to exercise its powers under this chapter. Each authority created pursuant to this chapter is hereby created as a political subdivision of the Commonwealth. At any time subsequent to the creation of an authority under this chapter, the membership of the authority may, with the approval of the authority's board, be expanded to include any locality within the region that would have been eligible to be an initial member of the authority. The governing body of a locality seeking to become a member of an existing authority shall evidence its intent to become

a member by adopting an ordinance proposing to join the authority that conforms, to the extent applicable, to the requirements for an ordinance set forth in clauses (i), (iii), and (iv) of this section.

1997, cc. [276](#), 587, § 15.1-1712; 1999, cc. [820](#), [882](#); 2000, c. [892](#); 2001, c. [391](#); 2002, c. [691](#); 2006, c. [324](#).

§15.2-6403. Board of the authority.

A. All powers, rights and duties conferred by this chapter, or other provisions of law, upon an authority shall be exercised by a board of directors. A board shall consist of two members for each member locality. The governing body of each member locality shall appoint two members to the board. Any person who is a resident of the Commonwealth may be appointed to the board. However, if an authority has only two member localities, the governing body of each locality may appoint three members each. However, in any instance in which the member localities are not equally contributing funding to the authority, and upon agreement by each member locality, the number of appointments to be made by each locality may be based upon the percentage of local funds contributed by each of the member localities. Each member of a board shall serve for a term of four years and may be reappointed for as many terms as the governing body desires. However, the board may elect to provide for staggered terms, in which case some members may draw an initial two-year term. If a vacancy occurs by reason of the death, disqualification or resignation of a board member, the governing body of the member locality that appointed the authority board member shall appoint a successor to fill the unexpired term.

However, with regard to any authority created by Planning Districts 10, 11, and 12, only members of the appointing governing body of each member locality shall be appointed to the board. In the event such board members feel it is necessary to have an odd number of members, they may establish a rotation system that will allow one locality to appoint one extra member to serve for up to two years. Each locality will, in turn, appoint such extra member. Once the cycle is completed, the rotation shall be repeated.

Each member locality may appoint up to two alternate board members. Alternates shall be selected in the same manner as board members, and may serve as an alternate for either board member from the member locality that appoints the alternate. Alternates shall be appointed for terms that coincide with one or more of the board members from the member locality that appoints the alternate. If a board member is

not present at a meeting of the authority, the alternate shall have all the voting and other rights of the board member not present and shall be counted for purposes of determining a quorum. Alternates are required to take an oath of office and are entitled to reimbursement for expenses in the same manner as board members.

B. Each member of a board shall, before entering upon the discharge of the duties of his office, take and subscribe to the oath prescribed in § [49-1](#). Members shall be reimbursed for actual expenses incurred in the performance of their duties from funds available to the authority.

C. A quorum shall exist when a majority of the member localities are represented by at least one member of the board. The affirmative vote of a quorum of the board shall be necessary for any action taken by the board. No vacancy in the membership of a board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board. The board shall determine the times and places of its regular meetings, which may be adjourned or continued, without further public notice, from day to day or from time to time or from place to place, but not beyond the time fixed for the next regular meeting, until the business before the board is completed. Special meetings of a board shall be held when requested by members of the board representing two or more localities. Any such request for a special meeting shall be in writing, and the request shall specify the time and place of the meeting and the matters to be considered at the meeting. A reasonable effort shall be made to provide each member with notice of any special meeting. No matter not specified in the notice shall be considered at such special meeting unless all the members of the board are present. Special meetings may be adjourned or continued, without further public notice, from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business before the board is completed.

D. Each board shall elect from its membership a chairman for each calendar year. The board may also appoint an executive director and staff who shall discharge such functions as may be directed by the board. The executive director and staff shall be paid from funds received by the authority.

E. Each board, promptly following the close of the fiscal year, shall submit an annual report of the authority's activities of the preceding year to the governing body of each member locality. Each such report shall set forth a complete operating and financial statement covering the operation of the authority during such year.

1997, cc. [276](#), 587, § 15.1-1713; 1999, cc. [820](#), [882](#); 2000, c. [892](#); 2001, cc. [7](#), [15](#), [390](#), [391](#); 2002, c. [691](#); 2006, c. [758](#); 2014, c. [728](#).

§15.2-6404. Office of authority; title to property.

Each board shall maintain the principal office of the authority within a member locality. All records shall be kept at such office. The title to all property of every kind belonging to an authority shall be titled to the authority, which shall hold it for the benefit of its member localities.

1997, cc. [276](#), 587, § 15.1-1714.

§15.2-6405. Powers of the authority.

Each authority is vested with the powers of a body corporate, including the power to sue and be sued in its own name, plead and be impleaded, and adopt and use a common seal and alter the same as may be deemed expedient. In addition to the powers set forth elsewhere in this chapter, an authority may:

1. Adopt bylaws, rules and regulations to carry out the provisions of this chapter;
2. Employ, either as regular employees or as independent contractors, consultants, engineers, architects, accountants, attorneys, financial experts, construction experts and personnel, superintendents, managers and other professional personnel, personnel, and agents as may be necessary in the judgment of the authority, and fix their compensation;
3. Determine the locations of, develop, establish, construct, erect, repair, remodel, add to, extend, improve, equip, operate, regulate, and maintain facilities to the extent necessary or convenient to accomplish the purposes of the authority;
4. Acquire, own, hold, lease, use, sell, encumber, transfer, or dispose of, in its own name, any real or personal property or interests therein;
5. Invest and reinvest funds of the authority;
6. Enter into contracts of any kind, and execute all instruments necessary or convenient with respect to its carrying out the powers in this chapter to accomplish the purposes of the authority;
7. Expend such funds as may be available to it for the purpose of developing facilities, including but not limited to (i) purchasing real estate; (ii) grading sites; (iii) improving, replacing, and extending water, sewer, natural gas, electrical, and other utility lines; (iv) constructing, rehabilitating, and expanding buildings; (v) constructing

parking facilities; (vi) constructing access roads, streets, and rail lines; (vii) purchasing or leasing machinery and tools; and (viii) making any other improvements deemed necessary by the authority to meet its objectives;

8. Fix and revise from time to time and charge and collect rates, rents, fees, or other charges for the use of facilities or for services rendered in connection with the facilities;

9. Borrow money from any source for any valid purpose, including working capital for its operations, reserve funds, or interest; mortgage, pledge, or otherwise encumber the property or funds of the authority; and contract with or engage the services of any person in connection with any financing, including financial institutions, issuers of letters of credit, or insurers;

10. Issue bonds under this chapter;

11. Accept funds and property from the Commonwealth, persons, counties, cities, and towns and use the same for any of the purposes for which the authority is created;

12. Apply for and accept grants or loans of money or other property from any federal agency for any of the purposes authorized in this chapter and expend or use the same in accordance with the directions and requirements attached thereto or imposed thereon by any such federal agency;

13. Make loans or grants to, and enter into cooperative arrangements with, any person, partnership, association, corporation, business or governmental entity in furtherance of the purposes of this chapter, for the purposes of promoting economic and workforce development, provided that such loans or grants shall be made only from revenues of the authority that have not been pledged or assigned for the payment of any of the authority's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans, and any security therefor. The word "revenues" as used in this subdivision includes grants, loans, funds and property, as set out in subdivisions 11 and 12;

14. Enter into agreements with any other political subdivision of the Commonwealth for joint or cooperative action in accordance with § [15.2-1300](#); and

15. Do all things necessary or convenient to carry out the purposes of this chapter.

1997, cc. [276](#), 587, § 15.1-1715; 2002, c. [691](#); 2003, c. [874](#).

§15.2-6406. Donations to authority; remittance of tax revenue.

A. Member localities are hereby authorized to lend or donate money or other property to an authority for any of its purposes. The member locality making the grant or loan may restrict the use of such grants or loans to a specific facility owned by the authority, within or without that member locality.

B. The governing body of the member locality in which a facility owned by an authority is located may direct, by resolution or ordinance, that all tax revenue collected with respect to the facility shall be remitted to the authority. Such revenues may be used for the payment of debt service on bonds of the authority and other obligations of the authority incurred with respect to such facility. The action of such governing body shall not constitute a pledge of the credit or taxing power of such locality.

1997, cc. [276](#), 587, § 15.1-1716; 2004, cc. [42](#), [603](#), [640](#).

§15.2-6407. Revenue sharing agreements.

Notwithstanding the requirements of Chapter 34 (§ [15.2-3400](#) et seq.) of this title, the member localities may agree to a revenue and economic growth-sharing arrangement with respect to tax revenues and other income and revenues generated by any facility owned by an authority. Such member localities may be located in any jurisdiction participating in the Appalachian Region Interstate Compact or a similar agreement for interstate cooperation for economic and workforce development authorized by law. The obligations of the parties to any such agreement shall not be construed to be debt within the meaning of Article VII, Section 10 of the Constitution of Virginia. Any such agreement shall be approved by a majority vote of the governing bodies of the member localities reaching such an agreement but shall not require any other approval.

1997, cc. [276](#), 587, § 15.1-1717; 2007, cc. [941](#), [947](#).

§15.2-6408. Applicability of land use regulations.

In any locality where planning, zoning, and development regulations may apply, an authority shall comply with and is subject to those regulations to the same extent as a private commercial or industrial enterprise.

1997, cc. [276](#), 587, § 15.1-1718.

§15.2-6409. Bond issues; contesting validity of bonds.

A. An authority may at any time and from time to time issue bonds for any valid purpose, including the establishment of reserves and the payment of interest. In this

chapter, "bonds" includes notes of any kind, interim certificates, refunding bonds, or any other evidence of obligation.

B. The bonds of any issue shall be payable solely from the property or receipts of the authority, including, but not limited to:

1. Taxes, rents, fees, charges, or other revenues payable to the authority;
2. Payments by financial institutions, insurance companies, or others pursuant to letters or lines of credit, policies of insurance, or purchase agreements;
3. Investment earnings from funds or accounts maintained pursuant to a bond resolution or trust agreement; and
4. Proceeds of refunding bonds.

C. Bonds shall be authorized by resolution of an authority and may be secured by a trust agreement by and between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. The bonds shall:

1. Be issued at, above, or below par value, for cash or other valuable consideration, and mature at a time or times, whether as serial bonds or as term bonds or both, not exceeding forty years from their respective dates of issue;
2. Bear interest at the fixed or variable rate or rates determined by the method provided in the resolution or trust agreement;
3. Be payable at a time or times, in the denominations and form, and carry the registration and privileges as to conversion and for the replacement of mutilated, lost, or destroyed bonds as the resolution or trust agreement may provide;
4. Be payable in lawful money of the United States at a designated place;
5. Be subject to the terms of purchase, payment, redemption, refunding, or refinancing that the resolution or trust agreement provides;
6. Be executed by the manual or facsimile signatures of the officers of the authority designated by the authority, which signatures shall be valid at delivery even for one who has ceased to hold office; and
7. Be sold in the manner and upon the terms determined by the authority including private (negotiated) sale.

D. Any resolution or trust agreement may contain provisions which shall be a part of the contract with the holders of the bonds as to:

1. Pledging, assigning, or directing the use, investment, or disposition of receipts of the authority or proceeds or benefits of any contract and conveying or otherwise securing any property rights;
2. Setting aside loan funding deposits, debt service reserves, capitalized interest accounts, cost of issuance accounts and sinking funds, and the regulation, investment, and disposition thereof;
3. Limiting the purpose to which, or the investments in which, the proceeds of the sale of any issue of bonds may be applied and restrictions to investments of revenues or bond proceeds in government obligations for which principal and interest are unconditionally guaranteed by the United States of America;
4. Limiting the issuance of additional bonds and the terms upon which additional bonds may be issued and secured and may rank on a parity with, or be subordinate or superior to, other bonds;
5. Refunding or refinancing outstanding bonds;
6. Providing a procedure, if any, by which the terms of any contract with bondholders may be altered or amended and the amount of bonds the holders of which must consent thereto, and the manner in which consent shall be given;
7. Defining the acts or omissions which shall constitute a default in the duties of the authority to bondholders and providing the rights of or remedies for such holders in the event of a default which may include provisions restricting individual right of action by bondholders;
8. Providing for guarantees, pledges of property, letters of credit, or other security, or insurance for the benefit of the bondholders; and
9. Addressing any other matter relating to the bonds which the authority determines appropriate.

E. No member of an authority, member of a board, or any person executing the bonds on behalf of an authority shall be liable personally for the bonds or subject to any personal liability by reason of the issuance of the bonds.

F. An authority may enter into agreements with agents, banks, insurers, or others for the purpose of enhancing the marketability of, or as security for, its bonds.

G. A pledge by an authority of revenues as security for an issue of bonds shall be valid and binding from the time the pledge is made.

The revenues pledged shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall be valid and binding against any person having any claim of any kind in tort, contract or otherwise against an authority, irrespective of whether the person has notice.

No resolution, trust agreement or financing statement, continuation statement, or other instrument adopted or entered into by an authority need be filed or recorded in any public record other than the records of the authority in order to perfect the lien against third persons, regardless of any contrary provision of public general or local law.

H. Except to the extent restricted by an applicable resolution or trust agreement, any holder of bonds issued under this chapter or a trustee acting under a trust agreement entered into under this chapter, may, by any suitable form of legal proceedings, protect and enforce any rights granted under the laws of Virginia or by any applicable resolution or trust agreement.

I. An authority may issue bonds to refund any of its bonds then outstanding, including the payment of any redemption premium and any interest accrued or to accrue to the earliest or any subsequent date of redemption, purchase or maturity of the bonds. Refunding bonds may be issued for the public purposes of realizing savings in the effective costs of debt service, directly or through a debt restructuring, for alleviating impending or actual default and may be issued in one or more series in an amount in excess of that of the bonds to be refunded.

J. For a period of thirty days after the date of the filing with the circuit court having jurisdiction over any of the political subdivisions that are members of the authority and in which the facility or any portion thereof being financed is located a certified copy of the initial resolution of the authority authorizing the issuance of bonds, any person in interest may contest the validity of the bonds, the rates, rents, fees and other charges for the services and facilities furnished by, for the use of, or in connection with, the facility or any portion thereof being financed, the pledge of revenues pledged to payment of the bonds, any provisions that may be recited in any resolution, trust agreement, indenture or other instrument authorizing the issuance of bonds, or any matter contained in, provided for or done or to be done pursuant to the foregoing. If such contest is not given within the thirty-day period, the authority

to issue bonds, the validity of any other provision contained in the resolution, trust agreement, indenture or other instrument, and all proceedings in connection with the authorization and the issuance of the bonds shall be conclusively presumed to have been legally taken and no court shall have authority to inquire into such matters and no such contest shall thereafter be instituted.

Upon the delivery of any bonds reciting that they are issued pursuant to this chapter and a resolution or resolutions adopted under this chapter, the bonds shall be conclusively presumed to be fully authorized by all the laws of the Commonwealth and to have been sold, executed and delivered by the authority in conformity with such laws, and the validity of the bonds shall not be questioned by a party plaintiff, a party defendant, the authority, or any other interested party in any court, anything in this chapter or in any other statutes to the contrary notwithstanding.

1997, cc. [276](#), 587, § 15.1-1719; 2002, c. [691](#).

§15.2-6410. Investments in bonds.

Any financial institution, investment company, insurance company or association, and any personal representative, guardian, trustee, or other fiduciary, may legally invest any moneys belonging to them or within their control in any bonds issued by an authority.

1997, cc. [276](#), 587, § 15.1-1720.

§15.2-6411. Bonds exempt from taxation.

An authority shall not be required to pay any taxes or assessments of any kind whatsoever, and its bonds, their transfer, the interest payable on them, and any income derived from them, including any profit realized in their sale or exchange, shall be exempt at all times from every kind and nature of taxation by this Commonwealth or by any of its political subdivisions, municipal corporations, or public agencies of any kind.

1997, cc. [276](#), 587, § 15.1-1721.

§15.2-6412. Tax revenues of the Commonwealth or any other political subdivision not pledged.

Nothing in this chapter shall be construed as authorizing the pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, or the faith and credit of any other political subdivision of the Commonwealth, or any of its revenues, for the payment of any bonds issued by an authority.

1997, cc. [276](#), 587, § 15.1-1722.

§15.2-6413. Forms of accounts and records; audit of same.

The accounts and records of an authority showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes, provided that such accounts correspond as nearly as possible to the accounts and records for such matters maintained by corporate enterprises. The accounts and records of an authority shall be subject to audit pursuant to § [30-140](#), and the costs of such audit services shall be borne by the authority. An authority's fiscal year shall be the same as the Commonwealth's.

1997, cc. [276](#), 587, § 15.1-1723.

§15.2-6414. Tort liability.

No pecuniary liability of any kind shall be imposed on the Commonwealth or on any other political subdivision of the Commonwealth because of any act, agreement, contract, tort, malfeasance or nonfeasance by or on the part of an authority, its agents, servants or employees.

1997, cc. [276](#), 587, § 15.1-1724.

§15.2-6415. Dissolution of authority.

A member locality of an authority may withdraw from the authority only (i) upon dissolution of the authority as set forth herein, or (ii) with the majority approval of all other members of such authority, upon a resolution adopted by the governing body of a member locality and after satisfaction of such member locality's legal obligations, including repayment of its portion of any debt incurred, with regard to the authority, or after making contractual provisions for the repayment of its portion of any debt incurred, with regard to the authority, as well as pledging to pay general dues for operation of the authority for the current and succeeding fiscal year following the effective date of withdrawal. No member seeking withdrawal shall retain, without the consent of a majority of the remaining members, any rights to contributions made by such member, to any property held by such authority or to any revenue sharing as allowed by §§ [15.2-6406](#) and [15.2-6407](#). Upon withdrawal, the withdrawing member shall also return to the authority any dues or other contributions refunded to such member during its membership in the authority. Whenever the board determines that the purpose for which the authority was created has been substantially fulfilled or is impractical or impossible to accomplish and that all obligations incurred by the authority have been paid or that cash or a sufficient amount of United States

government securities has been deposited for their payment, or provisions satisfactory for the timely payment of all its outstanding obligations have been arranged, the board may adopt resolutions declaring and finding that the authority shall be dissolved. Appropriate attested copies of such resolutions shall be delivered to the Governor so that legislation dissolving such authority may be introduced in the General Assembly. The dissolution of an authority shall become effective according to the terms of such legislation. The title to all funds and other property owned by such authority at the time of such dissolution shall vest in the member localities which have contributed to the authority in proportion to their respective contributions.

1997, cc. [276](#), 587, § 15.1-1725; 2010, c. [531](#).

§15.2-6416. Chapter liberally construed.

This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes thereof.

1997, cc. [276](#), 587, § 15.1-1726.

Virginia Register Act

§2.2-4100. Short title; purpose of chapter; declaration of policy.

A. This chapter shall be known and may be cited as the "Virginia Register Act."

B. It is the purpose of this chapter to satisfy the need for public availability of information respecting the regulations of state agencies. Nothing in this chapter contemplates or is designed to limit or impede the present or future making, amendment, or repeal of regulations by administrative agencies. It is declared to be the policy of the Commonwealth to encourage, facilitate, and assist agencies in developing regulations that will inform the public of the requirements, policies, and procedures of the administrative authorities of the State.

1973, c. 535, §§ 9-6.15, 9-6.22; 1975, c. 502; 2001, c. [844](#).

§2.2-4101. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency" means any authority, instrumentality, officer, board, or other unit of the government of the Commonwealth with express or implied authority to issue

regulations other than the General Assembly, courts, municipal corporations, counties, other local or regional governmental authorities including sanitary or other districts and joint state-federal, interstate or intermunicipal authorities, the Virginia Resources Authority, the Virginia Code Commission with respect to minor changes made under the provisions of § [30-150](#), and educational institutions operated by the Commonwealth with respect to regulations that pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

"Virginia Administrative Code" means the codified publication of regulations under the provisions of Chapter 15 (§ [30-145](#) et seq.) of Title 30.

"Commission" means the Virginia Code Commission.

"Guidance document" means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies. Nothing in this definition shall be construed or interpreted to expand the identification or release of any document otherwise protected by law.

"Registrar" means the Registrar of Regulations appointed as provided in § [2.2-4102](#).

"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws.

"Virginia Register of Regulations" means the publication issued under the provisions of Article 6 (§ [2.2-4031](#) et seq.) of the Administrative Process Act (§ [2.2-4000](#) et seq.). 1973, c. 535, § 9-6.16; 1975, c. 502; 1982, c. 489; 1984, c. 5; 1985, cc. 67, 602; 1993, c. 669; 1997, cc. [11](#), [87](#); 2001, c. [844](#).

§2.2-4102. Registrar of Regulations; personnel, facilities and services; publications.

The Commission shall engage or appoint on a contract, part-time, or annual basis a professionally experienced or trained Registrar of Regulations. Under the direction of the Commission, the Registrar shall, at a suitable place to be designated by the Commission, perform the duties required by this chapter or assigned by the Commission in accordance with this chapter or Chapter 15 (§ [30-145](#) et seq.) of Title 30. The Commission shall as necessary also (i) appoint clerical or other personnel if any, (ii)

arrange by contract or otherwise for the necessary facilities and services, and (iii) provide for the compilation and publication of the Virginia Register of Regulations and the Virginia Administrative Code pursuant to §§ [2.2-4031](#) and [30-146](#).

1973, c. 535, § 9-6.17; 1975, c. 502; 1982, c. 489; 1984, c. 5; 1992, c. 216; 1993, c. 669; 1997, c. [87](#); 2001, c. [844](#); 2003, c. [212](#).

§2.2-4103. Agencies to file regulations with Registrar; other duties; failure to file.

It shall be the duty of every agency to have on file with the Registrar the full text of all of its currently operative regulations, together with the dates of adoption, revision, publication, or amendment thereof and such additional information requested by the Commission or the Registrar for the purpose of publishing the Virginia Register of Regulations and the Virginia Administrative Code. Thereafter, coincidentally with the issuance thereof, each agency shall from day to day so file, date, and supplement all new regulations and amendments, repeals, or additions to its previously filed regulations. The filed regulations shall (i) indicate the laws they implement or carry out, (ii) designate any prior regulations repealed, modified, or supplemented, (iii) state any special effective or terminal dates, and (iv) be accompanied by a statement or certification, either in original or electronic form, that the regulations are full, true, and correctly dated. No regulation or amendment or repeal thereof shall be effective until filed with the Registrar.

Orders condemning or closing any shellfish, finfish or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ [28.2-803](#) et seq.) of Chapter 8, of Title 28.2, which are exempt from the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) as provided in subsection B of § [2.2-4002](#), shall be effective on the date specified by the promulgating agency. Such orders shall continue to be filed with the Registrar either before or after their effective dates in order to satisfy the need for public availability of information respecting the regulations of state agencies.

An order setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § [28.2-1000.2](#), which is exempt from the requirements of the Administrative Process Act as provided by subsection A of § [2.2-4002](#), shall be effective on the date specified. Such orders shall be filed with the Registrar for prompt publication.

In addition, each agency shall itself (i) maintain a complete list of all of its currently operative regulations for public consultation, (ii) make available to public inspection a complete file of the full texts of all such regulations, and (iii) allow public copying thereof or make copies available either without charge, at cost, or on payment of a reasonable fee. Each agency shall also maintain as a public record a complete file of its regulations that have been superseded on and after June 1, 1975.

Where regulations adopt textual matter by reference to publications other than the Federal Register or Code of Federal Regulations, the agency shall (i) file with the Registrar copies of the referenced publications, (ii) state on the face of or as notations to regulations making such adoptions by reference the places where copies of the referred publications may be procured, and (iii) make copies of such referred publications available for public inspection and copying along with its other regulations.

Unless he finds that there are special circumstances requiring otherwise, the Governor, in addition to the exercise of his authority to see that the laws are faithfully executed, may, until compliance with this chapter is achieved, withhold the payment of compensation or expenses of any officer or employee of any agency in whole or part whenever the Commission certifies to him that the agency has failed to comply with this section or this chapter in stated respects, to respond promptly to the requests of the Registrar, or to comply with the regulations of the Commission.

1973, c. 535, § 9-6.18; 1975, c. 502; 1982, c. 489; 1989, c. 299; 1997, cc. [11](#), [87](#); 2001, c. [844](#); 2007, c. [41](#); 2010, cc. [178](#), [407](#), [728](#); 2017, c. [488](#).

§2.2-4103.1. Guidance documents; duty to file with Registrar.

A. For the purposes of this section, "agency" means any authority, instrumentality, officer, board, or other unit of the government of the Commonwealth other than the General Assembly, courts, municipal corporations, counties, other local or regional governmental authorities including sanitary or other districts and joint state-federal, interstate or intermunicipal authorities, the Virginia Resources Authority, the Virginia Code Commission with respect to minor changes made under the provisions of § [30-150](#), and educational institutions operated by the Commonwealth with respect to regulations that pertain to (i) their academic affairs; (ii) the selection, tenure, promotion, and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

B. It shall be the duty of every agency to annually file with the Registrar for publication in the Virginia Register of Regulations a list of any guidance documents upon

which the agency currently relies. The filing shall be made on or before January 1 of each year in a format to be developed by the Registrar. Each agency shall also (i) maintain a complete list of all of its currently operative guidance documents and make the list available for public inspection, (ii) make available for public inspection the full texts of all guidance documents to the extent inspection is permitted by law, and (iii) upon request, make copies of such lists or guidance documents available without charge, at cost, or upon payment of a reasonable fee.

C. Nothing in this section is intended to nor shall it confer or impose any regulatory authority upon an agency, nor shall this section create any rights to appeal or challenge a guidance document adopted by an agency.

2017, c. [488](#).

§2.2-4104. Duties of Commission in compiling Virginia Administrative Code and Register.

The Commission, through the Registrar and otherwise as it directs, may in the course of the work of compiling and maintaining the Virginia Administrative Code and the Register:

1. In writing at any time call upon all agencies to submit to the Registrar one or more copies of all existing regulations as well as all subsequent amendments, repeals, additions, or new regulations. However, this subdivision shall not affect the duty of agencies to comply with § [2.2-4103](#) without calls or reminders;
2. Advise agencies as to the form and style of their regulations as well as the codification thereof; and
3. Formulate and issue, without reference to or limitation by the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.), general or special regulations respecting the nature and content of the Virginia Administrative Code, making exceptions thereto, supplementing or limiting the duties of agencies hereunder, and otherwise carrying out the purposes of this chapter.

1973, c. 535, § 9-6.20; 1975, c. 502; 1982, c. 489; 1984, c. 5; 1993, c. 669; 2001, c. [844](#).

Virginia Residential Landlord and

Tenant Act

§55-248.2. Short title.

This chapter may be cited as the "Virginia Residential Landlord and Tenant Act" or the "Virginia Rental Housing Act."

1974, c. 680; 2014, c. [813](#).

§55-248.3. Purposes of chapter.

The purposes of this chapter are to simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; to encourage landlords and tenants to maintain and improve the quality of housing; and to establish a single body of law relating to landlord and tenant relations throughout the Commonwealth; provided, however, that nothing in this chapter shall prohibit a county, city or town from establishing a commission, reconciliatory in nature only, or designating an existing agency, which upon mutual agreement of the parties may mediate conflicts which may arise out of the application of this chapter, nor shall anything herein be deemed to prohibit an ordinance designed to effect compliance with local property maintenance codes. This chapter shall supersede all other local, county, or municipal ordinances or regulations concerning landlord and tenant relations and the leasing of residential property.

1974, c. 680; 1977, c. 427.

§55-248.3:1. Applicability of chapter.

A. This chapter shall apply to all jurisdictions in the Commonwealth and may not be waived or otherwise modified, in whole or in part, by the governing body of any locality, its boards and commissions or other instrumentalities, or the courts of the Commonwealth.

B. The provisions of this chapter shall apply to occupancy in all single-family and multifamily residential dwelling units and multifamily dwelling unit located in the Commonwealth. However, where the landlord is a natural person, an estate, or a legal entity that owns no more than two single-family residential dwelling units in its own name subject to a rental agreement, such landlord may opt out of the Virginia Residential Landlord and Tenant Act (§ [55-248.2](#) et seq.) by so stating in a rental agreement with a tenant. Such residential dwelling units shall be exempt from

this chapter and the provisions of §§ [55-225.01](#) through [55-225.48](#) shall be applicable.

The provisions of this chapter shall not apply to instances where occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.

C. Tenancies and occupancies that are not residential tenancies. The following occupancies are not residential tenancies under this chapter:

1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;
2. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;
3. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;
4. Occupancy in a campground as defined in § [35.1-1](#);
5. Occupancy by a tenant who pays no rent pursuant to a rental agreement;
6. Occupancy by an employee of a landlord whose right to occupancy in a multifamily dwelling unit is conditioned upon employment in and about the premises or an former employee whose occupancy continues less than 60 days; or
7. Occupancy in a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, if the provisions of this chapter are inconsistent with the regulations of the Department of Housing and Urban Development.

D. Occupancy in hotel, motel, and extended stay facility.

1. A guest who is an occupant of a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ [55-360](#) et seq.), boardinghouse, or similar transient lodging shall not be construed to be a tenant living in a dwelling unit if such person does not reside in such lodging as his primary residence. Such guest shall be exempt from this chapter, and the innkeeper or property owner, or his agent, shall have the right to use self-help eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of possession

issued pursuant to such action, which would otherwise be required under this chapter.

2. A hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging shall be exempt from the provisions of this chapter if overnight sleeping accommodations are furnished to a person for consideration if such person does not reside in such lodging as his primary residence.

3. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ [55-360](#) et seq.), boardinghouse, or similar transient lodging as his primary residence for fewer than 90 consecutive days, such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging establishment shall give a five-day written notice of nonpayment to a person residing in such lodging and, upon the expiration of the five-day period specified in the notice, may exercise self-help eviction if payment in full has not been received.

4. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ [55-360](#) et seq.), boardinghouse, or similar transient lodging as his primary residence for more than 90 consecutive days or is subject to a written lease for more than 90 days, such lodging shall be subject to the provisions of this chapter.

2000, c. [760](#); 2001, c. [416](#); 2017, c. [730](#).

§55-248.4. Definitions.

When used in this chapter, unless expressly stated otherwise:

"Action" means recoupment, counterclaim, set off, or other civil suit and any other proceeding in which rights are determined, including without limitation actions for possession, rent, unlawful detainer, unlawful entry, and distress for rent.

"Application deposit" means any refundable deposit of money, however denominated, including all money intended to be used as a security deposit under a rental agreement, or property, which is paid by a tenant to a landlord for the purpose of being considered as a tenant for a dwelling unit.

"Application fee" means any nonrefundable fee, which is paid by a tenant to a landlord or managing agent for the purpose of being considered as a tenant for a dwelling unit. An application fee shall not exceed \$50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party performing background, credit, or other

pre-occupancy checks on the applicant. However, where an application is being made for a dwelling unit which is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, an application fee shall not exceed \$32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.

"Assignment" means the transfer by any tenant of all interests created by a rental agreement.

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the financial obligations as a tenant under the rental agreement.

"Building or housing code" means any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any structure or that part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

"Commencement date of rental agreement" means the date upon which the tenant is entitled to occupy the dwelling unit as a tenant.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, including, but not limited to, a manufactured home.

"Effective date of rental agreement" means the date upon which the rental agreement is signed by the landlord and the tenant obligating each party to the terms and conditions of the rental agreement.

"Facility" means something that is built, constructed, installed or established to perform some particular function.

"Good faith" means honesty in fact in the conduct of the transaction concerned.

"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the premises, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor or sublessor. Such managing agent shall be subject to the provisions of § [16.1-88.03](#). Landlord shall not, however, include a community land trust as defined in § [55-221.1](#).

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.

"Multifamily dwelling unit" means more than one single-family dwelling unit located in a building. However, nothing in this definition shall be construed to apply to any nonresidential space in such building.

"Natural person," wherever the chapter refers to an owner as a "natural person," includes co-owners who are natural persons, either as tenants in common, joint tenants, tenants in partnership, tenants by the entirety, trustees or beneficiaries of a trust, general partnerships, limited liability partnerships, registered limited liability partnerships or limited liability companies, or any lawful combination of natural persons permitted by law.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all

of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any combination thereof, and any other legal or commercial entity.

"Owner" means one or more persons or entities, jointly or severally, in whom is vested:

1. All or part of the legal title to the property, or
2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.

"Person" means any individual, group of individuals, corporation, partnership, business trust, association or other legal entity, or any combination thereof.

"Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

"Processing fee for payment of rent with bad check" means the processing fee specified in the rental agreement, not to exceed \$50, assessed by a landlord against a tenant for payment of rent with a check drawn by the tenant on which payment has been refused by the payor bank because the drawer had no account or insufficient funds.

"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment or similar items.

"Rent" means all money, other than a security deposit, owed or paid to the landlord under the rental agreement, including prepaid rent paid more than one month in advance of the rent due date.

"Rental agreement" or "lease agreement" means all agreements, written or oral, and valid rules and regulations adopted under § [55-248.17](#) embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

"Rental application" means the written application or similar document used by a landlord to determine if a prospective tenant is qualified to become a tenant of a dwelling unit. A landlord may charge an application fee as provided in this chapter and may request a prospective tenant to provide information that will enable the landlord to make such determination. The landlord may photocopy each applicant's driver's license or other similar photo identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § [46.2-342](#). However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of Title 18 U.S.C. Part I, Chapter 33, § 701. The landlord may require that each applicant provide a social security number issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit.

"Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet, and either a bath or shower, and in the case of a kitchen means refrigerator, stove, or sink.

"Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, as a security for damages to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit until the commencement date of the rental agreement. Security deposit shall not include a damage insurance policy or renter's insurance policy as those terms are defined in § [55-248.7:2](#) purchased by a landlord to provide coverage for a tenant.

"Single-family residence" means a structure, other than a multi-family residential structure, maintained and used as a single dwelling unit, condominium unit, or any other dwelling unit that has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.

"Sublease" means the transfer by any tenant of any but not all interests created by a rental agreement.

"Tenant" means a person entitled only under the terms of a rental agreement to occupy a dwelling unit to the exclusion of others and shall include roomer. Tenant shall not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Tenant records" means all information, including financial, maintenance, and other records about a tenant or prospective tenant, whether such information is in written or electronic form or other medium. A tenant may request copies of his tenant records pursuant to § [55-248.9:1](#).

"Utility" means electricity, natural gas, water and sewer provided by a public service corporation or such other person providing utility services as permitted under § [56-1.2](#). If the rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment as defined in § [56-245.2](#), or a ratio utility billing system as defined in § [55-226.2](#).

"Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of the move-in inspection.

"Written notice" means notice given in accordance with § [55-248.6](#), including any representation of words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or (ii) stored in an electronic form or other medium, retrievable in a perceivable form, and regardless of whether an electronic signature authorized by Chapter 42.1 (§ [59.1-479](#) et seq.) of Title 59.1 is affixed. The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice required by this chapter.

1974, c. 680; 1977, c. 427; 1987, c. 428; 1990, c. 55; 1991, c. 205; 1999, cc. [77](#), [258](#), [359](#), [390](#); 2000, cc. [760](#), [816](#); 2002, c. [531](#); 2003, cc. [355](#), [425](#), [855](#); 2004, c. [123](#); 2007, c. [634](#); 2008, cc. [489](#), [640](#); 2010, cc. [180](#), [550](#); 2012, c. [788](#); 2013, c. [563](#); 2014, c. [651](#); 2015, c. [596](#); 2016, c. [744](#); 2017, c. [730](#).

§55-248.5. Repealed.

Repealed by Acts 2017, c. [730](#), cl. [2](#).

§55-248.6. Notice.

A. As used in this chapter:

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

B. If the rental agreement so provides, the landlord and tenant may send notices in electronic form, however any tenant who so requests may elect to send and receive notices in paper form. If electronic delivery is used, the sender shall retain sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.

In the case of the landlord, notice is served on the landlord at his place of business where the rental agreement was made, or at any place held out by the landlord as the place for receipt of the communication.

C. In the case of the tenant, notice is served at the tenant's last known place of residence, which may be the dwelling unit.

D. Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the person conducting that transaction, or from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

E. No notice of termination of tenancy served upon a tenant by a public housing authority organized under the Housing Authorities Law (§ [36-1](#) et seq.) of Title 36 shall be effective unless it contains on its first page, in type no smaller or less legible than that otherwise used in the body of the notice, the name, address and telephone

number of the legal services program, if any, serving the jurisdiction wherein the premises are located.

F. The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice under this chapter. The landlord may also engage an attorney at law to prepare or provide any written notice under this chapter or legal process under Title 8.01. Nothing herein shall be construed to preclude use of an electronic signature as defined in § [59.1-480](#), or an electronic notarization as defined in § [47.1-2](#), in any written notice under this chapter or legal process under Title 8.01.

1974, c. 680; 1982, c. 260; 1993, c. 754; 1998, c. [260](#); 2000, c. [760](#); 2008, cc. [489](#), [640](#); 2017, c. [730](#).

§55-248.6:1. Application deposit and application fee.

Any landlord may require a refundable application deposit in addition to a non-refundable application fee. If the applicant fails to rent the unit for which application was made, from the application deposit the landlord shall refund to the applicant within 20 days after the applicant's failure to rent the unit or the landlord's rejection of the application all sums in excess of the landlord's actual expenses and damages together with an itemized list of said expenses and damages. If, however, the application deposit was made by cash, certified check, cashier's check, or postal money order, such refund shall be made within 10 days of the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application. If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that portion of the application deposit wrongfully withheld and reasonable attorney fees.

1977, c. 427; 1985, c. 208; 1993, c. 382; 2000, c. [760](#); 2003, c. [416](#); 2008, c. [489](#); 2011, c. [766](#); 2013, c. [563](#).

§55-248.7. Terms and conditions of rental agreement; copy for tenant; accounting of rental payments.

A. A landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law, including rent, charges for late payment of rent, term of the agreement, automatic renewal of the rental agreement, requirements for notice of intent to vacate or terminate the rental agreement, and other provisions governing the rights and obligations of the parties.

B. In the absence of a rental agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

C. Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the place designated by the landlord and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal installments at the beginning of each month. If the landlord receives from a tenant a written request for a written statement of charges and payments, he shall provide the tenant with a written statement showing all debits and credits over the tenancy or the past 12 months, whichever is shorter. The landlord shall provide such written statement within 10 business days of receiving the request.

D. Unless the rental agreement fixes a definite term, the tenancy shall be week to week in case of a roomer who pays weekly rent, and in all other cases month to month. Terminations of tenancies shall be governed by § [55-248.37](#) unless the rental agreement provides for a different notice period.

E. If the rental agreement contains any provision whereby the landlord may approve or disapprove a sublessee or assignee of the tenant, the landlord shall within 10 business days of receipt by him of the written application of the prospective sublessee or assignee on a form to be provided by the landlord, approve or disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days shall be deemed evidence of his approval.

F. A copy of any written rental agreement signed by both the tenant and the landlord shall be provided to the tenant within one month of the effective date of the written rental agreement. The failure of the landlord to deliver such a rental agreement shall not affect the validity of the agreement.

G. No unilateral change in the terms of a rental agreement by a landlord or tenant shall be valid unless (i) notice of the change is given in accordance with the terms of the rental agreement or as otherwise required by law and (ii) both parties consent in writing to the change.

H. The landlord shall provide the tenant with a written receipt, upon request from the tenant, whenever the tenant pays rent in the form of cash or money order.

1974, c. 680; 1977, c. 427; 1983, c. 39; 1988, c. 68; 2000, c. [760](#); 2003, c. [424](#); 2012, cc. [464](#), [503](#); 2013, c. [563](#); 2017, c. [730](#).

§55-248.7:1. Prepaid rent; maintenance of escrow account.

A landlord and a tenant may agree in a rental agreement that the tenant pay prepaid rent. If a landlord receives prepaid rent, it shall be placed in an escrow account in a federally insured depository authorized to do business in Virginia by the end of the fifth business day following receipt and shall remain in the account until such time as the prepaid rent becomes due. Unless the landlord has otherwise become entitled to receive any portion of the prepaid rent, it shall not be removed from the escrow account required by this section without the written consent of the tenant.

2002, c. [531](#); 2015, c. [596](#); 2017, c. [730](#).

§55-248.7:2. Landlord may obtain certain insurance for tenant.

A. Damage Insurance. A landlord may require as a condition of tenancy that a tenant have commercial insurance coverage as specified in the rental agreement to secure the performance by the tenant of the terms and conditions of the rental agreement and pay for the cost of premiums for such insurance coverage obtained by the landlord, generally known as "damage insurance." As provided in § [55-248.4](#), such payments shall not be deemed a security deposit, but shall be rent. However, as provided in § [55-248.9](#), the landlord cannot require a tenant to pay both security deposits and the cost of damage insurance premiums, if the total amount of any security deposits and damage insurance premiums exceeds the amount of two months' periodic rent. The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for damage insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement. Where a landlord obtains damage insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual costs of such insurance coverage and may recover administrative or other fees associated with administration of a damage insurance policy, including a tenant opting out of the insurance coverage provided by the landlord pursuant to this subsection. If a landlord obtains damage insurance for his tenants, the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the insurance policy or certificate evidencing the coverage being provided and upon request of the tenant make available a copy of the insurance policy.

B. Renter's Insurance. A landlord may require as a condition of tenancy that a tenant have renter's insurance as specified in the rental agreement that is a combination multi-peril policy containing fire, miscellaneous property, and personal liability coverage insuring personal property located in residential units not occupied by the owner. A landlord may require a tenant to pay for the cost of premiums for such insurance obtained by the landlord, to provide such coverage for the tenant as part of rent or as otherwise provided herein. As provided in § [55-248.4](#), such payments shall not be deemed a security deposit, but shall be rent. If the landlord requires that such premiums be paid prior to the commencement of the tenancy, the total amount of all security deposits and insurance premiums for damage insurance and renter's insurance shall not exceed the amount of two months' periodic rent. Otherwise, the landlord may add a monthly amount as additional rent to recover the costs of such insurance coverage. The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for renter's insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement.

C. Where a landlord obtains renter's insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual costs of such insurance coverage and may recover administrative or other fees associated with the administration of a renter's insurance program, including a tenant opting out of the insurance coverage provided to the tenant pursuant to this subsection. If a landlord obtains renter's insurance for his tenants, the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the insurance policy prepared by the insurer or certificate evidencing the coverage being provided and upon request of the tenant make available a copy of the insurance policy.

D. Nothing in this section shall be construed to prohibit the landlord from recovering from the tenant as part of the rent, the tenant's prorated share of the actual costs of other insurance coverages provided by the landlord relative to the premises, or the tenant's prorated share of a self-insurance program held in an escrow account by the landlord, including the landlord's administrative or other fees associated with the administration of such coverages. The landlord may apply such funds held in escrow to pay claims pursuant to the landlord's self-insurance plan.

2004, c. [123](#); 2005, c. [285](#); 2010, c. [550](#); 2012, c. [788](#); 2015, c. [596](#).

§55-248.8. Effect of unsigned or undelivered rental agreement.

If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord. If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession or payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant. If a rental agreement, given effect by the operation of this section, provides for a term longer than one year, it is effective for only one year.

1974, c. 680.

§55-248.9. Prohibited provisions in rental agreements.

A. A rental agreement shall not contain provisions that the tenant:

1. Agrees to waive or forego rights or remedies under this chapter;
2. Agrees to waive or forgo rights or remedies pertaining to the 120-day conversion or rehabilitation notice required in the Condominium Act (§ [55-79.39](#) et seq.), the Virginia Real Estate Cooperative Act (§ [55-424](#) et seq.) or Chapter 13 (§ [55-217](#) et seq.), except where the tenant is on a month-to-month lease pursuant to § [55-222](#);
3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;
4. Agrees to pay the landlord's attorney's fees except as provided in this chapter;
5. Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs connected therewith;
6. Agrees as a condition of tenancy in public housing to a prohibition or restriction of any lawful possession of a firearm within individual dwelling units unless required by federal law or regulation; or
7. Agrees to both the payment of a security deposit and the provision of a bond or commercial insurance policy purchased by the tenant to secure the performance of the terms and conditions of a rental agreement, if the total of the security deposit and the bond or insurance premium exceeds the amount of two months' periodic rent.

B. A provision prohibited by subsection A included in a rental agreement is unenforceable. If a landlord brings an action to enforce any of the prohibited provisions, the tenant may recover actual damages sustained by him and reasonable attorney's fees.

1974, c. 680; 1977, c. 427; 1987, c. 473; 1991, c. 720; 2000, c. [760](#); 2002, c. [531](#); 2003, c. [905](#); 2016, c. [744](#).

§55-248.9:1. Confidentiality of tenant records.

A. No landlord or managing agent shall release information about a tenant or prospective tenant in the possession of the landlord to a third party unless:

1. The tenant or prospective tenant has given prior written consent;
2. The information is a matter of public record as defined in § [2.2-3701](#);
3. The information is a summary of the tenant's rent payment record, including the amount of the tenant's periodic rent payment;
4. The information is a copy of a material noncompliance notice that has not been remedied or, termination notice given to the tenant under § [55-248.31](#) and the tenant did not remain in the premises thereafter;
5. The information is requested by a local, state, or federal law-enforcement or public safety official in the performance of his duties;
6. The information is requested pursuant to a subpoena in a civil case;
7. The information is requested by a local commissioner of the revenue in accordance with § [58.1-3901](#);
8. The information is requested by a contract purchaser of the landlord's property; provided the contract purchaser agrees in writing to maintain the confidentiality of such information;
9. The information is requested by a lender of the landlord for financing or refinancing of the property;
10. The information is requested by the commanding officer, military housing officer, or military attorney of the tenant;
11. The third party is the landlord's attorney or the landlord's collection agency;
12. The information is otherwise provided in the case of an emergency; or

13. The information is requested by the landlord to be provided to the managing agent, or a successor to the managing agent.

B. A tenant may designate a third party to receive duplicate copies of a summons that has been issued pursuant to § [8.01-126](#) and of written notices from the landlord relating to the tenancy. Where such a third party has been designated by the tenant, the landlord shall mail the duplicate copy of any summons issued pursuant to § [8.01-126](#) or notice to the designated third party at the same time the summons or notice is mailed to or served upon the tenant. Nothing in this subsection shall be construed to grant standing to any third party designated by the tenant to challenge actions of the landlord in which notice was mailed pursuant to this subsection. The failure of the landlord to give notice to a third party designated by the tenant shall not affect the validity of any judgment entered against the tenant.

C. A landlord or managing agent may enter into an agreement with a third-party service provider to maintain tenant records in electronic form or other medium. In such case, the landlord and managing agent shall not be liable under this section in the event of a breach of the electronic data of such third-party service provider, except in the case of gross negligence or intentional act. Nothing herein shall be construed to require a landlord or managing agent to indemnify such third-party service provider.

D. A tenant may request a copy of his tenant records in paper or electronic form. If the rental agreement so provides, a landlord may charge a tenant requesting more than one copy of his records the actual costs of preparing copies of such records. However, if the landlord makes available tenant records to each tenant by electronic portal, the tenant shall not be required to pay for access to such portal.

1985, c. 567; 2000, c. [760](#); 2003, c. [426](#); 2006, cc. [491](#), [667](#); 2008, c. [489](#); 2010, c. [550](#); 2015, c. [596](#); 2016, c. [744](#).

§55-248.10. Repealed.

Repealed by Acts 2000, c. [760](#), cl. 2.

§55-248.10:1. Landlord and tenant remedies for abuse of access.

If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fees. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably

harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages and reasonable attorney's fees.

2000, c. [760](#).

§55-248.11. Repealed.

Repealed by Acts 2000, c. [760](#), cl. 2.

§55-248.11:1. Inspection of premises.

The landlord shall, within five days after occupancy of a dwelling unit, submit a written report to the tenant, for his safekeeping, itemizing damages to the dwelling unit existing at the time of occupancy, which record shall be deemed correct unless the tenant objects thereto in writing within five days after receipt thereof. The landlord may adopt a written policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, which record shall be deemed correct unless the landlord objects thereto in writing within five days after receipt thereof. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy thereof, at which time the inspection record shall be deemed correct. If any damages are reflected on the written report, a landlord is not required to make repairs to address such damages unless required to do so under § [55-248.11:2](#) or [55-248.13](#).

1977, c. 427; 1992, c. 451; 2000, c. [760](#); 2016, c. [744](#).

§55-248.11:2. Disclosure of mold in dwelling units.

As part of the written report of the move-in inspection required by § [55-248.11:1](#), the landlord shall disclose whether there is any visible evidence of mold in areas readily accessible within the interior of the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects thereto in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain in possession, of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later

than five business days thereafter and re-inspect the dwelling unit to confirm there is no visible evidence of mold in the dwelling unit and reflect on a new report that there is no visible evidence of mold in the dwelling unit upon re-inspection.

2004, c. [226](#); 2008, c. [640](#).

§55-248.12. Disclosure.

A. The landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

1. The person or persons authorized to manage the premises; and
2. An owner of the premises or any other person authorized to act for and on behalf of the owner, for the purposes of service of process and receiving and receipting for notices and demands.

B. In the event of the sale of the premises, the landlord shall notify the tenant of such sale and disclose to the tenant the name and address of the purchaser and a telephone number at which such purchaser can be located.

C. With respect to a multifamily dwelling unit, if an application for registration of the rental property as a condominium or cooperative has been filed with the Real Estate Board, or if there is within six months an existing plan for tenant displacement resulting from (i) demolition or substantial rehabilitation of the property or (ii) conversion of the rental property to office, hotel or motel use or planned unit development, then the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose that information in writing to any prospective tenant.

D. The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord or owner. A person who fails to comply with this section becomes an agent of each person who is a landlord for the purposes of service of process and receiving and receipting for notices and demands.

1974, c. 680; 1983, c. 257; 2000, c. [760](#); 2017, c. [730](#).

§55-248.12:1. Required disclosures for properties located adjacent to a military air installation; remedy for nondisclosure.

A. The landlord of property in any locality in which a military air installation is located, or any person authorized to enter into a rental agreement on his behalf, shall provide to a prospective tenant a written disclosure that the property is located in a noise zone or accident potential zone, or both, as designated by the locality on its official zoning map. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. The disclosure shall specify the noise zone or accident potential zone in which the property is located according to the official zoning map of the locality. A disclosure made pursuant to this section containing inaccurate information regarding the location of the noise zone or accident potential zone shall be deemed as nondisclosure unless the inaccurate information is provided by an officer or employee of the locality in which the property is located.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time during the first 30 days of the lease period by sending to the landlord by certified or registered mail, return receipt requested, a written notice of termination. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

2005, c. [511](#); 2017, c. [730](#).

§55-248.12:2. Required disclosures for properties with defective drywall; remedy for nondisclosure.

A. If the landlord of a residential dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit that has not been remediated, the landlord shall provide to a prospective tenant a written disclosure that the property has defective drywall. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § [36-156.1](#).

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of notice of discovery of the

existence of defective drywall by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

2011, cc. [34](#), [46](#).

§55-248.12:3. Required disclosures for property previously used to manufacture methamphetamine; remedy for nondisclosure.

A. If the landlord of a residential dwelling unit has actual knowledge that the dwelling unit was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § [32.1-11.7](#) and the applicable licensing provisions of Chapter 11 (§ [54.1-1100](#) et seq.) of Title 54.1, the landlord shall provide to a prospective tenant a written disclosure that so states. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of discovery that the property was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § [32.1-11.7](#) by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions required by this section and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

2013, c. [557](#); 2016, c. [527](#).

§55-248.13. Landlord to maintain fit premises.

A. The landlord shall:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;
2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
3. Keep all common areas shared by two or more dwelling units of a multifamily premises in a clean and structurally safe condition;
4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;
5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, and to promptly respond to any notices from a tenant as provided in subdivision A 10 of § [55-248.16](#). Where there is visible evidence of mold, the landlord shall promptly remediate the mold conditions in accordance with the requirements of subsection E of § [8.01-226.12](#) and reinspect the dwelling unit to confirm that there is no longer visible evidence of mold in the dwelling unit. The landlord shall provide a tenant with a copy of a summary of information related to mold remediation occurring during that tenancy and, upon request of the tenant, make available the full package of such information and reports not protected by attorney-client privilege. Once the mold has been remediated in accordance with professional standards, the landlord shall not be required to make disclosures of a past incidence of mold to subsequent tenants;
6. Provide and maintain appropriate receptacles and conveniences for the collection, storage, and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of dwelling units and arrange for the removal of same;
7. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection; and
8. Maintain any carbon monoxide alarm that has been installed by the landlord in a dwelling unit.

B. The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.

C. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision A 1.

D. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions A 3, 6, and 7 and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord, and if the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

1974, c. 680; 1987, cc. 361, 636; 2000, c. [760](#); 2004, c. [226](#); 2007, c. [634](#); 2008, cc. [489](#), [640](#); 2009, c. [663](#); 2014, c. [632](#); 2015, c. [274](#); 2017, c. [730](#).

§55-248.13:1. Landlord to provide locks and peepholes.

The governing body of any locality may require by ordinance that any landlord who rents five or more dwelling units in any one multifamily building shall install:

1. Dead-bolt locks which meet the requirements of the Uniform Statewide Building Code (§ [36-97](#) et seq.) for new multifamily construction and peepholes in any exterior swinging entrance door to any such unit; however, any door having a glass panel shall not require a peephole.

2. Manufacturer's locks that meet the requirements of the Uniform Statewide Building Code and removable metal pins or charlie bars in accordance with the Uniform Statewide Building Code on exterior sliding glass doors located in a building at any level or levels designated in the ordinance.

3. Locking devices that meet the requirements of the Uniform Statewide Building Code on all exterior windows.

Any ordinance adopted pursuant to this section shall further provide that any landlord subject to the ordinance shall have a reasonable time as determined by the governing body in which to comply with the requirements of the ordinance.

1977, c. 464; 1988, c. 500; 2017, c. [730](#).

§55-248.13:2. Access of tenant to cable, satellite and other television facilities.

No landlord of a multifamily dwelling unit shall demand or accept payment of any fee, charge or other thing of value from any provider of cable television service, cable modem service, satellite master antenna television service, direct broadcast satellite television service, subscription television service or service of any other television programming system in exchange for granting a television service provider mere access to the landlord's tenants or giving the tenants of such landlord mere access to such service. A landlord may enter into a service agreement with a television service provider to provide marketing and other services to the television service provider, designed to facilitate the television service provider's delivery of its services. Under such a service agreement, the television service provider may compensate the landlord for the reasonable value of the services provided, and for the reasonable value of the landlord's property used by the television service provider.

No landlord shall demand or accept any such payment from any tenants in exchange therefor unless the landlord is itself the provider of the service. Nor shall any landlord discriminate in rental charges between tenants who receive any such service and those who do not. Nothing contained herein shall prohibit a landlord from requiring that the provider of such service and the tenant bear the entire cost of the installation, operation or removal of the facilities incident thereto, or prohibit a landlord from demanding or accepting reasonable indemnity or security for any damages caused by such installation, operation or removal.

1982, c. 323; 2000, c. [760](#); 2003, cc. [60](#), [64](#), [68](#); 2017, c. [730](#).

§55-248.13:3. Notice to tenants for insecticide or pesticide use.

A. The landlord shall give written notice to the tenant no less than forty-eight hours prior to his application of an insecticide or pesticide in the tenant's dwelling unit unless the tenant agrees to a shorter notification period. If a tenant requests the application of the insecticide or pesticide, the forty-eight-hour notice is not required. Tenants who have concerns about specific insecticides or pesticides shall notify the landlord in writing no less than twenty-four hours before the scheduled insecticide or pesticide application. The tenant shall prepare the dwelling unit for the application of insecticides or pesticides in accordance with any written instructions of the landlord, and if insects or pests are found to be present, follow any written instructions of the landlord to eliminate the insects or pests following the application of insecticides or pesticides.

B. In addition, the landlord shall post notice of all insecticide or pesticide applications in areas of the premises other than the dwelling units. Such notice shall consist of conspicuous signs placed in or upon such premises where the insecticide or pesticide will be applied at least forty-eight hours prior to the application.

2000, c. [760](#); 2009, c. [663](#).

§55-248.14. Limitation of liability.

Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to notice to the tenant of the conveyance. Unless otherwise agreed, a managing agent of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management.

1974, c. 680; 1987, c. 313; 2000, c. [760](#).

§55-248.15. Tenancy at will; effect of notice of change of terms or provisions of tenancy.

A notice of any change by a landlord or tenant in any terms or provisions of a tenancy at will shall constitute a notice to vacate the premises, and such notice of change shall be given in accordance with the terms of the rental agreement, if any, or as otherwise required by law.

1974, c. 680; 2000, c. [760](#).

§55-248.15:1. Security deposits.

A. A landlord may not demand or receive a security deposit, however denominated, in an amount or value in excess of two months' periodic rent. Upon termination of the tenancy, such security deposit, whether it is property or money held by the landlord as security as hereinafter provided may be applied solely by the landlord (i) to the payment of accrued rent and including the reasonable charges for late payment of rent specified in the rental agreement; (ii) to the payment of the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with § [55-248.16](#), less reasonable wear and tear; or (iii) to other damages or charges as provided in the rental agreement. The security deposit and any deductions, damages and charges shall be itemized by the landlord in a written notice given to the tenant,

together with any amount due the tenant within 45 days after termination of the tenancy and delivery of possession.

Where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in writing by each of the tenants, disposition of the security deposit shall be made with one check being payable to all such tenants and sent to a forwarding address provided by one of the tenants. The landlord shall make the security deposit disposition within the 45-day time period, but if no forwarding address is provided to the landlord, the landlord may continue to hold such security deposit in escrow. If a tenant fails to provide a forwarding address to the landlord to enable the landlord to make a refund of the security deposit, upon the expiration of one year from the date of the end of the 45-day time period, the landlord may remit such sum to the State Treasurer as unclaimed property on a form prescribed by the administrator that includes the name, social security number, if known, and the last known address of each tenant on the rental agreement. If the landlord or managing agent is a real estate licensee, compliance with this paragraph shall be deemed compliance with [§ 54.1-2108](#) and corresponding regulations of the Real Estate Board.

Nothing in this section shall be construed by a court of law or otherwise as entitling the tenant, upon the termination of the tenancy, to an immediate credit against the tenant's delinquent rent account in the amount of the security deposit. The landlord shall apply the security deposit in accordance with this section within the 45-day time period. However, provided the landlord has given prior written notice in accordance with this section, the landlord may withhold a reasonable portion of the security deposit to cover an amount of the balance due on the water, sewer, or other utility account that is an obligation of the tenant to a third-party provider under the rental agreement for the dwelling unit, and upon payment of such obligations the landlord shall provide written confirmation to the tenant within 10 days thereafter, along with payment to the tenant of any balance otherwise due to the tenant. In order to withhold such funds as part of the disposition of the security deposit, the landlord shall have so advised the tenant of his rights and obligations under this section in (a) a termination notice to the tenant in accordance with this chapter, (b) a vacating notice to the tenant in accordance with this section, or (c) a separate written notice to the tenant at least 15 days prior to the disposition of the security deposit. Any written notice to the tenant shall be given in accordance with [§ 55-248.6](#).

The tenant may provide the landlord with written confirmation of the payment of the final water, sewer, or other utility bill for the dwelling unit, in which case the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period, or if the tenant provides such written confirmation after the expiration of the 45-day period, the landlord shall refund any remaining balance of the security deposit held to the tenant within 10 days following the receipt of such written confirmation provided by the tenant. If the landlord otherwise receives confirmation of payment of the final water, sewer, or other utility bill for the dwelling unit, the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period.

Nothing in this section shall be construed to prohibit the landlord from making the disposition of the security deposit prior to the 45-day period and charging an administrative fee to the tenant for such expedited processing, if the rental agreement so provides and the tenant requests expedited processing in a separate written document.

The landlord shall notify the tenant in writing of any deductions provided by this subsection to be made from the tenant's security deposit during the course of the tenancy. Such notification shall be made within 30 days of the date of the determination of the deduction and shall itemize the reasons in the same manner as provided in subsection B. Such notification shall not be required for deductions made less than 30 days prior to the termination of the rental agreement. If the landlord willfully fails to comply with this section, the court shall order the return of the security deposit to the tenant, together with actual damages and reasonable attorney fees, unless the tenant owes rent to the landlord, in which case, the court shall order an amount equal to the security deposit credited against the rent due to the landlord. In the event that damages to the premises exceed the amount of the security deposit and require the services of a third party contractor, the landlord shall give written notice to the tenant advising him of that fact within the 45-day period. If notice is given as prescribed in this paragraph, the landlord shall have an additional 15-day period to provide an itemization of the damages and the cost of repair. This section shall not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter. The holder of the landlord's interest in the premises at the time of the termination of the tenancy, regardless of how the interest is acquired or transferred, is bound by this section and shall be required to return any security deposit received by the original landlord that is duly owed to the tenant, whether or

not such security deposit is transferred with the landlord's interest by law or equity, regardless of any contractual agreements between the original landlord and his successors in interest.

B. The landlord shall:

1. Maintain and itemize records for each tenant of all deductions from security deposits provided for under this section which the landlord has made by reason of a tenant's noncompliance with § [55-248.16](#) during the preceding two years; and
2. Permit a tenant or his authorized agent or attorney to inspect such tenant's records of deductions at any time during normal business hours.

C. Upon request by the landlord to a tenant to vacate, or within five days after receipt of notice by the landlord of the tenant's intent to vacate, the landlord shall provide written notice to the tenant of the tenant's right to be present at the landlord's inspection of the dwelling unit for the purpose of determining the amount of security deposit to be returned. If the tenant desires to be present when the landlord makes the inspection, he shall so advise the landlord in writing who, in turn, shall notify the tenant of the time and date of the inspection, which must be made within 72 hours of delivery of possession. Following the move-out inspection, the landlord shall provide the tenant with a written security deposit disposition statement, including an itemized list of damages. If additional damages are discovered by the landlord after the security deposit disposition has been made, nothing herein shall be construed to preclude the landlord from recovery of such damages against the tenant, provided, however, that the tenant may present into evidence a copy of the move-out report to support the tenant's position that such additional damages did not exist at the time of the move-out inspection.

D. If the tenant has any assignee or sublessee, the landlord shall be entitled to hold a security deposit from only one party in compliance with the provisions of this section.

2000, cc. [760](#), [761](#); 2001, c. [524](#); 2003, c. [438](#); 2007, c. [634](#); 2010, c. [550](#); 2013, c. [563](#); 2014, c. [651](#); 2015, c. [596](#); 2017, c. [730](#).

§55-248.15:2. Repealed.

Repealed by Acts 2014, c. [651](#), cl. 2, effective January 1, [2015](#).

§55-248.16. Tenant to maintain dwelling unit.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
2. Keep that part of the dwelling unit and the part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;
3. Keep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests, as those terms are defined in § [3.2-3900](#), and to promptly notify the landlord of the existence of any insects or pests;
4. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord;
5. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
6. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including an elevator in a multifamily premises, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement;
7. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;
8. Not remove or tamper with a properly functioning smoke detector installed by the landlord, including removing any working batteries, so as to render the detector inoperative and shall maintain the smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ [36-97](#) et seq.);
9. Not remove or tamper with a properly functioning carbon monoxide alarm installed by the landlord, including removing any working batteries, so as to render the carbon monoxide detector inoperative and shall maintain the carbon monoxide alarm in accordance with the uniform set of standards for maintenance of carbon monoxide alarms established in the Uniform Statewide Building Code (§ [36-97](#) et seq.);
10. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture

and the growth of mold, and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;

11. Not paint or disturb painted surfaces or make alterations in the dwelling unit without the prior written approval of the landlord, provided that (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces or making alterations in the dwelling unit;

12. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed;

13. Abide by all reasonable rules and regulations imposed by the landlord; and

14. Be financially responsible for the added cost of treatment or extermination due to the tenant's unreasonable delay in reporting the existence of any insects or pests and be financially responsible for the cost of treatment or extermination due to the tenant's fault in failing to prevent infestation of any insects or pests in the area occupied.

B. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision A 1.

1974, c. 680; 1987, c. 428; 1999, c. [80](#); 2000, c. [760](#); 2003, c. [355](#); 2004, c. [226](#); 2008, cc. [489](#), [617](#), [640](#); 2009, c. [663](#); 2011, c. [766](#); 2014, c. [632](#); 2016, c. [744](#); 2017, cc. [262](#), [730](#).

§55-248.17. Rules and regulations.

A. A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenants' use and occupancy of the dwelling unit and premises. Any such rule or regulation is enforceable against the tenant only if:

1. Its purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities held out for the tenants generally;

2. It is reasonably related to the purpose for which it is adopted;

3. It applies to all tenants in the premises in a fair manner;
4. It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;
5. It is not for the purpose of evading the obligations of the landlord; and
6. The tenant has been provided with a copy of the rules and regulations or changes thereto at the time he enters into the rental agreement or when they are adopted.

B. A rule or regulation adopted, changed, or provided to the tenant after the tenant enters into the rental agreement shall be enforceable against the tenant if reasonable notice of its adoption or change has been given to the tenant and it does not work a substantial modification of his bargain. If a rule or regulation is adopted or changed after the tenant enters into the rental agreement that does work a substantial modification of his bargain, it shall not be valid unless the tenant consents to it in writing.

C. Any court enforcing this chapter shall consider violations of the reasonable rules and regulations imposed under this section as a breach of the rental agreement and grant the landlord appropriate relief.

1974, c. 680; 2000, c. [760](#); 2017, c. [730](#).

§55-248.18. Access; consent; correction of nonemergency conditions; relocation of tenant.

A. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors. If, upon inspection of a dwelling unit during the term of a tenancy, the landlord determines there is a violation by the tenant of § [55-248.16](#) or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning in accordance with § [55-248.32](#), the landlord may make such repairs and send the tenant an invoice for payment. If, upon inspection of the dwelling unit during the term of a tenancy, the landlord discovers a violation of the rental agreement, this chapter, or other applicable law, the landlord may send a written notice of termination pursuant to § [55-248.31](#). If the rental agreement so provides and if a tenant without reasonable justification declines to permit the landlord or managing agent to exhibit the dwelling unit for sale or

lease, the landlord may recover damages, costs, and reasonable attorney fees against such tenant.

The landlord may enter the dwelling unit without consent of the tenant in case of emergency. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impractical to do so, the landlord shall give the tenant notice of his intent to enter and may enter only at reasonable times. Unless impractical to do so, the landlord shall give the tenant at least 24-hours' notice of routine maintenance to be performed that has not been requested by the tenant. If the tenant makes a request for maintenance, the landlord is not required to provide notice to the tenant. During the pendency of an unlawful detainer filed by the landlord against the tenant, the landlord may request the court to enter an order requiring the tenant to provide the landlord with access to such dwelling unit.

B. Upon the sole determination by the landlord of the existence of a nonemergency property condition in the dwelling unit that requires the tenant to temporarily vacate the dwelling unit in order for the landlord to properly remedy such property condition, the landlord may, upon at least 30 days' written notice to the tenant, require the tenant to temporarily vacate the dwelling unit for a period not to exceed 30 days to a comparable dwelling unit, or hotel, as selected by the landlord and at no expense or cost to the tenant. The landlord shall not be required to pay for any other expenses of the tenant that arise after the temporary relocation period. The landlord and tenant may agree for the tenant to temporarily vacate the dwelling unit in less than 30 days. For purposes of this subsection, "nonemergency property condition" means (i) a condition in the dwelling unit that, in the determination of the landlord, is necessary for the landlord to remedy in order for the landlord to be in compliance with § [55-248.13](#); (ii) the condition does not need to be remedied within a 24-hour period, with any condition that needs to be remedied within 24 hours being defined as an "emergency condition"; and (iii) the condition can only be effectively remedied by the temporary relocation of the tenant pursuant to the provisions of this subsection.

The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of repairs or remediation required to address the property condition. Refusal of the tenant to cooperate with a temporary relocation pursuant to this subsection shall be deemed a breach of the rental agreement, unless the tenant agrees to vacate the

unit and terminate the rental agreement within the 30-day notice period. If the landlord properly remedies the nonemergency property condition within the 30-day period, nothing herein shall be construed to entitle the tenant to terminate the rental agreement. Further, nothing herein shall be construed to limit the landlord from taking legal action against the tenant for any noncompliance that occurs during the period of any temporary relocation pursuant to this section. During the pendency of an unlawful detainer filed by the landlord against the tenant, the landlord may request the court to enter an order requiring the tenant to provide the landlord with access to such dwelling unit.

C. The landlord has no other right to access except by court order or that permitted by §§ [55-248.32](#) and [55-248.33](#) or if the tenant has abandoned or surrendered the premises.

D. The tenant may install, within the dwelling unit, new burglary prevention, including chain latch devices approved by the landlord, and fire detection devices, that the tenant may believe necessary to ensure his safety, provided:

1. Installation does no permanent damage to any part of the dwelling unit.
2. A duplicate of all keys and instructions of how to operate all devices are given to the landlord.
3. Upon termination of the tenancy, the tenant shall be responsible for payment to the landlord for reasonable costs incurred for the removal of all such devices and repairs to all damaged areas.

E. Upon written request of the tenant in a dwelling unit, the landlord shall install a carbon monoxide alarm in the tenant's dwelling unit within 90 days of such request and may charge the tenant a reasonable fee to recover the costs of the equipment and labor for such installation. The landlord's installation of a carbon monoxide alarm shall be in compliance with the Uniform Statewide Building Code.

1974, c. 680; 1993, c. 634; 1995, c. [601](#); 1999, c. [65](#); 2000, c. [760](#); 2001, c. [524](#); 2004, c. [307](#); 2008, cc. [489](#), [617](#); 2009, c. [663](#); 2011, c. [766](#); 2014, c. [632](#); 2015, c. [596](#); 2016, c. [744](#); 2017, c. [730](#).

§55-248.18:1. Access following entry of certain court orders.

A. A tenant or authorized occupant who has obtained an order from a court of competent jurisdiction pursuant to § [16.1-279.1](#) or subsection B of § [20-103](#) granting such tenant possession of the premises to the exclusion of one or more co-tenants or

authorized occupants may provide the landlord with a copy of that court order and request that the landlord either (i) install a new lock or other security devices on the exterior doors of the dwelling unit at the landlord's actual cost or (ii) permit the tenant or authorized occupant to do so, provided:

1. Installation of the new lock or security devices does no permanent damage to any part of the dwelling unit; and
2. A duplicate copy of all keys and instructions of how to operate all devices are given to the landlord.

Upon termination of the tenancy, the tenant shall be responsible for payment to the landlord of the reasonable costs incurred for the removal of all such devices installed and repairs to all damaged areas.

B. A person, who is not a tenant or authorized occupant in the dwelling unit and who has obtained an order from a court of competent jurisdiction pursuant to § [16.1-279.1](#) or subsection B of § [20-103](#) granting such person possession of the premises to the exclusion of one or more co-tenants or authorized occupants, may provide a copy of such order to the landlord and submit a rental application to become a tenant in such dwelling unit within 10 days of the entry of such order. If such person's rental application meets the landlord's tenant selection criteria, such person may become a tenant in such dwelling unit under a written rental agreement. If such person submits a rental application and does not meet the landlord's tenant selection criteria, such person shall vacate the dwelling unit no later than 30 days of the date the landlord gives such person written notice that his rental application has been rejected. If such person does not provide a copy of the protective order to the landlord and submit a rental application to the landlord within 10 days as required by this section, such person shall vacate the dwelling unit no later than 30 days of the date of the entry of such order. Such person shall be liable to the landlord for failure to vacate the dwelling unit as required in this section.

Any tenant obligated on a rental agreement shall pay the rent and otherwise comply with any and all requirements of the rental agreement, and any applicable laws and regulations. The landlord may pursue all of its remedies under the rental agreement and applicable laws and regulations, including filing an unlawful detainer action pursuant to § [8.01-126](#) to obtain a money judgment and to evict any persons residing in such dwelling unit.

C. A landlord who has received a copy of a court order in accordance with subsection A shall not provide copies of any keys to the dwelling unit to any person excluded from the premises by such order.

D. This section shall not apply when the court order excluding a person was issued ex parte.

2005, cc. [735](#), [825](#); 2016, c. [595](#).

§55-248.18:2. Relocation of tenant where mold remediation needs to be performed in the dwelling unit.

Where a mold condition in the dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § [55-248.4](#) for a period not to exceed 30 days. The landlord shall provide the tenant with either (i) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or (ii) a hotel room as selected by the landlord, at no expense or cost to the tenant. The landlord shall not be required to pay for any other expenses of the tenant that arise after the relocation period. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation and for the remainder of the term of the rental agreement following the remediation. Nothing in this section shall be construed as entitling the tenant to a termination of a tenancy where or when the landlord has remediated a mold condition in accordance with professional standards as defined in § [55-248.4](#). The landlord shall pay all costs of the relocation and the mold remediation, unless the mold is a result of the tenant's failure to comply with § [55-248.16](#).

2008, c. [640](#); 2009, c. [663](#); 2011, c. [779](#); 2016, c. [744](#); 2017, c. [730](#).

§55-248.19. Use and occupancy by tenant.

Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a residence.

1974, c. 680; 2000, c. [760](#).

§55-248.20. Tenant to surrender possession of dwelling unit.

At the termination of the term of tenancy, whether by expiration of the rental agreement or by reason of default by the tenant, the tenant shall promptly vacate the premises, removing all items of personal property and leaving the premises in good

and clean order, reasonable wear and tear excepted. If the tenant fails to vacate, the landlord may bring an action for possession and damages, including reasonable attorney's fees.

1974, c. 680; 2000, c. [760](#).

§55-248.21. Noncompliance by landlord.

Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with any provision of this chapter, materially affecting health and safety, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if such breach is not remedied in 21 days.

If the landlord commits a breach which is not remediable, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach, and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

If the landlord has been served with a prior written notice which required the landlord to remedy a breach, and the landlord remedied such breach, where the landlord intentionally commits a subsequent breach of a like nature as the prior breach, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

If the breach is remediable by repairs and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family or other person on the premises with his consent whether known by the tenant or not. In addition, the tenant may recover damages and obtain injunctive relief for noncompliance by the landlord with the provisions of the rental agreement or of this chapter. The tenant shall be entitled to recover reasonable attorneys' fees unless the landlord proves by a preponderance of the evidence that the landlord's actions were reasonable under the circumstances. If the rental agreement is terminated due to the landlord's noncompliance, the landlord shall return the security deposit in accordance with § [55-248.15:1](#).

1974, c. 680; 1982, c. 260; 1987, c. 387; 2000, c. [760](#); 2003, c. [363](#).

§55-248.21:1. Early termination of rental agreement by military personnel.

A. Any member of the armed forces of the United States or a member of the National Guard serving on full-time duty or as a Civil Service technician with the National Guard may, through the procedure detailed in subsection B, terminate his rental agreement if the member (i) has received permanent change of station orders to depart 35 miles or more (radius) from the location of the dwelling unit, (ii) has received temporary duty orders in excess of three months' duration to depart 35 miles or more (radius) from the location of the dwelling unit, (iii) is discharged or released from active duty with the Armed Forces of the United States or from his full-time duty or technician status with the National Guard, or (iv) is ordered to report to government-supplied quarters resulting in the forfeiture of basic allowance for quarters.

B. Tenants who qualify to terminate a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated therein, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. The termination date shall be no more than 60 days prior to the date of departure necessary to comply with the official orders or any supplemental instructions for interim training or duty prior to the transfer. Prior to the termination date, the tenant shall furnish the landlord with a copy of the official notification of the orders or a signed letter, confirming the orders, from the tenant's commanding officer.

The landlord may not charge any liquidated damages.

C. Nothing in this section shall affect the tenant's obligations established by § [55-248.16](#).

1977, c. 427; 1978, c. 104; 1982, c. 260; 1983, c. 241; 1986, c. 29; 1988, c. 184; 2000, c. [760](#); 2002, c. [760](#); 2005, c. [742](#); 2006, c. [667](#); 2007, c. [252](#); 2017, c. [730](#).

§55-248.21:2. Early termination of rental agreements by victims of family abuse, sexual abuse, or criminal sexual assault.

A. Any tenant who is a victim of (i) family abuse as defined by § [16.1-228](#), (ii) sexual abuse as defined by § [18.2-67.10](#), or (iii) other criminal sexual assault under Article 7

(§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2 may terminate such tenant's obligations under a rental agreement under the following circumstances:

1. The victim has obtained an order of protection pursuant to § [16.1-279.1](#) and has given written notice of termination in accordance with subsection B during the period of the protective order or any extension thereof; or
2. A court has entered an order convicting a perpetrator of any crime of sexual assault under Article 7 (§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2, sexual abuse as defined by § [18.2-67.10](#), or family abuse as defined by § [16.1-228](#) against the victim and the victim gives written notice of termination in accordance with subsection B. A victim may exercise a right of termination under this section to terminate a rental agreement in effect when the conviction order is entered and one subsequent rental agreement based upon the same conviction.

B. A tenant who qualifies to terminate such tenant's obligations under a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated therein, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. When the tenant serves the termination notice on the landlord, the tenant shall also provide the landlord with a copy of (i) the order of protection issued or (ii) the conviction order.

C. The rent shall be payable at such time as would otherwise have been required by the terms of the rental agreement through the effective date of the termination as provided in subsection B.

D. The landlord may not charge any liquidated damages.

E. The victim's obligations as a tenant under § [55-248.16](#) shall continue through the effective date of the termination as provided in subsection B. Any co-tenants on the lease with the victim shall remain responsible for the rent for the balance of the term of the rental agreement. If the perpetrator is the remaining sole tenant obligated on the rental agreement, the landlord may terminate the rental agreement and collect actual damages for such termination against the perpetrator pursuant to § [55-248.35](#).

2013, c. [531](#).

§55-248.22. Failure to deliver possession.

If the landlord willfully fails to deliver possession of the dwelling unit to the tenant, rent abates until possession is delivered and the tenant may (i) terminate the rental

agreement upon at least five days' written notice to the landlord and upon termination, the landlord shall return all prepaid rent and security deposits; or (ii) demand performance of the rental agreement by the landlord. If the tenant elects, he may file an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the damages sustained by him. If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person the actual damages sustained by him and reasonable attorney's fees.

1974, c. 680; 2000, c. [760](#).

§55-248.23. Wrongful failure to supply heat, water, hot water or essential services.

A. If contrary to the rental agreement or provisions of this chapter the landlord willfully or negligently fails to supply heat, running water, hot water, electricity, gas or other essential service, the tenant must serve a written notice on the landlord specifying the breach, if acting under this section and, in such event, and after a reasonable time allowed the landlord to correct such breach, may:

1. Recover damages based upon the diminution in the fair rental value of the dwelling unit; or
2. Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance, as determined by the court.

B. If the tenant proceeds under this section, he shall be entitled to recover reasonable attorney fees; however, he may not proceed under § [55-248.21](#) as to that breach. The rights of the tenant under this section shall not arise until he has given written notice to the landlord; however, no rights arise if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family or other person on the premises with his consent.

1974, c. 680; 1982, c. 260; 2000, c. [760](#).

§55-248.24. Fire or casualty damage.

If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that the tenant's enjoyment of the dwelling unit is substantially impaired or required repairs can only be accomplished if the tenant vacates the dwelling unit, either the tenant or the landlord may terminate the rental agreement. The tenant

may terminate the rental agreement by vacating the premises and within 14 days thereafter, serve on the landlord a written notice of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or if continued occupancy is lawful, § [55-226](#) shall apply.

The landlord may terminate the rental agreement by giving the tenant 14 days' notice of his intention to terminate the rental agreement based upon the landlord's determination that such damage requires the removal of the tenant and the use of the premises is substantially impaired, in which case the rental agreement terminates as of the expiration of the notice period.

If the rental agreement is terminated, the landlord shall return all security deposits in accordance with § [55-248.15:1](#) and prepaid rent, plus accrued interest, recoverable by law unless the landlord reasonably believes that the tenant, tenant's guests, invitees or authorized occupants were the cause of the damage or casualty, in which case the landlord shall provide a written statement to the tenant for the security and prepaid rent, plus accrued interest based upon the damage or casualty, and may recover actual damages sustained pursuant to § [55-248.35](#). Proration for rent in the event of termination or apportionment shall be made as of the date of the casualty.

1974, c. 680; 1982, c. 260; 2000, c. [760](#); 2005, c. [807](#); 2011, c. [766](#); 2015, c. [596](#); 2016, c. [744](#); 2017, c. [730](#).

§55-248.25. Landlord's noncompliance as defense to action for possession for nonpayment of rent.

A. In an action for possession based upon nonpayment of rent or in an action for rent by a landlord when the tenant is in possession, the tenant may assert as a defense that there exists upon the leased premises, a condition which constitutes or will constitute, a fire hazard or a serious threat to the life, health or safety of occupants thereof, including but not limited to a lack of heat or running water or of light or of electricity or adequate sewage disposal facilities or an infestation of rodents, or a condition which constitutes material noncompliance on the part of the landlord with the rental agreement or provisions of law. The assertion of any defense provided for in this section shall be conditioned upon the following:

1. Prior to the commencement of the action for rent or possession, the landlord or his agent was served a written notice of the aforesaid condition or conditions by the tenant or was notified by a violation or condemnation notice from an appropriate state or municipal agency, but that the landlord has refused, or having a reasonable

opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of thirty days from receipt of the notification by the landlord is unreasonable; and

2. The tenant, if in possession, has paid into court the amount of rent found by the court to be due and unpaid, to be held by the court pending the issuance of an order under subsection C.

B. It shall be a sufficient answer to such a defense provided for in this section if the landlord establishes the conditions alleged in the defense do not in fact exist; or such conditions have been removed or remedied; or such conditions have been caused by the tenant or members of the family of such tenant or of his or their guests; or the tenant has unreasonably refused entry to the landlord to the premises for the purposes of correcting such conditions.

C. The court shall make findings of fact upon any defense raised under this section or the answer to any defense and, thereafter, shall pass such order as may be required including any one or more of the following:

1. An order to set-off to the tenant as determined by the court in such amount as may be equitable to represent the existence of any condition set forth in subsection A which is found by the court to exist;

2. Terminate the rental agreement or order surrender of the premises to the landlord; or

3. Refer any matter before the court to the proper state or municipal agency for investigation and report and grant a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court any rents which will become due during the period of continuance, to be held by the court pending its further order or in its discretion the court may use such funds to pay a mortgage on the property in order to stay a foreclosure, to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien, or to remedy any condition set forth in subsection A which is found by the court to exist.

D. If it appears that the tenant has raised a defense under this section in bad faith or has caused the violation or has unreasonably refused entry to the landlord for the

purpose of correcting the condition giving rise to the violation, the court, in its discretion, may impose upon the tenant the reasonable costs of the landlord, including court costs, the costs of repair where the court finds the tenant has caused the violation, and reasonable attorney's fees.

1974, c. 680; 1982, c. 260; 2000, c. [760](#).

§55-248.25:1. Rent escrow required for continuance of tenant's case.

A. Where a landlord has filed an unlawful detainer action seeking possession of the premises as provided by this chapter and the tenant seeks to obtain a continuance of the action or to set it for a contested trial, the court shall, upon request of the landlord, order the tenant to pay an amount equal to the rent that is due as of the initial court date into the court escrow account prior to granting the tenant's request for a delayed court date. However, if the tenant asserts a good faith defense, and the court so finds, the court shall not require the rent to be escrowed. If the landlord requests a continuance, or to set the case for a contested trial, the court shall not require the rent to be escrowed.

B. If the court finds that the tenant has not asserted a good faith defense, the tenant shall be required to pay an amount determined by the court to be proper into the court escrow account in order for the case to be continued or set for contested trial. To meet the ends of justice, however, the court may grant the tenant a continuance of no more than one week to make full payment of the court-ordered amount into the court escrow account. If the tenant fails to pay the entire amount ordered, the court shall, upon request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

C. The court shall further order that should the tenant fail to pay future rents due under the rental agreement into the court escrow account, the court shall, upon the request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

D. Upon motion of the landlord, the court may disburse the moneys held in the court escrow account to the landlord for payment of his mortgage or other expenses relating to the dwelling unit.

E. Except as provided in subsection D, no rent required to be escrowed under this section shall be disbursed within 10 days of the date of the judgment unless otherwise agreed to by the parties. If an appeal is taken by the plaintiff, the rent held in escrow

shall be transmitted to the clerk of the circuit court to be held in such court escrow account pending the outcome of the appeal.

1999, cc. [382](#), [506](#); 2009, c. [137](#).

§55-248.26. Tenant's remedies for landlord's unlawful ouster, exclusion or diminution of service.

If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of gas, water, or other essential service to the tenant, the tenant may obtain an order from a general district court to recover possession, require the landlord to resume any such interrupted utility service, or terminate the rental agreement and, in any case, recover the actual damages sustained by him and a reasonable attorney fee. If the rental agreement is terminated the landlord shall return all of the security deposit in accordance with § [55-248.15:1](#).

1974, c. 680; 2000, c. [760](#); 2013, c. [110](#).

§55-248.27. Tenant's assertion; rent escrow.

A. The tenant may assert that there exists upon the leased premises, a condition or conditions which constitute a material noncompliance by the landlord with the rental agreement or with provisions of law, or which if not promptly corrected, will constitute a fire hazard or serious threat to the life, health or safety of occupants thereof, including but not limited to, a lack of heat or hot or cold running water, except if the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; or of light, electricity or adequate sewage disposal facilities; or an infestation of rodents; or of the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court wherein the premises are located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection D.

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

1. Prior to the commencement of the action the landlord was served a written notice by the tenant of the conditions described in subsection A, or was notified of such conditions by a violation or condemnation notice from an appropriate state or municipal

agency, and that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of 30 days from receipt of the notification by the landlord is unreasonable; and

2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due thereunder, unless or until such amount is modified by subsequent order of the court under this chapter.

C. It shall be sufficient answer or rejoinder to a declaration pursuant to subsection A if the landlord establishes to the satisfaction of the court that the conditions alleged by the tenant do not in fact exist, or such conditions have been removed or remedied, or such conditions have been caused by the tenant or members of his family or his or their invitees or licensees, or the tenant has unreasonably refused entry to the landlord to the premises for the purpose of correcting such conditions.

D. Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include, but is not limited to, any one or more of the following:

1. Terminating the rental agreement upon the request of the tenant or ordering the premises surrendered to the landlord if the landlord prevails on a request for possession pursuant to an unlawful detainer properly filed with the court;

2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;

3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of the condition or conditions found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;

5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise

remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;

6. Referring any matter before the court to the proper state or municipal agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court rents within five days of date due under the rental agreement, subject to any abatement under this section, which become due during the period of the continuance, to be held by the court pending its further order;

7. In its discretion, ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure; or

8. In its discretion, ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

Notwithstanding any provision of this subsection, where an escrow account is established by the court and the condition or conditions are not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end thereof, the condition or conditions have not been remedied.

E. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within fifteen calendar days from the date of service of process on the landlord as authorized by § [55-248.12](#), except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition which constitutes an immediate threat to the health or safety of the inhabitants of the leased premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily com-

pleted. If the tenant proceeds under this subsection, he may not proceed under any other section of this article as to that breach.

1974, c. 680; 2000, c. [760](#); 2001, c. [524](#); 2016, cc. [384](#), [459](#); 2017, c. [730](#).

§55-248.28. Repealed.

Repealed by Acts 2000, c. [760](#), cl. 2.

§55-248.31. Noncompliance with rental agreement; monetary penalty.

A. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § [55-248.16](#) materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days, and that the rental agreement shall terminate as provided in the notice.

B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

C. If the tenant commits a breach which is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act, which is not remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ [54.1-3400](#) et seq.), or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other activity that involves or constitutes a criminal or willful act that also poses a threat to health and

safety, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by a tenant's authorized occupants, or guests or invitees, the tenant shall be presumed to have knowledge of such activities unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 15 calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises which constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 calendar days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out herein shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § [16.1-228](#) that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § [55-248.31:01](#) based upon information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § [16.1-253.1](#), [16.1-279.1](#), or subsection B of § [20-103](#), the lease shall not terminate due solely to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails promptly to notify the landlord within 24 hours thereafter that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event more than 7 days thereafter. If the

provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants or guests or invitees pursuant to § [55-248.16](#), and is subject to termination of the tenancy pursuant to the lease and this chapter.

E. If the tenant has been served with a prior written notice which required the tenant to remedy a breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § [55-248.35](#). If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § [55-248.35](#). Nothing shall be construed to prevent a landlord from seeking an award of costs or attorney fees under § [8.01-27.1](#) or civil recovery under § [8.01-27.2](#), as a part of other damages requested on the unlawful detainer filed pursuant to § [8.01-126](#), provided the landlord has given notice in accordance with § [55-248.6](#), which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § [55-248.16](#). In the event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover from the tenant the following,

regardless of whether or not a lawsuit is filed or an order obtained from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of the proceeding as contracted for in the rental agreement or as provided by law only if court action has been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the landlord and against the tenant for the relief requested, which may include the following: (i) rent due and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to the dwelling unit or premises.

1974, c. 680; 1978, c. 378; 1980, c. 502; 1982, c. 260; 1984, c. 78; 1987, c. 387; 1988, c. 62; 1989, c. 301; 1995, c. [580](#); 2000, c. [760](#); 2003, c. [363](#); 2004, c. [232](#); 2005, cc. [808](#), [883](#); 2006, cc. [628](#), [717](#); 2007, c. [273](#); 2008, c. [489](#); 2013, c. [563](#); 2014, c. [813](#); 2017, c. [730](#).

§55-248.31:01. Barring guest or invitee of tenants.

A. A guest or invitee of a tenant may be barred from the premises by the landlord upon written notice served personally upon the guest or invitee of the tenant for conduct on the landlord's property where the premises are located which violates the terms and conditions of the rental agreement, a local ordinance, or a state or federal law. A copy of the notice must be served upon the tenant in accordance with this chapter. The notice shall describe the conduct of the guest or invitee which is the basis for the landlord's action.

B. In addition to the remedies against the tenant authorized by this chapter, a landlord may apply to the magistrate for a warrant for trespass, provided the guest or invitee has been served in accordance with subsection A.

C. The tenant may file a tenant's assertion, in accordance with § [55-248.27](#), requesting that the general district court review the landlord's action to bar the guest or invitee.

1999, cc. [359](#), [390](#); 2000, c. [760](#).

§55-248.31:1. Sheriffs authorized to serve certain notices; fees therefor.

The sheriff of any county or city, upon request, may deliver any notice to a tenant on behalf of a landlord or lessor under the provisions of § [55-225](#) or § [55-248.31](#). For this service, the sheriff shall be allowed a fee not to exceed twelve dollars.

1981, c. 148; 1995, c. [51](#).

§55-248.32. Remedy by repair, etc.; emergencies.

If there is a violation by the tenant of § [55-248.16](#) or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning, the landlord shall send a written notice to the tenant specifying the breach and stating that the landlord will enter the dwelling unit and perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost therefor to the tenant, which shall be due as rent on the next rent due date, or if the rental agreement has terminated, for immediate payment.

In case of emergency the landlord may, as promptly as conditions require, enter the dwelling unit, perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost therefor to the tenant, which shall be due as rent on the next rent due date, or if the rental agreement has terminated, for immediate payment.

The landlord may perform the repair, replacement, or cleaning, or may engage a third party to do so.

1974, c. 680; 2000, c. [760](#); 2009, c. [663](#).

§55-248.33. Remedies for absence, nonuse and abandonment.

If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days and the tenant fails to do so, the landlord may recover actual damages from the tenant. During any absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary to protect his possessions and property. The rental agreement is deemed to be terminated by the landlord as of the date of abandonment by the tenant. If the landlord cannot determine whether the premises have been abandoned by

the tenant, the landlord shall serve written notice on the tenant in accordance with § [55-248.6](#) requiring the tenant to give written notice to the landlord within seven days that the tenant intends to remain in occupancy of the premises. If the tenant gives such written notice to the landlord, or if the landlord otherwise determines that the tenant remains in occupancy of the premises, the landlord shall not treat the premises as having been abandoned. Unless the landlord receives written notice from the tenant or otherwise determines that the tenant remains in occupancy of the premises, upon the expiration of seven days from the date of the landlord's notice to the tenant, there shall be rebuttable presumption that the premises have been abandoned by the tenant and the rental agreement shall be deemed to terminate on that date. The landlord shall mitigate damages in accordance with § [55-248.35](#).

1974, c. 680; 2002, c. [761](#).

§55-248.34. Repealed.

Repealed by Acts 2003, c. [427](#), cl. 2

§55-248.34:1. Landlord's acceptance of rent with reservation.

A. Provided the landlord has given written notice to the tenant that the rent will be accepted with reservation, the landlord may accept full or partial payment of all rent and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under Article 13 (§ [8.01-124](#) et seq.) of Chapter 3 of Title 8.01 and proceed with eviction under § [55-248.38:2](#). Such notice shall be included in a written termination notice given by the landlord to the tenant in accordance with § [55-248.31](#) or in a separate written notice given by the landlord to the tenant within five business days of receipt of the rent. Unless the landlord has given such notice in a termination notice in accordance with § [55-248.31](#), the landlord shall continue to give a separate written notice to the tenant within five business days of receipt of the rent that the landlord continues to accept the rent with reservation in accordance with this section until such time as the violation alleged in the termination notice has been remedied or the matter has been adjudicated in a court of competent jurisdiction. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written notice required herein for the portion of the rent paid by the tenant.

B. Subsequent to the entry of an order of possession by a court of competent jurisdiction but prior to eviction pursuant to § [55-248.38:2](#), the landlord may accept all amounts owed to the landlord by the tenant, including full payment of any money judgment, award of attorney fees and court costs, and all subsequent rents that may be paid prior to eviction, and proceed with eviction provided that the landlord has given the tenant written notice that any such payment would be accepted with reservation and would not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. However, if a landlord enters into a new written rental agreement with the tenant prior to eviction, an order of possession obtained prior to the entry of such new rental agreement is not enforceable. Such notice shall be given in a separate written notice given by the landlord within five business days of receipt of payment of such money judgment, attorney fees and court costs, and all subsequent rents that may be paid prior to eviction. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written notice required herein for the portion of the rent paid by the tenant. Writs of possession in cases of unlawful entry and detainer are otherwise subject to § [8.01-471](#).

C. However, the tenant may pay or present to the court a redemption tender for payment of all rent due and owing as of the return date, including late charges, attorney fees and court costs, at or before the first return date on an action for unlawful detainer. For purposes of this section, "redemption tender" means a written commitment to pay all rent due and owing as of the return date, including late charges, attorney fees, and court costs, by a local government or nonprofit entity within 10 days of said return date.

D. If the tenant presents a redemption tender to the court at the return date, the court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs and dismissal of the action upon such payment. Should the landlord not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

E. In cases of unlawful detainer, a tenant may pay the landlord or his attorney or pay into court all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. A tenant may invoke the rights granted in this section no more than one time during any 12-month period of continuous residency in the dwelling unit, regardless of the term of the rental agreement or any renewal term thereof.

2003, c. [427](#); 2006, c. [667](#); 2008, c. [489](#); 2010, c. [793](#); 2012, c. [788](#); 2013, c. [563](#); 2014, c. [813](#).

§55-248.35. Remedy after termination.

If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement, reasonable attorney's fees as provided in § [55-248.31](#), and the cost of service of any notice under § [55-225](#) or § [55-248.31](#) or process by a sheriff or private process server which cost shall not exceed the amount authorized by § [55-248.31:1](#), which claims may be enforced, without limitation, by the institution of an action for unlawful entry or detainer. Actual damages for breach of the rental agreement may include a claim for such rent as would have accrued until the expiration of the term thereof or until a tenancy pursuant to a new rental agreement commences, whichever first occurs; provided that nothing herein contained shall diminish the duty of the landlord to mitigate actual damages for breach of the rental agreement. In obtaining post-possession judgments for actual damages as defined herein, the landlord shall not seek a judgment for accelerated rent through the end of the term of the tenancy.

In any unlawful detainer action brought by the landlord, this section shall not be construed to prevent the landlord from being granted by the court a simultaneous judgment for money due and for possession of the premises without a credit for any security deposit. Upon the tenant vacating the premises either voluntarily or by a writ of possession, security deposits shall be credited to the tenants' account by the landlord in accordance with the requirements of § [55-248.15:1](#).

1974, c. 680; 1981, c. 539; 1988, c. 68; 1989, c. 383; 1996, c. [326](#); 2000, c. [760](#); 2001, c. [524](#).

§55-248.36. Recovery of possession limited.

A landlord may not recover or take possession of the dwelling unit (i) by willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service required by the rental agreement or (ii) by refusal to permit the tenant access to the unit unless such refusal is pursuant to a court order for possession.

1974, c. 680; 1978, c. 520.

§55-248.37. Periodic tenancy; holdover remedies.

A. The landlord or the tenant may terminate a week-to-week tenancy by serving a written notice on the other at least seven days prior to the next rent due date. The landlord or the tenant may terminate a month-to-month tenancy by serving a written notice on the other at least 30 days prior to the next rent due date, unless the rental agreement provides for a different notice period. The landlord and the tenant may agree in writing to an early termination of a rental agreement. In the event that no such agreement is reached, the provisions of § [55-248.35](#) shall control.

B. If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and may also recover actual damages, reasonable attorney fees, and court costs, unless the tenant proves by a preponderance of the evidence that the failure of the tenant to vacate the dwelling unit as of the termination date was reasonable. The landlord may include in the rental agreement a reasonable liquidated damage penalty, not to exceed an amount equal to 150 percent of the per diem of the monthly rent, for each day the tenant remains in the dwelling unit after the termination date specified in the landlord's notice. However, if the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, any liquidated damage penalty shall not exceed an amount equal to the per diem of the monthly rent set out in the lease agreement. If the landlord consents to the tenant's continued occupancy, § [55-248.7](#) applies.

C. In the event of termination of a rental agreement and the tenant remains in possession with the agreement of the landlord either as a hold-over tenant or a month-to-month tenant and no new rental agreement is entered into, the terms of the terminated agreement shall remain in effect and govern the hold-over or month-to-month tenancy, except that the amount of rent shall be either as provided in the terminated rental agreement or the amount set forth in a written notice to the tenant,

provided that such new rent amount shall not take effect until the next rent due date coming 30 days after the notice.

1974, c. 680; 1977, c. 427; 1982, c. 260; 2004, c. [123](#); 2005, c. [805](#); 2009, c. [663](#); 2013, c. [563](#).

§55-248.38. Repealed.

Repealed by Acts 2000, c. [760](#), cl. 2.

§55-248.38:1. Disposal of property abandoned by tenants.

If any items of personal property are left in the dwelling unit, the premises, or in any storage area provided by the landlord, after the rental agreement has terminated and delivery of possession has occurred, the landlord may consider such property to be abandoned. The landlord may dispose of the property so abandoned as the landlord sees fit or appropriate, provided he has: (i) given a termination notice to the tenant in accordance with this chapter, which includes a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within the 24-hour period after termination, (ii) given written notice to the tenant in accordance with § [55-248.33](#), which includes a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within the 24-hour period after expiration of the seven-day notice period, or (iii) given a separate written notice to the tenant, which includes a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within 24 hours after expiration of a 10-day period from the date such notice was given to the tenant. Any written notice to the tenant shall be given in accordance with § [55-248.6](#). The tenant shall have the right to remove his personal property from the dwelling unit or the premises at reasonable times during the 24-hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant.

During the 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided in this section, the tenant shall have a right to injunctive or other relief as provided by law. If the landlord received any funds from any sale of abandoned property as provided in this section, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in

selling, storing or safekeeping such property. If any such funds are remaining after application, the remaining funds shall be treated as a security deposit under the provisions of § [55-248.15:1](#). The provisions of this section shall not be applicable if the landlord has been granted a writ of possession for the premises in accordance with Title 8.01 and execution of such writ has been completed pursuant to § [8.01-470](#).

Nothing herein shall affect the right of a landlord to enforce an inchoate or perfected lien of the landlord on the personal property of a tenant in a dwelling unit or on the premises leased to such tenant and the right of a landlord to distress, levy, and seize such personal property as otherwise provided by law.

1984, c. 741; 1995, c. [228](#); 1998, c. [461](#); 2000, c. [760](#); 2002, c. [762](#); 2013, c. [563](#); 2017, c. [730](#).

§55-248.38:2. Authority of sheriffs to store and sell personal property removed from residential premises; recovery of possession by owner; disposition or sale.

Notwithstanding the provisions of § [8.01-156](#), when personal property is removed from a dwelling unit, the premises, or from any storage area provided by the landlord pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the dwelling unit in order to restore the dwelling unit to the person entitled thereto, the sheriff shall oversee the removal of such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the 24-hour period after eviction. Upon the expiration of the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, any personal property removed pursuant to this section shall be placed into a storage area designated by the landlord, which may be the dwelling unit. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the 24 hours after eviction from the landlord's or at such other reasonable times until the landlord has disposed of the property as provided herein. During that 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided herein, the tenant shall have a right to injunctive or other relief as otherwise provided by law.

Any property remaining in the landlord's storage area upon the expiration of the 24-hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as security deposit under applicable law.

The notice posted by the sheriff setting the date and time of the eviction, pursuant to § [8.01-470](#), shall provide notice to the tenant of the rights afforded to tenants in this section and shall include in the said notice a copy of this statute attached to, or made a part of, this notice.

2001, c. [222](#); 2006, c. [129](#); 2013, c. [563](#).

§55-248.38:3. Disposal of property of deceased tenants.

A. If a tenant who is the sole tenant under a written rental agreement still residing in the dwelling unit dies, and there is no person authorized by order of the circuit court to handle probate matters for the deceased tenant, the landlord may dispose of the personal property left in the dwelling unit or upon the premises. However, the landlord shall give at least 10 days' written notice to (i) the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant or (ii) the tenant in accordance with § [55-248.6](#) if no such person is identified in the rental application, lease agreement, or other landlord document as the authorized contact person. The notice given under clause (i) or (ii) shall include a statement that any items of personal property left in the premises would be treated as abandoned property and disposed of in accordance with the provisions of § [55-248.38:1](#), if not claimed within 10 days. Authorized occupants, or guests or invitees, are not allowed to occupy the dwelling unit after the death of the sole remaining tenant and shall vacate the dwelling unit prior to the end of the 10-day period.

B. The landlord may request that such authorized contact person provide reasonable proof of identification. Thereafter, the authorized contact person identified in the rental application, lease agreement, or other landlord document may (i) have access to the dwelling unit or the premises and to the tenant records maintained by the

landlord and (ii) rightfully claim the personal property of the deceased tenant and otherwise handle the affairs of the deceased tenant with the landlord.

C. The rental agreement is deemed to be terminated by the landlord as of the date of death of the tenant who is the sole tenant under a written rental agreement still residing in the dwelling unit, and the landlord shall not be required to seek an order of possession from a court of competent jurisdiction. The estate of the tenant shall remain liable for actual damages under § [55-248.35](#), and the landlord shall mitigate damages as provided thereunder.

2006, c. [820](#); 2010, c. [550](#); 2011, c. [766](#); 2014, c. [813](#); 2017, c. [730](#).

§55-248.39. Retaliatory conduct prohibited.

A. Except as provided in this section, or as otherwise provided by law, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession or by causing a termination of the rental agreement pursuant to § [55-222](#) or [55-248.37](#) after he has knowledge that (i) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health or safety; (ii) the tenant has made a complaint to or filed a suit against the landlord for a violation of any provision of this chapter; (iii) the tenant has organized or become a member of a tenants' organization; or (iv) the tenant has testified in a court proceeding against the landlord. However, the provisions of this subsection shall not be construed to prevent the landlord from increasing rents to that charged on similar market rentals nor decreasing services that shall apply equally to all tenants.

B. If the landlord acts in violation of this section, the tenant is entitled to the applicable remedies provided for in this chapter, including recovery of actual damages, and may assert such retaliation as a defense in any action against him for possession. The burden of proving retaliatory intent shall be on the tenant.

C. Notwithstanding subsections A and B, a landlord may terminate the rental agreement pursuant to § [55-222](#) or [55-248.37](#) and bring an action for possession if:

1. Violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or a member of his household or a person on the premises with his consent;
2. The tenant is in default in rent;

3. Compliance with the applicable building or housing code requires alteration, remodeling or demolition that would effectively deprive the tenant of use of the dwelling unit; or

4. The tenant is in default of a provision of the rental agreement materially affecting the health and safety of himself or others. The maintenance of the action provided herein does not release the landlord from liability under § [55-248.15:1](#).

D. The landlord may also terminate the rental agreement pursuant to § [55-222](#) or [55-248.37](#) for any other reason not prohibited by law unless the court finds that the reason for the termination was retaliation.

1974, c. 680; 1983, c. 396; 1985, c. 268; 2000, c. [760](#); 2015, c. [408](#).

§55-248.40. Actions to enforce chapter.

In addition to any other remedies in this chapter, any person adversely affected by an act or omission prohibited under this chapter may institute an action for injunction and damages against the person responsible for such act or omission in the circuit court in the county or city in which such act or omission occurred. If the court finds that the defendant was responsible for such act or omission, it shall enjoin the defendant from continuance of such practice, and in its discretion award the plaintiff damages as herein provided.

1974, c. 680; 2013, c. [110](#).

Virginia Residential Property Disclosure Act

§55-517. Applicability.

The provisions of this chapter apply only with respect to transfers by sale, exchange, installment land sales contract, or lease with option to buy residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesperson.

1992, c. 717; 2007, c. [265](#); 2017, c. [386](#).

§55-517.1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Electronic delivery," for purposes of delivery of the disclosures required by this chapter, means sending the required disclosures via the Internet, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.

"Notification" means a statement of the availability of any disclosures required by this chapter on the Real Estate Board's website or delivery of any such disclosures to the purchaser.

"Ratification" means the full execution of a real estate purchase contract by all parties.

"Real estate contract" means a contract for the sale, exchange, or lease with the option to buy residential real estate subject to this chapter.

2017, c. [386](#).

§55-518. Exemptions.

A. The following are specifically excluded from the provisions of this chapter:

1. Transfers pursuant to court order including, but not limited to, transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale or by a deed in lieu of a foreclosure, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance. Also, transfers by an assignment for the benefit of creditors pursuant to Chapter 9 (§ [55-156](#) et seq.) and transfers pursuant to escheats pursuant to Chapter 9 (§ [55-156](#) et seq.).
2. Transfers to a beneficiary of a deed of trust pursuant to a foreclosure sale or by a deed in lieu of foreclosure, or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by a deed in lieu of foreclosure.
3. Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
4. Transfers from one or more co-owners solely to one or more other co-owners.
5. Transfers made solely to any combination of a spouse or a person or persons in the lineal line of consanguinity of one or more of the transferors.

6. Transfers between spouses resulting from a decree of divorce or a property settlement stipulation pursuant to the provisions of Title 20.

7. Transfers made by virtue of the record owner's failure to pay any federal, state, or local taxes.

8. Transfers to or from any governmental entity or public or quasi-public housing authority or agency.

9. Transfers involving the first sale of a dwelling; provided, that this exemption shall not apply to the disclosures required by § [55-519.1](#).

B. Notwithstanding the provisions of subdivision A 9, the builder of a new dwelling shall disclose in writing to the purchaser thereof all known material defects which would constitute a violation of any applicable building code. In addition, for property that is located wholly or partially in any locality comprising Planning District 15, the builder or owner, if the builder is not the owner of the property, shall disclose in writing whether the builder or owner has any knowledge of (i) whether mining operations have previously been conducted on the property or (ii) the presence of abandoned mines, shafts, or pits, if any. The disclosures required by this subsection shall be made by a builder or owner (i) when selling a completed dwelling, before ratification of the real estate purchase contract or (ii) when selling a dwelling before or during its construction, after issuance of a certificate of occupancy. Such disclosure shall not abrogate any warranty or any other contractual obligations the builder or owner may have to the purchaser. The disclosure required by this subsection may be made on the disclosure form described in § [55-519](#). If no defects are known by the builder to exist, no written disclosure is required by this subsection.

1992, c. 717; 1993, c. 824; 1994, cc. [80](#), [242](#); 2005, c. [510](#); 2006, c. [706](#); 2007, c. [265](#); 2017, c. [386](#).

§55-519. Required disclosures for buyer to beware; buyer to exercise necessary due diligence.

A. The owner of the residential real property shall furnish to a purchaser a residential property disclosure statement for the buyer to beware of certain matters that may affect the buyer's decision to purchase such real property. Such statement shall be on a form provided by the Real Estate Board on its website.

B. The residential property disclosure statement provided by the Real Estate Board on its website shall include the following:

1. The owner makes no representations or warranties as to the condition of the real property or any improvements thereon, or with regard to any covenants and restrictions as may be recorded among the land records affecting the real property or any improvements thereon, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary, including obtaining a home inspection, as defined in § [54.1-500](#), in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;
2. The owner makes no representations with respect to any matters that may pertain to parcels adjacent to the subject parcel, including zoning classification or permitted uses of adjacent parcels, and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to adjacent parcels in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;
3. The owner makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to any historic district designated by the locality pursuant to § [15.2-2306](#), including review of (i) any local ordinance creating such district, (ii) any official map adopted by the locality depicting historic districts, and (iii) any materials available from the locality that explain (a) any requirements to alter, reconstruct, renovate, restore, or demolish buildings or signs in the local historic district and (b) the necessity of any local review board or governing body approvals prior to doing any work on a property located in a local historic district, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;
4. The owner makes no representations with respect to whether the property contains any resource protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.) adopted by the locality where the property is located pursuant to § [62.1-44.15:74](#) and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to determine whether the provisions of any such ordinance affect the property, including review of any official map adopted by the locality depicting resource protection areas, in accord-

ance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

5. The owner makes no representations with respect to information on any sexual offenders registered under Chapter 23 (§ [19.2-387](#) et seq.) of Title 19.2 and that purchasers are advised to exercise whatever due diligence they deem necessary with respect to such information, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

6. The owner makes no representations with respect to whether the property is within a dam break inundation zone. Such disclosure statement shall advise purchasers to exercise whatever due diligence they deem necessary with respect to whether the property resides within a dam break inundation zone, including a review of any map adopted by the locality depicting dam break inundation zones;

7. The owner makes no representations with respect to the presence of any stormwater detention facilities located on the property, or any maintenance agreement for such facilities, and purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any stormwater detention facilities on the property, or any maintenance agreement for such facilities, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

8. The owner makes no representations with respect to the presence of any wastewater system, including the type or size thereof or associated maintenance responsibilities related thereto, located on the property and purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any wastewater system on the property and the costs associated with maintaining, repairing, or inspecting any wastewater system, including any costs or requirements related to the pump-out of septic tanks, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

9. The owner makes no representations with respect to any right to install or use solar energy collection devices on the property;

10. The owner makes no representations with respect to whether the property is located in one or more special flood hazard areas and purchasers are advised to exercise

whatever due diligence they deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether the property is located in one or more special flood hazard areas, (ii) review of any map depicting special flood hazard areas, and (iii) whether flood insurance is required, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

11. The owner makes no representations with respect to whether the property is subject to one or more conservation or other easements and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract; and

12. The owner makes no representations with respect to whether the property is subject to a community development authority approved by a local governing body pursuant to Article 6 (§ [15.2-5152](#) et seq.) of Chapter 51 of Title 15.2 and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary in accordance with terms and conditions as may be contained in the real estate purchase contract, including determining whether a copy of the resolution or ordinance has been recorded in the land records of the circuit court for the locality in which the community development authority district is located for each tax parcel included in the district pursuant to § [15.2-5157](#), but in any event, prior to settlement pursuant to such contract.

C. The residential property disclosure statement shall be delivered in accordance with § [55-520](#).

1992, c. 717; 1996, c. [379](#); 1998, cc. [384](#), [795](#); 2005, c. [510](#); 2006, cc. [247](#), [514](#), [533](#), [705](#), [767](#); 2007, cc. [265](#), [784](#); 2008, c. [491](#); 2009, c. [641](#); 2010, c. [518](#); 2011, c. [461](#); 2013, c. [357](#); 2015, cc. [79](#), [269](#); 2016, cc. [161](#), [323](#), [436](#), [505](#); 2017, cc. [386](#), [569](#).

§55-519.1. Required disclosures pertaining to a military air installation.

The owner of residential real property located in any locality in which a military air installation is located shall disclose to the purchaser whether the subject parcel is located in a noise zone or accident potential zone, or both, if so designated on the official zoning map by the locality in which the property is located. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website. Such disclosure shall state the specific noise zone or accident potential zone, or both, in which the property is located according to the official zoning map.

2005, c. [510](#); 2007, c. [265](#); 2017, c. [386](#).

§55-519.2. Required disclosures; defective drywall.

Notwithstanding the exemptions in § [55-518](#), if the owner of a residential dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit, the owner shall provide to a prospective purchaser a written disclosure that the property has defective drywall. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website and otherwise in accordance with this chapter. For purposes of this section, "defective drywall" means all defective drywall as defined in § [36-156.1](#).

2011, cc. [34](#), [46](#); 2017, c. [386](#).

§55-519.2:1. Required disclosures; pending building or zoning violations.

Notwithstanding the exemptions in § [55-518](#), if the owner of a residential dwelling unit has actual knowledge of any pending enforcement actions pursuant to the Uniform Statewide Building Code (§ [36-97](#) et seq.) that affect the safe, decent, sanitary living conditions of the property of which the owner has been notified in writing by the locality, or any pending violation of the local zoning ordinance that the violator has not abated or remedied under the zoning ordinance, within a time period set out in the written notice of violation from the locality or established by a court of competent jurisdiction, the owner shall provide to a prospective purchaser a written disclosure that so states. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website and otherwise in accordance with this chapter.

2017, c. [386](#).

§55-519.3. Permissive disclosure; tourism activity zone.

An owner of residential property located partially or wholly within a designated tourism activity zone established pursuant to § [15.2-982](#) may disclose in writing to any prospective purchaser or lessee of the property that the subject property is located within a tourism activity zone, with a description of potential impacts associated with the parcel's location in a tourism activity zone, including impacts caused by special events, parades, temporary street closures, and indoor and outdoor entertainment activities.

2013, c. [246](#).

§55-519.4. Required disclosures; property previously used to manufacture methamphetamine.

Notwithstanding the exemptions in § [55-518](#), if the owner of a residential dwelling unit has actual knowledge that such residential property was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § [32.1-11.7](#) and the applicable licensing provisions of Chapter 11 (§ [54.1-1100](#) et seq.) of Title 54.1, the owner shall provide to a prospective purchaser a written disclosure that so states. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website and otherwise in accordance with this chapter.

2013, c. [557](#); 2016, c. [527](#); 2017, c. [386](#).

§55-520. Time for disclosure; termination of contract.

A. The owner of residential real property subject to this chapter shall provide notification to the purchaser of any disclosures required by this chapter prior to the ratification of a real estate purchase contract or otherwise be subject to the provisions of subsection B. The disclosures required by this chapter shall be on forms provided by the Real Estate Board on its website.

B. If the disclosures required by this chapter are delivered to the purchaser after ratification of the real estate purchase contract, the purchaser's sole remedy shall be to terminate the real estate purchase contract at or prior to the earliest of (i) three days after delivery of the disclosure statement in person or by electronic delivery; (ii) five days after the postmark if the disclosure statement is deposited in the United States mail, postage prepaid, and properly addressed to the purchaser; (iii) settlement upon purchase of the property; (iv) occupancy of the property by the purchaser; (v) the purchaser making written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan; or (vi) the execution by the purchaser after receiving the disclosure statement required by this chapter of a written waiver of the purchaser's right of termination under this chapter contained in a writing separate from the real estate purchase contract. In order to terminate a real estate purchase contract when permitted by this chapter, the purchaser must, within the times required by this chapter, give written notice to the owner by one of the following methods:

1. Hand delivery;

2. United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing, which may be a certificate of service prepared by the sender confirming such mailing;
3. Electronic delivery; or
4. Overnight delivery using a commercial service or the United States Postal Service.

If the purchaser terminates a real estate purchase contract in compliance with this chapter, the termination shall be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser.

C. Notwithstanding the provisions of subsection B of § [55-524](#), no purchaser of residential real property located in a noise zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have the right to terminate a real estate purchase contract pursuant to this section for failure of the property owner to timely provide any disclosure required by this chapter.

1992, c. 717; 1993, c. 818; 2005, c. [510](#); 2007, c. [265](#); 2011, c. [82](#); 2017, c. [386](#).

§55-521. Owner liability.

A. Except with respect to the disclosures required by § [55-519.1](#), the owner shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this chapter if: (i) the error, inaccuracy or omission was not within the actual knowledge of the owner or was based on information provided by public agencies or by other persons providing information that is required to be disclosed pursuant to this chapter, or the owner reasonably believed the information to be correct, and (ii) the owner was not grossly negligent in obtaining the information from a third party and transmitting it. The owner shall not be liable for any error, inaccuracy, or omission of any information required to be disclosed by § [55-519.1](#) if the error, inaccuracy, or omission was the result of information provided by an officer or employee of the locality in which the property is located.

B. The delivery by a public agency or other person, as described in subsection C below, of any information required to be disclosed by this chapter to a prospective purchaser shall be deemed to comply with the requirements of this chapter and shall relieve the owner of any further duty under this chapter with respect to that item of information.

C. The delivery by the owner of a report or opinion prepared by a licensed engineer, land surveyor, geologist, wood-destroying insect control expert, contractor or home inspection expert, dealing with matters within the scope of the professional's license or expertise, shall satisfy the requirements of this chapter if the information is provided to the prospective purchaser pursuant to a request therefor, whether written or oral. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of this chapter and, if so, shall indicate the required disclosures, or portions thereof, to which the information being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible for any items of information, or, portions thereof, other than those expressly set forth in the statement.

1992, c. 717; 2005, c. [510](#); 2007, c. [265](#).

§55-522. Change in circumstances.

If information disclosed in accordance with this chapter is subsequently rendered or discovered to be inaccurate as a result of any act, occurrence, information received, circumstance or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this chapter.

However, at or before settlement, the owner shall be required to disclose any material change in the disclosures made relative to the property. If, at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the owner, the owner may state that the information is unknown or may use an approximation of the information, provided the approximation is clearly identified as such, is reasonable, is based on the actual knowledge of the owner, and is not used for the purpose of circumventing or evading this chapter.

1992, c. 717; 2007, c. [265](#); 2014, c. [386](#).

§55-523. Duties of real estate licensees.

A real estate licensee representing an owner of residential real property as the listing broker has a duty to inform each such owner represented by that licensee of the owner's rights and obligations under this chapter. A real estate licensee representing a purchaser of residential real property or, if the purchaser is not represented by a licensee, the real estate licensee representing an owner of residential real estate and dealing with the purchaser has a duty to inform each such purchaser of the purchaser's rights and obligations under this chapter. Provided a real estate licensee

performs those duties, the licensee shall have no further duties to the parties to a residential real estate transaction under this chapter, and shall not be liable to any party to a residential real estate transaction for a violation of this chapter or for any failure to disclose any information regarding any real property subject to this chapter.

1992, c. 717 .

§55-524. Actions under this chapter.

A. Notwithstanding any other provision of this chapter or any other statute or regulation, no cause of action shall arise against an owner or a real estate licensee for failure to disclose that the real property was the site of:

1. An act or occurrence which had no effect on the physical structure of the real property, its physical environment, or the improvements located thereon; or
2. A homicide, felony, or suicide.

B. The purchaser's remedies hereunder for failure of an owner to comply with the provisions of this chapter are as follows:

1. If the owner fails to provide any of the applicable disclosures required by this chapter, the contract may be terminated subject to the provisions of subsection B of [§ 55-520](#).

2. In the event the owner fails to provide any of the applicable disclosures required by this chapter, or the owner misrepresents, willfully or otherwise, the information required in such disclosure, except as result of information provided by an officer or employee of the locality in which the property is located, the purchaser may maintain an action to recover his actual damages suffered as the result of such violation. Notwithstanding the provisions of this subdivision, no purchaser of residential real property located in a noise zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have a right to maintain an action for damages pursuant to this section.

C. Any action brought under this section shall be commenced within one year of the date the purchaser received the applicable disclosures required by this chapter. If the disclosures required by this chapter were not delivered to the purchaser, an action shall be commenced within one year of the date of settlement if by sale, or occupancy if by lease with an option to purchase.

Nothing contained herein shall prevent a purchaser from pursuing any remedies at law or equity otherwise available against an owner in the event of an owner's intentional or willful misrepresentation of the condition of the subject property.

1992, c. 717; 1993, c. 847; 2005, c. [510](#); 2007, c. [265](#); 2017, c. [386](#).

§55-525. Real Estate Board to develop form; when effective.

An owner shall be required to make disclosures required by this chapter for real property subject to a real estate purchase contract which is fully executed by all parties thereto on and after January 1, 2008. On or before January 1, 2008, the Real Estate Board shall develop the form for the residential property disclosure statement in accordance with § [54.1-2105.1](#). The Board may at any time amend the form as the Board deems necessary and appropriate.

1992, c. 717; 1993, c. 848; 2007, c. [265](#).

Virginia Resources Authority

§62.1-197. Short title.

This chapter shall be known and may be cited as the Virginia Resources Authority Act.

1984, c. 699; 1985, c. 67.

§62.1-198. Legislative findings and purposes.

The General Assembly finds that there exists in the Commonwealth a critical need for additional sources of funding to finance the present and future needs of the Commonwealth for water supply; land conservation or land preservation including land for parks and other recreational purposes; oyster restoration projects, including planting and replanting with seed oysters, oyster shells, or other material that will catch, support, and grow oysters; wastewater treatment facilities; drainage facilities; solid waste treatment, disposal and management facilities; recycling facilities; resource recovery facilities; energy conservation and energy efficiency projects; professional sports facilities; certain heavy rail transportation facilities; public safety facilities; airport facilities; the remediation of brownfields and contaminated properties, including properties contaminated by defective drywall; the design and construction of roads, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail; construction of local government buildings,

including administrative and operations systems and other local government equipment and infrastructure; site acquisition and site development work for economic and community development projects; recovered gas energy facilities; the location or retention of federal facilities in the Commonwealth and the support of the transition of former federal facilities from use by the federal government to other uses; and renewable energy projects, including solar, wind, biomass, waste-to-energy, and geothermal. This need can be alleviated in part through the creation of a resources authority. Its purpose is to encourage the investment of both public and private funds and to make loans, grants, and credit enhancements available to local governments to finance water and sewer projects, land conservation or land preservation programs or projects, oyster restoration projects, drainage projects, solid waste treatment, disposal and management projects, recycling projects, energy conservation and energy efficiency projects, professional sports facilities, resource recovery projects, public safety facilities, airport facilities, the remediation of brownfields and contaminated properties including properties contaminated by defective drywall, the design and construction of roads, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail, site acquisition and site development work for the benefit of economic development projects, technology, construction of local government buildings, including administrative and operations systems and other local government equipment and infrastructure, infrastructure for broadband services, recovered gas energy facilities, federal facilities or former federal facilities, and renewable energy projects. The General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose and will promote the health, safety, welfare, convenience or prosperity of the people of the Commonwealth.

1984, c. 699; 1989, cc. 533, 551; 1990, c. 506; 1998, c. [399](#); 2000, c. [790](#); 2001, cc. [652](#), [661](#); 2003, c. [561](#); 2005, cc. [727](#), [769](#); 2007, cc. [81](#), [649](#), [663](#); 2008, cc. [3](#), [24](#), [238](#), [259](#), [504](#), [605](#), [613](#); 2009, cc. [14](#), [246](#), [311](#), [543](#), [632](#); 2010, cc. [42](#), [724](#), [820](#); 2011, c. [270](#).

§62.1-199. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created by this chapter.

"Board of Directors" means the Board of Directors of the Authority.

"Bonds" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, lease and sale-leaseback transactions or any other obligations of the Authority for the payment of money.

"Capital Reserve Fund" means the reserve fund created and established by the Authority in accordance with § [62.1-215](#).

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, real estate appraisals, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred by the local government in the course of the development of the project, including the cost of any credit enhancements, carrying charges incurred before placing the project in service, interest on local obligations issued to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary. It also includes the amount of any contribution, grant or aid which a local government may make or give to any adjoining state, the District of Columbia or any department, agency or instrumentality thereof to pay the costs incident and necessary to the accomplishment of any project, including, without limitation, the items set forth above. The term also includes interest and principal payments pursuant to any installment purchase agreement.

"Credit enhancements" means surety bonds, insurance policies, letters of credit, guarantees and other forms of collateral or security.

"Defective drywall" means the same as that term is defined in § [36-156.1](#).

"Federal facility" means any building or infrastructure used or to be used by the federal government, including any building or infrastructure located on lands owned by the federal government.

"Federal government" means the United States of America, or any department, agency or instrumentality, corporate or otherwise, of the United States of America.

"Former federal facility" means any federal facility formerly used by the federal government or in transition from use by the federal government to a facility all or part of which is to serve any local government.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the Commonwealth or any combination of any two or more of the foregoing.

"Local obligations" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, leases, credit enhancements, or any other obligations of a local government for the payment of money.

"Minimum capital reserve fund requirement" means, as of any particular date of computation, the amount of money designated as the minimum capital reserve fund requirement which may be established in the resolution of the Authority authorizing the issuance of, or the trust indenture securing, any outstanding issue of bonds or credit enhancement.

"Project" means (i) any water supply or wastewater treatment facility including a facility for receiving and stabilizing septage or a soil drainage management facility and any solid waste treatment, disposal, or management facility, recycling facility, federal facility or former federal facility, or resource recovery facility located or to be located in the Commonwealth, the District of Columbia or any adjoining state, all or part of which facility serves or is to serve any local government; and (ii) any federal facility located or to be located in the Commonwealth, provided that both the Board of Directors of the Authority and the governing body of the local government receiving the benefit of the loan, grant, or credit enhancement from the Authority make a determination or finding to be embodied in a resolution or ordinance that the undertaking and financing of such facility is necessary for the location or retention of such facility and the related use by the federal government in the Commonwealth. The term includes, without limitation, water supply and intake facilities; water treatment and filtration facilities; water storage facilities; water distribution facilities; sewage and wastewater (including surface and ground water) collection, treatment and disposal facilities; drainage facilities and projects; solid waste treatment, disposal or management facilities; recycling facilities; resource recovery facilities; related office,

administrative, storage, maintenance and laboratory facilities; and interests in land related thereto. The term also includes energy conservation measures and facility technology infrastructure as defined in § [11-34.2](#) and other energy objectives as defined in § [67-101](#). The term also means any heavy rail transportation facilities operated by a transportation district, created under the Transportation District Act of 1964 (§ [33.2-1900](#) et seq.), which operates heavy rail freight service, including rolling stock, barge loading facilities, and any related marine or rail equipment. The term also means, without limitation, the design and construction of roads, the construction of local government buildings, including administrative and operations systems and other local government equipment and infrastructure, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail. In addition, the term means any project as defined in § [5.1-30.1](#) and any professional sports facility, including a major league baseball stadium as defined in § [15.2-5800](#), provided that the specific professional sports facility projects have been designated by the General Assembly as eligible for assistance from the Authority. The term also means any equipment, facilities, and technology infrastructure designed to provide broadband service. The term also means facilities supporting, related to, or otherwise used for public safety including, but not limited to, law-enforcement training facilities and emergency response, fire, rescue and police stations. The term also means the remediation, redevelopment and rehabilitation of property contaminated by the release of hazardous substances, hazardous wastes, solid wastes or petroleum where such remediation has not clearly been mandated by the United States Environmental Protection Agency, the Department of Environmental Quality, or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Virginia Waste Management Act (§ [10.1-1400](#) et seq.), the State Water Control Law (§ [62.1-44.2](#) et seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been waived. The term also means any program or project for land conservation, parks, park facilities, land for recreational purposes, or land preservation, including but not limited to any program or project involving the acquisition of rights or interests in land for the conservation or preservation of such land. The term also means any oyster restoration project, including planting and replanting with seed oysters, oyster shells, or other material that will catch, support, and grow oysters. The term also means any program or project to perform site acquisition or site

development work for the benefit of economic and community development projects for any local government. The term also means any undertaking by a local government to build or facilitate the building of a recovered gas energy facility; and any local government renewable energy project, including solar, wind, biomass, waste-to-energy, and geothermal projects. The term also means any undertaking by a local government to facilitate the remediation of residential properties contaminated by the presence of defective drywall.

"Recovered gas energy facility" means a facility, located at or adjacent to (i) a solid waste management facility permitted by the Department of Environmental Quality or (ii) a sewerage system or sewage treatment work described in § [62.1-44.18](#) that is constructed and operated for the purpose of treating sewage and wastewater for discharge to state waters, which facility or work is constructed and operated for the purpose of (a) reclaiming or collecting methane or other combustible gas from the biodegradation or decomposition of solid waste, as defined in § [10.1-1400](#), that has been deposited in the solid waste management facility or sewerage system or sewage treatment work and (b) either using such gas to generate electric energy or upgrading the gas to pipeline quality and transmitting it off premises for sale or delivery to commercial or industrial purchasers or to a public utility or locality.

1984, c. 699; 1985, c. 67; 1986, c. 331; 1987, cc. 117, 133; 1989, cc. 533, 551; 1990, c. 506; 1998, c. [399](#); 1999, c. [897](#); 2000, c. [790](#); 2001, cc. [652](#), [661](#); 2005, cc. [727](#), [769](#); 2007, cc. [81](#), [649](#), [663](#); 2008, cc. [3](#), [24](#), [238](#), [259](#), [504](#), [605](#), [613](#); 2009, cc. [14](#), [246](#), [311](#), [543](#), [632](#); 2010, cc. [42](#), [724](#), [820](#); 2011, cc. [270](#), [616](#).

§62.1-200. Creation of Authority.

The Virginia Resources Authority is created, with the duties and powers set forth in this chapter, as a public body corporate and as a political subdivision of the Commonwealth. The exercise by the Authority of the duties and powers conferred by this chapter shall be deemed to be the performance of an essential governmental function of the Commonwealth.

1984, c. 699; 1985, c. 67.

§62.1-201. Board of Directors.

A. All powers, rights and duties conferred by this chapter or other provisions of law upon the Authority shall be exercised by a board of directors consisting of the State Treasurer or his designee, the State Health Commissioner or his designee, the Director of the Department of Environmental Quality or his designee, the Director of the

Department of Aviation or his designee, and seven members appointed by the Governor, subject to confirmation by the General Assembly. The members of the Board of Directors appointed by the Governor shall serve terms of four years each, except that the original terms of three members appointed by the Governor shall end on June 30, 1985, 1986, and 1987, respectively, as designated by the Governor. Any appointment to fill a vacancy on the Board of Directors shall be made for the unexpired term of the member whose death, resignation or removal created the vacancy. All members of the Board of Directors shall be residents of the Commonwealth. Members may be appointed to successive terms on the Board of Directors. Each member of the Board of Directors shall be reimbursed for his or her reasonable expenses incurred in attendance at meetings or when otherwise engaged in the business of the Authority and shall be compensated at the rate provided in § [2.2-2813](#) for each day or portion thereof in which the member is engaged in the business of the Authority.

B. The Governor shall designate one member of the Board of Directors as chairman; he shall be the chief executive officer of the Authority. The Board of Directors may elect one member as vice-chairman; he shall exercise the powers of chairman in the absence of the chairman or as directed by the chairman. The State Treasurer or his designee, the Director of the Department of Environmental Quality or his designee, the Director of the Department of Aviation or his designee, and the State Health Commissioner or his designee shall not be eligible to serve as chairman or vice-chairman.

C. Meetings of the Board of Directors shall be held at the call of the chairman or of any five members. Six members of the Board of Directors shall constitute a quorum for the transaction of the business of the Authority. An act of the majority of the members of the Board of Directors present at any regular or special meeting at which a quorum is present shall be an act of the Board of Directors. No vacancy on the Board of Directors shall impair the right of a majority of a quorum of the members of the Board of Directors to exercise all the rights and perform all the duties of the Authority.

D. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth shall be deemed to have forfeited or shall have forfeited his or her office or employment by reason of acceptance of membership on the Board of Directors or by providing service to the Authority.

1984, c. 699; 1989, cc. 533, 551; 1992, c. 887; 2000, cc. [38](#), [197](#); 2012, cc. [114](#), [242](#).

§62.1-202. Appointment and duties of Executive Director.

The Governor shall appoint an Executive Director of the Authority, who shall report to, but not be a member of, the Board of Directors. The Executive Director shall serve as the ex officio secretary of the Board of Directors and shall administer, manage and direct the affairs and activities of the Authority in accordance with the policies and under the control and direction of the Board of Directors. He shall attend meetings of the Board of Directors, shall keep a record of the proceedings of the Board of Directors and shall maintain and be custodian of all books, documents and papers of the Authority, the minute book of the Authority and its official seal. He may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under seal of the Authority to the effect that the copies are true copies, and all persons dealing with the Authority may rely upon the certificates. He shall also perform other duties as instructed by the Board of Directors in carrying out the purposes of this chapter. He shall execute a surety bond in a penalty sum determined by the Board of Directors. The surety bond shall be executed by a surety company authorized to transact business in the Commonwealth and shall be conditioned upon the faithful performance of the duties of the office.

1984, c. 699; 1994, c. [684](#).

§62.1-203. Powers of Authority.

The Authority is granted all powers necessary or appropriate to carry out and to effectuate its purposes, including the following:

1. To have perpetual succession as a public body corporate and as a political subdivision of the Commonwealth;
2. To adopt, amend and repeal bylaws, and rules and regulations, not inconsistent with this chapter for the administration and regulation of its affairs and to carry into effect the powers and purposes of the Authority and the conduct of its business;
3. To sue and be sued in its own name;
4. To have an official seal and alter it at will although the failure to affix this seal shall not affect the validity of any instrument executed on behalf of the Authority;
5. To maintain an office at any place within the Commonwealth which it designates;
6. To make and execute contracts and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;

7. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its properties and assets;
8. To employ officers, employees, agents, advisers and consultants, including without limitations, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality;
9. To procure insurance, in amounts and from insurers of its choice, or provide self-insurance, against any loss, cost, or expense in connection with its property, assets or activities, including insurance or self-insurance against liability for its acts or the acts of its directors, employees or agents and for the indemnification of the members of its Board of Directors and its employees and agents;
10. To procure credit enhancements from any public or private entities, including any department, agency or instrumentality of the United States of America or the Commonwealth, for the payment of any bonds issued by the Authority, including the power to pay premiums or fees on any such credit enhancements;
11. To receive and accept from any source aid, grants and contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this chapter subject to the conditions upon which the aid, grants or contributions are made;
12. To enter into agreements with any department, agency or instrumentality of the United States of America or, the Commonwealth, the District of Columbia or any adjoining state for the purpose of planning, regulating and providing for the financing of any projects;
13. To collect, or to authorize the trustee under any trust indenture securing any bonds or any other fiduciary to collect, amounts due under any local obligations owned or credit enhanced by the Authority, including taking the action required by § [15.2-2659](#) or [62.1-216.1](#) to obtain payment of any unpaid sums;
14. To enter into contracts or agreements for the servicing and processing of local obligations owned by the Authority;
15. To invest or reinvest its funds as provided in this chapter or permitted by applicable law;

16. Unless restricted under any agreement with holders of bonds, to consent to any modification with respect to the rate of interest, time and payment of any installment of principal or interest, or any other term of any local obligations owned by the Authority;

17. To establish and revise, amend and repeal, and to charge and collect, fees and charges in connection with any activities or services of the Authority;

18. To do any act necessary or convenient to the exercise of the powers granted or reasonably implied by this chapter; and

19. To pledge as security for the payment of any or all bonds of the Authority, all or any part of the Capital Reserve Fund or other reserve fund or account transferred to a trustee for such purpose from the Water Facilities Revolving Fund pursuant to § [62.1-231](#), from the Water Supply Revolving Fund pursuant to § [62.1-240](#), from the Virginia Solid Waste or Recycling Revolving Fund pursuant to § [62.1-241.9](#), from the Virginia Airports Revolving Fund pursuant to § [5.1-30.6](#), from the Dam Safety, Flood Prevention and Protection Assistance Fund pursuant to § [10.1-603.17](#), or from the Virginia Tobacco Region Revolving Fund pursuant to § [3.2-3117](#). Notwithstanding the foregoing, any such transfer from the Virginia Tobacco Region Revolving Fund may be pledged to secure only those bonds of the Authority issued to finance or refinance projects located in the tobacco-dependent communities in the Southside and Southwest regions of Virginia.

1984, c. 699; 1985, c. 67; 1986, c. 415; 1987, cc. 117, 133, 324; 1994, c. [684](#); 1998, c. [399](#); 1999, c. [897](#); 2003, c. [561](#); 2006, cc. [648](#), [765](#); 2011, c. [616](#); 2015, cc. [399](#), [433](#).

§62.1-204. Power to borrow money and issue bonds and credit enhancements.

The Authority shall have the power to borrow money and issue its bonds in amounts the Authority determines to be necessary or convenient to provide funds to carry out its purposes and powers and to pay all costs and expenses incurred in connection with the issuance of bonds. The Authority shall also have the power to issue credit enhancements with respect to local obligations issued to finance or refinance the cost of any project. The total outstanding aggregate principal amount of bonds issued by the Authority and local obligations guaranteed by the Authority pursuant to credit enhancements, that in either case are secured by a capital reserve fund pursuant to the provisions of § [62.1-215](#), shall not exceed the sum of \$1.5 billion without prior approval of the General Assembly.

Notwithstanding the foregoing, the Authority shall not exceed the sum of eight million dollars in the total principal amount of bonds outstanding at any one time for the purpose of financing any heavy rail transportation facilities.

1984, c. 699; 1985, c. 67; 1989, cc. 533, 551; 1990, c. 506; 1994, c. [684](#); 1998, c. [399](#); 1999, c. [104](#); 2001, c. [574](#); 2009, c. [324](#).

§62.1-205. Power to issue refunding bonds.

The Authority shall have the power: (i) to issue bonds to renew or to pay bonds, including the interest, (ii) whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and (iii) to issue bonds partly to refund bonds then outstanding and partly for its corporate purposes. The refunding bonds may be exchanged for the bonds to be refunded or they may be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded. The amount of the bonds issued by the Authority and refunded with proceeds of refunding bonds issued hereunder shall not be included in the total of outstanding bonds for purposes of the limit on the amount of bonds issued by the Authority as provided in § [62.1-204](#).

1984, c. 699; 1994, c. [684](#).

§62.1-206. Sources of payment and security for bonds and credit enhancements.

The Authority shall have the power to pledge any revenue or funds of or under the control of the Authority to the payment of its bonds and credit enhancements, subject only to any prior agreements with the holders of particular bonds or the beneficiaries of particular credit enhancements pledging money or revenue. Bonds or credit enhancements issued by the Authority may be secured by a pledge of any local obligation owned by the Authority, any grant, contribution or guaranty from the United States of America, the Commonwealth or any corporation, association, institution or person, any other property or assets of or under the control of the Authority, or a pledge of any money, income or revenue of the Authority from any source.

1984, c. 699; 1985, c. 67; 1986, c. 415; 1998, c. [399](#).

§62.1-207. Liability of Commonwealth, political subdivisions and members of board of directors.

No bonds or credit enhancements issued by the Authority under this chapter shall constitute a debt or a pledge of the faith and credit of the Commonwealth, or any political subdivision thereof other than the Authority, but shall be payable solely

from the revenue, money or property of the Authority as provided for in this chapter. No member of the board of directors or officer, employee or agent of the Authority or any person executing bonds or credit enhancements of the Authority shall be liable personally on the bonds or credit enhancements by reason of their issuance or execution. Each bond or credit enhancement issued under this chapter shall contain on its face a statement to the effect (i) that neither the Commonwealth, nor any political subdivision thereof, nor the Authority shall be obligated to pay the principal of, or interest or premium on, the bond or credit enhancement or other costs incident to the bond or credit enhancement except from the revenue, money or property of the Authority pledged and (ii) that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of or interests or premium on the bond or credit enhancement.

1984, c. 699; 1998, c. [399](#).

§62.1-208. Authorization, content and sale of bonds and credit enhancements.

A. The bonds and credit enhancements of the Authority shall be authorized by a resolution of the Board of Directors.

B. The bonds shall bear the date or dates and mature at the time or times that the resolution provides, except that no bond shall mature more than fifty years from its date of issue. The bonds may be in the denominations, be executed in the manner, be payable in the medium of payment, be payable at the place or places and at the time or times, and be subject to redemption or repurchase and contain such other provisions as may be determined by the Authority prior to their issuance. The bonds may bear interest payable at such time or times and at such rate or rates as determined by the Authority or as determined in such manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by it. Bonds may be sold by the Authority at public or private sale at the price or prices that the Authority determines and approves.

C. The Authority may bring action pursuant to Article 6 (§ [15.2-2650](#) et seq.) of Chapter 26 of Title 15.2 to determine the validity of any issuance or proposed issuance of its bonds or credit enhancements under this chapter and the legality and validity of all proceedings previously taken, or proposed in a resolution of the Authority to be taken, for the authorization, issuance, sale and delivery of bonds or credit enhancements and for the payment of the principal of and premium, if any, and

interest on bonds or payments of amounts due under credit enhancements of the Authority.

1984, c. 699; 1985, c. 67; 1998, c. [399](#).

§62.1-209. Provisions of resolution or trust indenture authorizing issuance of bonds.

A. Bonds may be secured by a trust indenture between the Authority and a corporate trustee, which may be any bank having the power of a trust company or any trust company within or without the Commonwealth. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the exercise of its powers and the custody, safekeeping and application of all money. The Authority may provide by the trust indenture for the payment of the proceeds of the bonds and all or any part of the revenues of the Authority to the trustee under the trust indenture or to some other depository, and for the method of their disbursement with whatever safeguards and restrictions as the Authority specifies. All expenses incurred in carrying out the trust indenture may be treated as part of the operating expenses of the Authority.

B. Any resolution or trust indenture pursuant to which bonds are issued may contain provisions, which shall be part of the contract or contracts with the holders of such bonds as to:

1. Pledging all or any part of the revenue of the Authority to secure the payment of the bonds, subject to any agreements with bondholders that then exist;
2. Pledging all or any part of the assets of, or funds under control of the Authority, including local obligations owned by the Authority, to secure the payment of the bonds, subject to any agreements with bondholders that then exist;
3. The use and disposition of the gross income from, and payment of the principal of and premium, if any, and interest on local obligations owned by the Authority;
4. The establishment of reserves, sinking funds and other funds and accounts and the regulation and disposition thereof;
5. Limitations on the purposes to which the proceeds from the sale of the bonds may be applied, and limitations pledging the proceeds to secure the payment of the bonds;

6. Limitations on the issuance of additional bonds, the terms on which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;
7. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds, if any, the holders of which must consent thereto, and the manner in which any consent may be given;
8. Limitations on the amount of money to be expended by the Authority for operating expenses of the Authority;
9. Vesting in a trustee or trustees any property, rights, powers and duties in trust that the Authority may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limit the rights, powers and duties of the trustees;
10. Defining the acts or omissions which shall constitute a default, the obligations or duties of the Authority to the holders of the bonds, and the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver; these rights and remedies may include the general laws of the Commonwealth and other provisions of this chapter;
11. Requiring the Authority or the trustees under the trust indenture to file a petition with the Governor and to take any and all other actions required under § [15.2-2659](#) or [62.1-216.1](#) to obtain payment of all unpaid sums on local obligations owned by the Authority or held by a trustee to which § [15.2-2659](#) or § [62.1-216.1](#) shall be applicable; and
12. Any other matter, of like or different character, relating to the terms of the bonds or the security or protection of the holders of the bonds.

1984, c. 699; 1986, c. 415; 1997, c. [319](#); 1998, c. [399](#); 2003, c. [561](#); 2011, c. [616](#).

§62.1-210. Pledge by Authority.

Any pledge made by the Authority shall be valid and binding from the time when the pledge is made. The revenue, money or property so pledged and thereafter received by the Authority shall immediately be subject to the lien of such a pledge without any physical delivery thereof or further act. Furthermore, the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether the parties have notice of the pledge. No recording or filing of the resolution authorizing the issuance of bonds or credit enhancements, the trust indenture securing bonds or any other instrument, including filings under Title 8.9A (§ [8.9A-101](#) et seq.) of the Uniform

Commercial Code of Virginia, shall be necessary to create or perfect any pledge or security interest granted by the Authority to secure any bonds or credit enhancements.

1984, c. 699; 1998, c. [399](#).

§62.1-211. Purchase of bonds by Authority.

The Authority, subject to such agreements with bondholders as may then exist, shall have the power to purchase bonds of the Authority out of any available funds, at any reasonable price. If the bonds are then redeemable, this price shall not exceed the redemption price then applicable plus accrued interest to the next interest payment date.

1984, c. 699.

§62.1-212. Bonds as negotiable instruments.

Whether or not in form and character of negotiable instruments, the bonds of the Authority are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

1984, c. 699.

§62.1-213. Validity of signatures of prior members or officers.

In the event that any of the members of the board of directors or any officers of the Authority cease to be members or officers before the delivery of any bonds or credit enhancements signed by them, their signatures or authorized substitute signatures shall nevertheless be valid and sufficient for all purposes as if the members or officers had remained in office until delivery.

1984, c. 699; 1998, c. [399](#).

§62.1-214. Bondholder protection.

Subsequent amendments to this chapter shall not limit the rights vested in the Authority with respect to any agreements made with, or remedies available to, the holders of bonds or the beneficiaries of credit enhancements issued under this chapter before the enactment of the amendments until the bonds, together with all premium and interest thereon, and the credit enhancements, and all costs and expenses in connection with any proceeding by or on behalf of the holders or the beneficiaries, are fully met and discharged.

1984, c. 699; 1998, c. [399](#).

§62.1-215. Establishment of capital reserve funds.

A.1. The Authority may create and establish one or more capital reserve funds and may pay into each capital reserve fund (i) any moneys appropriated and made available by the Commonwealth for the purpose of such a fund, (ii) any proceeds of the sale of bonds of the Authority, to the extent provided in the resolution authorizing the issuance of, or the trust indenture securing, the bonds, and (iii) any other moneys which may be made available to the Authority for the purpose of such a fund from any other source. All moneys held in any capital reserve fund, except as hereinafter provided, shall be used solely for the payment when due of the principal of and premium, if any, and interest on the bonds or obligations under credit enhancements issued by the Authority secured in whole or in part by such a fund. If, however, moneys in any such fund are ever less than the minimum capital reserve fund requirement established for the fund, the Authority shall not use the moneys for any optional purchase or redemption of bonds. Any income or interest earned on, or increment to, any capital reserve fund due to its investment may be transferred by the Authority to other funds or accounts of the Authority to the extent it does not reduce the amount of the capital reserve fund below its minimal requirement.

2. The Authority shall not at any time issue bonds or credit enhancements secured in whole or in part by any capital reserve fund, if upon the issuance of the bonds or credit enhancements, the amount in the capital reserve fund will be less than its minimal requirement unless the Authority, at the time of issuance of the bonds or credit enhancements, deposits in the fund an amount which, together with the amount then in the fund, will not be less than the fund's minimal capital reserve requirement.

B. In order to assure further the maintenance of capital reserve funds, the chairman of the Authority shall annually, on or before December 1, make and deliver to the Governor and the Secretary of Administration a certificate stating the sum, if any, required to restore each capital reserve fund to its minimal requirement. Within five days after the beginning of each session of the General Assembly, the Governor shall submit to the presiding officer of each House of the General Assembly printed copies of a budget including the sum, if any, required to restore each capital reserve fund to its minimal requirement. All sums, if any, which may be appropriated by the General Assembly for any restoration and paid to the Authority shall be deposited by the Authority in the applicable capital reserve fund. All amounts paid to the Authority by the Commonwealth pursuant to the provisions of this section shall constitute and be

accounted for as advances by the Commonwealth to the Authority and, subject to the rights of the holders of any bonds of the Authority or the beneficiaries of credit enhancements of the Authority, shall be repaid to the Commonwealth without interest from available operating revenues of the Authority in excess of amounts required for the payment of bonds, credit enhancements or other obligations of the Authority, the maintenance of capital reserve funds, and operating expenses. In addition, no bonds issued by the Authority to finance a professional sports facility shall be secured by a capital reserve fund.

C. The Authority may create and establish other funds as necessary or desirable for its corporate purposes.

D. Nothing in this section shall be construed as limiting the power of the Authority to issue bonds or credit enhancements not secured by a capital reserve fund.

1984, c. 699; 1998, c. [399](#); 2000, c. [790](#).

§62.1-216. Purchase and credit enhancements of local obligations.

The Authority shall have the power and authority, with any funds of the Authority available for such a purpose, to purchase and acquire, on terms which the Authority determines, local obligations to finance or refinance the cost of any project. The Authority may pledge to the payment of any bonds all or any portion of the local obligations so purchased. The Authority may also, subject to any such pledge, sell any local obligations so purchased and apply the proceeds of such a sale to the purchase of other local obligations for financing or refinancing the cost of any project or for any other corporate purpose of the Authority.

The Authority shall also have the power and authority to issue credit enhancements, on terms which the Authority determines, to credit enhance local obligations issued to finance or refinance the cost of any project.

The Authority may require, as a condition to the purchase or credit enhancement of any local obligations, that the local government issuing the local obligations covenant to perform any of the following:

A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the local obligations; and (iii) any amounts necessary to create and maintain any

required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees or charges;

B. Create and maintain a special fund or funds for the payment of the principal of and premium, if any, and interest on the local obligations and any other amounts becoming due under any agreement entered into in connection with the local obligations, or for the operation, maintenance, repair or replacement of the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments as they become due and payable;

C. Create and maintain other special funds as required by the Authority; and

D. Perform other acts, including the conveyance of real and personal property together with all right, title and interest therein to the Authority, or take other actions as may be deemed necessary or desirable by the Authority to secure payment of the principal of and premium, if any, and interest on the local obligations or obligations to the Authority with respect to any credit enhancement and to provide for the remedies of the Authority or other holder of the local obligations in the event of any default by the local government in the payment, including, without limitation, any of the following:

1. The procurement of credit enhancements or liquidity arrangements for local obligations from any source, public or private, and the payment therefor of premiums, fees or other charges.

2. The payment of the allocable shares of the local governments, as determined by the Authority, of any costs, fees, charges or expenses attributable to liquidity arrangements incurred in connection with the issuance of bonds by the Authority to acquire local obligations of one or more local governments. The determination of such allocable shares may be made by the Authority on any reasonable basis.

3. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems to secure local obligations issued in connection with such combination or any part or parts thereof.

4. The payment of the allocable shares of the local governments, as determined by the Authority on any reasonable basis, of rate stabilization funds established or

required by the Authority in connection with the issuance of bonds by the Authority to acquire or provide credit enhancement for local obligations of two or more local governments.

All local governments issuing and selling local obligations to the Authority or to be credit enhanced by the Authority are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts with the Authority that are contemplated by this chapter. Such contracts need not be identical among all participants in financings of the Authority, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Authority.

To the extent permitted by law for local obligations issued after July 1, 2003, local governments may enter into agreements with the Authority that provide for a local government to consider and make appropriations of any funds or revenue generated from the following: (i) taxes, funds and assessments from service districts created under Chapter 24 (§ [15.2-2400](#) et seq.) of Title 15.2, (ii) funds held by the local government, or (iii) any revenue or funds generated from sources other than property taxes imposed under Chapter 32 (§ [58.1-3200](#) et seq.) or Chapter 35 (§ [58.1-3500](#) et seq.) of Title 58.1 in amounts sufficient to pay all or a specified portion of the amounts set forth in subsection A or to make deposits into the special fund or funds provided for in subsections B and C and to pledge and apply the amounts so appropriated for such purposes.

1984, c. 699; 1985, c. 67; 1998, c. [399](#); 2003, c. [561](#).

§62.1-216.1. Investigation by Governor of nonpayments; withholding state funds from nonpaying locality; payment of funds withheld; receipts, reports, etc.

Whenever it appears to the Governor from an affidavit filed with him by the Authority as the purchaser, holder, or credit enhancer of local obligations (regardless of the security therefor) issued by any county, city or town that a payment has not been made on any local obligations, the Governor shall immediately make a summary investigation into the facts set forth in the affidavit. The Authority may, but shall not be required to, file such an affidavit unless the Authority has otherwise contracted to make such filing for the benefit of the holders of any of its bonds or the local obligations credit enhanced by it. The affidavit described in this section may be filed by a trustee to which the Authority has assigned the local obligations or the payment

thereon as security for bonds of the Authority under a resolution or trust indenture or otherwise.

If it is established to the satisfaction of the Governor that such nonpayment has occurred, the Governor shall immediately make an order directing the Comptroller to withhold all further payment to the county, city or town of all funds, or of any part of them, appropriated and payable by the Commonwealth to the county, city or town for any and all purposes, until the unpaid sum is obtained. The Governor shall, while the nonpayment continues, direct in writing the payment of all sums withheld by the Comptroller, or as much of them as is necessary, to the Authority, so as to cure, or cure insofar as possible, nonpayment on the local obligations.

The Governor shall, as soon as practicable, give notice of the nonpayment and of the availability of funds with the Comptroller in writing to the Authority. Any payment so made by the Comptroller to the Authority shall be credited as if made directly by the county, city or town and shall be charged by the Comptroller against the first appropriations otherwise payable to the county, city or town as if paid to the county, city or town. The Authority, at the time of payment or at the time of each payment shall receipt for the payment and deliver to the Comptroller all local obligations or other instruments or documents, in a form satisfactory to the Comptroller, evidencing the Authority's right to receive the amounts satisfied by the payment. The Comptroller shall report each payment made to the governing body of the nonpaying county, city or town and deliver or send by registered mail to the governing body all local obligations, or other instruments or documents received by the Comptroller under the provisions of this section.

Nothing in this section shall be construed to create any obligation on the part of the Comptroller or the Commonwealth to make any payment on behalf of the nonpaying county, city or town other than from funds appropriated and payable to the nonpaying county, city or town.

1998, c. [399](#); 2003, c. [561](#); 2011, c. [616](#).

§62.1-217. Grants from Commonwealth.

The Commonwealth may make grants of money or property to the Authority for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers, including deposits to the capital reserve funds. This section shall not be construed to limit any other power the Commonwealth may have to make grants to the Authority.

1984, c. 699.

§62.1-218. Grants to local governments.

The Authority shall have the power and authority, with any funds of the Authority available for this purpose, to make grants to local governments. In determining which local governments are to receive grants, the Department of Environmental Quality, the Department of Health, and the Virginia Waste Management Board shall assist the Authority in determining needs for wastewater treatment facilities, water supply facilities, solid waste treatment, disposal or management facilities, or recycling facilities, and the method and form of such grants.

1984, c. 699; 1992, cc. 378, 887 .

§62.1-219. Exemption from taxation.

As set forth in § [62.1-200](#), the Authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. Accordingly, the Authority shall not be required to pay any taxes or assessments upon any project or any property or upon any operations of the Authority or the income therefrom, or any taxes or assessments upon any project or any property or local obligation acquired, credit enhanced or used by the Authority under the provisions of this chapter or upon the income therefrom. Any bonds and credit enhancements issued by the Authority under the provisions of this chapter, the transfer thereof and the income therefrom, including any profit on the sale thereof, shall at all times be free from taxation and assessment of every kind by the Commonwealth and by the local governments and other political subdivisions of the Commonwealth.

1984, c. 699; 1985, c. 67; 1998, c. [399](#).

§62.1-220. Bonds as legal investments and securities.

The bonds issued by the Authority in accordance with the provisions of this chapter are declared to be legal investments in which all public officers or public bodies of the Commonwealth, its political subdivisions, all municipalities and municipal subdivisions; all insurance companies and associations and other persons carrying on insurance business; all banks, bankers, banking associations, trust companies, savings banks, savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees and other fiduciaries; and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth, may invest funds, including capital, in

their control or belonging to them. The bonds of the Authority are also hereby made securities which may be deposited with and received by all public officers and bodies of the Commonwealth or any agency or political subdivision of the Commonwealth and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may be later authorized by law.

1984, c. 699.

§62.1-221. Deposit of money; expenditures; security for deposits.

A. All money of the Authority, except as otherwise authorized by law or provided in this chapter, shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director or other officers or employees and designated by the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies and savings institutions are authorized to give security for the deposits.

B. Notwithstanding the provisions of subsection A the Authority shall have the power to contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any money of the Authority and of any money held in trust or otherwise for the payment of bonds and to carry out such a contract. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of money may be secured in the same manner as money of the Authority, and all banks and trust companies are authorized to give security for the deposits.

C. Subject to the provisions of subsection B hereof, funds of the Authority not needed for immediate use or disbursement, including any funds held in reserve, may be invested in (i) obligations or securities which are considered lawful investments for fiduciaries, both individual and corporate, as set forth in § [2.2-4519](#), (ii) bankers' acceptances, or (iii) repurchase agreements, reverse repurchase agreements, rate guarantee or investment agreements or other similar banking arrangements.

D. Whenever investments are made in accordance with this section, no director, officer or employee of the Authority shall be liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance or nonfeasance on his part.

1984, c. 699; 1985, c. 67; 1994, c. [684](#); 1996, c. [77](#).

§62.1-222. Annual reports; audit.

The Authority shall, following the close of each fiscal year, submit an annual report on or before December 1 of its activities for the preceding year to the Governor and General Assembly. Each report shall set forth a complete operating and financial statement for the Authority during the fiscal year it covers. An independent certified public accountant or the Auditor of Public Accounts shall perform an audit of the books and accounts of the Authority at least once in each fiscal year.

1984, c. 699; 2005, c. [633](#).

§62.1-223. Liberal construction of chapter.

The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. No proceedings, notice or approval shall be required for the issuance of any bonds of the Authority or any instruments or the security thereof, except as provided in this chapter. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, the provisions of this chapter shall be controlling.

1984, c. 699.

Virginia Retirement System Oversight Act

§30-78. Title of chapter.

This chapter may be referred to as the "Virginia Retirement System Oversight Act."

1994, cc. [3](#), [732](#).

§30-79. Purpose.

A. Section 11 of Article X of the Constitution of Virginia (1971) requires that the General Assembly maintain a state employees retirement system to be administered in the best interest of the beneficiaries thereof. In order to fulfill this duty, continuing

legislative oversight of the Virginia Retirement System ("Retirement System" or "System") is essential.

B. The General Assembly hereby designates the Joint Legislative Audit and Review Commission ("Commission") to oversee and evaluate the Virginia Retirement System on a continuing basis and to make such special studies and reports as may be requested by the General Assembly, the House Appropriations Committee, or the Senate Finance Committee.

1994, cc. [3](#), [732](#).

§30-80. Duties and powers.

A. The areas of review and evaluation to be conducted by the Commission shall include, but are not limited to, the following: (i) structure and governance of the Retirement System; (ii) structure of the investment portfolio; (iii) investment practices, policies, and performance, including the effect of investment performance on employer contributions; (iv) actuarial policy and the actuarial soundness of the Retirement System's trust funds; and (v) administration and management of the Retirement System.

B. For the purpose of carrying out its duties under this chapter and notwithstanding any contrary provision of law, the Commission shall have the following powers, including but not limited to:

1. Access to the information, records, and facilities of the Retirement System and any corporations or subsidiaries thereof or other entities owned, directly or indirectly, or otherwise created by or on behalf of the System.
2. Access to the public and executive session meetings and records of the board of trustees of the System, as well as those of the System's investment advisory committee and real estate advisory committee. Access shall include the right to attend such meetings.
3. Access to the System's employees, consultants, actuaries, investment managers, advisors, attorneys, accountants, or other contractors in the employ or hire of the Virginia Retirement System. Such persons shall cooperate with the Commission and upon its request shall provide specific information or opinions in the form requested.
4. The chairman of the Commission may appoint a permanent subcommittee to provide guidance and direction for oversight activities, subject to the full Commission's supervision and such guidelines as the Commission itself may provide.

C. Confidential or proprietary records of the Virginia Retirement System or its subsidiary corporations provided to the Commission shall be exempted from the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

1994, cc. [3](#), [732](#).

§30-81. Required reports.

A. The Virginia Retirement System shall submit to the General Assembly, through its Commission, both semi-annual and annual reports on the investment programs of the Retirement System. The report shall be presented in a format approved by the Commission and shall include information concerning (i) planned or actual material changes in asset allocation, (ii) investment performance of all asset classes and sub-classes, and (iii) investment policies and programs.

B. The System shall also submit a biennial report on the actuarial soundness of its trust funds, which shall include (i) funding policy and objectives, (ii) current and projected funding levels, (iii) current and projected contribution rates, and (iv) actuarial assumptions.

C. The System shall furnish such reports or information as may be requested by standing committees of the General Assembly having jurisdiction over the subject matter which is the basis of such committee's inquiry.

D. The Commission shall publish the following reports concerning the Retirement System: (i) a biennial status report which shall include, at a minimum and where appropriate, findings and recommendations and the status of actions, if any, taken in response to prior recommendations and (ii) with the assistance of an actuary, an actuarial report once every four years.

E. The Commission's staff shall prepare and maintain an informational guide to the Virginia Retirement System for the members of the General Assembly.

F. The Auditor of Public Accounts shall complete an annual financial audit of the Virginia Retirement System, the State Police Officers' Retirement System, and the Judicial Retirement System. The Auditor shall report the findings of his audit to the Governor, the General Assembly, the Joint Legislative Audit and Review Commission, and the Board of Trustees of the Virginia Retirement System. Such audit shall be submitted on or before the first day of the General Assembly session.

1994, cc. [3](#), [732](#).

§30-82. Use of consultants.

The Commission may employ on a consulting basis such investment, actuarial, and other professional or technical experts as may be reasonably necessary for the Commission to fulfill its responsibilities under this chapter. Such consultants shall provide, upon request, assistance to the House Appropriations Committee and the Senate Finance Committee on matters related to the Retirement System.

1994, cc. [3](#), [732](#).

§30-83. Cooperation of other agencies.

All agencies of the Commonwealth shall cooperate as requested by the Commission in the performance of its duties under this chapter.

1994, cc. [3](#), [732](#).

§30-84. Funding for Commission's oversight activities.

The Commission's reasonable and necessary expenses related to its duties under this chapter shall be paid by the Retirement System and shall be borne by each trust fund in the System in the same ratio as the assets of each trust fund, as of the preceding June 30, bear to the total trust funds of the System on that date. On or before September 30 of each year, the Commission shall submit to the Board of Trustees of the Virginia Retirement System an itemized estimate for the next fiscal year of the amounts necessary to pay the Commission's expenses related to its duties under this chapter and shall include the estimate as part of the agency's budget submission to the House Committee on Appropriations and the Senate Committee on Finance.

1994, cc. [3](#), [732](#); 2005, c. [633](#).

Virginia Revised Uniform Limited Partnership Act

§50-73.1. Definitions.

As used in this chapter, unless the context otherwise requires:

"Certificate of limited partnership" means the certificate referred to in § [50-73.11](#), and the certificate as amended or restated.

"Commission" means the State Corporation Commission.

"Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

"Domestic business trust" has the same meaning as specified in § [13.1-1201](#).

"Domestic corporation" has the same meaning as specified in § [13.1-603](#).

"Domestic limited liability company" has the same meaning as specified in § [13.1-1002](#).

"Domestic partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under § [50-73.88](#), or predecessor law of the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a registered limited liability partnership.

"Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in § [50-73.28](#).

"Foreign business trust" has the same meaning as specified in § [13.1-1201](#).

"Foreign corporation" has the same meaning as specified in § [13.1-603](#).

"Foreign limited liability company" has the same meaning as specified in § [13.1-1002](#).

"Foreign limited partnership" means a partnership formed under the laws of any state or jurisdiction other than the Commonwealth and having as partners one or more general partners and one or more limited partners.

"Foreign partnership" means an association of two or more persons to carry on as co-owners of a business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability partnership.

"Foreign registered limited liability partnership" has the same meaning as specified in § [50-73.79](#).

"General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

"Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

"Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of the Commonwealth and having one or more general partners and one or more limited partners.

"Liquidating trustee" means a person, other than a general partner, but including a limited partner, who carries out the winding up of a limited partnership as provided in this chapter.

"Partner" means a limited or general partner.

"Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

"Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

"Person" means an individual, partnership, limited partnership (domestic or foreign), trust, estate, association, corporation or any other legal or commercial entity.

"Principal office" means the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign limited partnership are located. Any reference to a specified office contained in the records of the Commission as of July 1, 2010, shall be deemed, in all instances, to be a reference to the principal office of a domestic or foreign limited partnership.

"Registered limited liability partnership" means a limited partnership or general partnership formed under the laws of the Commonwealth that is registered under § [50-73.132](#).

"State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

1985, c. 607; 1987, c. 702; 1990, c. 343; 1992, c. 575; 1997, c. [190](#); 2003, c. [340](#); 2007, c. [631](#); 2010, c. [675](#).

§50-73.2. Name.

A. A limited partnership name, as set forth in its certificate of limited partnership, shall either (i) contain the words "limited partnership" or "a limited partnership" or the abbreviations "L.P." or "LP" or (ii) in the case of a limited partnership that is also a registered limited liability partnership, comply with the requirements of subdivision A 2 of § [50-73.78](#).

B. A limited partnership name shall not contain:

1. The name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;
2. Any word, abbreviation, or combination of characters that states or implies the limited partnership is a corporation or a limited liability company; or
3. Any word or phrase the use of which is prohibited by law for such limited partnership.

C. Except as authorized by subsection D, a limited partnership name shall be distinguishable upon the records of the Commission from:

1. The name of a domestic limited partnership or a foreign limited partnership registered pursuant to this chapter;
2. A limited partnership name reserved under this chapter;
3. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in the Commonwealth;
4. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of the Commonwealth or authorized to transact business in the Commonwealth;
5. A corporate name reserved or registered under § [13.1-631](#), [13.1-632](#), [13.1-830](#) or [13.1-831](#);
6. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in the Commonwealth;
7. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in the Commonwealth;
8. A limited liability company name reserved under § [13.1-1013](#);
9. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in the Commonwealth;
10. The name of a domestic business trust or a foreign business trust registered to transact business in the Commonwealth;
11. A business trust name reserved under § [13.1-1215](#); and

12. The designated name adopted by a foreign business trust because its real name is unavailable for use in the Commonwealth.

D. A domestic limited partnership may apply to the Commission for authorization to use a name that is not distinguishable upon its records from one or more of the names described in subsection C. The Commission shall authorize use of the name applied for if the other domestic or foreign limited partnership or other business entity consents to the use in writing and submits an undertaking in a form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying limited partnership.

E. The use of assumed names or fictitious names, as provided for in Chapter 5 (§ [59.1-69](#) et seq.) of Title 59.1, is not affected by this chapter.

F. The Commission, in determining whether the name of a limited partnership is distinguishable upon its records from the name of any of the business entities listed in subsection C, shall not consider any word, phrase, abbreviation, or designation required or permitted under this section and § [13.1-544.1](#), subsection A of § [13.1-630](#), subsection A of § [13.1-1012](#), § [13.1-1104](#), and subdivision A 2 of § [50-73.78](#) to be contained in the name of a business entity formed or organized under the laws of the Commonwealth or authorized or registered to transact business in the Commonwealth.

1985, c. 607; 1987, c. 702; 1998, c. [163](#); 2003, cc. [340](#), [592](#); 2005, c. [379](#); 2012, c. [63](#).

§50-73.3. Reserved name.

A. A person may apply to the Commission to reserve the exclusive use of a limited partnership name, including a designated name for a foreign limited partnership. The limited partnership name applied for need not comply with subsection A of § [50-73.2](#). If the Commission finds that the limited partnership name is distinguishable upon the records of the Commission, it shall reserve the name for the applicant's exclusive use for a 120-day period.

B. The owner of a reserved limited partnership name may renew the reservation for successive 120-day periods each by filing with the Commission, during the 45-day period preceding the date of expiration of the reservation, a renewal application.

C. The owner of a reserved limited partnership name may transfer the reservation to any other person by delivering to the Commission a notice of the transfer, signed by

the applicant for whom the name was reserved and specifying the name and address of the transferee.

D. A reserved limited partnership name may be used by its owner in connection with (i) the formation or an amendment to change the name of a domestic stock or non-stock corporation, limited liability company, business trust, or limited partnership; (ii) an application for a certificate of authority or registration to transact business in the Commonwealth as a foreign stock or nonstock corporation, limited liability company, business trust, or limited partnership; or (iii) an amended application for such authority or registration, provided that the proposed name complies with the provisions of § [13.1-630](#), [13.1-762](#), [13.1-829](#), [13.1-924](#), [13.1-1012](#), [13.1-1054](#), [13.1-1214](#), [13.1-1244](#), [50-73.2](#), or [50-73.56](#), as the case may be.

1985, c. 607; 2006, c. [505](#); 2015, c. [444](#).

§50-73.4. Principal office, registered office, and registered agent.

A. Each domestic limited partnership and each foreign limited partnership registered to transact business in the Commonwealth shall continuously maintain:

1. A principal office, which shall be a place of its business and which may but need not be within the Commonwealth, at which shall be kept the records required to be maintained pursuant to § [50-73.8](#);
2. A registered office in the Commonwealth that may be the same as any of its places of business; and
3. A registered agent, who shall be either:
 - a. An individual who is a resident of the Commonwealth and is either (i) a general partner of the limited partnership, (ii) an officer or director of a corporate general partner of the limited partnership, (iii) a general partner of a general or limited partnership that is a general partner of the limited partnership, (iv) a member or manager of a limited liability company that is a general partner of the limited partnership, (v) a trustee of a trust that is a general partner of the limited partnership, or (vi) a member of the Virginia State Bar and whose business office is identical with the registered office; or
 - b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall

designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the limited partnership or foreign limited partnership at its last known address any process, notice or demand that is served on the registered agent.

1985, c. 607; 1987, c. 702; 1993, c. 292; 2000, cc. [162](#), [537](#); 2001, cc. [517](#), [541](#); 2007, c. [631](#); 2010, c. [675](#).

§50-73.5. Change of registered office or registered agent.

A. A limited partnership or a foreign limited partnership registered to transact business in the Commonwealth may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the domestic or foreign limited partnership;
2. The address of its current registered office;
3. If the current registered office is to be changed, the post office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the domestic or foreign limited partnership will be in compliance with the requirements of § [50-73.4](#).

B. A statement of change shall forthwith be filed with the Commission by a domestic or foreign limited partnership whenever its registered agent dies, resigns or ceases to satisfy the requirements of § [50-73.4](#).

C. Except as provided in subsection D, a statement of change shall be executed on behalf of a domestic or foreign limited partnership by a general partner or a liquidating trustee or, if there are no general partners or liquidating trustees, by a limited partner.

D. A domestic or foreign limited partnership's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A domestic or foreign limited partnership's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § [50-73.4](#). In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office address of the domestic or foreign limited partnership on or before the business day following the day on which the statement is filed.

1985, c. 607; 1987, c. 702; 1991, c. 225; 2003, c. [597](#); 2007, c. [631](#); 2010, c. [675](#).

§50-73.6. Resignation of registered agent.

A. A registered agent may resign the agency appointment by signing and filing with the Commission a statement of resignation accompanied by a certification that the registered agent shall mail a copy thereof to the principal office of the domestic or foreign limited partnership by certified mail on or before the business day following the day on which the statement is filed. The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

1985, c. 607; 2010, c. [434](#).

§50-73.7. Service on limited partnership.

A. A domestic or foreign limited partnership's registered agent is the limited partnership's agent for service of process, notice, or demand required or permitted by law to be served on the limited partnership. The registered agent, by instrument in writing, acknowledged before a notary public, may designate a natural person or persons in the office of the registered agent upon whom any such process, notice or demand may be served. Whenever any such person accepts service of process, a photographic copy of such instrument shall be attached to the return.

B. Whenever a domestic or foreign limited partnership fails to appoint or maintain a registered agent in the Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the limited partnership upon whom service may be made in accordance with § [12.1-19.1](#).

C. This section does not prescribe the only means, or necessarily the required means, of serving a domestic or foreign limited partnership.

1985, c. 607; 1991, c. 672; 2001, cc. [517](#), [541](#); 2007, c. [631](#).

§50-73.8. Records to be kept.

A. Each limited partnership shall keep at its principal office the following:

1. A current list of the full name and last known business address of each partner, separately identifying the general partners in alphabetical order and the limited partners in alphabetical order;
2. A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;
3. Copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the three most recent years;
4. Copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years; and
5. Unless contained in a written partnership agreement, a writing setting out:
 - a. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;
 - b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;
 - c. Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and
 - d. Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

B. Records kept under this section are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

1985, c. 607; 1987, c. 702; 2010, c. [675](#).

§50-73.9. Nature of business.

A limited partnership may carry on any business that a partnership without limited partners may carry on.

1985, c. 607.

§50-73.10. Business transactions of partner with partnership.

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

1985, c. 607.

§50-73.10:1. Unlawful to transact or offer to transact business as a limited partnership unless authorized; penalty.

It shall be unlawful for any person to transact business in the Commonwealth as a limited partnership or to offer or advertise to transact business in the Commonwealth as a limited partnership unless the alleged limited partnership is either a domestic limited partnership or a foreign limited partnership authorized to transact business in the Commonwealth. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

2007, c. [631](#).

§50-73.11. Certificate of limited partnership.

A. In order to form a limited partnership, a certificate of limited partnership shall be executed and filed with the Commission and shall set forth:

1. The name of the limited partnership that satisfies the requirements of § [50-73.2](#);
2. The post office address, including the street and number, if any, of the limited partnership's initial registered office, the name of the city or county in which it is located, the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of Virginia and either a general partner of the limited partnership, an officer or director of a corporate general partner of the limited partnership, a general partner of a partnership or limited partnership that is a

general partner of the limited partnership, a member or manager of a limited liability company that is a general partner of the limited partnership, a trustee of a trust that is a general partner of the limited partnership, or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth;

3. The name and the post office address, including the street and number, if any, of each general partner and, if a general partner is a business entity, the jurisdiction under whose law it is incorporated, organized, or formed and, if the general partner is of record with the Commission, the identification number issued by the Commission to such general partner; and

4. The post office address, including the street and number, if any, of the principal office of the limited partnership, which may be the same as the registered office but need not be within the Commonwealth.

B. The certificate of limited partnership may set forth any other matter that the general partners determine to include therein.

C. A limited partnership is formed at the time of the filing of the certificate of limited partnership with the Commission unless a later date and time are specified in the certificate of limited partnership as provided by § [50-73.17](#) if, in either case, there has been substantial compliance with the requirements of this section.

1985, c. 607; 1987, c. 702; 1993, c. 292; 2001, cc. [517](#), [541](#); 2003, c. [378](#); 2007, c. [631](#); 2010, c. [675](#); 2013, c. [18](#).

§50-73.11:1. Repealed.

Repealed by Acts 2002, c. [441](#), cl. 2.

§50-73.11:2. Repealed.

Repealed by Acts 2007, c. [631](#), cl. 4.

§50-73.11:3. Conversion of general partnership to limited partnership.

A. A domestic or foreign general partnership may convert to a limited partnership pursuant to this section.

B. The terms and conditions of a conversion of a general partnership to a limited partnership shall be approved by the partners in the manner provided in the part-

nership's partnership agreement for amendments to the partnership agreement or, if no such provision is made in the partnership agreement, by all of the partners.

C. After the conversion is approved by the partners, the general partnership shall file a certificate of limited partnership that meets the requirements of § [50-73.11](#) and includes the following:

1. The name of the former general partnership and the identification number issued by the Commission to the general partnership, if any;
2. The jurisdiction under whose law the general partnership was formed immediately prior to the filing of the certificate of limited partnership;
3. If the former general partnership is registered with the Commission as a registered limited liability partnership, a statement to that effect;
4. A statement that the conversion of the general partnership to a limited partnership was approved by the partners in accordance with the provisions of subsection B.

2007, c. [631](#).

§50-73.11:4. Effect of conversion; entity unchanged.

A. A general partnership that has been converted to a limited partnership pursuant to § [50-73.11:3](#), former § [50-73.11:1](#), or former § [50-73.125](#) shall be deemed for all purposes the same entity that existed before the conversion.

B. When such conversion takes effect:

1. The title to real estate and other property owned by the converting general partnership remains vested in the converted limited partnership;
2. All obligations of the converting general partnership continue as obligations of the converted limited partnership; and
3. An action or proceeding pending against the converting general partnership may be continued as if the conversion had not occurred.

C. A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the general partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect.

The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in this chapter.

D. If the converting general partnership is formed under the laws of the Commonwealth and is registered with the Commission as a registered limited liability partnership at the time of conversion, the registration as a registered limited liability partnership shall continue as to the converted limited partnership upon the effective date and time of the conversion.

2007, c. [631](#).

§50-73.12. Amendment of certificate.

A. A certificate of limited partnership is amended by filing with the Commission a certificate of amendment setting forth:

1. The name of the limited partnership;
2. The date of filing of the initial certificate of limited partnership; and
3. The amendment to the certificate.

B. Within 30 days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

1. The admission of a new general partner;
2. The withdrawal of a general partner;
3. The continuation of the business under § [50-73.49](#) after an event of withdrawal of a general partner;
4. A change in the name of the limited partnership or the address of the principal office; or
5. One or more liquidating trustees commence the winding up of the affairs of the limited partnership, in which event the certificate of amendment shall include the name and the business, residence or mailing address of each liquidating trustee.

C. A general partner who becomes aware that any material statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any material respect, shall promptly amend the certificate.

D. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

E. An amendment to a certificate of limited partnership may delete the name of the initial registered agent or the address of the initial registered office if a statement of change described in § [50-73.5](#) is on file with the Commission.

F. If an amendment to a certificate of limited partnership is filed in compliance with subsection B of this section, no person shall be subject to liability because the amendment was not filed earlier.

G. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

H. A liquidating trustee shall not be subject to liability as a general partner by reason of the execution and filing of a certificate of amendment required by this section.

I. Upon the effective date and time of a certificate of amendment as provided by § [50-73.17](#), the certificate of limited partnership shall be amended as set forth therein.

1985, c. 607; 1987, c. 702; 1990, c. 343; 1993, c. 292; 2007, c. [631](#); 2008, c. [586](#); 2010, c. [675](#).

§50-73.13. Repealed.

Repealed by Acts 2008, c. [586](#), cl. 2, effective April 1, 2009.

§50-73.14. Repealed.

Repealed by Acts 1987, c. 702.

§50-73.15. Execution of documents; penalty.

A. Certificates and articles required or permitted by this chapter to be filed with the Commission by a limited partnership shall be executed in the following manner:

1. An initial certificate of limited partnership and an amended and restated certificate of limited partnership pursuant to § [50-73.77](#) shall be signed by all general partners;

2. A certificate of amendment shall be signed (i) by at least one general partner or, if all general partners have withdrawn and all of the limited partners agree to continue the business of the limited partnership pursuant to subdivision A 3 of § [50-73.49](#), by all limited partners, and by each person designated in the certificate as a new general partner or (ii) after the dissolution of a limited partnership but before the filing of a certificate of cancellation, if all general partners have withdrawn or if the general

partners named in the certificate of limited partnership are not winding up the affairs of the limited partnership, by each liquidating trustee;

3. A certificate of cancellation shall be signed by all general partners, or, if the general partners are not winding up the affairs of the limited partnership, then by all liquidating trustees or a majority of the limited partners; and

4. Articles of merger shall be signed by at least one general partner.

B. Every person executing a document required or permitted by this chapter to be filed with the Commission shall sign it and set forth beneath or opposite his signature his name and the capacity in which he signs. A signature on any document filed under this chapter may be a facsimile. Any person may sign a certificate by an attorney-in-fact.

C. It shall be unlawful for any person to sign a document he knows is false in any material respect with intent that the document be delivered to the Commission for filing. Any person who violates the provisions of this subsection shall be guilty of a Class 1 misdemeanor.

D. The acknowledgment before July 1, 1981, of a certificate or amended certificate of limited partnership, not false or misleading in any material respect, shall be deemed substantial compliance in good faith with any requirement that the certificate or amended certificate be signed or sworn to. The provisions of this subsection shall not apply to any litigation, pending or decided, on or before the effective date hereof.

1985, c. 607; 1987, c. 702; 1990, c. 343; 1993, c. 292; 2002, c. [441](#); 2007, c. [631](#); 2008, c. [586](#); 2010, c. [675](#); 2013, c. [18](#).

§50-73.16. Execution by judicial act.

If a person required by § [50-73.15](#) to execute any certificate fails or refuses to do so, any other person, who is adversely affected by the failure or refusal, may petition any circuit court, with general equity jurisdiction in the city or county where the office of the registered agent is located, to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the plaintiff to prepare and file with the Commission an appropriate certificate.

1985, c. 607; 1987, c. 702.

§50-73.17. Filing; fees; effective time and date.

A. 1. One signed copy of the certificate of limited partnership, of any amended and restated certificate referred to in § [50-73.77](#), of any certificate of amendment or cancellation, of any restated certificate of limited partnership or of any articles of merger shall be delivered to the Commission for filing and shall be accompanied by the required filing fee.

2. Any document delivered to the Commission for filing shall be typewritten or printed in black. Photocopies, or other reproduced copies, of typewritten or printed certificates may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

3. The document shall be in the English language. A limited partnership name need not be in English if written in English letters or Arabic or Roman numerals. The certificate of limited partnership or partnership agreement, duly authenticated by the official having custody of the applicable records in the state or other jurisdiction under whose law the limited partnership is formed, which is required of foreign limited partnerships, need not be in English if accompanied by a reasonably authenticated English translation.

4. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

5. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. If the Commission finds that the certificate complies with the provisions of this chapter, that it has been signed as required by this chapter, and that the required filing fee has been paid, it shall file the certificate and admit it to record in its office.

6. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § [59.1-496](#).

B. The Commission shall charge and collect the following fees, except as provided in § [12.1-21.2](#):

1. For filing any one of the following, the fee shall be \$10:

a. An application to reserve or to renew the reservation of a name for use by a domestic or a foreign limited partnership;

b. A notice of the transfer of a name reserved for the use by a domestic or a foreign limited partnership; and

c. A certificate declaring withdrawal referred to in § [50-73.25](#).

2. For filing any one of the following, the fee shall be \$100:

a. A certificate of limited partnership;

b. An application for registration as a foreign limited partnership; and

c. An amended and restated certificate of limited partnership referred to in § [50-73.77](#).

3. For filing any one of the following, the fee shall be \$25:

a. A certificate of amendment;

b. A restated certificate of limited partnership;

c. A copy of an amendment or correction referred to in § [50-73.57](#), or an amended application referred to in § [50-73.57](#), provided that an amended application shall not require a separate fee when it is filed with a copy of an amendment or a correction referred to in § [50-73.57](#);

d. Articles of merger;

e. A copy of an instrument of merger of a foreign limited partnership holding a certificate of registration to transact business in the Commonwealth;

f. A copy of an instrument of entity conversion of a foreign limited partnership holding a certificate of registration to transact business in the Commonwealth;

g. A certificate of cancellation; and

h. An application for cancellation of a foreign limited partnership.

4. For issuing a certificate pursuant to § [50-73.76:1](#), the fee shall be \$6.

C. 1. A certificate filed with or issued by the Commission pursuant to the provisions of this chapter is effective at the time such certificate is filed or issued unless the certificate or articles to which the certificate relates are filed on behalf of a limited partnership and state that they shall become effective at a later time and date. In that event, the certificate shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the fifteenth day after the date on which the certificate is filed with or issued by the Commission. Any other document filed with the Commission

shall be effective when accepted for filing unless otherwise provided for in this chapter.

2. Notwithstanding subdivision 1, as to any certificate that has a delayed effective time and date if, prior to the effective time and date, a party to which the certificate relates files a request for cancellation with the Commission, the Commission shall cancel the certificate and it shall not become effective.

3. Notwithstanding subdivision 1, for purposes of §§ [50-73.2](#) and [50-73.56](#), any certificate that has a delayed effective date shall be deemed to be effective when the certificate is filed or, in the case of a certificate of merger, issued.

D. Notwithstanding any other provision of law to the contrary, the Commission shall have the power to act upon a petition filed by a limited partnership at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person without authority to act for the limited partnership.

1985, c. 607; 1987, c. 702; 1991, c. 434; 1992, c. 575; 1993, c. 292; 1995, cc. [70](#), [368](#); 2000, c. [995](#); 2002, c. [441](#); 2004, c. [274](#); 2007, cc. [631](#), [771](#); 2008, c. [586](#); 2012, c. [130](#).

§50-73.18. Liability for false statement in certificate.

If any certificate filed pursuant to this chapter contains a false or inaccurate statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

1. Any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false in any material respect at the time the certificate was executed; and
2. Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any material respect, if that general partner had sufficient time to cancel or amend the certificate, or to file a petition for its cancellation or amendment under § [50-73.16](#) before the statement was reasonably relied upon.

1985, c. 607; 1987, c. 702.

§50-73.19. Scope of notice.

The fact that a certificate of limited partnership has been filed in accordance with the provisions of this chapter or the Virginia Uniform Limited Partnership Act, Chapter 2

(§ [50-44](#) et seq.) of this title, as it existed prior to its repeal, is notice that the partnership is a limited partnership and that a person designated as a general partner is a general partner, but shall not be deemed to be notice of any other fact.

1985, c. 607; 1987, c. 702.

§50-73.20. Delivery of certificates to limited partners.

Upon the filing with the clerk of the Commission, pursuant to § [50-73.17](#), of a certificate, the general partners shall promptly deliver or mail a true copy of the certificate of limited partnership to each limited partner unless the partnership agreement provides otherwise.

1985, c. 607; 1987, c. 702; 1991, c. 434 .

§50-73.21. Assumed or fictitious names.

Notwithstanding any other provision of the law, no partnership organized under this chapter which is conducting or transacting business in this Commonwealth under the name of the partnership set forth in a certificate filed pursuant to § [50-73.17](#), nor any partner of that limited partnership, shall be required to file any assumed or fictitious name or comparable certificate solely for such conduct or transaction of partnership business.

1985, c. 607; 1987, c. 702.

§50-73.22. Repealed.

Repealed by Acts 1987, c. 702.

§50-73.22:1. Admission of limited partners.

A. A person becomes a limited partner on the later of:

1. The date the original certificate of limited partnership is filed; or
2. The date stated in the records of the limited partnership as the date that person becomes a limited partner.

B. After the filing of a limited partnership's initial certificate of limited partnership, a person may be admitted as an additional limited partner:

1. In the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

2. In the case of an assignee of a partnership interest of a partner who has the power, as provided in § [50-73.47](#), to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

1987, c. 702.

§50-73.23. Voting.

Subject to § [50-73.24](#), the partnership agreement may grant to all or a specified group of the limited partners the right to vote upon any matter, on a per capita or other basis, upon any matter.

1985, c. 607; 1987, c. 702.

§50-73.24. Liability to third parties.

A. Except as provided in subsection D, a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business. However, if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

B. A limited partner does not participate in the control of the business within the meaning of subsection A solely by doing one or more of the following:

1. Being a contractor for or an agent or employee of the limited partnership or of a general partner, or being an officer, director or shareholder of a general partner that is a corporation or being a partner of a partnership that is a general partner of the limited partnership;
2. Consulting with and advising a general partner with respect to the business of the limited partnership;
3. Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;
4. Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;
5. Requesting or attending a meeting of partners;

6. Proposing, approving or disapproving, by voting or otherwise, one or more of the following matters:

- a. The dissolution and winding up of the limited partnership;
 - b. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;
 - c. The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;
 - d. A change in the nature of the business;
 - e. The admission or removal of a general partner;
 - f. The admission or removal of a limited partner;
 - g. A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;
 - h. An amendment to the partnership agreement or certificate of limited partnership; or
 - i. Matters related to the business of the limited partnership not otherwise enumerated in this subsection, which the partnership agreement states may be subject to the approval or disapproval of limited partners;
7. Winding up the limited partnership pursuant to § [50-73.51](#); or
8. Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection.

C. The enumeration in subsection B does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

D. A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by subdivision B 1 of § [50-73.2](#), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

1985, c. 607; 1987, c. 702; 1990, c. 343; 2012, c. [63](#).

§50-73.25. Person erroneously believing himself limited partner.

A. Except as provided in subsection B of this section, a person who makes a contribution to a partnership and erroneously but in good faith believes that he has become a limited partner in the partnership is not a general partner in the partnership and is not bound by its obligations by reason of making the contribution, receiving distributions from the partnership, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

1. Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or
2. Withdraws from future equity participation in the partnership by executing and filing with the Commission a certificate declaring his withdrawal under the provisions of this section.

B. A person who makes a contribution of the kind described in subsection A of this section is liable as a general partner to any third party who transacts business with the partnership prior to the occurrence of either of the events referred to in subsection A of this section if: (i) such person knew or should have known either that no certificate has been filed or that the certificate inaccurately refers to him as a general partner and (ii) the other person actually believed in good faith that the person was a general partner at the time of the transaction and acted in reliance on such belief.

1985, c. 607; 1987, c. 702.

§50-73.26. Information.

Each limited partner has the right, subject to such reasonable standards as set forth in the partnership agreement, to:

1. Inspect and copy any of the partnership records required to be maintained by § [50-73.8](#); and
2. Obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable.

1985, c. 607.

§50-73.27. Admission of additional general partners.

After the filing of a limited partnership's initial certificate of limited partnership, additional general partners may be admitted as provided in the partnership agreement or, if the partnership agreement does not provide for the admission of additional general partners, with the written consent of all partners. A person may be admitted to a limited partnership as a general partner of the limited partnership and may receive a partnership interest in the limited partnership without making a contribution or being obligated to make a contribution to the limited partnership. Unless otherwise provided in a partnership agreement, a person may be admitted to a limited partnership as a general partner of the limited partnership without acquiring a partnership interest in the limited partnership.

1985, c. 607; 2015, c. [614](#).

§50-73.28. Events of withdrawal.

Except as approved by the written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

1. The general partner withdraws from the limited partnership as provided in § [50-73.37](#);
2. The general partner ceases to be a member of the limited partnership as provided in § [50-73.45](#);
3. The general partner is removed as a general partner in accordance with the partnership agreement;
4. Unless otherwise provided in writing in the partnership agreement, the general partner (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegation of a petition filed against him in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties;
5. Unless otherwise provided in writing in the partnership agreement, if within 120 days after the commencement of any proceeding against the general partner seeking

reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or if within 90 days after the expiration of any such stay, the appointment is not vacated;

6. In the case of a general partner who is an individual, (i) his death, or (ii) the entry by a court of competent jurisdiction of an order or decree adjudicating him incapacitated;

7. In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

8. In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

9. In the case of a general partner that is a corporation or other legal or commercial entity, the termination of its existence; or

10. In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

1985, c. 607; 1987, c. 702; 1990, c. 343; 1997, c. [801](#).

§50-73.29. General powers and liabilities.

A. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the rights and powers of a partner in a partnership without limited partners.

B. Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

1985, c. 607.

§50-73.30. Contributions by general partner.

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the partnership as a limited partner.

1985, c. 607.

§50-73.31. Voting.

The partnership agreement may grant to all or certain identified general partners the right to vote, on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter.

1985, c. 607.

§50-73.32. Form of contribution.

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

1985, c. 607.

§50-73.33. Liability for contribution.

A.1. A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner or his duly authorized attorney-in-fact.

2. Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to § [50-73.8](#), of the stated contribution that has not been made.

B. Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the partners.

Notwithstanding the compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing that reflects the obligation and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

1985, c. 607; 1987, c. 702.

§50-73.34. Sharing of profits and losses.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept pursuant to § [50-73.8](#), of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

1985, c. 607; 1987, c. 702.

§50-73.35. Sharing of distributions.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept pursuant to § [50-73.8](#), of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

1985, c. 607; 1987, c. 702.

§50-73.36. Interim distributions.

Except as provided in this article, a partner is entitled to receive distributions from a limited partnership before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

1985, c. 607; 1987, c. 702; 1997, c. [188](#).

§50-73.37. Withdrawal of general partner.

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the

amount otherwise distributable to him in addition to any remedies otherwise available under applicable law.

1985, c. 607.

§50-73.38. Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in writing in the partnership agreement.

1985, c. 607; 1987, c. 702; 1997, c. [188](#).

§50-73.39. Repealed.

Repealed by Acts 1997, c. [188](#).

§50-73.39:1. No right to distribution upon withdrawal.

Except as otherwise provided in writing in the partnership agreement, neither a general partner nor a limited partner has any right to receive any distribution on account of (i) the partner's withdrawal or (ii) other event of dissolution or ceasing, for any other reason, to be partner.

2000, c. [581](#).

§50-73.40. Distribution in kind.

Except as provided in writing in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

1985, c. 607; 1987, c. 702.

§50-73.41. Right to distribution.

At the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

1985, c. 607.

§50-73.42. Limitations on distribution.

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership,

other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

1985, c. 607.

§50-73.43. Liability upon return of contribution.

A. If a partner has received the return of any part of his contribution without violation of the partnership agreement or this chapter, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

B. If a partner has received the return of any part of his contribution in violation of the partnership agreement or this chapter, he is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

C. A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership records to be kept pursuant to § [50-73.8](#), of his contribution which has not been distributed to him.

1985, c. 607; 1987, c. 702.

§50-73.44. Nature of partnership interest.

A partnership interest is personal property.

1985, c. 607.

§50-73.45. Assignment of partnership interest.

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

1985, c. 607.

§50-73.46. Repealed.

Repealed by Acts 2004, c. [601](#).

§50-73.46:1. Partner's transferable interest subject to charging order.

A. On application by a judgment creditor of a partner or of a partner's assignee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. To the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of the interest.

B. A charging order constitutes a lien on the judgment debtor's transferable interest in the limited partnership.

C. This chapter does not deprive a partner or a partner's assignee of a right under exemption laws with respect to the judgment debtor's interest in the limited partnership.

D. The entry of a charging order is the exclusive remedy by which a judgment creditor of a partner or of a partner's assignee may satisfy a judgment out of the judgment debtor's transferable interest in the limited partnership.

E. No creditor of a partner or of a partner's assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited partnership.

2004, c. [601](#); 2006, c. [912](#).

§50-73.47. Right of assignee to become limited partner.

A. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (i) the assignor gives the assignee that right in accordance with authority described in writing in the partnership agreement, or (ii) all other partners consent.

B. An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligation of his assignor to make and return contributions as provided in Articles 5 (§ [50-73.32](#) et seq.) and 6 (§ [50-73.36](#) et seq.) of this chapter. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner.

C. If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under §§ [50-73.18](#) and [50-73.33](#).

1985, c. 607; 1987, c. 702.

§50-73.48. Power of estate of deceased or incapacitated partner.

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incapacitated, the partner's executor, administrator, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

1985, c. 607; 1997, c. [801](#).

§50-73.48:1. Merger.

A. Pursuant to a written plan of merger, a domestic limited partnership that has filed a certificate of limited partnership with the Commission that is not canceled may merge with one or more domestic or foreign partnerships, limited partnerships, limited liability companies, business trusts or corporations if:

1. The merger is not prohibited by the partnership agreement of any domestic limited partnership that is a party to the merger, and each domestic limited partnership party to the merger approves the plan of merger in accordance with § [50-73.48:2](#) and complies with the terms of its partnership agreement;
2. Each domestic partnership that is a party to the merger complies with the applicable provisions of Article 9 (§ [50-73.124](#) et seq.) of Chapter 2.2 of this title;
3. Each domestic limited liability company that is a party to the merger complies with the applicable provisions of Article 13 (§ [13.1-1069.1](#) et seq.) of Chapter 12 of Title 13.1;
4. Each domestic business trust that is a party to the merger complies with the applicable provisions of Article 11 (§ [13.1-1257](#) et seq.) of Chapter 14 of Title 13.1;
5. Each domestic corporation that is a party to the merger complies with the applicable provisions of Article 12 (§ [13.1-715.1](#) et seq.) of Chapter 9 of Title 13.1;
6. The merger is permitted by the laws under which each foreign partnership, limited partnership, foreign limited liability company, foreign business trust, and foreign corporation party to the merger is formed, organized or incorporated, and each such for-

eign partnership, limited partnership, limited liability company, business trust or corporation complies with those laws in effecting the merger; and

7. No partner of a domestic limited partnership that is a party to the merger will, as a result of the merger, become personally liable for the liabilities or obligations of any other person or entity unless that partner approves the plan of merger or otherwise consents to becoming personally liable.

B. The plan of merger shall set forth:

1. The name of each domestic or foreign limited partnership, limited liability company, business trust or corporation planning to merge and the name of the surviving domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation into which each other domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation plans to merge;

2. The name of the state or country under whose law each domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation planning to merge is formed, organized or incorporated and the name of the state or country of formation, organization or incorporation of the surviving domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation;

3. The terms and conditions of the merger; and

4. The manner and basis of converting the partnership interests of each domestic partnership or limited partnership, the membership interests of each domestic limited liability company, the shares of beneficial interest of each domestic business trust, and the shares of each domestic corporation party to the merger into partnership interests, membership interests, shares of beneficial interest, shares, obligations or other securities of the surviving or any other domestic or foreign partnership, limited partnership, limited liability company, business trust, or corporation or into cash or other property in whole or in part, and the manner and basis of converting rights to acquire the partnership interests of each domestic partnership or limited partnership, the membership interests of each domestic limited liability company, the shares of beneficial interest of each domestic business trust, and the shares of each domestic corporation party to the merger into rights to acquire partnership interests, membership interests, shares of beneficial interest, shares, obligations or other securities

of the surviving or any other domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation or into cash or other property in whole or in part.

C. The plan of merger may set forth:

1. If a domestic limited partnership is to be the surviving entity, amendments to the certificate of limited partnership or partnership agreement of that limited partnership;

2. If the merger is not to be effective upon the issuance of the certificate of merger described in subsection C of § [50-73.48:3](#) by the Commission, the future effective date or time of the merger; and

3. Other provisions relating to the merger.

1992, c. 575; 1997, c. [190](#); 2003, c. [340](#); 2005, c. [765](#); 2007, c. [631](#); 2016, c. [288](#).

§50-73.48:2. Approval of merger by domestic limited partnership.

A. Each domestic limited partnership that is to be a party to a proposed merger shall approve the proposed merger, unless the partnership agreement of that limited partnership provides otherwise, by the unanimous vote of the partners of the partnership. However, a provision of a limited partnership's partnership agreement purporting to authorize the limited partnership to approve a merger by a less than unanimous vote of the partners shall be effective to permit approval of a merger by a less than unanimous vote only if either (i) the partnership agreement included that provision at the time each partner who does not vote in favor of the merger became bound by the agreement, or (ii) the provision was added to the partnership agreement through an amendment to which each partner who does not vote in favor of the merger specifically consented.

B. A plan of merger may provide for the manner, if any, in which the plan may be amended at any time before the effective date of the certificate of merger issued by the Commission for the merger.

C. If an amendment to a plan of merger is made in accordance with subsection B of this section, and articles of merger already have been filed with the Commission, amended articles of merger shall be filed with the Commission before the effective date of any certificate of merger issued by the Commission for the articles of merger which the amended articles are to supersede.

D. Unless the domestic limited partnership's partnership agreement or the plan of merger provides otherwise, after the merger has been authorized and at any time before the effective date of the certificate of merger issued by the Commission for the merger, the merger may be abandoned by the affirmative vote of all general partners of the domestic limited partnership, subject to any contractual rights, without further action by the limited partners, in accordance with the procedure set forth in the plan or, if none is set forth, in the manner determined by the general partners of each domestic limited partnership party to the merger. If articles of merger already have been filed with the Commission, written notice of abandonment must be filed with the Commission before the effective date of the certificate of merger.

1992, c. 575 .

§50-73.48:3. Articles of merger.

A. After a plan of merger is approved by each domestic or foreign limited partnership, limited liability company, business trust or corporation that is a party to the merger, the surviving domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation shall file with the Commission articles of merger executed by each party to the merger setting forth:

1. The plan of merger;
2. If the surviving entity of the merger is a foreign limited liability partnership not registered with the Commission pursuant to § [50-73.138](#), a foreign limited partnership without a certificate of registration issued by the Commission pursuant to § [50-73.54](#), a foreign limited liability company without a certificate of registration issued by the Commission pursuant to § [13.1-1052](#), a foreign business trust without a certificate of registration issued by the Commission pursuant to § [13.1-1242](#) or a foreign corporation without a certificate of authority issued by the Commission pursuant to § [13.1-759](#), the address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it was formed, organized or incorporated;
3. A statement that the plan of merger was adopted by each domestic partnership party to the merger in accordance with § [50-73.128](#), each domestic limited partnership party to the merger in accordance with § [50-73.48:2](#), each domestic business trust party to the merger in accordance with § [13.1-1258](#), and by each domestic limited liability company party to the merger in accordance with § [13.1-1071](#); and

4. If a domestic corporation is a party to the merger, any additional information required by § [13.1-720](#).

B. If a foreign partnership, limited partnership, limited liability company, business trust or corporation is a party to the merger, the articles of merger shall contain a statement that the merger is permitted by the state or other jurisdiction under whose law the partnership, limited partnership or business trust is formed, the limited liability company is organized or the corporation is incorporated and that the foreign partnership, limited partnership, limited liability company, business trust or corporation has complied with that law in effecting the merger.

C. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger, which shall become effective pursuant to the provisions of subsection C of § [50-73.17](#).

D. A certificate of merger shall act as a certificate of cancellation as described in § [50-73.52:4](#) for a domestic limited partnership that is not the surviving party to the merger, and such limited partnership's existence shall be canceled upon the effective time and date of the certificate of merger.

1992, c. 575; 1997, c. [190](#); 2003, cc. [340](#), [597](#); 2004, c. [274](#); 2007, c. [631](#); 2008, c. [586](#).

§50-73.48:4. Effect of merger.

When a merger takes effect:

1. The separate existence of every domestic limited partnership that is a party to the merger except the surviving domestic limited partnership, if any, ceases;
2. The title to all real estate and other property owned by each domestic limited partnership party to the merger is vested in the surviving domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation without reversion or impairment;
3. The surviving domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation has all liabilities of each domestic limited partnership party to the merger;
4. A proceeding pending by or against any domestic limited partnership party to the merger may be continued as if the merger had not occurred, or the surviving domestic

or foreign partnership, limited partnership, limited liability company, business trust or corporation may be substituted in the proceeding for the domestic limited partnership whose existence ceased;

5. If a domestic limited partnership is the surviving entity of the merger, the certificate of limited partnership and partnership agreement of that limited partnership is amended to the extent provided in the plan of merger; and

6. The former holders of partnership interests of every domestic limited partnership party to the merger are entitled only to the rights provided in the plan of merger.

1992, c. 575; 1997, c. [190](#); 2003, c. [340](#).

§50-73.49. Dissolution generally.

A limited partnership formed under this chapter or that has filed an amended and restated certificate of limited partnership in compliance with subsection D of § [50-73.77](#) is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

1. At the time or upon the occurrence of any events specified in the certificate of limited partnership or in writing in the partnership agreement;

2. Upon the unanimous written consent of the partners;

3. Upon an event of withdrawal of a general partner unless:

a. At the time there is at least one other general partner, in which event, unless otherwise provided in the written provisions of the partnership agreement or agreed upon by all remaining partners, the limited partnership is not dissolved and is not required to be wound up by reason of the event of withdrawal; or

b. Within 90 days after the withdrawal, all remaining partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired, in which event the limited partnership is not dissolved and is not required to be wound up by reason of the event of withdrawal;

4. Entry of a decree of judicial dissolution under § [50-73.50](#);

5. Automatic cancellation of its existence pursuant to § [50-73.52:5](#); or

6. Involuntary cancellation of its existence pursuant to § [50-73.52:6](#).

1985, c. 607; 1987, c. 702; 1996, c. [255](#); 2007, c. [631](#); 2008, cc. [586](#), [588](#), [770](#); 2009, c. [167](#); 2015, c. [614](#).

§50-73.50. Judicial dissolution.

A. On application by or for a partner, the circuit court of the locality in which the registered office is located may decree dissolution of a limited partnership if it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

B. When the winding up of the affairs of the limited partnership has been completed, the court shall so advise the Commission, which shall enter an order of cancellation of the limited partnership's existence.

1985, c. 607; 1987, c. 702; 2008, c. [586](#).

§50-73.51. Winding up.

A. The winding up of a limited partnership shall be completed when all debts, liabilities, and obligations of the limited partnership have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the limited partnership have been distributed to the partners.

B. Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, or a person or persons approved by the limited partners, or if there is more than one class of limited partners, then as approved by each such class, by the affirmative vote of limited partners holding more than 50 percent of the then current interests in the profits of the limited partnership owned by all limited partners or by the limited partners in each class, as appropriate, may wind up the limited partnership's affairs; however, the circuit court of the locality in which the registered office is located, on cause shown, may wind up the limited partnership's affairs on application of any partner, his legal representative, or assignee, and in connection therewith, may appoint one or more liquidating trustees.

C. Upon dissolution of a limited partnership and until the effective date of a certificate of cancellation filed pursuant to § [50-73.52:4](#), the liquidating trustees, in the name and on behalf of the limited partnership, may (i) prosecute and defend suits, whether civil, criminal or administrative, (ii) wind up the limited partnership's business, (iii) dispose of and convey the limited partnership's property, (iv) discharge or make reasonable provision for the limited partnership's liabilities, and (v) distribute

to the partners any remaining assets of the limited partnership, all without affecting the liability of limited partners and without imposing the liability of a general partner on a liquidating trustee.

1985, c. 607; 1987, c. 702; 1990, c. 343; 1997, c. [188](#); 2008, c. [586](#).

§50-73.52. Distribution of assets.

Upon the winding up of a limited partnership, the assets shall be distributed as follows:

1. To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under § [50-73.36](#) or § [50-73.39](#);
2. Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under § [50-73.36](#) or § [50-73.39](#); and
3. Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

1985, c. 607.

§50-73.52:1. Known claims against dissolved limited partnership.

A. A dissolved limited partnership may dispose of the known claims against it by following the procedure described in this section.

B. The dissolved limited partnership shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:

1. Provide a reasonable description of the claim that the claimant may be entitled to assert;
2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an instrument of indebtedness;
3. Provide a mailing address where a claim may be sent;
4. State a deadline, which may not be fewer than 120 days from the effective date of the written notice, by which confirmation of the claim shall be delivered to the dissolved limited partnership; and

5. State that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not delivered by the deadline.

C. A claim against the dissolved limited partnership is barred to the extent that it is not admitted:

1. If the dissolved limited partnership delivered written notice to the claimant in accordance with subsection B and the claimant does not deliver written confirmation of the claim to the dissolved limited partnership by the deadline; or

2. If the dissolved limited partnership delivered written notice to the claimant that its claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within 90 days from the delivery of written confirmation of the claim to the dissolved limited partnership.

D. For purposes of this section, "claim" does not include (i) a contingent liability or a claim based on an event occurring after the effective date of dissolution or (ii) a liability or claim the ultimate maturity of which is more than 60 days after the delivery of written notice to the claimant pursuant to subsection B.

E. If a liability exists but the full extent of any damages is or may not be ascertainable, and a proceeding to enforce the claim is commenced pursuant to subdivision C 2, the claimant may amend the pleadings after filing to include any damages that occurred or are alleged to have occurred after filing, and the court having jurisdiction of such claim may continue such proceeding during its pendency if it appears that further damages are or still may be occurring.

2004, c. [601](#).

§50-73.52:2. Other claims against dissolved limited partnership.

A. A dissolved limited partnership may also publish notice of its dissolution and request that persons with claims against the dissolved limited partnership present them in accordance with the notice.

B. The notice shall:

1. Be published one time in a newspaper of general circulation in the city or county where the dissolved limited partnership's principal office, or, if none in the Commonwealth, its registered office, is or was last located;

2. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

3. State that a claim against the dissolved limited partnership will be barred unless a proceeding to enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of limitations or three years after the date of publication of the notice.

C. If the dissolved limited partnership publishes a newspaper notice in accordance with subsection B, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited partnership prior to the earlier of the expiration of any applicable statute of limitations or three years after the publication date of the newspaper notice:

1. A claimant who was not given written notice under § [50-73.52:1](#);
2. A claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and
3. A claimant whose claim does not meet the definition of a claim in subsection D of § [50-73.52:1](#).

D. A claim that is not barred by subsection C of § [50-73.52:1](#) or subsection C of § [50-73.52:2](#) may be enforced:

1. Against the dissolved limited partnership, to the extent of its undistributed assets; or
2. Except as provided in subsection D of § [50-73.52:3](#), if the assets have been distributed in liquidation, against a partner of the dissolved limited partnership to the extent of the partner's pro rata share of the claim or the limited partnership assets distributed to the partner in liquidation, whichever is less, but a partner's total liability for all claims under this section may not exceed the total amount of assets distributed to the partner.

2006, c. [912](#).

§50-73.52:3. Court proceedings.

A. A dissolved limited partnership that has published a notice under § [50-73.52:2](#) may file an application with the circuit court of the city or county where the dissolved limited partnership's principal office, or, if none in the Commonwealth, its registered office, is or was last located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved limited partnership or that are based on an event occurring

after the effective date of dissolution but that, based on the facts known to the dissolved limited partnership, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § [50-73.52:2](#).

B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved limited partnership to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved limited partnership.

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved limited partnership.

D. Provision by the dissolved limited partnership for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved limited partnership's obligations with respect to claims that do not meet the definition of a claim in subsection D of § [50-73.52:1](#), and such claims may not be enforced against a partner who received assets in liquidation.

2006, c. [912](#).

§50-73.52:4. Certificate of cancellation.

A. When the affairs of a limited partnership have been wound up pursuant to § [50-73.51](#), it shall file a certificate of cancellation with the Commission. The certificate shall set forth:

1. The name of the limited partnership;
2. The effective date of its certificate of limited partnership;
3. The reason for filing the certificate of cancellation;
4. A statement that the limited partnership has completed the winding up of its affairs; and
5. Any other information the partners determine to include therein.

B. If the Commission finds that the certificate of cancellation complies with the requirements of law and that all required fees have been paid, it shall file the certificate of cancellation, canceling the limited partnership's existence. Upon the effective date of such certificate, the existence of the limited partnership shall cease, except

for the purpose of suits, other proceedings, and appropriate actions by general partners and limited partners as provided in this chapter.

2008, c. [586](#).

§50-73.52:5. Automatic cancellation of limited partnership existence.

A. Whether or not the notice described in subsection B of § [50-73.69](#) is mailed, if any limited partnership fails to pay its annual registration fee on or before December 31 of the year assessed, its existence shall be automatically canceled as of that day.

B. If any limited partnership whose registered agent has filed with the Commission a statement of resignation pursuant to § [50-73.6](#) fails to file a statement of change pursuant to § [50-73.5](#) within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the limited partnership of impending cancellation of its existence. If the limited partnership fails to file the statement of change on or before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the existence of the limited partnership shall be automatically canceled as of that day.

C. The properties and affairs of a limited partnership whose existence has been canceled pursuant to this section shall pass automatically to its general partners as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited partnership; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its partners; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its partners according to their respective rights and interests.

D. No partner or other agent of a limited partnership shall have any personal obligation for any liabilities of the limited partnership, whether such liabilities arise in contract, tort, or otherwise, solely by reason of the cancellation of the limited partnership's existence pursuant to this section.

2008, c. [586](#); 2013, c. [18](#).

§50-73.52:6. Involuntary cancellation of limited partnership existence.

A. The existence of a limited partnership may be canceled involuntarily by order of the Commission when it finds that the limited partnership has:

1. Continued to exceed or abuse the authority conferred on it by law;

2. Failed to maintain a registered office or a registered agent in the Commonwealth as required by law;
3. Failed to file any document required by this chapter to be filed with the Commission; or
4. Been convicted for a violation of 8 U.S.C. § 1324a (f), as amended, for actions of its partners constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

B. Before entering any such order, the Commission shall issue a rule against the limited partnership giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The properties and affairs of a limited partnership whose existence has been canceled pursuant to this section shall pass automatically to its general partners as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited partnership; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its partners; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its partners according to their respective rights and interests.

D. Any limited partnership convicted of the offense listed in subdivision A 4 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A limited partnership whose existence is canceled pursuant to subdivision A 4 shall not be eligible for reinstatement for a period of not less than one year.

2008, c. [586](#); 2009, c. [167](#).

§50-73.52:7. Reinstatement of a limited partnership that has ceased to exist.

A. A limited partnership that has ceased to exist may apply to the Commission for reinstatement within five years thereafter, unless the cancellation was by order of the Commission (i) entered pursuant to subdivision A 1 of § [50-73.52:6](#) or (ii) entered pursuant to § [50-73.50](#) and the circuit court's decree directing dissolution contains no provision for reinstatement of the existence of the limited partnership.

B. To have the certificate of limited partnership reinstated, a limited partnership shall provide the Commission with the following:

1. An application for reinstatement signed by a general partner of the limited partnership or, if there are no general partners, a limited partner, which may be in the form of a letter;
2. A reinstatement fee of \$100;
3. All annual registration fees required by § [50-73.67](#) and penalties that were due before the certificate of limited partnership was canceled and that would have been assessed or imposed to the date of reinstatement if the limited partnership's certificate of limited partnership had not been canceled;
4. If the name of the limited partnership does not comply with the provisions of § [50-73.2](#) at the time of reinstatement, an amendment to the certificate of limited partnership to change the limited partnership's name to a name that satisfies the provisions of § [50-73.2](#), with the fee required by this chapter for the filing of an amendment to the certificate of limited partnership; and
5. If the limited partnership's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § [50-73.5](#).

C. If the limited partnership complies with the provisions of this section, the Commission shall enter an order of reinstatement of existence. Upon entry of the order, the existence of the limited partnership shall be deemed to have continued from the date of the cancellation as if cancellation had never occurred, and any liability incurred by the limited partnership or a partner or other agent after the cancellation and before the reinstatement is determined as if cancellation of the limited partnership's existence had never occurred.

2008, c. [586](#).

§50-73.53. Authority to transact business required; governing law.

A. A foreign limited partnership may not transact business in the Commonwealth until it obtains a certificate of registration from the Commission.

B. Subject to the Constitution of this Commonwealth, (i) the laws of the state or other jurisdiction under which a foreign limited partnership is formed govern its formation and internal affairs and the liability of its limited partners, and (ii) a foreign

limited partnership may not be denied a certificate of registration by reason of any difference between those laws and the laws of this Commonwealth. However, a foreign limited partnership holding a valid certificate of registration to transact business in the Commonwealth shall have no greater rights and privileges than a domestic limited partnership. The certificate of registration shall not be deemed to authorize the foreign limited partnership to exercise any of its powers or purposes that a domestic limited partnership is forbidden by law to exercise in the Commonwealth.

1985, c. 607; 2007, c. [631](#).

§50-73.54. Application for certificate of registration.

A. A foreign limited partnership may apply to the Commission for a certificate of registration to transact business in the Commonwealth. The application shall be made on a form prescribed and furnished by the Commission, executed by a general partner and setting forth:

1. The name of the foreign limited partnership and, if the limited partnership is prevented by § [50-73.56](#) from using its own name in the Commonwealth, a designated name that satisfies the requirements of § [50-73.56](#);
2. The name of the state or other jurisdiction under whose law it is formed, the date of its formation, and if the limited partnership was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization or formation; and (iv) the entity identification number issued to it by the Commission;
3. The address of the proposed registered office of the foreign limited partnership in the Commonwealth, including both (i) the post office address, including the street and number, if any, and (ii) the name of the city or county in which it is located and the name of its proposed registered agent in the Commonwealth at such address and that the registered agent is either (a) an individual who is a resident of Virginia and either a general partner of the limited partnership, an officer or director of a corporate general partner of the limited partnership, a general partner of a general partner of the limited partnership, a member or manager of a limited liability company that is a general partner of the limited partnership, a trustee of a trust that is a general partner of the limited partnership, or a member of the Virginia State Bar or (b) a

domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth;

4. A statement that the Clerk of the Commission is irrevocably appointed the agent of the foreign limited partnership for service of process if the foreign limited partnership fails to maintain a registered agent in the Commonwealth as required by § [50-73.4](#), the registered agent's authority has been revoked, the registered agent has resigned or the registered agent cannot be found or served with the exercise of reasonable diligence;

5. The name and post office address, including the street and number, if any, of each general partner and, if a general partner is a business entity, the jurisdiction under whose law the general partner is incorporated, organized, or formed, and, if it is of record with the Commission, the identification number issued by the Commission to such general partner; and

6. The post office address, including the street and number, if any, of the foreign limited partnership's principal office, at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to maintain those records until the foreign limited partnership's registration in the Commonwealth is canceled or withdrawn.

B. The foreign limited partnership shall deliver with the completed application a copy of its certificate of limited partnership or, if there is no such certificate, a copy of the partnership agreement and all amendments thereto filed in the foreign limited partnership's state or other jurisdiction of formation, duly authenticated by the secretary of state or other official having custody of the limited partnership records in the state or other jurisdiction under whose law it is formed.

C. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of registration to transact business in the Commonwealth.

1985, c. 607; 1987, c. 702; 2002, c. [441](#); 2003, c. [378](#); 2004, c. [274](#); 2007, c. [631](#); 2010, c. [675](#).

§50-73.55. Repealed.

Repealed by Acts 2007, c. [631](#), cl. 4.

§50-73.56. Name.

A. No certificate of registration shall be issued to a foreign limited partnership unless the name of such limited partnership satisfies the requirements of § [50-73.2](#). If the name of a limited partnership does not satisfy the requirements of § [50-73.2](#), in order to obtain or maintain a certificate of registration:

1. The foreign limited partnership may add to its name for use in this Commonwealth the words "limited partnership" or "a limited partnership," or the abbreviation "L.P." or "LP," or, in the case of a limited partnership that is also registered as a foreign limited liability partnership in Virginia, a word, abbreviation or designation to bring its name into compliance with the requirements of clause (ii) of subdivision A 2 of § [50-73.78](#); or

2. If its real name is unavailable, the foreign limited partnership may use a designated name that is available and that satisfies the requirements of § [50-73.2](#) if it informs the Commission of the designated name.

B. No foreign limited partnership registered with the Commission under this article which is conducting or transacting business in this Commonwealth under the designated name of the partnership set forth in the application for registration filed pursuant to § [50-73.54](#), nor any partner of that limited partnership, shall be required to file any assumed or fictitious name or comparable certificate solely for such conduct or transaction of partnership business.

C. A foreign limited partnership that is registered with the Commission prior to July 1, 2002, under a name other than the name under which it is registered in its state or other jurisdiction of formation may continue to be so registered until the name in its application for registration is amended or its certificate of registration is canceled. 1985, c. 607; 1990, c. 343; 2002, c. [441](#).

§50-73.57. Amendments; amended applications for registration.

A. Whenever the certificate of limited partnership or, if there is no such certificate, partnership agreement or other constituent document of a foreign limited partnership that is registered to transact business in the Commonwealth is amended or corrected, the foreign limited partnership shall promptly file with the Commission a copy of the amendment or correction duly authenticated by the Secretary of State or other official having custody of the limited partnership records in the state or other jurisdiction of its formation.

B. If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file with the Commission an amended application for registration, executed by a general partner, amending such statement or information. The amended application for registration shall be made on a form prescribed and furnished by the Commission.

1985, c. 607; 1993, c. 292; 2003, c. [370](#); 2008, c. [586](#).

§50-73.57:1. Liability for false statement in application.

If any application for registration filed pursuant to this article contains a false or inaccurate statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

1. Any person who executes the application, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false in any material respect at the time the application was executed; and

2. Any general partner who thereafter knows or should have known that any arrangement or other fact described in the application has changed, making the statement inaccurate in any material respect, if that general partner had sufficient time to cancel or amend the application before the statement was reasonably relied upon.

1990, c. 343 .

§50-73.57:2. Merger of foreign limited partnership registered to transact business in Commonwealth.

A. Whenever a foreign limited partnership that is registered to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it is formed, and that limited partnership is the surviving entity of the merger, it shall, within 30 days after the merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of limited partnership records in the state or other jurisdiction under whose laws the merger was effected. However, the filing shall not be required when a foreign limited partnership merges with a domestic corporation, limited liability company, limited partnership, business trust, or partnership; the foreign limited partnership's certificate of limited

partnership or, if there is no such certificate, partnership agreement or other constituent document, is not amended by the merger; and the articles or statement of merger filed on behalf of the domestic corporation, limited liability company, limited partnership, business trust, or partnership pursuant to § [13.1-720](#), [13.1-1072](#), [13.1-1261](#), [50-73.48:3](#), or [50-73.131](#) contains a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign limited partnership is formed and that the foreign limited partnership has complied with that law in effecting the merger.

B. Whenever a foreign limited partnership that is registered to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the laws of which it is formed, and that limited partnership is not the surviving entity of the merger, the surviving partnership, limited partnership, limited liability company, business trust, or corporation shall, if not continuing to transact business in the Commonwealth, within 30 days after the merger becomes effective, deliver to the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of limited partnership records in the state or other jurisdiction under whose laws the merger was effected, and comply in behalf of the predecessor limited partnership with § [50-73.58](#). If a surviving business trust, registered limited liability partnership, limited partnership, limited liability company or corporation is to continue to transact business in the Commonwealth and has not registered with the Commission as a foreign registered limited liability partnership under § [50-73.138](#), as a foreign limited partnership under § [50-73.54](#), as a foreign business trust under § [13.1-1242](#), or as a foreign limited liability company under § [13.1-1052](#) or received a certificate of authority to transact business in the Commonwealth as a foreign corporation, as the case may be, it shall, within 30 days after the merger becomes effective, deliver to the Commission an application, if a foreign registered limited liability partnership, for registration as a foreign registered limited liability partnership, if a foreign limited partnership, for registration as a foreign limited partnership, if a foreign limited liability company, for registration as a foreign limited liability company, if a foreign business trust, for registration as a foreign business trust, or, if a foreign corporation, for a certificate of authority to transact business in the Commonwealth, together with a duly authenticated copy of the instrument of merger and also a copy of its partnership certificate, statement of registered limited liability partnership, certificate of limited partnership, articles of organization, articles of trust, or articles of

incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of registered limited liability partnership, limited partnership, limited liability company, business trust, or corporate records in the state or other jurisdiction under whose laws it is formed, organized, registered, or incorporated.

C. Upon the merger of a foreign limited partnership with one or more foreign partnerships, limited partnerships, limited liability companies, business trusts, or corporations, all property in the Commonwealth owned by the foreign limited partnership shall pass to the surviving foreign partnership, limited partnership, limited liability company, business trust, or corporation except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of merger is filed with the Commission.

1992, c. 575; 1997, c. [190](#); 2004, c. [274](#); 2008, c. [586](#).

§50-73.57:3. Entity conversion of foreign limited partnership registered to transact business in Commonwealth.

A. Whenever a foreign limited partnership registered to transact business in the Commonwealth converts to another type of entity, the surviving or resulting entity shall, within 30 days after such entity conversion becomes effective, file with the Commission a copy of the instrument of entity conversion duly authenticated by the Secretary of State or other official having custody of limited partnership records in the state or other jurisdiction under whose laws such entity conversion was effected; and

1. If the surviving or resulting entity is not continuing to transact business in the Commonwealth or is not a foreign corporation, limited liability company, business trust, or partnership registered as a registered limited liability partnership, then, within 30 days after such entity conversion, it shall comply on behalf of the predecessor limited partnership with the provisions of § [50-73.58](#); or

2. If the surviving or resulting entity is a foreign corporation, limited liability company, business trust, or partnership registered as a registered limited liability partnership and is to continue to transact business in the Commonwealth, then, within such 30 days, it shall deliver to the Commission an application for a certificate of authority or registration to transact business in the Commonwealth or, in the case of a foreign registered limited liability partnership, a statement of registration.

B. Upon the entity conversion of a foreign limited partnership that is registered to transact business in the Commonwealth, all property in the Commonwealth owned by the foreign limited partnership shall pass to the surviving or resulting entity except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of entity conversion is filed with the Commission.

2004, c. [274](#).

§50-73.58. Voluntary cancellation of certificate of registration.

A. A foreign limited partnership registered to transact business in the Commonwealth may apply to the Commission for a certificate of cancellation to cancel its certificate of registration. The application shall be executed by a general partner or court-appointed fiduciary on a form prescribed and furnished by the Commission, which shall set forth:

1. The name of the foreign limited partnership and the name of the state or other jurisdiction under whose law it is or was formed, and the identification number issued by the Commission to the limited partnership;
2. If applicable, a statement that the foreign limited partnership was a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it was formed and that it was not the surviving entity of the merger;
3. That the foreign limited partnership is not transacting business in the Commonwealth and that it surrenders its registration to transact business in the Commonwealth;
4. That the foreign limited partnership revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;
5. A mailing address to which the clerk of the Commission may mail a copy of any process served on him under subdivision 4; and
6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the limited partnership.

B. If the Commission finds that the application complies with the requirements of law and all required fees have been paid, it shall issue a certificate of cancellation canceling the certificate of registration.

C. Before any foreign limited partnership registered to transact business in the Commonwealth cancels its existence, it shall file with the Commission an application for a certificate of cancellation. Whether or not such application is filed, the cancellation of the existence of such foreign limited partnership shall not take away or impair any remedy available against such limited partnership for any right or claim existing or any liability incurred prior to such cancellation. Any such action or proceeding against such foreign limited partnership may be defended by such limited partnership in its name. The general partners and limited partners shall have power to take such action as shall be appropriate to protect such remedy, right, or claim. The right of a foreign limited partnership that has canceled its existence to institute and maintain in its name actions, suits, or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its formation.

D. Service of process on the clerk of the Commission is service of process on a foreign limited partnership whose certificate of registration has been canceled pursuant to this section. Service upon the clerk shall be made in accordance with § [12.1-19.1](#), and service upon the foreign limited partnership may be made in any other manner permitted by law.

1985, c. 607; 2008, cc. [588](#), [770](#); 2009, c. [167](#); 2012, c. [130](#); 2013, c. [18](#).

§50-73.58:1. Automatic cancellation of certificate of registration.

A. Whether or not the notice described in subsection B of § [50-73.69](#) is mailed, if any foreign limited partnership fails to pay its annual registration fee on or before December 31 of the year assessed, such foreign limited partnership shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of registration shall be automatically canceled as of that day.

B. If any foreign limited partnership whose registered agent has filed with the Commission a statement of resignation pursuant to § [50-73.6](#) fails to file a statement of change pursuant to § [50-73.5](#) within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the limited partnership of impending cancellation of its certificate of registration. If the limited partnership fails to file the statement of change as of the last day of the second month imme-

diately following the month in which the impending cancellation notice was mailed, the certificate shall be automatically canceled as of that day.

C. The automatic cancellation of a foreign limited partnership's certificate of registration constitutes the appointment of the clerk of the Commission as the foreign limited partnership's agent for service of process in any proceeding based on a cause of action arising during the time the foreign limited partnership was registered to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign limited partnership and shall be made on the clerk in accordance with § [12.1-19.1](#).

D. Cancellation of a foreign limited partnership's certificate of registration does not terminate the authority of the registered agent of the foreign limited partnership.

2008, c. [586](#); 2013, c. [18](#).

§50-73.58:2. Involuntary cancellation of certificate of registration.

A. The certificate of registration to transact business in the Commonwealth of any foreign limited partnership may be canceled involuntarily by order of the Commission when it finds that the foreign limited partnership:

1. Has continued to exceed or abuse the authority conferred on it by law;
2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;
3. Has failed to file any document required by this chapter to be filed with the Commission;
4. No longer exists under the laws of the state or other jurisdiction of its formation; or
5. Has been convicted for a violation of 8 U.S.C. § 1324a (f), as amended, for actions of its partners constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

B. Before entering any such order, the Commission shall issue a rule against the limited partnership giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The authority of a foreign limited partnership to transact business in the Commonwealth ceases on the date shown on the order canceling its certificate of registration.

D. The Commission's cancellation of a foreign limited partnership's certificate of registration appoints the clerk of the Commission the limited partnership's agent for service of process in any proceeding based on a cause of action arising during the time the limited partnership was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign limited partnership and shall be made on the clerk in accordance with § [12.1-19.1](#).

E. Cancellation of a foreign limited partnership's certificate of registration does not terminate the authority of the registered agent of the foreign limited partnership.

F. Any foreign limited partnership convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A certificate of registration canceled pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

2008, c. [586](#); 2009, c. [167](#).

§50-73.58:3. Reinstatement of a certificate of registration that has been canceled.

A. A foreign limited partnership whose certificate of registration to transact business in the Commonwealth has been canceled may apply to the Commission for reinstatement within five years thereafter unless the cancellation was by order of the Commission entered pursuant to subdivision A 1 of § [50-73.58:2](#).

B. To have its certificate of registration reinstated, a foreign limited partnership shall provide the Commission with the following:

1. An application for reinstatement signed by a general partner of the foreign limited partnership, or, if there are no general partners, a limited partner, which may be in the form of a letter;
2. A reinstatement fee of \$100;
3. All annual registration fees required by § [50-73.67](#) and penalties that were due before the certificate of registration was canceled and that would have been assessed

or imposed to the date of reinstatement if the limited partnership's certificate of registration had not been canceled;

4. A duly authenticated copy of any amendments or corrections made to the certificate of limited partnership or other constituent document of the foreign limited partnership and any mergers entered into by the foreign limited partnership from the date of cancellation of its certificate of registration to the date of its application for reinstatement, with an amended application for registration if required for an amendment or a correction, and all fees required by this chapter for the filing of such instruments;

5. If the name of the foreign limited partnership does not comply with the provisions of § [50-73.56](#) at the time of reinstatement, an amended application for registration to adopt a designated name for use in the Commonwealth that satisfies the requirements of § [50-73.56](#), with the fee required by this chapter for the filing of an amended application for registration; and

6. If the foreign limited partnership's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § [50-73.5](#).

C. If the foreign limited partnership complies with the provisions of this section, the Commission shall enter an order of reinstatement, reinstating the foreign limited partnership's certificate of registration to transact business in the Commonwealth.

2008, c. [586](#).

§50-73.59. Transaction of business without registration.

A. A foreign limited partnership transacting business in the Commonwealth may not maintain any action, suit, or proceeding in any court of the Commonwealth until it has registered in the Commonwealth.

B. The successor to a foreign limited partnership that transacted business in the Commonwealth without registering in the Commonwealth and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in the Commonwealth until the foreign limited partnership or its successor has registered in the Commonwealth.

C. The failure of a foreign limited partnership to register in the Commonwealth does not impair the validity of any contract or act of the foreign limited partnership or pre-

vent the foreign limited partnership from defending any action, suit, or proceeding in any court of the Commonwealth.

D. A limited partner of a foreign limited partnership is not liable as a general partner of a foreign limited partnership solely by reason of having transacted business in the Commonwealth without registration.

E. Suits, actions, and proceedings may be initiated against a foreign limited partnership that transacts business in the Commonwealth without a certificate of registration by serving process on any general partner or agent of the limited partnership doing such business, or, if none can be found, on the clerk of the Commission or on the limited partnership in any other manner permitted by law. If any foreign limited partnership transacts business in the Commonwealth without a certificate of registration, it shall by transacting such business be deemed to have thereby appointed the clerk of the Commission its agent for service of process. Service upon the clerk shall be made in accordance with § [12.1-19.1](#).

1985, c. 607; 2008, c. [523](#); 2013, c. [18](#).

§50-73.60. Action by Attorney General.

The Attorney General may bring an action to restrain a foreign limited partnership from transacting business in this Commonwealth in violation of this article.

1985, c. 607.

§50-73.61. Transactions not constituting transacting business.

A. The following activities, among others, do not constitute transacting business within the meaning of this article:

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of its partners or carrying on any other activities concerning its internal affairs;
3. Maintaining bank accounts;
4. Maintaining offices or agencies for the transfer, exchange and registration of the partnership's securities or maintaining trustees or depositaries with respect to those securities;
5. Selling through independent contractors;

6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;
7. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;
8. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;
9. Owning, without more, personal property;
10. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
11. For a period of less than ninety consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films which are sent outside of the Commonwealth for processing, editing, marketing and distribution; or
12. Serving, without more, as a general partner of, or as a partner in a partnership which is a general partner of, a domestic or foreign limited partnership which does not otherwise transact business in this Commonwealth.

B. The term "transacting business" as used in this section shall have no effect on personal jurisdiction under § [8.01-328.1](#).

C. The list of activities in subsection A of this section is not exhaustive. This section does not apply in determining the contracts or activities which may subject a foreign limited partnership to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.

1985, c. 607; 1987, c. 305; 1990, c. 343 .

§50-73.62. Right of action.

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor to the same extent that a stockholder may bring an action for a derivative suit under the Stock Corporation Act, Chapter 9 (§ [13.1-601](#) et seq.) of Title 13.1. Such action may be brought if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed. The derivative action may not be maintained

if it appears that the plaintiff does not fairly and adequately represent the interests of the limited partners and the partnership in enforcing the right of the partnership.

1985, c. 607.

§50-73.63. Proper plaintiff.

In a derivative action, the plaintiff shall be a partner at the time of bringing the action and (i) shall have been a partner at the time of the transaction of which he complains or (ii) his status as a partner shall have devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

1985, c. 607; 1987, c. 702.

§50-73.64. Pleading.

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure commencement of the action by a general partner or the reasons for not making the effort.

1985, c. 607; 1987, c. 702.

§50-73.65. Expenses.

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, except as hereinafter provided, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him. On termination of the derivative action, the court may require the plaintiff to pay any defendant's reasonable expenses, including reasonable attorney's fees, incurred in defending the action if it finds that the action was commenced without reasonable cause or the plaintiff did not fairly and adequately represent the interests of the limited partners and the partnership in enforcing the right of the partnership.

1985, c. 607.

§50-73.66. Annual registration fees to be assessed and collected by Commission; application of payment.

The Commission shall assess and collect the annual registration fees imposed by this chapter. When the Commission receives payment of a registration fee assessed against a domestic or a foreign limited partnership, such payment shall be applied against any unpaid registration fees previously assessed against such limited

partnership, including any penalties incurred thereon, beginning with the assessment that has remained unpaid for the longest period of time.

1985, c. 607.

§50-73.67. Annual registration fees to be paid by domestic and foreign limited partnerships.

A. Each domestic limited partnership, and each foreign limited partnership registered to transact business in the Commonwealth, shall pay into the state treasury on or before October 1 in each year after the calendar year in which it was formed or registered to transact business in the Commonwealth an annual registration fee of \$50.

The annual registration fee shall be imposed irrespective of any specific license tax or other tax or fee imposed by law upon the limited partnership for the privilege of carrying on its business in the Commonwealth or upon its franchise, property, or receipts.

B. Each year, the Commission shall ascertain from its records each domestic limited partnership and each foreign limited partnership registered to transact business in the Commonwealth as of July 1 and, except as provided in subsection A, shall assess against each such limited partnership the annual registration fee herein imposed.

C. A statement of the assessment, when made, shall be forwarded by the clerk of the Commission to the Comptroller and to each domestic and foreign limited partnership.

D. Any domestic limited partnership that has ceased to exist in the Commonwealth because of the filing of a certificate of cancellation or any foreign limited partnership that has obtained a certificate of cancellation, effective on or before its annual registration fee due date pursuant to subsection A in any year, shall not be required to pay the annual registration fee for that year. Any domestic or foreign limited partnership that has merged, effective on or before its annual registration fee due date pursuant to subsection A in any year, into a surviving domestic or foreign corporation, limited liability company, business trust, limited partnership, or partnership that files with the Commission an authenticated copy of the instrument of merger on or before such date shall not be required to pay the annual registration fee for that year. Any foreign limited partnership that has converted, effective on or before its annual registration fee due date pursuant to subsection A in any year, to a

different entity type that files with the Commission an authenticated copy of the instrument of entity conversion on or before such date shall not be required to pay the annual registration fee for that year. The Commission shall cancel the annual registration fee assessments specified in this subsection that remain unpaid.

E. Registration fee assessments that have been paid shall not be refunded.

F. The fees paid into the state treasury under this section and the fees collected under subsection B of § [50-73.17](#) shall be set aside and paid into the special fund created under § [13.1-775.1](#), and shall be used only by the Commission as it deems necessary to defray the costs of the Commission and of the office of the clerk of the Commission in supervising, implementing, administering and enforcing the provisions of this chapter. The projected excess of fees collected over the costs of administration and enforcement so incurred shall be paid into the general fund prior to the close of each fiscal year, based on the unexpended balance of the special fund at the end of the prior fiscal year. An adjustment of this transfer amount to reflect actual fees collected shall occur during the first quarter of the succeeding fiscal year.

1985, c. 607; 1987, c. 702; 1991, c. 434; 1995, c. [621](#); 2002, c. [441](#); 2007, cc. [631](#), [810](#); 2013, c. [18](#).

§50-73.68. Repealed.

Repealed by Acts 2013, c. [18](#), cl. 2.

§50-73.69. Penalty for failure to timely pay annual registration fee.

A. Any domestic or any foreign limited partnership that fails to pay the annual registration fee into the state treasury within the time prescribed in § [50-73.67](#) shall incur a penalty of \$25, which shall be added to the amount of the annual registration fee due. The penalty prescribed herein shall be in addition to any other penalty or liability imposed by law.

B. The Commission shall mail to each domestic and foreign limited partnership that fails to pay the annual registration fee within the time prescribed in § [50-73.67](#) notice of assessment of the penalty imposed herein and of the impending cancellation of its existence or certificate of registration, as the case may be. A domestic limited partnership whose certificate has been canceled pursuant to this section is dissolved upon cancellation and shall be wound up pursuant to Article 8 (§ [50-73.49](#) et seq.) of this chapter.

1985, c. 607; 1996, c. [255](#); 1998, c. [163](#); 2000, c. [52](#); 2004, cc. [274](#), [601](#); 2008, c. [586](#).

§50-73.70. Payment of fees, fines, penalties, and interest prerequisite to Commission action; refunds.

A. The Commission shall not file or issue with respect to any domestic or foreign limited partnership any document or certificate specified in this chapter, except a statement of change pursuant to § [50-73.5](#) and a statement of resignation pursuant to § [50-73.6](#), until all fees, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid by or on behalf of such limited partnership. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign limited partnership that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the limited partnership's annual registration fee payment in any year.

B. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment.

1985, c. 607; 2002, c. [441](#); 2004, c. [316](#); 2006, c. [659](#); 2007, c. [810](#).

§50-73.71. Collection by suit and of unpaid bills.

The provisions of §§ [13.1-775.1](#) and [58.1-2814](#), so far as they are applicable, shall apply to the annual registration fees and penalties imposed by this chapter.

1985, c. 607.

§50-73.72. Construction and application.

This Act shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

1985, c. 607.

§50-73.73. Short title.

This chapter may be cited as the Virginia Revised Uniform Limited Partnership Act.

1985, c. 607.

§50-73.74. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§50-73.75. Rules for cases not provided for in this chapter.

In any case not provided for in this chapter the provisions of the Uniform Partnership Act Chapter 2.2 (§ [50-73.79](#) et seq.) shall govern.

1985, c. 607; 1996, c. [292](#).

§50-73.76. Application to existing limited partnership.

Unless otherwise provided in this chapter, the provisions of this chapter shall apply to all limited partnerships, and to their partners, existing on January 1, 1987.

1985, c. 607.

§50-73.76:1. Property title records.

A. Whenever the records in the office of the clerk of the Commission reflect that a domestic or foreign limited partnership has changed or corrected its name, merged into a domestic or foreign corporation, limited liability company, business trust, limited partnership or partnership, converted into a domestic or foreign corporation, limited liability company, business trust or partnership, or domesticated in or from another jurisdiction, the clerk of the Commission, upon request, shall issue a certificate reciting such change, correction, merger, conversion or domestication. The certificate may be admitted to record in the deed books, in accordance with § [17.1-227](#), of any clerk's office within the jurisdiction of which any property of the limited partnership is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever a foreign limited partnership has changed or corrected its name, merged into a corporation, limited liability company, business trust, limited partnership or partnership, converted into another type of business entity, or domesticated in another jurisdiction, and it cannot or chooses not to obtain a certificate reciting such change, correction, merger, conversion or domestication from the clerk of the Commission pursuant to subsection A, a similar certificate by any competent authority of the foreign limited partnership's jurisdiction of formation may be admitted to record in the deed books, in accordance with § [17.1-227](#), of any clerk's office within the jurisdiction of which any property of the limited partnership is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

2007, c. [771](#).

§50-73.77. Transition and savings provisions.

A. The repeal of Chapter 2 (§ [50-44](#) et seq.) of this title shall not impair the continued existence of a limited partnership formed prior to January 1, 1987.

B. The provisions of this chapter requiring limited partnerships formed under the laws of the Commonwealth (i) to file a certificate of limited partnership under § [50-73.11](#), (ii) to maintain a principal office, registered office, and registered agent as required by § [50-73.4](#), (iii) to keep certain partnership records at its principal office as required by § [50-73.8](#), and (iv) to adopt a name that complies with the requirements of § [50-73.2](#), shall not apply to limited partnerships formed prior to January 1, 1987, under the laws of the Commonwealth until the first to occur of (a) the voluntary filing of a certificate under subsection C of this section or (b) such time as the limited partnership would have been required to file an amendment to its certificate pursuant to § [50-67](#) as it existed prior to its repeal.

C. At the time a limited partnership formed prior to January 1, 1987, under the laws of the Commonwealth voluntarily elects to file a certificate under this subsection or is required to file a certificate under this subsection pursuant to the provisions of subsection B of this section, the limited partnership shall file an amended and restated certificate of limited partnership (i) in which it shall adopt a name meeting the requirements of § [50-73.2](#) and (ii) which shall contain (a) the information required by § [50-73.11](#), (b) the name under which its certificate of limited partnership, or any amendment thereto, was last filed under the Virginia Uniform Limited Partnership Act (§ [50-44](#) et seq.) as it existed prior to its repeal, and (c) the counties or cities in which its certificate of limited partnership, or any amendments thereto, had last been filed in the clerk's office of such jurisdictions pursuant to the provisions of the Virginia Uniform Limited Partnership Act as it existed prior to its repeal. Within 30 days of such filing with the Commission, the limited partnership shall forward a copy of the amended and restated certificate of limited partnership, certified by the clerk of the Commission, to the clerk's office or offices shown in the amended and restated certificate as being the clerk's office or offices in which its certificate of limited partnership, or any amendment thereto, had last been filed pursuant to the provisions of the Virginia Uniform Limited Partnership Act as it existed prior to its repeal, with the appropriate fee required for each such filing.

D. The failure to file an amended and restated certificate in compliance with subsection C of this section shall not impair the continued existence of a limited partnership formed prior to January 1, 1987, or the rights and liabilities of the parties in such a limited partnership set forth in § [50-66](#) as it existed prior to repeal, but the general partners of such a limited partnership shall be liable for any false statements

in the limited partnership's certificate of limited partnership as provided in § [50-73.18](#).

E. The provisions of § [50-73.7](#) permitting service of process on a limited partnership's registered agent or the Clerk of the Commission shall not apply to a limited partnership formed under the laws of the Commonwealth prior to January 1, 1987, until such time as the limited partnership files an amended and restated certificate of limited partnership pursuant to subsection C of this section.

F. At the time a limited partnership formed before January 1, 1987, that has not previously filed a certificate of limited partnership under § [50-73.11](#), would have been required to cancel its certificate pursuant to § [50-67](#) as it existed before its repeal, the limited partnership shall file with the Commission an amended and restated certificate of limited partnership as described in subsection C of this section and a certificate of cancellation as described in § [50-73.52:4](#).

1985, c. 607; 1987, c. 702; 1991, c. 434; 1993, c. 292; 1996, c. [292](#); 2007, c. [631](#); 2008, c. [586](#); 2010, c. [675](#).

§50-73.78. Limited partnership as registered limited liability partnership.

A. A limited partnership is a registered limited liability partnership as well as a limited partnership if it:

1. Registers as a limited liability partnership as provided in § [50-73.132](#) of the Virginia Uniform Partnership Act (§ [50-73.79](#) et seq.), as permitted by its written partnership agreement or, if its written partnership agreement is silent, with the consent of partners required to amend its written partnership agreement, provided that, notwithstanding the provisions of subsection C of § [50-73.83](#), a statement of registration as a limited liability partnership filed by a limited partnership shall be executed by any one or more authorized general partners; and

2. Has a name that either: (i) complies with the requirements of clause (i) of subsection A of § [50-73.2](#) and subsection A of § [50-73.133](#) or (ii) contains the words "Registered Limited Liability Limited Partnership" or "Limited Liability Limited Partnership" or the abbreviation "R.L.L.L.P." or "L.L.L.P." or the designation "RLLLLP" or "LLLLP."

B. In applying § [50-73.132](#) to a limited partnership, all references to partners mean general partners.

C. If a limited partnership is a registered limited liability partnership, § [50-73.96](#) applies to its general partners and to any of its limited partners who, under other provisions of this chapter, are liable for the debts or obligations of the partnership.

D. If a limited partnership is a registered limited liability partnership, except to the extent that the provisions of this section and Article 9.1 (§ [50-73.132](#) et seq.) of Chapter 2.2 make a distinction between a domestic partnership and a limited partnership, the provisions of Article 9.1 (§ [50-73.132](#) et seq.) of Chapter 2.2 shall apply to a limited partnership to the same extent that such provisions apply to a domestic partnership that has registered for status as a registered limited liability partnership.

1995, c. [116](#); 1996, c. [292](#); 1998, c. [163](#); 2007, c. [631](#); 2012, c. [63](#).

Virginia Security for Public Deposits Act

§2.2-4400. Short title; declaration of intent; applicability.

A. This chapter may be cited as the "Virginia Security for Public Deposits Act."

B. The General Assembly intends by this chapter to establish a single body of law applicable to the pledge of collateral for public deposits in financial institutions so that the procedure for securing public deposits may be uniform throughout the Commonwealth.

C. All public deposits in qualified public depositories that are required to be secured by other provisions of law or by a public depositor shall be secured pursuant to this chapter. Public depositors are required to secure their deposits pursuant to several applicable provisions of law, including but not limited to §§ [2.2-1813](#), [2.2-1815](#), [8.01-582](#), [8.01-600](#), [15.2-1512.1](#), [15.2-1615](#), [15.2-2625](#), [15.2-6611](#), [15.2-6637](#), [58.1-3149](#), [58.1-3150](#), [58.1-3154](#), and [58.1-3158](#).

D. This chapter, however, shall not apply to deposits made by the State Treasurer in out-of-state financial institutions related to master custody and tri-party repurchase agreements, provided (i) such deposits do not exceed ten percent of average monthly investment balances and (ii) the out-of-state financial institutions used for this purpose have a short-term deposit rating of not less than A-1 by Standard & Poor's Rating Service or P-1 by Moody's Investors Service, Inc., respectively.

1973, c. 172, §§ 2.1-359, 2.1-361; 1984, c. 135; 2000, cc. [335](#), [352](#); 2001, c. [844](#); 2010, cc. [640](#), [674](#).

§2.2-4401. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Dedicated method" or "opt-out method" means the securing of public deposits without accepting the contingent liability for the losses of public deposits of other qualified public depositories, pursuant to § [2.2-4404](#) and regulations and guidelines promulgated by the Treasury Board.

"Defaulting depository" means any qualified public depository determined to be in default or insolvent.

"Default or insolvency" includes, but shall not be limited to, the failure or refusal of any qualified public depository to return any public deposit upon demand or at maturity and the issuance of an order of supervisory authority restraining such depository from making payments of deposit liabilities or the appointment of a receiver for such depository.

"Eligible collateral" means securities or instruments authorized as legal investments under the laws of the Commonwealth for public sinking funds or other public funds as well as Federal Home Loan Bank letters of credit issued in accordance with guidelines promulgated by the Treasury Board.

"Located in Virginia" means having a main office or branch office in the Commonwealth where deposits are accepted, checks are paid, and money is lent.

"Pooled method" means securing public deposits by accepting the contingent liability for the losses of public deposits of other qualified public depositories choosing this method, pursuant to § [2.2-4403](#) and regulations and guidelines promulgated by the Treasury Board.

"Public deposit" means moneys held by a public depositor who is charged with the duty to receive or administer such moneys and is acting in an official capacity, such moneys being deposited in any of the following types of accounts: nonnegotiable time deposits, demand deposits, savings deposits, or any other transaction accounts.

"Public depositor" means the Commonwealth or any county, city, town or other political subdivision thereof, including any commission, institution, committee, board, or officer of the foregoing and any state court.

"Qualified escrow agent" means the State Treasurer or any bank or trust company approved by the Treasury Board to hold collateral pledged to secure public deposits.

"Qualified public depository" means any national banking association, federal savings and loan association or federal savings bank located in Virginia, any bank, trust company or savings institution organized under Virginia law, or any state bank or savings institution organized under the laws of another state located in Virginia authorized by the Treasury Board to hold public deposits according to this chapter.

"Required collateral" of a qualified public depository means the amount of eligible collateral required to secure public deposits set by regulations or an action of the Treasury Board.

"Treasury Board" means the Treasury Board of the Commonwealth created by § [2.2-2415](#).

1973, c. 172, § 2.1-360; 1984, c. 135; 1987, c. 718; 1996, c. [77](#); 1998, cc. [20](#), [21](#); 2001, c. [844](#); 2008, c. [7](#); 2010, cc. [640](#), [674](#).

§2.2-4402. Collateral for public deposits.

Qualified public depositories shall elect to secure deposits by either the pooled method or the dedicated method. Every qualified public depository shall deposit with a qualified escrow agent eligible collateral equal to or in excess of the required collateral. Eligible collateral shall be valued as determined by the Treasury Board. Substitutions and withdrawals of eligible collateral may be made as determined by the Treasury Board.

Notwithstanding any other provisions of law, no qualified public depository shall be required to give bond or pledge securities or instruments in the manner herein provided for the purpose of securing deposits received or held in the trust department of the depository and that are secured as required by § [6.2-1005](#) of the Code of Virginia or that are secured pursuant to Title 12, § 92a of the United States Code by securities of the classes prescribed by § [6.2-1005](#) of the Code of Virginia .

No qualified public depository shall accept or retain any public deposit that is required to be secured unless it has deposited eligible collateral equal to its required collateral with a qualified escrow agent pursuant to this chapter.

1973, c. 172, § 2.1-362; 2001, c. [844](#); 2010, cc. [640](#), [674](#).

§2.2-4403. Procedure for payment of losses by pooled method.

When the Treasury Board determines that a qualified public depository securing public deposits in accordance with this section is a defaulting depository, it shall as promptly as practicable take steps to reimburse public depositors for uninsured public deposits using the following procedures:

1. The Treasury Board shall ascertain the amount of uninsured public deposits held by the defaulting depository, either with the cooperation of the Commissioner of Financial Institutions, the receiver appointed for such depository, or by any other means available.
2. The amount of such uninsured public deposits ascertained as provided in subdivision 1, plus any costs associated with liquidation, shall be assessed by the Treasury Board first against the defaulting depository to the extent of the full realizable market value of the collateral pledged to secure its public deposits.
3. In the event the realized value of the pledged collateral in subdivision 2 is insufficient to satisfy the liability of the defaulting depository to its public depositors and the Treasury Board, the Treasury Board shall assess the remaining liability against all other qualified public depositories securing public deposits according to the following ratio: total average public deposit balance for each qualified public depository held during the immediately preceding twelve months divided by the total average public deposit balance for the same period held by all qualified public depositories under this section other than the defaulting depository.
4. Assessments made by the Treasury Board in accordance with subdivision 3 shall be payable by the close of business on the second business day following demand. Upon the failure of any qualified public depository to pay such assessment when due, the State Treasurer shall promptly take possession of the eligible collateral deposited with the non-paying depository's escrow agent and liquidate the same to the extent necessary to pay the original assessment plus any additional costs necessary to liquidate the collateral.
5. Upon receipt of such assessments and the net proceeds of the eligible collateral liquidated from the State Treasurer, the Treasury Board shall reimburse the public depositors to the extent of the defaulting depository's liability to them, net of any applicable deposit insurance.

1973, c. 172, § 2.1-363; 1978, c. 14; 1984, c. 135; 2001, c. [844](#); 2009, c. [64](#); 2010, cc. [640](#), [674](#).

§2.2-4404. Procedure for payment of losses by dedicated method.

When the Treasury Board determines that a qualified public depository securing public deposits in accordance with this section is a defaulting depository, it shall as promptly as practicable take steps to reimburse public depositors of all uninsured public deposits using the following procedures:

1. The Treasury Board shall ascertain the amount of uninsured public deposits held by the defaulting depository with the cooperation of the Commissioner of Financial Institutions, the receiver appointed for such depository or by any other means available.
2. The amount of such uninsured public deposits ascertained as provided in subdivision 1, plus any costs associated with liquidation of the eligible collateral of the defaulting depository, shall be assessed by the Treasury Board against the defaulting depository. The State Treasurer shall promptly take possession of the eligible collateral deposited by such depository with the depository's escrow agent, as is necessary to satisfy the assessment of the Treasury Board and shall liquidate the same and turn over the net proceeds to the Treasury Board.
3. Upon receipt from the State Treasurer of the eligible collateral liquidated, the Treasury Board shall reimburse the public depositors from the proceeds of the collateral up to the extent of the depository's deposit liability to them, net of any applicable deposit insurance.

1984, c. 135, § 2.1-363.1; 2001, c. [844](#); 2009, c. [64](#); 2010, cc. [640](#), [674](#).

§2.2-4405. Powers of Treasury Board relating to the administration of this chapter.

The Treasury Board shall have power to:

1. Make and enforce regulations and guidelines necessary and proper to the full and complete performance of its functions under this chapter;
2. Prescribe and enforce regulations and guidelines fixing terms and conditions consistent with this chapter under which public deposits must be secured;
3. Require additional collateral, in excess of the required collateral of any or all qualified public depositories as it may determine prudent under the circumstances;

4. Determine what securities or instruments shall be acceptable as eligible collateral, and fix the percentage of face value or market value of such securities or instruments that can be used to secure public deposits;
5. Establish guidelines to permit banks to withdraw from the procedures for the payment of losses under § [2.2-4403](#) and instead be governed by the procedures for the payment of losses under § [2.2-4404](#), consistent with the primary purpose of protecting public deposits;
6. Require any qualified public depository to provide information concerning its public deposits as requested by the Treasury Board; and
7. Determine when a default or insolvency has occurred and to take such action as it may deem advisable for the protection, collection, compromise or settlement of any claim arising in case of default or insolvency.

1973, c. 172, § 2.1-364; 2001, c. [844](#); 2009, c. [64](#); 2010, cc. [640](#), [674](#).

§2.2-4406. Subrogation of Treasury Board to depositor's rights; payment of sums received from distribution of assets.

Upon payment in full to any public depositor on any claim presented pursuant to § [2.2-4403](#) or [2.2-4404](#), the Treasury Board shall be subrogated to all of such depositor's rights, title and interest against the depository in default or insolvent and shall share in any distribution of such defaulting or insolvent depository's assets ratably with other depositors. Any sums received from any such distribution shall be paid to the other qualified public depositories against which assessments were made, in proportion to such assessments, net of any proper payment or expense of the Treasury Board in enforcing any such claim.

1973, c. 172, § 2.1-365; 2001, c. [844](#); 2010, cc. [640](#), [674](#).

§2.2-4407. Mandatory deposit of public funds in qualified public depositories.

Public deposits required to be secured pursuant to this chapter shall be deposited in a qualified public depository.

1973, c. 172, § 2.1-366; 2001, c. [844](#); 2010, cc. [640](#), [674](#).

§2.2-4408. Authority to make public deposits.

A. All public depositors are hereby authorized to make public deposits under their control in qualified public depositories, securing such public deposits pursuant to this chapter.

B. Local officials handling public deposits in the Commonwealth may not require from a qualified public depository any pledge of collateral for their deposits in excess of the requirements of this chapter.

1973, c. 172, § 2.1-367; 1980, c. 538, § 2.1-234.5; 1998, cc. [20](#), [21](#); 2001, c. [844](#); 2010, cc. [640](#), [674](#).

§2.2-4409. Authority to secure public deposits; acceptance of liabilities and duties by public depositories.

All qualified public depositories are hereby authorized to secure public deposits in accordance with this chapter and shall be deemed to have accepted the liabilities and duties imposed upon it pursuant to this chapter.

1973, c. 172, § 2.1-368; 2001, c. [844](#); 2010, cc. [640](#), [674](#).

§2.2-4410. Liability of public depositors.

When deposits are made in accordance with this chapter no official of a public depositor shall be personally liable for any loss resulting from the default or insolvency of any qualified public depository in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his agents.

1973, c. 172, § 2.1-370; 2001, c. [844](#); 2010, cc. [640](#), [674](#).

§2.2-4411. Reports of qualified public depositories.

By the tenth day after the end of each calendar reporting month or when requested by the Treasury Board each qualified public depository shall submit to the Treasury Board an electronic report of such data required by the Treasury Board to demonstrate that the current market value of its pledged collateral was equal to or greater than the amount of required collateral for the previous month, certified as to its accuracy by an authorized official of the qualified public depository.

Upon request by a public depositor, a qualified public depository shall provide a schedule detailing the public deposit accounts reported to the Treasury Board for that depositor, as well as the amount of total public deposits held by that depository at the close of the applicable month and the total market value of the collateral securing such public deposits.

1973, c. 172, § 2.1-369; 1979, c. 154; 2001, c. [844](#); 2010, cc. [640](#), [674](#).

Virginia Self-Service Storage Act

§55-416. Short title.

This chapter shall be known as the "Virginia Self-Service Storage Act."

1981, c. 627.

§55-417. Definitions.

As used in this chapter, unless the context clearly requires otherwise:

1. "Self-service storage facility" means any real property designed and used for renting or leasing individual storage spaces, other than storage spaces which are leased or rented as an incident to the lease or rental of residential property or dwelling units, to which the occupants thereof have access for storing or removing their personal property. No occupant shall use a self-service storage facility for residential purposes.
2. "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his agent, or any other person authorized to manage the facility or to receive rent from any occupant under a rental agreement.

The owner of a self-service storage facility is not a warehouseman as defined in § [8.7-102](#), unless the owner issues a warehouse receipt, bill of lading, or other document of title for the personal property stored, in which event, the owner and the occupant are subject to the provisions of Title 8.7 dealing with warehousemen.

3. "Occupant" means a person, his sublessee, successor, or assign, entitled to the use of a leased space at a self-service storage facility under a rental agreement.
4. "Rental agreement" means any agreement or lease that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self-service storage facility.
5. "Leased space" means the individual storage space at the self-service facility which is leased or rented to an occupant pursuant to a rental agreement.
6. "Personal property" means movable property, not affixed to land and includes, but is not limited to, goods, wares, merchandise, and household items and furnishings.
7. "Default" means the failure to perform on time any obligation or duty set forth in the rental agreement or this chapter.
8. "Last known address" means that address or electronic mail address provided by the occupant in the rental agreement or the address or electronic mail address provided by the occupant in a subsequent written notice of a change of address.

9. "Verified mail" means any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing.

1981, c. 627; 2009, c. [664](#); 2015, c. [208](#).

§55-418. Lien.

A. The owner shall have a lien on all personal property stored within each leased space for rent, labor, or other charges, and for expenses reasonably incurred in its sale pursuant to this chapter. Such lien shall attach as of the date the personal property is stored within each leased space, and, to the extent the property remains stored within such leased space, as hereinafter provided, shall be superior to any other existing liens or security interests to the extent of \$250 or, if the leased space is a climate-controlled facility, \$500. In addition, such lien shall extend to the proceeds, if any, remaining after the satisfaction of any perfected liens and the owner may retain possession of such proceeds until the balance, if any, of such charges is paid.

B. In the case of any watercraft which is subject to a lien, previously recorded on the certificate of title, the owner, so long as the watercraft remains stored within such leased space, shall have a lien on such watercraft as provided for herein to the extent of \$250 or \$500 if the leased space is a climate-controlled facility. In addition, such lien shall extend to the proceeds, if any, remaining after the satisfaction of any recorded liens and the owner may retain possession of such proceeds until the balance, if any, of such charges is paid.

C. The rental agreement shall contain a statement, in bold type, advising the occupant of the existence of such lien, and that the personal property stored within the leased space may be sold to satisfy the lien if the occupant is in default.

D. In the case of any motor vehicle that is subject to a lien, previously recorded on the certificate of title, the owner, so long as the motor vehicle remains stored within such leased space, shall have a lien on such vehicle in accordance with § [46.2-644.01](#).

1981, c. 627; 1984, c. 717; 1999, c. [149](#); 2005, c. [275](#); 2009, c. [664](#).

§55-419. Enforcement of lien.

A.1. If any occupant is in default under a rental agreement, the owner shall notify the occupant of such default by regular mail at his last known address or, if expressly provided for in the rental agreement, such notice may be given by electronic means. If such default is not cured within 10 days after its occurrence, then the owner may

proceed to enforce such lien by selling the contents of the occupant's unit at public auction, for cash, and apply the proceeds to satisfaction of the lien, with the surplus, if any, to be disbursed as hereinafter provided. Before conducting such a public auction, the owner shall notify the occupant as prescribed in subsection C and shall advertise the time, place, and terms thereof in such manner as to give publicity thereto.

2. In the case of personal property having a fair market value in excess of \$1,000, and against which a creditor has filed a financing statement in the name of the occupant at the State Corporation Commission or in the city or county where the self-service storage facility is located or in the city or county in Virginia shown as the last known address of the occupant, or if such personal property is a watercraft required by the laws of Virginia to be registered and the Department of Game and Inland Fisheries shows a lien on the certificate of title, the owner shall notify the lienholder of record, by certified mail, at the address on the financing statement or certificate of title, at least 10 days prior to the time and place of the proposed public auction.

If the owner of the personal property cannot be ascertained, the name of "John Doe" shall be substituted in the proceedings hereunder and no written notice shall be required. Whenever a watercraft is sold hereunder, the Department of Game and Inland Fisheries shall issue a certificate of title and registration to the purchaser thereof upon his application containing the serial or motor number of the watercraft purchased, together with an affidavit by the lienholder, or by the person conducting the public auction, evidencing compliance with the provisions hereof.

B. Whenever the occupant is in default, the owner shall have the right to deny the occupant access to the leased space.

C. After the occupant has been in default for a period of 10 days, and before the owner can sell the occupant's personal property in accordance with this chapter, the owner shall send a further notice of default, by verified mail, postage prepaid, to the occupant at his last known address or, if expressly provided for in the rental agreement, such notice may be given by electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery. Such notice of default shall include:

1. An itemized statement of the owner's claim, indicating the charges due on the date of the notice and the date when the charges became due;
 2. A demand for payment of the charges due within a specified time not less than 20 days after the date of the notice;
 3. A statement that the contents of the occupant's leased space are subject to the owner's lien;
 4. A conspicuous statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at public auction at a specified time and place; and
 5. The name, street address, and telephone number of the owner or his designated agent whom the occupant may contact to respond to the notice.
- D. At any time prior to the public auction pursuant to this section, the occupant may pay the amount necessary to satisfy the lien and thereby redeem the personal property.
- E. In the event of a public auction pursuant to this section, the owner may satisfy his lien from the proceeds of the public auction, and shall hold the balance, if any, for delivery on demand to the occupant or other lienholder referred to in this chapter. However, the owner shall not be obligated to hold any balance for a lienholder of record notified pursuant to subdivision A 2, or any other lien creditor, that fails to claim an interest in the balance within 30 days of the public auction. So long as the owner complies with the provisions of this chapter, the owner's liability to the occupant under this chapter shall be limited to the net proceeds received from the public auction of any personal property, and as to other lienholders, shall be limited to the net proceeds received from the public auction of any personal property covered by such superior lien.
- F. Any public auction of the personal property shall be held at the self-service storage facility or at the nearest suitable place to where the personal property is held or stored. An advertisement shall be published in a newspaper of general circulation in the county, city or town in which the public auction is to be held at least once prior to the public auction. The advertisement must state (i) the fact that it is a public auction; (ii) the date, time and location of the public auction; and (iii) form of payment.

G. A purchaser in good faith of any personal property sold or otherwise disposed of pursuant to this chapter takes such property free and clear of any rights of persons against whom the lien was valid.

H. Any notice made pursuant to this section shall be presumed delivered when it is (i) deposited with the United States Postal Service and properly addressed to the occupant's last known address with postage prepaid or (ii) sent by electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery. In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of default.

I. In the case of any motor vehicle, so long as the motor vehicle remains stored within such leased space, the owner shall have a lien on such vehicle in accordance with § [46.2-644.01](#).

1981, c. 627; 1984, cc. 717, 774; 2000, c. [655](#); 2009, c. [664](#); 2015, c. [208](#).

§55-419.1. Other legal remedies may be used.

The provisions of this chapter shall not preempt or limit the owner's use of any additional remedy otherwise allowed by law.

2000, c. [655](#).

§55-420. Care, custody and control of property.

Unless the rental agreement specifically provides otherwise, the exclusive care, custody, and control of all personal property stored in the leased space shall remain vested in the occupant.

1981, c. 627.

§55-421. Savings clause.

All rental agreements, entered into prior to July 1, 1981, which have not been extended or renewed after that date, shall remain valid and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this Commonwealth.

1981, c. 627.

§55-422. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§55-423. Effective date and application of chapter.

The provisions of this chapter shall apply to all rental agreements entered into or extended or renewed after July 1, 1981.

1981, c. 627.

Virginia Solar Easements Act

§55-352. Short title.

This chapter may be cited as the "Virginia Solar Easements Act."

1978, c. 323.

§55-353. Creation of solar easements.

Any easement obtained for the purpose of exposure of solar energy equipment, facilities or devices shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

1978, c. 323.

§55-354. Contents of solar easement agreements.

Any instrument creating a solar easement shall include, but the contents shall not be limited to:

1. The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement.
2. Any terms or conditions or both under which the solar easement is granted or will be terminated.
3. Any provisions for compensation of the owner of the property subject to the solar easement.

1978, c. 323.

§55-355. Reserved.

Reserved.

Virginia Stock Corporation Act

§13.1-601. Short title.

This chapter shall be known as the Virginia Stock Corporation Act.

Code 1950, § 13.1-1; 1956, c. 428; 1985, c. 522.

§13.1-602. Reservation of power to amend or repeal.

The General Assembly shall have power to amend or repeal all or part of this Act at any time and all domestic and foreign corporations subject to this Act shall be governed by the amendment or repeal.

Code 1950, § 13.1-129; 1956, c. 428; 1985, c. 522.

§13.1-603. Definitions.

In this chapter:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission and all amendments including certificates of consolidation, serial designation, reduction, correction, and merger. It excludes articles of share exchange filed by an acquiring corporation. When the articles of incorporation have been restated pursuant to any articles of restatement, amendment, domestication, or merger, it includes only the restated articles of incorporation, including any articles of serial designation, without the accompanying articles of restatement, amendment, domestication, or merger.

"Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

"Certificate," when relating to articles filed with the Commission, means the order of the Commission that makes the articles effective, together with the articles.

"Commission" means the State Corporation Commission of Virginia.

"Conspicuous" means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text that is italicized, is in boldface, contrasting colors, or capitals, or is underlined, is conspicuous.

"Corporation" or "domestic corporation" means a corporation authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this chapter or existing pursuant to the laws of the Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of the Commonwealth, even though also being a corporation organized under laws other than the laws of the Commonwealth, or that has

become a domestic corporation of the Commonwealth pursuant to Article 12.1 (§ [13.1-722.2](#) et seq.) of this chapter or Article 15 (§ [13.1-1081](#) et seq.) of Chapter 12.

"Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with § [13.1-610](#), electronic transmission.

"Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in Article 8.1 (§ [13.1-672.1](#) et seq.) of Chapter 9 of this title, a foreign corporation.

"Disinterested director" means, except with respect to Article 14 (§ [13.1-725](#) et seq.) of this chapter, a director who, at the time action is to be taken under § [13.1-672.4](#), [13.1-691](#), [13.1-699](#) or [13.1-701](#), does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial, financial, professional, employment or other relationship with a person who has a financial interest in the matter, either of which would reasonably be expected to affect adversely the objectivity of the director when participating in the action, and if the action is to be taken under § [13.1-699](#) or [13.1-701](#), is also not a party to the proceeding. The presence of one or more of the following circumstances shall not by itself prevent a person from being a disinterested director: (i) nomination or election of the director to the current board by any person, acting alone or participating with others, who is so interested in the matter; (ii) service as a director of another corporation of which an interested person is also a director; or (iii) at the time action is to be taken under § [13.1-672.4](#), status as a named defendant, as a director against whom action is demanded, or as a director who approved the act being challenged.

"Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness of the corporation; or otherwise. Distribution does not include acquisition by a corporation of its shares from the estate or personal representative of a deceased shareholder, or any other shareholder, but only to the extent the acquisition is effected using the proceeds of insurance on the life of such deceased shareholder and the board of directors approved the policy and the terms of the redemption prior to the shareholder's death.

"Document" means (i) any tangible medium on which information is inscribed, and includes any writing or written instrument, or (ii) an electronic record.

"Domestic business trust" has the same meaning as specified in § [13.1-1201](#).

"Domestic limited liability company" has the same meaning as specified in § [13.1-1002](#).

"Domestic limited partnership" has the same meaning as specified in § [50-73.1](#).

"Domestic nonstock corporation" has the same meaning as "domestic corporation" as specified in § [13.1-803](#).

"Domestic partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under § [50-73.88](#), or predecessor law of the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a registered limited liability partnership.

"Effective date of notice" is defined in § [13.1-610](#).

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic record" means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection J of § [13.1-610](#).

"Electronic transmission" or "electronically transmitted" means any form or process of communication, not directly involving the physical transfer of paper or other tangible medium, that (i) is suitable for the retention, retrieval, and reproduction of information by the recipient, and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection J of § [13.1-610](#).

"Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonstock corporation.

"Eligible interests" means interests or memberships.

"Employee" includes, unless otherwise provided in the bylaws, an officer but not a director. A director may accept duties that make him also an employee.

"Entity" includes any domestic or foreign corporation; any domestic or foreign non-stock corporation; any domestic or foreign unincorporated entity; any estate or trust; and any state, the United States and any foreign government.

"Foreign business trust" has the same meaning as specified in § [13.1-1201](#).

"Foreign corporation" means a corporation authorized by law to issue shares, organized under laws other than the laws of the Commonwealth.

"Foreign limited liability company" has the same meaning as specified in § [13.1-1002](#).

"Foreign limited partnership" has the same meaning as specified in § [50-73.1](#).

"Foreign nonstock corporation" has the same meaning as "foreign corporation" as specified in § [13.1-803](#).

"Foreign partnership" means an association of two or more persons to carry on as co-owners of a business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability partnership.

"Foreign registered limited liability partnership" has the same meaning as specified in § [50-73.79](#).

"Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than the Commonwealth.

"Government subdivision" includes authority, county, district, and municipality.

"Includes" denotes a partial definition.

"Individual" means a natural person.

"Interest" means either or both of the following rights under the organic law of an unincorporated entity:

1. The right to receive distributions from the entity either in the ordinary course or upon liquidation; or
2. The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy or person responsible for managing its business and affairs.

"Means" denotes an exhaustive definition.

"Membership" means the rights of a member in a domestic or foreign nonstock corporation or limited liability company.

"Notice" is defined in § [13.1-610](#).

"Organic document" means the document, if any, that is filed of public record to create an unincorporated entity. Where an organic document has been amended or restated, the term means the organic document as last amended or restated.

"Organic law" means the statute governing the internal affairs of a domestic or foreign corporation or eligible entity.

"Person" includes an individual and an entity.

"Principal office" means the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to § [13.1-775](#) shall be conclusive for purposes of this chapter.

"Proceeding" includes civil suit and criminal, administrative, and investigatory action conducted by a governmental agency.

"Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

"Record date" means the date established under Article 7 (§ [13.1-638](#) et seq.) or Article 8 (§ [13.1-654](#) et seq.) of this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination shall be made as of the close of business at the principal office of the corporation on the record date unless another time for doing so is specified when the record date is fixed.

"Shareholder" means the person in whose name shares are registered in the records of the corporation, the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation, or the beneficial owner of shares held in a voting trust.

"Shares" means the units into which the proprietary interests in a corporation are divided.

"Sign" or "signature" means, with present intent to authenticate or adopt a document: (i) to execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or (ii) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

"State" when referring to a part of the United States, includes a state, commonwealth, and the District of Columbia, and their agencies and governmental subdivisions; and a territory or insular possession, and their agencies and governmental subdivisions, of the United States.

"Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

"Subsidiary" means, as to any corporation, any other corporation of which it owns, directly or indirectly, voting shares entitled to cast a majority of the votes entitled to be cast generally in an election of directors of such other corporation.

"Unincorporated entity" or "domestic unincorporated entity" means a domestic partnership, limited liability company, limited partnership or business trust.

"United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

"Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

"Voting power" means the current power to vote in the election of directors.

"Writing" or "written" means any information in the form of a document.

Code 1950, § 13.1-2; 1956, c. 428; 1962, c. 44; 1975, c. 500; 1985, c. 522; 1992, cc. 575, 802; 1993, c. 200; 1994, c. [122](#); 1997, cc. [190](#), [801](#); 2001, c. [545](#); 2002, cc. [1](#), [285](#); 2003, cc. [340](#), [728](#); 2005, c. [765](#); 2006, c. [663](#); 2007, c. [165](#); 2010, c. [782](#); 2012, c. [706](#); 2015, c. [611](#); 2016, c. [288](#).

§13.1-604. Filing requirements.

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this chapter requires or permits to be filed with the Commission.

C. The document shall contain the information required by this chapter. It may contain other information as well.

D. The document shall be typewritten or printed or, if electronically transmitted, shall be in a format that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals. The articles of incorporation, duly authenticated by the official having custody of corporate records in the state or country under whose law the corporation is incorporated, which are required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be signed in the name of the domestic or foreign corporation:

1. By the chairman or any vice-chairman of the board of directors, the president, or any other of its officers authorized to act on behalf of the corporation;

2. If directors have not been selected or the corporation has not been formed, by an incorporator; or

3. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. Any annual report required to be filed by § [13.1-775](#) shall be signed in the name of the corporation by an officer or director listed in the report or, if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

H. The person signing the document shall state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile. The

document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

I. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

J. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee, and any franchise tax, charter or entrance fee or registration fee required by this chapter.

K. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § [59.1-496](#).

L. Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

1. The plan or filed document shall specify the nationally recognized news or information medium in which the facts can be found or otherwise state the manner in which the facts can be objectively ascertained. The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

2. The facts may include:

a. Any of the following that are available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates or similar economic or financial data;

b. A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

c. The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

3. As used in this subsection:

a. "Filed document" means a document filed with the Commission under § [13.1-619](#) or Article 11 (§ [13.1-705](#) et seq.) or 12 (§ [13.1-715.1](#) et seq.) of this chapter; and

b. "Plan" means a plan of merger or share exchange.

4. The following terms of a plan or filed document may not be made dependent on facts outside the plan or filed document:

- a. The name and address of any person required in a filed document;
- b. The registered office of any entity required in a filed document;
- c. The registered agent of any entity required in a filed document;
- d. The number of authorized shares and designation of each class or series of shares;
- e. The effective date of a filed document; and
- f. Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

5. If a term of a filed document is made dependent on a fact objectively ascertainable outside of the filed document, and that fact is not objectively ascertainable by reference to a source described in subdivision 2 a of this subsection or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Commission articles of amendment setting forth the fact promptly after the time when the fact referred to is first objectively ascertainable or thereafter changes. Articles of amendment under this subdivision are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

6. The provisions of subdivisions 1, 2, and 5 of this subsection shall not be considered by the Commission in deciding whether the terms of a plan or filed document comply with the requirements of law.

1985, c. 522; 1986, c. 231; 1995, c. [70](#); 2000, c. [995](#); 2005, c. [765](#); 2010, c. [782](#); 2015, c. [623](#).

§13.1-604.1. Filings with the Commission pursuant to reorganization.

A. Notwithstanding anything to the contrary contained in § [13.1-604](#), [13.1-619](#), [13.1-710](#), [13.1-711](#), [13.1-720](#), [13.1-722.12](#), [13.1-743](#), or [13.1-750](#), whenever, pursuant to any applicable statute of the United States relating to reorganizations of corporations, a plan of reorganization of a corporation has been confirmed by the decree or order of a court of competent jurisdiction, the corporation may put into effect and carry out the plan and decrees of the court relative thereto, (i) through one or more amendments to the corporation's articles of incorporation containing terms and

conditions permitted by this chapter; (ii) through a plan of merger, share exchange, or entity conversion; or (iii) through dissolution or termination, without action by the board of directors or shareholders to carry out the plan of reorganization ordered or decreed by such court of competent jurisdiction under federal statute.

B. The individual or individuals designated by the court shall file with the Commission articles of amendment, merger, share exchange, entity conversion, dissolution, or termination, which, in addition to the matters otherwise required or permitted by law to be set forth therein, shall set forth:

1. The name of the corporation;
 2. Any provision relating to the amendment or amendments; plan of merger, share exchange, or entity conversion; or dissolution or termination approved by the court;
 3. The name of the court and the date of the court's order or decree approving the amendment, plan of merger, share exchange, or entity conversion; or dissolution or termination;
 4. The title and case number, if any, of the reorganization proceeding in which the order or decree was entered; and
 5. A statement that the court had jurisdiction of the proceeding under federal statute.
- C. If the Commission finds that the articles of amendment, merger, share exchange, entity conversion, dissolution, or termination comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment, merger, share exchange, entity conversion, dissolution, or termination.
- D. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

1988, c. 194; 2005, c. [765](#); 2012, c. [130](#).

§13.1-605. Issuance of certificate by Commission; recordation of documents.

A. Whenever this chapter conditions the effectiveness of a document upon the issuance of a certificate by the Commission to evidence the effectiveness of the document, the Commission shall by order issue the certificate if it finds that the document complies with the requirements of law and that all required fees have been paid. The Commission shall admit any such certificate to record in its office.

B. Whenever the Commission is directed to admit any document to record in its office, it shall cause it to be spread upon its record books or to be recorded or reproduced in any other manner the Commission may deem suitable. Except as otherwise provided by law, the Commission may furnish information from and provide access to any of its records by any means the Commission may deem suitable.

Code 1950, § 13.1-126; 1956, c. 428; 1982, c. 375; 1984, c. 295; 1985, c. 522; 1986, c. 231; 1987, c. 183; 1988, c. 405; 1989, c. 152 .

§13.1-606. Effective time and date of document.

A. A certificate issued by the Commission is effective at the time such certificate is issued, unless the certificate relates to articles filed with the Commission and the articles state that the certificate shall become effective at a later time and date specified in the articles. In that event the certificate shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the fifteenth day after the date on which the certificate is issued by the Commission. Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

B. Notwithstanding subsection A of this section, any certificate that has a delayed effective time and date shall not become effective if, prior to the effective time and date, the parties to the articles to which the certificate relates file a request for cancellation with the Commission and the Commission, by order, cancels the certificate.

C. Notwithstanding subsection A of this section, for purposes of §§ [13.1-630](#) and [13.1-762](#), any certificate that has a delayed effective date shall be deemed to be effective when the certificate is issued.

1985, c. 522.

§13.1-607. Correcting filed articles.

A. The board of directors of a corporation may authorize correction of any articles filed with the Commission if (i) the articles contain an inaccuracy; (ii) the articles were not properly authorized or defectively executed, attested, sealed, verified, or acknowledged; or (iii) the electronic transmission of the articles to the Commission was defective.

B. Articles are corrected by filing with the Commission articles of correction setting forth:

1. The name of the corporation prior to filing;

2. A description of the articles to be corrected, including their effective date;
3. Each inaccurate or defective matter that is to be corrected;
4. The correction of each inaccurate or defective matter; and
5. A statement that the board of directors authorized the correction and the date of such authorization.

C. Upon the issuance of a certificate of correction by the Commission, the articles of correction shall become effective as of the effective date and time of the articles they correct except as to persons relying on the uncorrected articles and adversely affected by the correction. As to those persons, articles of correction are effective upon the issuance of the certificate of correction.

D. No articles of correction shall be accepted by the Commission when received more than 30 days after the effective date of the certificate relating to the articles to be corrected.

1985, c. 522; 2005, c. [765](#); 2007, c. [165](#); 2008, cc. [91](#), [509](#).

§13.1-608. Evidentiary effect of copy of filed document.

A certificate attached to a copy of any document admitted to the records of the Commission, bearing the signature of the clerk of the Commission or a member of the staff of the office of the clerk, which in either case may be in facsimile, and the seal of the Commission, which may be in facsimile, is conclusive evidence that the document has been admitted to the records of the Commission.

1985, c. 522; 2005, c. [765](#).

§13.1-609. Certificate of good standing.

A. Anyone may apply to the Commission to furnish a certificate of good standing for a domestic or foreign corporation.

B. The certificate shall state that the corporation is in good standing in this Commonwealth and shall set forth:

1. The domestic corporation's corporate name or the foreign corporation's corporate name used in this Commonwealth;
2. That (i) the domestic corporation is duly incorporated under the law of this Commonwealth, the date of its incorporation, and the period of its duration if less than

perpetual; or that (ii) the foreign corporation is authorized to transact business in the Commonwealth; and

3. If requested, a list of all certificates relating to articles filed with the Commission that have been issued by the Commission with respect to such corporation and their respective effective dates.

C. A domestic corporation or a foreign corporation authorized to transact business in this Commonwealth shall be deemed to be in good standing if:

1. All fees, fines, penalties and interest assessed, imposed, charged or to be collected by the Commission pursuant to this chapter have been paid;

2. An annual report required by § [13.1-775](#) has been delivered to and accepted by the Commission; and

3. No certificate of dissolution, certificate of withdrawal, or order of reinstatement prohibiting the domestic corporation from engaging in business until it changes its corporate name has been issued or such certificate or prohibition no longer is in effect.

D. The certificate may state any other facts of record in the office of the clerk of the Commission that may be requested by the applicant.

E. Subject to any qualification stated in the certificate, a certificate of good standing issued by the Commission may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in the Commonwealth.

1985, c. 522; 1988, c. 405; 1993, c. 60; 2005, c. [765](#); 2006, c. [663](#).

§13.1-610. Notices and other communications.

For purposes of this chapter, except for notice to or from the Commission:

A. Notice shall be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

B. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication shall be in the English language. A notice or other communication may be given or sent by any method of delivery, except that an electronic transmission shall be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication may be communicated by publication in a newspaper of general circulation in the area where the notice is intended to be

given, or by radio, television, or other form of public communication in the area where the notice is intended to be given.

C. Notice or other communication to a domestic or foreign corporation authorized to transact business in the Commonwealth may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

D. Notice or other communication may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection K.

E. Any consent under subsection D may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if (i) the corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent or other person responsible for the giving of notice or other communications. The inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

F. Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

1. It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and
2. It is in a form capable of being processed by that system.

G. Receipt of an electronic acknowledgment from an information processing system described in subdivision F 1 establishes that an electronic transmission was received. However, such receipt of an electronic acknowledgment, by itself, does not establish that the content sent corresponds to the content received.

H. An electronic transmission is received under this section even if no individual is aware of its receipt.

I. Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

1. If in physical form, the earliest of when it is actually received or when it is left at:

a. A shareholder's address shown on the corporation's record of shareholders maintained by the corporation pursuant to subsection C of § [13.1-770](#);

b. A director's residence or usual place of business;

c. The corporation's principal place of business; or

d. The corporation's registered office when left with the corporation's registered agent;

2. If mailed postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;

3. If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received or: (i) if sent by registered or certified mail return receipt requested, the date shown on the receipt, signed by or on behalf of the addressee; or (ii) five days after it is deposited in the mail;

4. If an electronic transmission, when it is received as provided in subsection F; and

5. If oral, when communicated.

J. A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if (i) the electronic transmission is otherwise retrievable in perceivable form, and (ii) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

K. If this chapter prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of this chapter, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

L. Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by a public corporation, under any provision of this chapter, the articles of incorporation, or the bylaws, shall be effective if given in a manner permitted by the rules and regulations under the Securities

Exchange Act of 1934, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.

1985, c. 522; 2002, c. [285](#); 2003, c. [728](#); 2005, c. [765](#); 2007, c. [165](#); 2010, c. [782](#).

§13.1-610.1. Householding.

A. A corporation shall be deemed to have delivered written notice or any other report or statement under this chapter, the articles of incorporation or the bylaws to all shareholders who share a common address as shown on the corporation's current record of shareholders if:

1. The corporation delivers one copy of the notice, report or statement to the common address;
2. The corporation addresses the notice, report or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and
3. Each of those shareholders consents, including any implied consent pursuant to subsection B, to delivery of a single copy of such notice, report or statement to the shareholders' common address.

B. Any shareholder who fails to object by written notice to the corporation, within 60 days of written notice by the corporation of its intention to send single copies of notices, reports or statements to shareholders who share a common address as permitted by subsection A, shall be deemed to have consented to receiving such single copy at the common address.

C. Any consent pursuant to this section shall be revocable by any shareholder who delivers written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports or other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

2007, c. [165](#).

§13.1-611. Number of shareholders.

A. For purposes of this chapter, the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

1. Two or more co-owners;

2. A corporation, limited liability company, partnership, limited partnership, business trust, trust, estate, or other entity; or
3. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

B. For purposes of this chapter, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

1985, c. 522; 2005, c. [765](#).

§13.1-612. Penalty for signing false documents.

A. It shall be unlawful for any person to sign a document he knows is false in any material respect with intent that the document be delivered to the Commission for filing.

B. Anyone who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 13.1-134; 1958, c. 564; 1975, c. 500; 1985, c. 522.

§13.1-613. Unlawful to transact or offer to transact business as a corporation unless authorized.

It shall be unlawful for any person to transact business in this Commonwealth as a corporation or to offer or advertise to transact business in this Commonwealth as a corporation unless the alleged corporation is either a domestic corporation or a foreign corporation authorized to transact business in this Commonwealth. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 13.1-135; 1958, c. 565; 1981, c. 320; 1985, c. 522.

§13.1-614. Hearing and finality of Commission action; injunctions.

A. The Commission shall have no power to grant a hearing with respect to any certificate issued by the Commission with respect to any articles filed with the Commission except on a petition by a shareholder filed with the Commission and the corporation within 30 days after the effective date of the certificate, in which the shareholder asserts that the certification of corporate action contained in the articles contains a misstatement of a material fact as to compliance with statutory requirements, specifying the particulars thereof. After hearing, on notice in writing to the

corporation and the shareholder, the Commission shall determine the issues and revoke or refuse to revoke its order accordingly.

B. No court within or without the Commonwealth shall have jurisdiction to enjoin or delay the holding of any meeting of directors or shareholders for the purpose of authorizing or consummating any amendment, merger, share exchange, domestication, conversion or termination of corporate existence or the execution or filing with the Commission of any articles or other documents for such purpose, except pursuant to subsection D of § [13.1-661](#) or for fraud. No court within or without the Commonwealth, except the Supreme Court by way of appeal as authorized by law, shall have jurisdiction to review, reverse, correct or annul any action of the Commission, within the scope of its authority, with regard to any articles, certificate, order, objection or petition, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties.

C. Notwithstanding any provision of subsection A to the contrary, the Commission shall have the power to act upon a petition filed by a corporation at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person or persons without authority to act for the corporation, or of its own motion to correct Commission records so as to eliminate the effects of clerical errors committed by its staff.

Code 1950, § 13.1-125; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. [765](#); 2008, c. [91](#); 2010, c. [782](#); 2015, c. [623](#).

§13.1-615. Fees to be collected by Commission; application of payment; payment of fees prerequisite to Commission action; exceptions.

A. The Commission shall assess the registration fees and shall charge and collect the filing fees, charter fees, and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment. When the Commission receives payment of an annual registration fee assessed against a domestic or foreign corporation, such payment shall be applied against any unpaid annual registration fees previously assessed against such corporation, including any penalties incurred thereon, beginning with the assessment or penalty that has remained unpaid for the longest period of time.

B. The Commission shall not file or issue with respect to any domestic or foreign corporation any document or certificate specified in this chapter, except the annual report required by § [13.1-775](#), a statement of change pursuant to § [13.1-635](#) or [13.1-764](#), and a statement of resignation pursuant to § [13.1-636](#) or [13.1-765](#), until all fees, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid by or on behalf of such corporation. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign corporation that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the corporation's annual registration fee payment in any year, provided that the Commission shall not issue a certificate of domestication with respect to a foreign corporation until the annual registration fee has been paid by or on behalf of that corporation.

C. A domestic or foreign corporation shall not be required to pay the annual registration fee assessed against it pursuant to subsection B of § [13.1-775.1](#) in any year if (i) the Commission issues or files any of the following types of certificate or instrument and (ii) the certificate or instrument is effective on or before the annual registration fee due date:

1. A certificate of termination of corporate existence, a certificate of incorporation surrender, or a certificate of entity conversion for a domestic corporation;
2. A certificate of withdrawal for a foreign corporation;
3. A certificate of merger or an authenticated copy of an instrument of merger for a domestic or foreign corporation that has merged into a surviving domestic corporation or eligible entity or into a surviving foreign corporation or eligible entity; or
4. An authenticated copy of an instrument of entity conversion for a foreign corporation that has converted to a different entity type.

The Commission shall cancel the annual registration fee assessments specified in this subsection that remain unpaid.

D. A foreign corporation that has amended its articles of incorporation to reduce the number of shares it is authorized to issue, effective prior to its annual registration fee assessment date pursuant to subsection B of § [13.1-775.1](#) of a given year, and has timely filed an authenticated copy of the amendment with the Commission pursuant to § [13.1-760](#) after its annual registration fee assessment date pursuant to subsection

B of § [13.1-775.1](#) shall have its annual registration fee reassessed to reflect the new number of authorized shares.

E. Annual registration fee assessments that have been paid shall not be refunded.

Code 1950, § 13.1-122; 1956, c. 428; 1985, c. 522; 1988, c. 405; 1989, c. 152; 1991, c. 309; 1997, c. [216](#); 2001, c. [545](#); 2002, c. [1](#); 2005, c. [765](#); 2006, c. [659](#); 2007, c. [810](#); 2009, c. [216](#); 2010, c. [753](#); 2015, c. [623](#).

§13.1-615.1. Charter and entrance fees for corporations.

A. Every domestic corporation, upon the granting of its charter or upon domestication, shall pay a charter fee into the state treasury, and every foreign corporation, when it obtains from the State Corporation Commission a certificate of authority to transact business in the Commonwealth, shall pay an entrance fee into the state treasury. The fee in each case is to be ascertained and fixed as follows:

For any domestic or foreign corporation whose number of authorized shares is 1,000,000 or fewer shares -- \$50 for each 25,000 shares or fraction thereof;

For any domestic or foreign corporation whose number of authorized shares is more than 1,000,000 shares -- \$2,500.

B. For any foreign corporation that files articles of domestication and that had authority to transact business in the Commonwealth at the time of such filing, the charter fee to be charged upon domestication shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as an entrance fee by such corporation.

C. For any foreign corporation that files an application for a certificate of authority to transact business in the Commonwealth and that had previously surrendered its articles of incorporation as a domestic corporation, the entrance fee to be charged upon obtaining a certificate of authority to transact business in the Commonwealth shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as a charter fee by such corporation.

D. Whenever by articles of amendment or articles of merger, the number of authorized shares of any domestic or foreign corporation or of the surviving corporation is increased, the charter or entrance fee to be charged shall be an amount equal to the difference between the amount already paid as a charter or entrance fee by such corporation and the amount that would be required by this section to be paid if the

increased number of authorized shares were being stated at that time in the original articles of incorporation.

E. For any domestic limited liability company that files articles of entity conversion to become a domestic corporation and that had previously converted from a domestic corporation, the charter fee to be charged upon entity conversion shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as a charter fee by the domestic limited liability company when it was a domestic corporation.

F. If no charter or entrance fee has been heretofore paid to the Commonwealth, the amount to be paid shall be the same as would have to be paid on original incorporation or application for authority to transact business.

1988, c. 405; 2001, c. [545](#); 2002, c. [1](#); 2007, c. [810](#); 2008, c. [509](#); 2015, c. [623](#).

§13.1-616. Fees for filing documents or issuing certificates.

The Commission shall charge and collect the following fees, except as provided in § [12.1-21.2](#):

1. For filing any one of the following, the fee shall be \$25:

- a. Articles of incorporation, domestication, or incorporation surrender.
- b. Articles of entity conversion to convert a domestic limited liability company to a corporation.
- c. Articles of amendment or restatement.
- d. Articles of merger or share exchange.
- e. Articles of correction.
- f. An application of a foreign corporation for a certificate of authority to transact business in the Commonwealth.
- g. An application of a foreign corporation for an amended certificate of authority to transact business in the Commonwealth.
- h. A copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.
- i. A copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

j. A copy of an instrument of entity conversion of a foreign corporation holding a certificate of authority to transact business in the Commonwealth.

2. For filing any one of the following, the fee shall be \$10:

a. An application to reserve or to renew the reservation of a corporate name.

b. A notice of transfer of a reserved corporate name.

c. An application for use of an indistinguishable name.

d. Articles of dissolution.

e. Articles of revocation of dissolution.

f. Articles of termination of corporate existence.

g. An application for a certificate of withdrawal of a foreign corporation.

3. For issuing a certificate pursuant to § [13.1-781](#), the fee shall be \$6.

Code 1950, §§ 13-18, 13.1-123, 13.1-124.1; 1956, c. 428; 1958, c. 564; 1964, c. 551; 1972, c. 579; 1975, c. 500; 1981, c. 522; 1982, c. 460; 1984, c. 294; 1985, c. 522; 1988, c. 405; 1995, c. [368](#); 2001, c. [545](#); 2002, c. [1](#); 2004, c. [274](#); 2005, c. [765](#); 2007, cc. [771](#), [810](#); 2012, c. [130](#).

§13.1-617. Repealed.

Repealed by Acts 2001, c. [545](#), effective February 1, 2002.

§13.1-618. Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by signing and delivering articles of incorporation to the Commission for filing.

Code 1950, § 13.1-48; 1956, c. 428; 1968, c. 42; 1972, c. 606; 1985, c. 522; 2015, c. [623](#).

§13.1-619. Articles of incorporation.

A. The articles of incorporation shall set forth:

1. A corporate name for the corporation that satisfies the requirements of § [13.1-630](#);

2. The number of shares the corporation is authorized to issue;

3. If more than one class or series of shares is authorized, the number of authorized shares of each class or series and a distinguishing designation for each class or series; and

4. The address of the corporation's initial registered office (including both (i) the post-office address with street and number, if any, and (ii) the name of the city or county in which it is located), and the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of Virginia and either a director of the corporation or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth.

B. The articles of incorporation may set forth:

1. The names and addresses of the individuals who are to serve as the initial directors;

2. Any provision defining or denying the preemptive right of shareholders to acquire unissued shares of the corporation;

3. Provisions not inconsistent with law:

a. Stating the purpose or purposes for which the corporation is organized;

b. Regarding the management of the business and regulation of the affairs of the corporation;

c. Defining, limiting, and regulating the powers of the corporation, its directors, and shareholders;

d. Establishing a par value for authorized shares or classes or series of shares; and

4. Any provision that under this chapter is required or permitted to be set forth in the bylaws.

C. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

D. Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection L of § [13.1-604](#).

Code 1950, § 13.1-49; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, c. 622; 1993, c. 113; 2000, c. [162](#); 2001, cc. [517](#), [541](#); 2005, c. [765](#).

§13.1-620. Special kinds of business.

A. If any corporation is to conduct the business of a bank or trust company, that shall be stated in the articles of incorporation and the corporation shall not have power to conduct other business except as may be related to or incidental to the banking or trust company business.

B. If any corporation is to conduct the business of an insurance company, that shall be stated in the articles of incorporation and the articles shall further set forth the class or classes of insurance the corporation proposes to undertake and the corporation shall not have power to conduct other business except as may be related to or incidental to the insurance business.

C. If any corporation is to conduct the business of a savings and loan association or savings bank, that shall be stated in the articles of incorporation and the corporation shall not have power to conduct other business except as may be related to or incidental to the stated business.

D. If any corporation is to conduct the business of a railroad or other public service company, that shall be stated in the articles of incorporation and a brief description of the business shall be included. Otherwise the corporation shall not have the power to conduct a public service business or to exercise any of the privileges of a public service company. No corporation shall be organized under this chapter for the purpose of conducting in this Commonwealth more than one kind of public service business except that the telephone and telegraph businesses or the water and sewer businesses may be combined, but this provision shall not limit the powers of domestic corporations existing on January 1, 1986. No corporation organized under this chapter to conduct the business of a public service company shall have general business powers in this Commonwealth. Corporations organized under this chapter to conduct the business of a public service company may, however, conduct in this Commonwealth other public service business or nonpublic service business so far as may be related to or incidental to its stated business as a public service company and in any other state such business as may be authorized or permitted by the laws thereof. Nothing in this subsection shall limit the powers of such corporation in respect of the securities of other corporations or of limited liability companies.

E. If one or more of the purposes set forth in the articles of incorporation is to own, manage or control any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages or for the production, transmission, delivery or furnishing of heat, light, power or water, including

heated or chilled water, or sewerage facilities, either directly or indirectly, to or for the public, the Commission shall not issue a certificate of incorporation unless the articles of incorporation expressly state that the corporation is to conduct business as a public service company.

F. Whether or not classified elsewhere in the Code as public service companies the following are not required to incorporate as public service companies: a person authorized by the Federal Communications Commission to provide commercial mobile service, household goods carriers, petroleum tank truck carriers, bottled gas companies, taxicab companies, community television companies, charter party carriers, restricted parcel carriers, sight-seeing carriers, companies excluded from the definition of "public utility" by § [56-265.1](#)(b)(4) or by § [56-1.2](#) and compressed natural gas filling stations.

G. A water or sewer company that proposes to serve more than fifty customers shall incorporate as a public service company. A water or sewer company shall not serve more than fifty customers unless its articles of incorporation state that the corporation is to conduct business as a public service company. The two preceding sentences shall not apply to a water or sewer company incorporated before and operating a water or sewer system on January 1, 1970; however, as to any water or sewer system serving more than fifty customers, upon application to the Commission by a majority of the customers or by the company, a hearing may be held after thirty days' notice to the company and the system's customers or a majority thereof, and the Commission may order such, if any, improvements or rate changes or both as are just and reasonable. Upon ordering into effect any rate changes or improvements found to be just and reasonable, the water or sewer system shall remain subject to the Commission's regulatory authority in the same manner as a public utility for such reasonable period as the Commission may direct. Nothing in this subsection shall apply to persons described in § [56-1.2](#).

Code 1950, § 13.1-50; 1956, c. 428; 1968, c. 110; 1970, c. 127; 1972, c. 123; 1974, c. 285; 1976, c. 284; 1981, c. 285; 1985, c. 522; 1990, c. 488; 1991, c. 263; 1993, cc. 61, 265, 419; 1995, c. [281](#); 1996, c. [16](#).

§13.1-621. Issuance of certificate of incorporation.

If the Commission finds that the articles of incorporation comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation. When the certificate of incorporation is effective, the corporate

existence shall begin. Upon becoming effective, the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter.

Code 1950, §§ 13-25, 13-26, 13.1-51, 13.1-52; 1956, c. 428; 1985, c. 522.

§13.1-622. Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting except for any liability to any person who also knew that there was no incorporation.

1985, c. 522.

§13.1-623. Organization of corporation.

A. After incorporation:

1. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

2. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

a. To elect a board of directors and complete the organization of the corporation; or

b. To elect directors who shall complete the organization of the corporation.

B. Action required or permitted by this Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

C. An organizational meeting may be held in or out of this Commonwealth.

Code 1950, § 13.1-54; 1956, c. 428; 1972, c. 606; 1974, c. 71; 1975, c. 500; 1985, c. 522.

§13.1-624. Bylaws.

A. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

B. The bylaws of a corporation may contain any provision that is not inconsistent with law or the articles of incorporation.

C. The bylaws may contain one or more of the following provisions:

1. A requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors;

2. A requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures or conditions as are provided in the bylaws, provided that no bylaw so adopted shall apply to elections for which any record date precedes its adoption; and

3. A requirement that a circuit court or a federal district court in the Commonwealth or the jurisdiction in which the corporation has its principal office shall be the sole and exclusive forum for (i) any derivative action brought on behalf of the corporation; (ii) any action for breach of duty to the corporation or the corporation's shareholders by any current or former officer or director of the corporation; or (iii) any action against the corporation or any current or former officer or director of the corporation arising pursuant to this chapter or the corporation's articles of incorporation or bylaws.

D. Notwithstanding subdivision B 2 of § [13.1-714](#), the shareholders in amending, repealing, or adopting a bylaw described in subsection C may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in, or to add any procedure or condition to, such a bylaw in order to provide for a reasonable, practicable, and orderly process.

Code 1950, §§ 13-10, 13.1-24; 1956, c. 428; 1985, c. 522; 2010, c. [782](#); 2015, c. [611](#).

§13.1-625. Emergency bylaws.

A. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection D of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

1. Procedures for calling a meeting of the board of directors;
2. Quorum requirements for the meeting; and
3. Designation of additional or substitute directors.

B. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

C. Corporate action taken in good faith in accordance with the emergency bylaws:

1. Binds the corporation; and
2. May not be used to impose liability on a corporate director, officer, employee, or agent.

D. An emergency exists for purposes of this section if a quorum of the corporation's board of directors cannot readily be assembled because of some catastrophic event.

Code 1950, § 13.1-24.1; 1962, c. 102; 1975, c. 500; 1985, c. 522.

§13.1-626. Purposes.

Every corporation incorporated under this Act has the purpose of engaging in any lawful business unless a more limited purpose is (i) set forth in the articles of incorporation, or (ii) required to be set forth in the articles of incorporation by § [13.1-620](#), or any other law of this Commonwealth.

1985, c. 522.

§13.1-627. General powers.

A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

1. To sue and be sued, complain and defend in its corporate name;
2. To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
3. To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Commonwealth;

4. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
5. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
6. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
7. To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities or property of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
8. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
9. To conduct its business, locate offices, and exercise the powers granted by this chapter within or without the Commonwealth;
10. To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
11. To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, share purchase plans and benefit and incentive plans for any or all of the current or former directors, officers, employees, and agents of the corporation or any of its subsidiaries;
12. To make donations for the public welfare or for religious, charitable, scientific, literary or educational purposes, except that corporations subject to regulation as to rates by the Commission shall not have power to make donations in excess of five percent of net income computed before federal and state taxes on income and without taking into account any deduction for gifts;
13. To make payments or donations, or do any other act, not inconsistent with this section or any other applicable law, that furthers the business and affairs of the corporation;
14. To pay compensation, or to pay additional compensation, to any or all directors, officers and employees on account of services previously rendered to the corporation,

whether or not an agreement to pay such compensation was made before such services were rendered;

15. To insure for its benefit the life of any of its directors, officers or employees, to insure the life of any shareholder for the purpose of acquiring at his death shares owned by such shareholder and to continue such insurance after the relationship terminates;

16. To cease its corporate activities and surrender its corporate franchise; and

17. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

B. Each corporation other than a public service company, a banking corporation, an insurance corporation, a savings institution or a credit union shall have power to enter into partnership agreements, joint ventures or other associations of any kind with any person or persons. The foregoing limitations on public service companies, banking corporations, insurance corporations, savings institutions, and credit unions shall not apply to the purchase by any such entity of any security of a limited liability company. The term "public service company" as used in this subsection shall not apply to railroads, which shall have the power given other corporations generally by this subsection. The foregoing limitation on public service companies shall not apply to partnership agreements, joint ventures or other associations where the purposes of such partnerships, joint ventures or other associations are activities that the public service company could lawfully engage in without participation in a partnership, joint venture or association and will require an equity investment by the public service company and debt with recourse to the public service company of an amount not more than one percent of its net equity as measured at the end of the most recent fiscal year so long as all such partnerships, joint ventures and associations collectively will require an equity investment by the public service company and debt with recourse to the public service company of less than five percent of the net equity of the public service company as measured at the end of the most recent fiscal year. Upon application by the public service company, the Commission may approve any partnership agreements, joint ventures or other associations that exceed the equity investment criteria set forth above. The foregoing limitation on public service companies shall not apply to partnership agreements, joint ventures or other associations between telephone companies and telephone companies, whether in corporate or other form, or between telephone companies and commonly owned affiliates of

telephone companies for the purpose of providing domestic cellular radio telecommunication service.

C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the Code on railroads or other public service companies, banking corporations, insurance corporations, savings and loan associations, credit unions, industrial loan associations or other special types of corporations, shall not be deemed repealed or amended by any provision of this chapter except where specifically so provided.

D. Each corporation which is deemed a private foundation, as defined in § 509 of the Internal Revenue Code, unless its articles of incorporation expressly provide otherwise, shall distribute its income and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any act of self-dealing, as defined in § 4941(d) of the Internal Revenue Code, retain any excess business holdings, as defined in § 4943(c) of the Internal Revenue Code, make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code or make any taxable expenditures, as defined in § 4945(d) of the Internal Revenue Code. This subsection shall apply to any corporation organized after December 31, 1969, under this chapter or under the Virginia Stock Corporation Act (§ [13.1-601](#) et seq.) enacted by Chapter 428 of the 1956 Acts of General Assembly; and to any corporation organized before January 1, 1970, only for its taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508(e)(2)(A) or (B) of the Internal Revenue Code shall apply or unless the board of directors of such corporation shall elect that such restrictions as contained in this subsection shall not apply by filing written notice of such election with the Attorney General and the clerk of the Commission on or before December 31, 1971. Each reference to a section of the Internal Revenue Code made in this subsection shall include future amendments to such Code sections and corresponding provisions of future internal revenue laws.

Code 1950, § 13.1-2.1; 1975, c. 500; 1977, c. 508; 1983, c. 534; 1984, c. 406; 1985, c. 522; 1993, cc. 61, 143, 419; 1994, c. [452](#); 1996, cc. [16](#), [257](#); 2005, c. [765](#); 2015, c. [611](#).

§13.1-628. Emergency powers.

A. In anticipation of or during an emergency defined in subsection D, the board of directors of a corporation may:

1. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and
2. Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

B. During an emergency defined in subsection D, unless emergency bylaws provide otherwise:

1. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and
2. One or more officers of the corporation present at a meeting of the board of directors may be deemed by a majority of the directors present at the meeting to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

C. Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

1. Binds the corporation; and
2. May not be used to impose liability on a director, officer, employee, or agent of the corporation.

D. An emergency exists for purposes of this section if a quorum of the corporation's board of directors cannot readily be assembled because of some catastrophic event.

1985, c. 522; 2005, c. [765](#).

§13.1-629. Ultra vires.

A. Except as provided in subsection B of this section, corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

B. A corporation's power to act may be challenged:

1. In a proceeding by a shareholder against the corporation to enjoin the act;
2. In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

3. In a proceeding against a corporation before the Commission.

C. In a shareholder's proceeding under subdivision 1 of subsection B of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act and may award damages for loss, except anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

Code 1950, § 13.1-5; 1956, c. 428; 1985, c. 522.

§13.1-630. Corporate name.

A. A corporate name shall contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd." Such words and their corresponding abbreviations may be used interchangeably for all purposes.

B. A corporate name shall not contain:

1. Any language stating or implying that it will transact one of the special kinds of businesses listed in § [13.1-620](#) unless it proposes in fact to engage in such special kind of business;

2. The word "redevelopment" unless the corporation is organized as an urban redevelopment corporation pursuant to Chapter 190 of the 1946 Acts of Assembly, as amended;

3. Any word, abbreviation, or combination of characters that states or implies the corporation is a limited liability company or a limited partnership; or

4. Any word or phrase that is prohibited by law for such corporation.

C. Except as authorized by subsection D, a corporate name shall be distinguishable upon the records of the Commission from:

1. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of the Commonwealth or authorized to transact business in the Commonwealth;

2. A corporate name reserved or registered under § [13.1-631](#), [13.1-632](#), [13.1-830](#) or [13.1-831](#);

3. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in the Commonwealth;

4. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in the Commonwealth;
5. A limited liability company name reserved under § [13.1-1013](#);
6. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in the Commonwealth;
7. The name of a domestic business trust or a foreign business trust registered to transact business in the Commonwealth;
8. A business trust name reserved under § [13.1-1215](#);
9. The designated name adopted by a foreign business trust because its real name is unavailable for use in the Commonwealth;
10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in the Commonwealth;
11. A limited partnership name reserved under § [50-73.3](#); and
12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in the Commonwealth.

D. A domestic corporation may apply to the Commission for authorization to use a name that is not distinguishable upon the Commission's records from one or more of the names described in subsection C. The Commission shall authorize use of the name applied for if the other entity consents to the use in writing and submits an undertaking in a form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying corporation.

E. The use of assumed names or fictitious names, as provided for in Chapter 5 (§ [59.1-69](#) et seq.) of Title 59.1, is not affected by this chapter.

F. The Commission, in determining whether a corporate name is distinguishable upon its records from the name of any of the business entities listed in subsection C, shall not consider any word, phrase, abbreviation, or designation required or permitted under this section and § [13.1-544.1](#), subsection A of § [13.1-1012](#), § [13.1-1104](#), subsection A of § [50-73.2](#), and subdivision A 2 of § [50-73.78](#) to be contained in the name of a business entity formed or organized under the laws of the Commonwealth or authorized or registered to transact business in the Commonwealth.

Code 1950, § 13.1-6; 1956, c. 428; 1968, c. 241; 1975, c. 500; 1985, c. 522; 1986, c. 232; 2003, c. [592](#); 2005, cc. [379](#), [765](#); 2009, c. [216](#); 2012, c. [63](#).

§13.1-631. Reserved name.

A. A person may apply to the Commission to reserve the exclusive use of a corporate name, including a designated name for a foreign corporation. The corporate name applied for need not comply with subsection A of § [13.1-630](#). If the Commission finds that the corporate name applied for is distinguishable upon the records of the Commission, it shall reserve the name for the applicant's exclusive use for a 120-day period.

B. The owner of a reserved corporate name may renew the reservation for successive periods of 120 days each by filing with the Commission, during the 45-day period preceding the date of expiration of the reservation, a renewal application.

C. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Commission a notice of the transfer, signed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

D. A reserved corporate name may be used by its owner in connection with (i) the formation or an amendment to change the name of a domestic stock or nonstock corporation, limited liability company, business trust, or limited partnership; (ii) an application for a certificate of authority or registration to transact business in the Commonwealth as a foreign stock or nonstock corporation, limited liability company, business trust, or limited partnership; or (iii) an amended application for such authority or registration, provided that the proposed name complies with the provisions of § [13.1-630](#), [13.1-762](#), [13.1-829](#), [13.1-924](#), [13.1-1012](#), [13.1-1054](#), [13.1-1214](#), [13.1-1244](#), [50-73.2](#), or [50-73.56](#), as the case may be.

Code 1950, § 13.1-7; 1956, c. 428; 1985, c. 522; 2005, c. [765](#); 2015, c. [444](#).

§13.1-632. Registered name.

A. A foreign corporation may register its corporate name, or its corporate name with any addition required by § [13.1-762](#), if the name is distinguishable upon the records of the Commission from the corporate names that are not available under subsection C of § [13.1-630](#).

B. A foreign corporation registers its corporate name, or its corporate name with any addition required by § [13.1-762](#), by:

1. Filing with the Commission (i) an application setting forth its corporate name, or its corporate name with any addition required by § [13.1-762](#), the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and (ii) a certificate setting forth that such corporation is in good standing, or a document of similar import, from the state or country of incorporation, executed by the official who has custody of the records pertaining to corporations; and

2. Paying to the Commission a registration fee in the amount of \$20. Except as provided in subsection E, registration is effective for one year after the date an application is filed.

C. If the Commission finds that the corporate name applied for is available, it shall register the name for the applicant's exclusive use.

D. A foreign corporation whose registration is effective may renew it for the succeeding year by filing with the Commission, during the 60-day period preceding the date of expiration of the registration, a renewal application that complies with the requirements of subsection B, and paying a renewal fee of \$20. The renewal application is effective when filed in accordance with this section and, except as provided in subsection E, renews the registration for one year after the date the registration would have expired if such subsequent renewal of the registration had not occurred.

E. A foreign corporation whose registration is effective may thereafter obtain a certificate of authority to transact business in the Commonwealth under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in the Commonwealth. The registration terminates when the domestic corporation is incorporated or the foreign corporation obtains a certificate of authority to transact business in the Commonwealth or consents to the authorization of another foreign corporation to transact business in the Commonwealth under the registered name.

F. A foreign corporation that has in effect a registration of its corporate name may release such name by filing a notice of release of a registered name with the Commission and by paying a fee of \$10.

Code 1950, § 13.1-8; 1956, c. 428; 1981, c. 522; 1984, c. 771; 1985, c. 522; 1995, c. [114](#); 2005, c. [765](#).

§13.1-633. Repealed.

Repealed by Acts 2007, c. [771](#), cl. 2.

§13.1-634. Registered office and registered agent.

A. Each corporation shall continuously maintain in this Commonwealth:

1. A registered office that may be the same as any of its places of business; and

2. A registered agent, who shall be:

a. An individual who is a resident of this Commonwealth and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the corporation at its last known address any process, notice or demand that is served on the registered agent.

Code 1950, § 13.1-9; 1956, c. 428; 1975, c. 407; 1976, c. 4; 1985, c. 522; 1993, c. 113; 2000, c. [162](#); 2001, cc. [517](#), [541](#).

§13.1-635. Change of registered office or registered agent.

A. A corporation may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the corporation;

2. The address of its current registered office;

3. If the current registered office is to be changed, the post office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;

4. The name of its current registered agent;

5. If the current registered agent is to be changed, the name of the new registered agent; and

6. That after the change or changes are made, the corporation will be in compliance with the requirements of § [13.1-634](#).

B. A statement of change shall forthwith be filed with the Commission by a corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § [13.1-634](#).

C. A corporation's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A corporation's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § [13.1-634](#). In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office address of the corporation on or before the business day following the day on which the statement is filed.

Code 1950, § 13.1-10; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1976, c. 4; 1985, c. 522; 1986, c. 622; 1987, c. 183; 1988, c. 405; 2003, c. [597](#); 2010, cc. [434](#), [782](#).

§13.1-636. Resignation of registered agent.

A. A registered agent may resign the agency appointment by signing and filing with the Commission a statement of resignation accompanied by a certification that the registered agent shall mail a copy thereof to the principal office of the corporation by certified mail on or before the business day following the day on which the statement is filed. The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

1985, c. 522; 2005, c. [765](#); 2010, c. [434](#).

§13.1-637. Service on corporation.

A. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation. The registered agent may by instrument in writing, acknowledged before a notary public, designate a natural person or persons in the office of the registered agent upon whom any such process, notice or demand may be served and may, by instrument in writing, authorize service of process by facsimile by the sheriff, provided acknowledgement of receipt of service is returned by facsimile to the sheriff. Whenever any person so designated by the registered agent accepts service of process or whenever service is by facsimile, a photographic copy of the instruments designating the person or authorizing the method of service and receipt shall be attached to the return.

B. Whenever a corporation fails to appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the corporation upon whom service may be made in accordance with § [12.1-19.1](#).

C. This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

Code 1950, §§ 13-12, 13-14, 13.1-11; 1956, c. 428; 1985, c. 522; 1986, c. 622; 1991, c. 672; 1995, c. [411](#); 2001, cc. [517](#), [541](#).

§13.1-638. Authorized shares.

A. The articles of incorporation shall set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class or series and shall describe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights and limitations of that class or series. Except to the extent varied as permitted by this section or by subsection B of § [13.1-646](#), all shares of a class or series shall have terms, including preferences, rights, and limitations, that are identical with those of other shares of the same class or series.

B. The articles of incorporation shall authorize:

1. One or more classes or series of shares that together have unlimited voting rights; and

2. One or more classes or series of shares, which may be the same class or classes or series as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

C. The articles of incorporation may authorize one or more classes or series of shares that:

1. Have special, conditional or limited voting rights, or no right to vote, except to the extent otherwise provided by this chapter;

2. Are redeemable or convertible as specified in the articles of incorporation:

a. At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event;

b. For cash, indebtedness, securities, or other property; and

c. At prices and in amounts specified or determined in accordance with a formula;

3. Entitle the holders to distributions, calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative;

4. Have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation; or

5. Entitle the holders to other specified rights, including a right that no transaction of a specified nature shall be consummated while any such shares remain outstanding except upon the assent of all or a specified portion of such shares.

D. Any of the terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection L of § [13.1-604](#).

E. Any of the terms of shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.

F. The description of the preferences, rights, and limitations of classes or series of shares in subsection C is not exhaustive.

Code 1950, §§ 13.1-12, 13.1-13; 1956, c. 428; 1958, c. 564; 1985, c. 522; 1990, c. 423; 2005, c. [765](#).

§13.1-639. Terms of class or series determined by board of directors.

A. If the articles of incorporation so provide, the board of directors, without shareholder action, may, by adoption of an amendment of the articles of incorporation:

1. Classify any unissued shares into one or more classes or into one or more series within one or more classes;
2. Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or
3. Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within one or more classes.

B. If the board of directors acts pursuant to subsection A, it shall determine the terms, including the preferences, rights and limitations, to the same extent permitted under § [13.1-638](#), of:

1. Any class of shares before the issuance of any shares of that class, or
2. Any series within a class before the issuance of any shares of that series.

C. Unless the articles of incorporation otherwise provide, the board of directors, without shareholder action, may, by adoption of an amendment of the articles of incorporation, delete from the articles of incorporation any provisions originally adopted by the board of directors without shareholder action fixing the preferences, limitations and rights of any class of shares or series within a class, provided there are no shares of such class or series then outstanding.

D. Unless the articles of incorporation otherwise provide, the board of directors of a corporation that is registered as an open-end management investment company under the Investment Company Act of 1940, without shareholder action, may, by adoption of an amendment of the articles of incorporation:

1. Classify any unissued shares into one or more classes or into one or more series within one or more classes; or
2. Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or
3. Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within one or more classes.

E. When the board of directors has adopted an amendment of the articles of incorporation pursuant to subsection A, C or D, the corporation shall file with the Commission articles of amendment that set forth:

1. The name of the corporation;

2. The text of the amendment, including any determination made pursuant to subsection B;
3. The date it was adopted; and
4. A statement that the amendment was duly adopted by the board of directors.

If the Commission finds that the articles comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment. Shares of any class or series that are the subject of the articles of amendment shall not be issued until the certificate of amendment is effective.

Code 1950, § 13.1-14; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1988, c. 193; 2005, c. [765](#); 2006, c. [330](#).

§13.1-640. Issued and outstanding shares.

A. A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

B. The reacquisition, redemption or conversion of outstanding shares is subject to the limitations of subsection C of this section and to § [13.1-653](#).

C. At all times that shares of the corporation are issued and outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

1985, c. 522.

§13.1-641. Fractional shares.

A. A corporation may, if authorized by its board of directors:

1. Issue fractions of a share or pay in money the value of fractions of a share;
2. Arrange for disposition of fractional shares by the shareholders; or
3. Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

B. Each certificate representing scrip shall be conspicuously labeled "Scrip" and shall contain the information required by subsection B of § [13.1-647](#).

C. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of

the corporation upon dissolution. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

D. The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

1. That the scrip will become void if not exchanged for full shares before a specified date; and

2. That the shares for which the scrip is exchangeable may be sold by the corporation and the proceeds paid to the scripholders.

E. When a corporation is to pay in money the value of fractions of a share such value shall be determined by the board of directors. A good faith judgment of the board of directors as to the value of a fractional share is conclusive.

Code 1950, § 13.1-21; 1956, c. 428; 1958, c. 564; 1966, c. 466; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. [765](#).

§13.1-642. Subscription for shares before incorporation.

A. A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides otherwise or all the subscribers agree to revocation.

B. The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

C. Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

D. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. The articles of incorporation, bylaws or the subscription agreement may prescribe other penalties for nonpayment but a subscription and the installments already paid on it may not be forfeited unless the corporation demands the amount due by written notice to the subscriber and it remains unpaid for at least 20 days after the effective date of the notice.

E. If a subscription for unissued shares is forfeited for nonpayment under subsection D, the corporation may sell the shares subscribed for. If the shares are sold by reason of any forfeiture for more than the amount due on the subscription, the corporation shall pay the excess, after deducting the expense of sale, to the subscriber or the subscriber's representative.

F. A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to § [13.1-643](#).

Code 1950, §§ 13-98, 13.1-15; 1956, c. 428; 1972, c. 580; 1975, c. 500; 1985, c. 522; 2005, c. [765](#).

§13.1-643. Issuance of shares.

A. The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

B. Any issuance of shares must be authorized by the board of directors. Shares may be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

C. A good faith determination by the board of directors that the consideration received or to be received for the shares to be issued is adequate is conclusive insofar as the adequacy of consideration relates to whether the shares are validly issued, fully paid and nonassessable. When the board of directors has made such a determination and the corporation has received the consideration, the shares issued therefor are fully paid and nonassessable.

D. The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the benefits are received or the note is paid. If the services are not performed, the benefits are not received or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

E. Where it cannot be determined that outstanding shares are fully paid and nonassessable, there shall be a conclusive presumption that such shares are fully paid and nonassessable if the board of directors makes a good faith determination that there is no substantial evidence that the full consideration for such shares has not been paid.

Code 1950, §§ 13-97, 13-98, 13.1-15, 13.1-17; 1956, c. 428; 1958, c. 564; 1964, c. 352; 1972, c. 580; 1975, c. 500; 1985, c. 522.

§13.1-644. Liability for shares issued before payment.

A. A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued as provided in § [13.1-643](#) or specified in the subscription agreement under § [13.1-642](#).

B. A person who becomes a transferee of shares in good faith and without knowledge that the consideration determined for the shares pursuant to § [13.1-643](#) or specified in the subscription agreement pursuant to § [13.1-642](#) has not been paid is not personally liable for any unpaid portion of the consideration, but the initial transferor remains liable therefor.

C. An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not, in any event, be personally liable to the corporation as transferee of a purchaser from the corporation of its own shares but the estate of the purchaser and his assets in the hands of such personal representative shall be so liable.

D. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

Code 1950, §§ 13-97, 13.1-22; 1956, c. 428; 1975, c. 500; 1985, c. 522.

§13.1-645. Share dividends.

A. Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

B. Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (i) the articles of incorporation so authorize, (ii) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (iii) there are no outstanding shares of the class or series to be issued. For purposes of this subsection, if a security convertible into or carrying a right to subscribe for or acquire shares of the class or series to be issued is outstanding, the holders shall be deemed to be holders of the class or series.

C. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

Code 1950, §§ 13-37, 13.1-19; 1956, c. 428; 1972, c. 580; 1975, c. 500; 1985, c. 522.

§13.1-646. Share options.

A. Subject to the provisions of § [13.1-651](#), a corporation may issue rights, options or warrants for the purchase of shares or other securities of the corporation. Unless reserved to the shareholders in the articles of incorporation, the board of directors may authorize the issuance of rights, options or warrants and determine (i) the terms upon which the rights, options or warrants are issued and (ii) the terms, including the consideration for which the shares or other securities are to be issued. The authorization for the corporation to issue such rights, options or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options or warrants are exercisable.

B. Notwithstanding the provisions of subsection A of § [13.1-638](#), the terms of rights, options or warrants issued by a corporation may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer or receipt thereof by designated persons or classes of persons or that invalidate or void such rights, options, or warrants held by designated persons or classes of persons. Any action or determination by the board of directors with respect to the issuance, the terms of or the redemption of rights, options, or warrants shall be subject to the provisions of § [13.1-690](#) and shall be valid if taken or determined in compliance therewith.

C. The board of directors may authorize one or more officers to (i) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares and (ii) determine, within an amount and subject to any other limitations established by the board and, if applicable, the shareholders, the number of such rights, options, warrants, or other equity compensation awards and the terms thereof to be received by the recipients, provided that an officer may not use such authority to designate himself, or any other person specified by the board of directors, as a recipient of such rights, options, warrants, or other equity compensation awards.

1985, c. 522; 1986, c. 74; 1988, c. 442; 1990, c. 423; 1992, c. 472; 2005, c. [765](#); 2010, c. [782](#).

§13.1-647. Form and content of certificates evidencing shares and form of bonds.

A. Shares may but need not be represented by certificates. Unless this chapter or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

B. At a minimum each share certificate shall state on its face:

1. The name of the issuing corporation and that it is organized under the law of this Commonwealth;
2. The name of the person to whom issued; and
3. The number and class of shares and the designation of the series, if any, the certificate represents.

C. If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) shall be summarized on the front or back of each certificate for shares of such class or series. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

D. Each share certificate (i) shall be signed by two officers designated in the bylaws or by the board of directors and (ii) may bear the corporate seal or its facsimile. Unless otherwise provided in the articles of incorporation or bylaws, any or all of the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

E. On any bond, note or debenture issued by a corporation that is countersigned or otherwise authenticated by the manual signature of a trustee, the signatures of the officers of the corporation and its seal may be facsimiles.

F. If the person who signed, either manually or in facsimile, a share certificate or bond, note or debenture no longer holds office when the certificate or bond, note or debenture is issued, the certificate or bond, note or debenture is nevertheless valid.

Code 1950, § 13.1-20; 1956, c. 428; 1958, c. 564; 1972, c. 580; 1984, c. 613; 1985, c. 522; 1986, c. 623; 1990, c. 227; 2005, c. [765](#).

§13.1-648. Shares without certificates.

A. Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

B. Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by subsections B and C of § [13.1-647](#), and, if applicable, § [13.1-649](#).

Code 1950, § 13.1-20; 1956, c. 428; 1958, c. 564; 1972, c. 580; 1984, c. 613; 1985, c. 522.

§13.1-649. Restriction on transfer of shares and other securities.

A. The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

B. A restriction on the transfer or registration of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or in the information statement required by subsection B of § [13.1-648](#). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

C. A restriction on the transfer or registration of transfer of shares is authorized:

1. To maintain the corporation's status when it is dependent on the number or identity of its shareholders;
2. To preserve exemptions under federal or state securities law; and
3. For any other reasonable purpose.

D. A restriction on the transfer or registration of transfer of shares may:

1. Obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;
 2. Obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares;
 3. Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or
 4. Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.
- E. For purposes of this section, "shares" includes any warrants, rights or options to acquire any such shares or any security or other obligation of the corporation convertible into any such shares or into warrants, rights or options to acquire any such shares.

1985, c. 522; 2005, c. [765](#); 2015, c. [611](#).

§13.1-650. Expense of issue.

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

1985, c. 522.

§13.1-651. Shareholders' preemptive rights.

A. Unless limited or denied in the articles of incorporation and subject to the limitations in subsections D through G, the shareholders of a corporation incorporated on or before December 31, 2005, have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

B. Unless otherwise provided for in the articles of incorporation, the shareholders of a corporation incorporated after December 31, 2005, have no preemptive right to acquire the corporation's unissued shares upon the decision of the board of directors to issue them.

C. Except to the extent that the articles of incorporation expressly provide otherwise, a shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

D. Unless expressly conferred in the articles of incorporation, there is no preemptive right with respect to:

1. Shares issued to officers or employees of the corporation or of its subsidiaries pursuant to a plan approved by the shareholders; or

2. Shares sold other than for money.

E. Holders of shares of any class with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

F. Holders of shares of any class without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into, or carry a right to subscribe for or acquire, shares without preferential rights.

G. Holders of shares without general voting rights and without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with general voting rights but without preferential rights to distributions or assets.

H. Except to the extent that the articles of incorporation expressly provide otherwise, shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

I. For purposes of this section, "shares" includes any warrants, rights or options to acquire any such shares or any security or other obligation of the corporation convertible into any such shares or into warrants, rights or options to acquire any such shares.

Code 1950, § 13.1-23; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. [765](#).

§13.1-652. Corporation's acquisition of its own shares.

A. A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares of the same class, if any, but undesignated as to series.

B. If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon the issuance of a certificate of amendment. The corporation shall file with the Commission articles of amendment setting forth:

1. The name of the corporation;
2. The reduction in the number of authorized shares, itemized by class and series;
3. The total number of authorized shares, itemized by class and series, remaining after reduction of the shares; and
4. A statement that the reduction in the number of authorized shares was authorized by the board of directors. The articles of amendment may be adopted by the board of directors without shareholder action.

C. If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

Code 1950, §§ 13.1-65, 13.1-66; 1956, c. 428; 1958, c. 564; 1985, c. 522; 2005, c. [765](#).

§13.1-653. Distributions to shareholders.

A. A board of directors may authorize and the corporation may make distributions to its shareholders, subject to restriction by the articles of incorporation and the limitation in subsection C.

B. If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

C. No distribution may be made if, after giving it effect:

1. The corporation would not be able to pay its debts as they become due in the usual course of business; or
2. The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

D. The board of directors may base a determination that a distribution is not prohibited under subsection C either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances. For any public corporation, reliance upon the most recent financial statements that have been prepared in accordance with accounting principles generally accepted in the United States shall be deemed to be reasonable in the circumstances if the financial statements have been audited by independent certified public accountants whose certification does not include a going concern qualification.

E. Except as provided in subsection G, the effect of a distribution under subsection C is measured:

1. In the case of a distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;
2. In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
3. In all other cases, as of (i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or (ii) the date payment is made if it occurs more than 120 days after the date of authorization.

F. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

G. Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection C if its terms provide that payments of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

H. This section shall not apply to distributions in liquidation under Article 16 (§ [13.1-742](#) et seq.) of this chapter.

Code 1950, §§ 13-206, 13.1-4, 13.1-43, 13.1-62; 1956, c. 428; 1962, c. 14; 1979, c. 175; 1985, c. 522; 2005, c. [765](#).

§13.1-654. Annual meeting.

A. Unless directors are elected by written consent in lieu of an annual meeting as permitted by § [13.1-657](#), a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws, except that a corporation registered under the Investment Company Act of 1940 is not required to hold an annual meeting in any year in which the election of directors is not required to be held under the Investment Company Act of 1940 unless the articles of incorporation or bylaws of the corporation require an annual meeting to be held.

B. Except as otherwise determined by the board of directors acting pursuant to subsection C of § [13.1-660.2](#), shareholders' meetings may be held at such place, in or out of the Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

C. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Code 1950, § 13.1-25; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1990, c. 228; 2003, c. [728](#); 2005, c. [765](#); 2007, c. [165](#); 2012, c. [706](#); 2017, c. [646](#).

§13.1-655. Special meeting.

A. A corporation shall hold a special meeting of shareholders:

1. On call of the chairman of the board of directors, the president, the board of directors, or the person or persons authorized to do so by the articles of incorporation or bylaws; or

2. In the case of a corporation that is not a public corporation and that has 35 or fewer shareholders of record, if the holders of at least 20 percent of all votes entitled to be cast on any issue proposed to be considered at the special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held. The articles of incorporation may provide for an increase or decrease in the percentage stated in this subdivision.

B. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing, including an electronic transmission, to

that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

C. If not otherwise fixed under § [13.1-656](#) or [13.1-660](#), the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

D. Except as otherwise determined by the board of directors acting pursuant to subsection C of § [13.1-660.2](#), shareholders' meetings may be held at such place in or out of this Commonwealth as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

E. Only business within the purpose or purposes described in the meeting notice required by subsection C of § [13.1-658](#) may be conducted at a special shareholders' meeting.

Code 1950, § 13.1-25; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2003, c. [728](#); 2005, c. [765](#); 2012, c. [706](#); 2017, c. [646](#).

§13.1-656. Court-ordered meeting.

A. The circuit court of the city or county where a corporation's principal office is located or, if none in the Commonwealth, where its registered office is located, may, after notice to the corporation, order a meeting of shareholders to be held:

1. On petition of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within 15 months after its last annual meeting or, if there has been no annual meeting, the date of its incorporation; or

2. On petition of a shareholder who signed a demand for a special meeting that satisfies the requirements of § [13.1-655](#) if:

a. Notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

b. The special meeting was not held in accordance with the notice.

B. The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

1985, c. 522; 2005, c. [765](#); 2007, c. [165](#); 2010, c. [782](#).

§13.1-657. Action without meeting.

A. Action required or permitted by this chapter to be adopted or taken at a shareholders' meeting may be adopted or taken without a meeting if the action is adopted or taken by all the shareholders entitled to vote on the action, in which case no action by the board of directors shall be required. The adoption or taking of the action shall be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, bearing the date of each signature, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

B. The articles of incorporation may authorize action by shareholders by less than unanimous written consent provided that the taking of such action is consistent with any requirements that may be set forth in the corporation's articles of incorporation, the bylaws, or this section. For such action to be valid:

1. It shall be an action that this chapter requires or permits to be adopted or taken at a shareholders' meeting;

2. The corporation's articles of incorporation shall authorize action by shareholders by less than unanimous written consent and, if a public corporation at the time of such authorization, the inclusion of the authorization in the articles of incorporation shall be approved by each voting group entitled to vote by the greater of:

- a. The vote of that voting group required by the corporation's articles of incorporation to amend the articles of incorporation; and

- b. More than two-thirds of all votes that the voting group is entitled to cast on the amendment;

3. Before the holders of more than 10 percent of the outstanding shares of any voting group entitled to vote on the action to be adopted or taken have executed the written consent, the corporation's secretary shall have received a copy of the form of written consent setting forth the action to be adopted or taken; and

4. The holders of not less than the minimum number of outstanding shares of each voting group entitled to vote on the action that would be required to adopt or take the action at a shareholders' meeting at which all shares of each voting group entitled to vote on the action were present and voted shall have signed written consents setting forth the action to be adopted or taken.

The written consent shall bear the date on which each shareholder signed the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

C. If not otherwise fixed under § [13.1-656](#) or [13.1-660](#) and if prior board action is not required respecting the action to be adopted or taken without a meeting, the record date for determining the shareholders entitled to adopt or take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under § [13.1-656](#) or [13.1-660](#) and if prior board action is required respecting the action to be adopted or taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to adopt or take the action referred to therein unless, within 60 days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by the holders of shares having sufficient votes to adopt or take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to adopt or take the action are delivered to the corporation.

D. A consent signed pursuant to the provisions of this section has the effect of a vote at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action adopted or taken by written consent shall be effective when (i) written consents signed by the holders of shares having sufficient votes to adopt or take the action are delivered to the corporation or (ii) if an effective date is specified therein, as of such date provided such consent states the date of execution by the consenting shareholder.

E. Any person, whether or not then a shareholder, may provide that a consent in writing as a shareholder shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a shareholder at such future time and (ii) the person did not revoke the consent prior to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to its becoming effective.

F. If this chapter requires that notice of a proposed action be given to nonvoting shareholders and the action is to be adopted or taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action not more than 10 days after (i) written consents sufficient to adopt or take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection D. The notice shall reasonably describe the action adopted or taken and contain or be accompanied by the same material that under any provision of this chapter would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

G. If action is adopted or taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not more than 10 days after (i) written consents sufficient to adopt or take the action have been delivered to the corporation or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection D. The notice shall reasonably describe the action adopted or taken and contain or be accompanied by the same material that under any provision of this chapter would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

Code 1950, § 13.1-28; 1956, c. 428; 1985, c. 522; 1999, c. [416](#); 2003, c. [728](#); 2005, c. [765](#); 2007, c. [165](#); 2008, c. [91](#); 2010, c. [782](#); 2012, c. [706](#); 2015, c. [611](#).

§13.1-658. Notice of meeting.

A. A corporation shall notify shareholders of the date, time, and place, if any, of each annual and special shareholders' meeting. Such notice shall be given no less than 10 nor more than 60 days before the meeting date except that notice of a shareholders' meeting to act on an amendment of the articles of incorporation, a plan of merger, share exchange, domestication or entity conversion, a proposed sale of assets pursuant to § [13.1-724](#), or the dissolution of the corporation shall be given not less than 25 nor more than 60 days before the meeting date. The notice shall include the record date for determining the shareholders entitled to vote at the meeting, if such date is different than the record date for determining shareholders entitled to notice of the meeting. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the

meeting as of the record date for determining the shareholders entitled to notice of the meeting.

B. Unless the articles of incorporation or this chapter requires otherwise, notice of an annual meeting need not state the purpose or purposes for which the meeting is called.

C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

D. If not otherwise fixed under § [13.1-656](#) or [13.1-660](#), the record date for determining shareholders entitled to notice of and to vote at an annual or special meeting is the day before the effective date of the notice to shareholders.

E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different date, time, or place, notice need not be given if the new date, time, or place, if any, is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed under § [13.1-660](#), however, not less than 10 days before the meeting date notice of the adjourned meeting shall be given under this section to shareholders entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

F. Notwithstanding the foregoing, no notice of a shareholders' meeting need be given to a shareholder if (i) an annual report and proxy statements for two consecutive annual meetings of shareholders or (ii) all, and at least two, checks in payment of dividends or interest on securities during a 12-month period, have been sent by first-class United States mail, addressed to the shareholder at the shareholder's address as it appears on the share transfer books of the corporation, and returned undeliverable. The obligation of the corporation to give notice of shareholders' meetings to any such shareholder shall be reinstated once the corporation has received a new address for such shareholder for entry on its share transfer books.

Code 1950, § 13.1-26; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1984, c. 301; 1985, c. 522; 1999, c. [102](#); 2001, c. [545](#); 2002, cc. [1](#), [285](#); 2005, c. [765](#); 2010, c. [782](#); 2015, c. [611](#); 2017, c. [646](#).

§13.1-659. Waiver of notice.

A. A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time of the meeting that is the subject of such notice. The waiver shall be in writing, be signed by the shareholder

entitled to the notice, and be delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records.

B. A shareholder's attendance at a meeting:

1. Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and
2. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Code 1950, § 13.1-27; 1956, c. 428; 1985, c. 522.

§13.1-660. Record date.

A. The bylaws may fix or provide the manner of fixing in advance the record date or dates for one or more voting groups in order to make a determination of shareholders for any purpose. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix as the record date the date on which it takes such action or a future date.

B. A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

C. A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date or dates, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

D. If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date or dates continue in effect or it may fix a new record date or dates.

E. The record date for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors shall be the record date for determining shareholders entitled to both notice of and to vote at the shareholders' meeting, unless in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

Code 1950, §§ 13-192, 13.1-29; 1952, c. 88; 1956, c. 428; 1985, c. 522; 2005, c. [765](#); 2010, c. [782](#).

§13.1-660.1. Conduct of the meeting.

A. At each meeting of shareholders, a chairman shall preside. The chairman shall be appointed as provided in the articles of incorporation, bylaws or, in the absence of such a provision, by the board of directors.

B. Unless the articles of incorporation or bylaws provide otherwise, the chairman shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

C. The chairman of the meeting shall announce at the meeting when the polls open and close for each matter voted upon. If no announcement is made, the polls shall be deemed to have opened at the beginning of the meeting and closed upon the final adjournment of the meeting.

2005, c. [765](#).

§13.1-660.2. Remote participation in annual and special meetings.

A. Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation by means of remote communication shall be subject to such guidelines and procedures the board of directors adopts, and shall be in conformity with subsection B.

B. Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

1. Verify that each person participating remotely is a shareholder or a shareholder's proxy; and

2. Provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

C. Unless the articles of incorporation or bylaws require the meeting of shareholders to be held at a place, the board of directors may determine that any meeting of share-

holders shall not be held at any place and shall instead be held solely by means of remote communication in conformity with subsection B.

2010, c. [782](#); 2017, c. [646](#).

§13.1-661. Shareholders' list for meeting.

A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under subsection E of § [13.1-660](#) to determine the shareholders entitled to vote at the meeting, a corporation shall also prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list shall be arranged by voting group, and within each group by class or series of shares, and show the address of and number of shares held by each shareholder.

B. The shareholders' list for notice shall be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the county or city where the meeting will be held. A shareholders' list for voting shall be similarly available for inspection promptly after the record date for voting. The original share transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or to vote at any meeting of shareholders. A shareholder, or the shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements set forth in subsection D of § [13.1-771](#), to copy a list, during the regular business hours and at the shareholder's expense, during the period it is available for inspection.

C. If the meeting is to be held at a place, the corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder, or the shareholder's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

D. If the corporation refuses to allow a shareholder, the shareholder's agent, or the shareholder's attorney to inspect a shareholders' list before or at the meeting as provided in subsections B and C, or to copy a list as permitted by subsection B, the circuit court of the county or city where the corporation's principal office, or if none in the Commonwealth its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense

and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

E. Refusal or failure to prepare or make available a shareholders' list does not affect the validity of action taken at the meeting.

Code 1950, § 13.1-30; 1956, c. 428; 1964, c. 418; 1975, c. 500; 1985, c. 522; 2010, c. [782](#); 2012, c. [706](#); 2017, c. [646](#).

§13.1-662. Voting entitlement of shares.

A. Except as provided in subsections B, C, D and E or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting.

B. Unless the articles of incorporation provide otherwise, in the election of directors each outstanding share, regardless of class, is entitled to one vote for as many persons as there are directors to be elected at that time and for whose election the shareholder has a right to vote.

C. Shares that have been called for redemption are not entitled to vote on any matter and, except as to any right of conversion, shall not be deemed outstanding shares after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution with irrevocable instruction and authority to pay the holders the redemption price on surrender of the shares. Such instruction may provide that the amount so deposited and any interest thereon not claimed within a specified period, not less than two years, after the redemption date shall be repaid to the corporation whose shares are so redeemed, and the persons entitled thereto shall thereafter have only the right to receive the redemption price as unsecured creditors of such corporation.

D. The shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

E. If a corporation holds in a fiduciary capacity its own shares or shares of a second corporation that owns directly or indirectly a majority of shares entitled to vote for directors of the first corporation, such shares shall not be deemed to be outstanding and entitled to vote unless:

1. The corporation has authority to vote the shares only in accordance with directions of the principal or beneficiary; or

2. A co-fiduciary exists, pursuant to § [6.2-1011](#) or otherwise, in which event the co-fiduciary may vote the shares.

F. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

G. Shares standing in the name of a partnership may be voted by any partner. Shares standing in the name of a limited liability company may be voted as the articles of organization or an operating agreement may prescribe, or in the absence of any such provision as the managers, or if there are no managers, the members of the limited liability company may determine.

H. Shares held by two or more persons as joint tenants or tenants in common or tenants by the entirety may be voted by any of such persons. If more than one of such tenants votes such shares, the vote shall be divided among them in proportion to the number of such tenants voting.

I. Shares held by an administrator, executor, guardian, conservator, committee or curator representing the shareholder may be voted by such person without a transfer of such shares into such person's name. Shares standing in the name of a trustee may be voted by the trustee, but no trustee is entitled to vote shares held by the trustee without a transfer of such shares into the trustee's name.

J. Shares standing in the name of a receiver or a trustee in proceedings under the Bankruptcy Reform Act of 1978 may be voted by such person. Shares held by or under the control of a receiver or a trustee in proceedings under the Bankruptcy Reform Act of 1978 may be voted by such person without the transfer thereof into such person's name if authority to do so is contained in an order of the court by which such person was appointed.

K. Nothing herein contained shall prevent trustees or other fiduciaries holding shares registered in the name of a nominee pursuant to § [6.2-1010](#) from causing such shares to be voted by such nominee as the trustee or other fiduciary may direct. Such nominee may vote shares as directed by a trustee or other fiduciary without the necessity of transferring the shares to the name of the trustee or other fiduciary.

L. A shareholder whose shares are pledged is entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee is entitled to vote the shares so transferred.

M. The articles of incorporation may provide that the holders of bonds or debentures shall be entitled to vote on specified matters and such right shall not be terminated except upon consent of the holders of two-thirds in aggregate principal amount.

N. Subject to the provisions of § [13.1-665](#), when shares are held by more than one of the fiduciaries referred to in this section, the shares shall be voted as determined by a majority of such fiduciaries, except that: (i) if they are equally divided as to a vote, the vote of the shares is divided equally and (ii) if only one of such fiduciaries is present in person or by proxy at a meeting, the fiduciary shall be entitled to vote all the shares. A proxy apparently executed by one of several of such fiduciaries shall be presumed to be valid until challenged and the burden of proving invalidity shall rest on the challenger.

Code 1950, §§ 13-192 to 13-198, 13-203, 13.1-32; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1984, c. 366; 1985, c. 522; 1990, c. 267; 1997, c. [801](#); 2005, c. [765](#).

§13.1-663. Proxies.

A. A shareholder may vote the shareholder's shares in person or by proxy.

B. A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this subsection may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

C. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspectors of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

1. A pledgee;
2. A person who purchased or agreed to purchase the shares;
3. A creditor of the corporation who extended it credit under terms requiring the appointment;
4. An employee of the corporation whose employment contract requires the appointment; or
5. A party to a voting agreement created under § [13.1-671](#).

E. The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

F. An appointment made irrevocable under subsection D is revoked when the interest with which it is coupled is extinguished.

G. A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

H. Subject to § [13.1-665](#) and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

I. Any fiduciary who is entitled to vote any shares may vote such shares by proxy.

Code 1950, §§ 13-193 to 13-198, 13-203, 13.1-32; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1984, c. 366; 1985, c. 522; 1991, c. 405; 2005, c. [765](#); 2010, c. [782](#).

§13.1-664. Shares held by nominees.

A. A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

B. The procedure may set forth:

1. The types of nominees to which it applies;
2. The rights or privileges that the corporation recognizes in a beneficial owner;
3. The manner in which the procedure is selected by the nominee;
4. The information that must be provided when the procedure is selected;
5. The period for which selection of the procedure is effective; and
6. Other aspects of the rights and duties created.

1985, c. 522.

§13.1-664.1. Voting procedures and inspectors of elections.

A. A public corporation shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector, before entering upon the discharge of his duties, shall certify in writing that the inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of his ability.

B. The inspectors shall (i) ascertain the number of shares outstanding and the voting power of each, (ii) determine the shares represented at a meeting and the validity of proxy appointments and ballots, (iii) count all votes, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify in a written report their determination of the number of shares represented at the meeting and their count of the votes. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors and may rely on information provided by such persons and other persons, including those appointed to tabulate votes, unless the inspectors believe reliance is unwarranted. In any court proceeding there shall be a rebuttable presumption that the report of the inspectors is correct.

C. No ballot, proxies, or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the circuit court of the city or county where the corporation's principal office is located or, if none in

this Commonwealth, where its registered office is located, upon application by a shareholder, shall determine otherwise.

D. In performing their duties, the inspectors may examine (i) the proxy appointment forms and any other information provided in accordance with subsection B of § [13.1-663](#), (ii) any envelope or related writing submitted with those appointment forms, (iii) any ballots, (iv) any evidence or other information specified in § [13.1-665](#), and (v) the relevant books and records of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency.

E. The inspectors also may consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection B, including for the purpose of evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted on behalf of banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy is authorized by the record shareholder to cast or more votes being cast than the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall specify in their report under subsection B the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that such information is relevant and reliable.

F. Determinations of law by the inspectors shall be subject to de novo review by a court in a proceeding under § [13.1-669.1](#) or other judicial proceeding.

G. If authorized by the board of directors, any shareholder vote to be taken by written ballot may be satisfied by a ballot submitted by electronic transmission by the shareholder or the shareholder's proxy, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the shareholder or the shareholder's proxy. A share that is voted by a ballot submitted by electronic transmission is deemed present at the meeting of shareholders.

1991, c. 405; 2002, c. [285](#); 2005, c. [765](#); 2010, c. [782](#); 2015, c. [611](#).

§13.1-665. Corporation's acceptance of votes.

A. If the name signed on a vote, ballot, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver or proxy appointment and give it effect as the act of the shareholder.

B. If the name signed on a vote, ballot, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

1. The shareholder is an entity and the name signed purports to be that of an officer, partner, or agent of the entity;
2. The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;
3. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence acceptable to the corporation that such receiver or trustee has been authorized to vote the shares in an order of the court by which such person was appointed has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;
4. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment; or
5. Two or more persons are the shareholder as fiduciaries and the name signed purports to be the name of at least one of the fiduciaries and the person signing appears to be acting on behalf of all the fiduciaries.

C. Notwithstanding the provisions of subdivisions B 2 and B 5, in any case in which the will, trust agreement, or other instrument under which a fiduciary purports to act contains directions for the voting of shares in any corporation, or for the execution and delivery of proxies for the voting thereof, such directions shall be binding upon the fiduciary and upon the corporation if a copy thereof has been furnished to the corporation.

D. The corporation is entitled to reject a vote, ballot, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to count votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

E. Neither the corporation nor the person authorized to count votes, including an inspector under § [13.1-664.1](#), who accepts or rejects a vote, ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection B of § [13.1-663](#) is liable in damages to the shareholder for the consequences of the acceptance or rejection.

F. Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

Code 1950, §§ 13-193 to 13-198, 13-203, 13.1-32; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1984, c. 366; 1985, c. 522; 2005, c. [765](#); 2015, c. [611](#).

§13.1-666. Quorum and voting requirements for voting groups.

A. Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

B. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

C. If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter requires a greater number of affirmative votes. An abstention or an election by a shareholder not to vote on the action because of the failure to receive voting instructions from the beneficial owner of the shares shall not be considered a vote cast.

D. Less than a quorum may adjourn a meeting.

E. The election of directors is governed by § [13.1-669](#).

Code 1950, § 13.1-31; 1956, c. 428; 1985, c. 522; 2007, c. [165](#).

§13.1-667. Action by single and multiple voting groups.

A. If the articles of incorporation or this chapter provides for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in § [13.1-665](#).

B. If the articles of incorporation or this chapter provides for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in § [13.1-666](#). Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

1985, c. 522.

§13.1-668. Change in quorum or voting requirements.

A. The articles of incorporation may provide for (i) a lesser or greater quorum requirement for shareholders, but not less than one-third of the shares eligible to vote, or voting groups of shareholders, or (ii) a greater voting requirement for shareholders, or voting groups of shareholders, than is provided by this chapter.

B. An amendment to the articles of incorporation that adds, changes, or deletes a quorum or voting requirement shall meet the quorum requirement and be adopted by the vote and voting groups required to take action under the quorum and voting requirements then in effect.

Code 1950, § 13.1-33; 1956, c. 428; 1985, c. 522; 1986, c. 321.

§13.1-669. Voting for directors; cumulative voting.

A. Unless otherwise provided in the articles of incorporation or the bylaws, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

B. Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

C. A statement included in the articles of incorporation that "all of a designated voting group of shareholders are entitled to cumulate their votes for directors" or words of similar import means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

D. Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or
2. A shareholder who has the right to cumulate his votes gives notice to the secretary of the corporation not less than 48 hours before the time set for the meeting of the shareholder's intent to cumulate his votes during the meeting. If one shareholder gives such a notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

E. If a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors, directors may not be elected by written consent pursuant to § [13.1-657](#) unless it is unanimous.

Code 1950, §§ 13-193 to 13-198, 13-203, 13.1-32; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1984, c. 366; 1985, c. 522; 2005, c. [765](#); 2007, c. [165](#).

§13.1-669.1. Judicial determination of corporate officers and review of elections and shareholder votes.

A. Upon application of, or in a proceeding commenced by, a person specified in subsection B, the circuit court in the county or city in which the principal office of the corporation is located, or, if none in the Commonwealth, in the county or city in which its registered office is located may determine:

1. The validity of the election, appointment, removal, or resignation of a director or officer of the corporation;
2. The right of an individual to hold the office of director or officer of the corporation;
3. The result or validity of an election or vote by the shareholders of the corporation;
4. The right of a director to membership on a committee of the board of directors; and
5. The right of a person to nominate, or an individual to be nominated as, a candidate for election or appointment as a director of the corporation, and any right under a bylaw adopted pursuant to subsection C of § [13.1-624](#) or any comparable right under any provision of the articles of incorporation, contract, or applicable law.

B. Any application or proceeding pursuant to subsection A may be filed or commenced by any of the following persons:

1. The corporation;
2. A shareholder of the corporation;
3. A director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, who, in each case, is seeking a determination of his right to such office or membership;
4. An officer of the corporation or an individual claiming to be an officer of the corporation, in each case who is seeking a determination of his right to such office; or
5. A person claiming a right covered by subdivision A 5 and who is seeking a determination of such right.

C. In connection with any application or proceeding pursuant to subsection A, the following shall be named as defendants, unless such person made the application or commenced the proceeding:

1. The corporation;
2. An individual whose right to office or membership on a committee of the board of directors is contested;
3. Any individual claiming the office or membership at issue; and
4. Any person claiming a right covered by subdivision A 5 that is at issue.

D. In connection with any application or proceeding under subsection A, service of process may be made upon each of the persons specified in subsection C either by:

1. Serving on the corporation process addressed to such person in any manner provided by statute of the Commonwealth or by rule of the applicable court for service of process on the corporation; or
2. Serving on such person process in any manner provided by statute of the Commonwealth or by rule of the applicable court.

E. When service of process is made upon a person other than the corporation by service upon the corporation pursuant to subdivision D 1, the plaintiff and the corporation promptly shall provide written notice of such service, together with copies of all process and the application or complaint, to such person at the person's last known residence or business address, or as permitted by statute of the Commonwealth.

F. In connection with any application or proceeding under subsection A, the court shall dispose of the application or proceeding on an expedited basis and also may:

1. Order such additional or further notice as the court deems proper under the circumstances;
2. Order that additional persons be joined as parties to the proceeding if the court determines that such joinder is necessary for a just adjudication of matters before the court;
3. Order an election or meeting be held in accordance with the provisions of § [13.1-656](#) or otherwise;
4. Appoint a master to conduct an election or meeting;
5. Enter temporary, preliminary, or permanent injunctive relief;
6. Resolve solely for the purposes of the proceeding any legal or factual issues necessary for the resolution of any of the matters specified in subsection A, including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and
7. Order such relief as the court determines is equitable, just, and proper.

G. It shall not be necessary to make shareholders parties to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subdivision C 4, relief is sought against the shareholder individually, or the court orders joinder pursuant to subdivision F 2.

H. Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court as existed prior to July 1, 2015. An application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection A.

2010, c. [782](#); 2015, c. [611](#).

§13.1-670. Voting trusts.

A. One or more shareholders may create a voting trust, conferring on a trustee or trustees the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee or trustees. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of

shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

B. A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

C. The duration of a voting trust shall be as set forth in the voting trust, except that a voting trust that became effective prior to July 1, 2015, is valid for not more than 10 years after its effective date unless some or all of the parties to the voting trust extend it by signing a written consent to the extension.

D. Any consent to an extension pursuant to subsection C signed by less than all of the parties to the voting trust binds only the parties signing it.

E. The voting trustee shall deliver copies of any consent to extension and the list of beneficial owners to the secretary at the corporation's principal office.

Code 1950, § 13.1-34; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. [765](#); 2015, c. [611](#).

§13.1-671. Voting agreements.

A. Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of § [13.1-670](#).

B. A voting agreement created under this section is specifically enforceable.

Code 1950, § 13.1-34; 1956, c. 428; 1975, c. 500; 1985, c. 522.

§13.1-671.1. Shareholder agreements.

A. An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation, even though it is inconsistent with one or more other provisions of this chapter in that it:

1. Eliminates the board of directors or, subject to the requirements of subsection D of § [13.1-647](#) and subsection A of § [13.1-693](#), one or more officers or restricts the discretion or powers of the board of directors or one or more officers;
2. Governs the authorization or making of distributions, whether or not in proportion to ownership of shares, subject to the limitations in § [13.1-653](#);
3. Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

4. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;
5. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation, or among any of them;
6. Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;
7. Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or
8. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

B. An agreement authorized by this section shall be:

1. a. Set forth in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or
- b. Set forth in a written agreement that is signed by all persons who are shareholders at the time of the agreement; and
2. Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise.

C. The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by subsection B of § [13.1-648](#). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to

rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

D. An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

E. An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

F. The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

G. Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares were issued when the agreement was made.

H. No action taken pursuant to this section shall change any requirement to file articles or other documents with the Commission or affect the rights of any creditors or other third parties.

I. The duration of an agreement authorized by this section shall be as set forth in the agreement, except that the duration of an agreement that became effective prior to

July 1, 2015, remains 10 years unless the agreement provided otherwise or is subsequently amended to provide otherwise.

J. An agreement among shareholders of a corporation that is consistent with the other provisions of this chapter that does not comply with the provisions of this section shall nonetheless be effective among the shareholders and the corporation.

1990, c. 337; 1997, c. [226](#); 2005, c. [765](#); 2015, c. [611](#).

§13.1-672. Repealed.

Repealed by Acts 1992, c. 802 .

§13.1-672.1. Standing; condition precedent; stay of proceedings.

A. A shareholder shall not commence or maintain a derivative proceeding unless the shareholder:

1. Was a shareholder of the corporation at the time of the act or omission complained of;
2. Became a shareholder through transfer by operation of law from one who was a shareholder at that time; or
3. Became a shareholder before public disclosure and without knowledge of the act or omission complained of; and
4. Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

B. No shareholder may commence a derivative proceeding until:

1. A written demand has been made on the corporation to take suitable action; and
2. Ninety days have expired from the date delivery of the demand was made unless (i) the shareholder has been notified before the expiration of 90 days that the demand has been rejected by the corporation or (ii) irreparable injury to the corporation would result by waiting until the end of the 90-day period.

C. If the corporation commences a review and evaluation of the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

1992, c. 802; 2007, c. [165](#); 2010, c. [782](#).

§13.1-672.2. Discontinuance or settlement.

A. A derivative proceeding shall not be settled or discontinued without the court's approval. If the court determines that the discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of the corporation's shareholders, the court shall direct that notice be given to the shareholders affected.

B. Notice required under this section shall be given in such manner as the court shall determine, and the costs of such notice shall be borne in such manner as the court shall direct.

1992, c. 802 .

§13.1-672.3. Foreign corporations.

Notwithstanding the provisions of §§ [13.1-672.1](#) and [13.1-672.4](#), in any derivative proceeding in the right of a foreign corporation, subject to the court's determination of whether the courts of the Commonwealth are a convenient forum for such a proceeding, determinations of (i) standing and satisfaction of conditions precedent to commencing and maintaining derivative proceedings and (ii) grounds for dismissal of derivative proceedings, shall be governed by the laws of the foreign corporation's state of incorporation.

1992, c. 802; 2005, c. [765](#).

§13.1-672.4. Dismissal.

A. A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection B or E has:

1. Conducted a review and evaluation, adequately informed in the circumstances, of the allegations made in the demand or complaint;
2. Determined in good faith on the basis of that review and evaluation that the maintenance of the derivative proceeding is not in the best interests of the corporation; and
3. Submitted in support of the motion a short and concise statement of the reasons for its determination.

B. Unless a panel is appointed pursuant to subsection E, the determination in subsection A shall be made by:

1. A majority vote of disinterested directors present at a meeting of the board of directors if the disinterested directors constitute a quorum; or

2. A majority vote of a committee consisting of two or more disinterested directors appointed by a majority vote of disinterested directors present at a meeting of the board of directors, whether or not such disinterested directors constituted a quorum.

C. If a derivative proceeding has been commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing that the requirements of subsection A have not been met. The plaintiff shall be entitled to discovery with respect to the issues presented by the motion only if and to the extent that the complaint alleges such facts with particularity.

D. The plaintiff shall have the burden of proving that the requirements of subsection A have not been met, except that the corporation shall have the burden with respect to the issue of independence under subsection B if the complaint alleges with particularity facts raising a substantial question as to such independence.

E. The court may appoint a panel of independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation.

1992, c. 802; 1993, c. 233; 2005, c. [765](#).

§13.1-672.5. Payment of and security for expenses.

On termination of a derivative proceeding, the court shall:

1. Order the corporation to pay the plaintiff's reasonable expenses (including counsel fees) incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation; or

2. Order the plaintiff or the plaintiff's attorney to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the proceeding if it finds that the proceeding was commenced or maintained arbitrarily, vexatiously or not in good faith.

1992, c. 802; 1993, c. 233 .

§13.1-672.6. Shareholder action to appoint custodian or receiver for a public corporation.

A. The circuit court in any city or county where a public corporation's principal office is or was last located, or, if none in the Commonwealth, where its registered office is or was last located may appoint one or more persons to be custodians, or, if the

corporation is insolvent, to be receivers, of and for a public corporation in a proceeding by a shareholder where it is established that:

1. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or
2. The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

B. The court:

1. May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;
2. Shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and
3. Has jurisdiction over the corporation and all of its property, wherever located.

C. The court may appoint an individual or domestic or foreign corporation, authorized to transact business in the Commonwealth, as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

D. The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

1. A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and
2. A receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in the receiver's own name as receiver in all courts of the Commonwealth.

E. The court during a custodianship may designate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

F. The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

2007, c. [165](#).

§13.1-673. Requirement for and duties of board of directors.

A. Except as provided in an agreement authorized by § [13.1-671.1](#), each corporation shall have a board of directors.

B. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under § [13.1-671.1](#).

Code 1950, § 13.1-35; 1956, c. 428; 1985, c. 522; 1990, c. 337; 2005, c. [765](#).

§13.1-674. Qualification of directors or for nomination for director.

A. The articles of incorporation or bylaws may prescribe qualifications for directors or to be nominated as directors.

B. A requirement that is based on a past, current, or prospective action, or on an expression of an opinion, by a nominee or director that (i) relates to the discharge of a director's duties and (ii) could limit the ability of the nominee or director to discharge his duties as a director is not a permissible qualification for a nominee or director under this section. Permissible qualifications for a nominee or director under this section include the person's not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.

C. A director need not be a resident of this Commonwealth or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

D. A qualification for nomination for director that is prescribed before a person's nomination shall apply to the person at the time of his nomination. A qualification for nomination for director that is prescribed after a person's nomination shall not apply to the person with respect to such nomination.

E. A qualification for directors that is prescribed before a person's nomination for director may provide that it applies (i) only at the start of the director's term or (ii)

during that person's term as director. A qualification for directors prescribed during a director's term shall not apply to that director prior to the end of that director's term. Code 1950, § 13.1-35; 1956, c. 428; 1985, c. 522; 2012, c. [706](#); 2015, c. [611](#).

§13.1-675. Number and election of directors.

A. A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the bylaws, or if not specified in or fixed in accordance with the bylaws, with the number specified in or fixed in accordance with the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation.

B. The shareholders may adopt a bylaw fixing the number of directors and may direct that such bylaw not be amended by the board of directors.

C. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or by the board of directors. After shares are issued, only the shareholders may change the range for the size of the board of directors or change from a fixed to a variable-range size board or vice versa.

D. Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under § [13.1-678](#).

E. No individual shall be named or elected as a director without his prior consent.

Code 1950, § 13.1-36; 1956, c. 428; 1968, c. 87; 1973, c. 50; 1974, c. 662; 1977, c. 123; 1982, c. 104; 1985, c. 522; 1991, c. 112; 2005, c. [765](#); 2006, c. [330](#); 2010, c. [782](#).

§13.1-676. Election of directors by certain classes of shareholders.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. Each class, or classes, of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

Code 1950, § 13.1-37; 1956, c. 428; 1985, c. 522.

§13.1-677. Terms of directors generally.

A. The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected, unless their terms are staggered pursuant to § [13.1-678](#), in which case the term shall expire at the applicable second or third annual shareholders' meeting.

B. The terms of all other directors expire at the next, or if the terms are staggered in accordance with § [13.1-678](#), at the applicable second or third, annual shareholders' meeting following their election.

C. A decrease in the number of directors does not shorten an incumbent director's term.

D. The term of a director elected by the board of directors to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

E. Despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or until there is a decrease in the number of directors, if any.

F. Notwithstanding the foregoing provisions, the terms of the directors of a corporation registered under the Investment Company Act of 1940 shall expire according to, and otherwise be governed by, the provisions of the Investment Company Act of 1940.

Code 1950, § 13.1-36; 1956, c. 428; 1968, c. 87; 1973, c. 50; 1974, c. 662; 1977, c. 123; 1982, c. 104; 1985, c. 522; 1990, c. 228; 2005, c. [765](#); 2007, c. [165](#).

§13.1-678. Staggered terms for directors.

A. The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

B. If the articles of incorporation permit cumulative voting, any provision establishing staggered terms of directors shall provide that at least three directors shall be elected at each annual shareholders' meeting.

Code 1950, § 13.1-37; 1956, c. 428; 1985, c. 522.

§13.1-679. Resignation of directors.

A. A director may resign at any time by delivering a written resignation to the board of directors or its chairman, or to the secretary of the corporation.

B. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the occurrence of one or more events. If a resignation is made effective at a later date, the board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

C. Any person who has resigned as a director of a corporation, or whose name is incorrectly on file with the Commission as a director of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation of a director, the corporation may file an amended annual report with the Commission indicating the resignation of the director and the successor in office, if any.

1985, c. 522; 1991, c. 124; 2005, c. [765](#); 2007, c. [165](#).

§13.1-680. Removal of directors by shareholders.

A. The shareholders may remove one or more directors with or without cause, unless the articles of incorporation provide that directors may be removed only with cause.

B. If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

C. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, unless the articles of incorporation require a greater vote, a director may be removed if the number of votes cast to remove him constitutes a majority of the votes entitled to be cast at an election of directors of the voting group or voting groups by which the director was elected.

D. A director may be removed by the shareholders only at a meeting called for the purpose of removing the director. The meeting notice shall state that the purpose, or one of the purposes of the meeting, is removal of the director.

E. Upon the removal of a director, the corporation may file an amended annual report with the Commission indicating the removal of the director and the successor in office, if any.

Code 1950, §§ 13-205, 13.1-42; 1956, c. 428; 1985, c. 522; 1991, c. 124; 2005, c. [765](#).

§13.1-681. Repealed.

Repealed by Acts 2010, c. [782](#), cl. 2.

§13.1-682. Vacancy on board of directors.

A. Unless the articles of incorporation provide otherwise, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors:

1. The shareholders may fill the vacancy;
2. The board of directors may fill the vacancy; or
3. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of the directors remaining in office.

B. Unless the articles of incorporation provide otherwise, if the vacant office was held by a director elected by a voting group of shareholders, only the shareholders of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the board of directors.

C. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection B of § [13.1-679](#) or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

D. The corporation may file an amended annual report with the Commission indicating the filling of a vacancy.

Code 1950, § 13.1-38; 1956, c. 428; 1985, c. 522; 1991, c. 124; 2007, c. [165](#).

§13.1-683. Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Code 1950, § 13.1-35; 1956, c. 428; 1985, c. 522.

§13.1-684. Meetings of the board of directors.

A. The board of directors may hold regular or special meetings in or out of this Commonwealth.

B. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Code 1950, § 13.1-41; 1956, c. 428; 1975, c. 500; 1985, c. 522.

§13.1-685. Action without meeting of board of directors.

A. Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

B. Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein provided the consent states the date of execution by each director.

C. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

D. Any person, whether or not then a director, may provide that a consent to action as a director shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a director at such future time and (ii) the person did not revoke the con-

sent prior to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to its becoming effective.

E. For purposes of this section, a written consent and the signing thereof may be accomplished by one or more electronic transmissions.

F. A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

Code 1950, § 13.1-41.1; 1964, c. 419; 1975, c. 500; 1985, c. 522; 2005, c. [765](#); 2015, c. [611](#).

§13.1-686. Notice of board of directors' meetings.

A. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.

B. Special meetings of the board of directors shall be held upon such notice as is prescribed in the articles of incorporation or bylaws, or when not inconsistent with the articles of incorporation or bylaws, by resolution of the board of directors. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Code 1950, § 13.1-41; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2002, c. [285](#); 2005, c. [765](#); 2010, c. [782](#).

§13.1-687. Waiver of notice by director.

A. A director may waive any notice required by this Act, the articles of incorporation, or bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided in subsection B of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

B. A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting or promptly upon his arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Code 1950, § 13.1-27; 1956, c. 428; 1985, c. 522.

§13.1-688. Quorum and voting by directors.

A. Unless the articles of incorporation or bylaws require a greater number for the transaction of all business or any particular business, or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

1. A majority of the fixed number of directors if the corporation has a fixed board size; or
2. A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

B. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection A.

C. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

D. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

1. The director objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting specified business at the meeting; or
2. The director votes against, or abstains from, the action taken.

E. Except as provided in § [13.1-671.1](#), a director shall not vote by proxy.

F. Whenever this chapter requires the board of directors to take any action or to recommend or approve any proposed corporate act, such action, recommendation or approval shall not be required if the proposed action or corporate act is adopted by the unanimous consent of shareholders.

Code 1950, §§ 13-206, 13-207, 13.1-39, 13.1-44; 1956, c. 428; 1966, c. 131; 1985, c. 522; 1992, c. 471; 2005, c. [765](#).

§13.1-689. Committees.

A. Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have two or more members, who serve at the pleasure of the board of directors.

B. The creation of a committee and appointment of members to it shall be approved by the greater number of (i) a majority of all the directors in office when the action is taken, or (ii) the number of directors required by the articles of incorporation or bylaws to take action under § [13.1-688](#).

C. Sections [13.1-684](#) through [13.1-688](#), which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

D. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under § [13.1-673](#), except that a committee may not:

1. Approve or recommend to shareholders action that this chapter requires to be approved by shareholders;
2. Fill vacancies on the board or on any of its committees;
3. Amend articles of incorporation pursuant to § [13.1-706](#);
4. Adopt, amend, or repeal the bylaws;
5. Approve a plan of merger not requiring shareholder approval;
6. Authorize or approve a distribution, except according to a general formula or method prescribed by the board of directors; or
7. Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and rights, preferences, and limitations of a class or series of shares, except that the board of directors may (i) authorize a committee to do so subject to such limits, if any, as may be prescribed by the board of directors, and (ii) authorize a senior executive officer of the corporation to do so subject to such limits, if any, as may be prescribed by the board of directors or by subsection C of § [13.1-646](#).

E. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § [13.1-690](#).

F. The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or

disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously may appoint another director to act in place of the absent or disqualified member.

Code 1950, § 13.1-40; 1956, c. 428; 1975, c. 500; 1980, c. 341; 1985, c. 522; 2005, c. [765](#); 2010, c. [782](#).

§13.1-690. General standards of conduct for director.

A. A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith business judgment of the best interests of the corporation.

B. Unless he has knowledge or information concerning the matter in question that makes reliance unwarranted, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

1. One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;
2. Legal counsel, public accountants, or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or
3. A committee of the board of directors of which he is not a member if the director believes, in good faith, that the committee merits confidence.

C. A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

D. A person alleging a violation of this section has the burden of proving the violation.

Code 1950, §§ 13-206, 13-207, 13.1-44; 1956, c. 428; 1985, c. 522.

§13.1-690.1. Director of open-end management investment company deemed independent and disinterested.

A director of a corporation that is an open-end management investment company, as defined by the Investment Company Act of 1940, who with respect to the corporation is not an interested person, as defined by the Investment Company Act of 1940, shall be deemed to be independent and disinterested when making any determination or taking any action as a director.

2006, c. [330](#).

§13.1-691. Director conflict of interests.

A. A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has an interest that precludes the director from being a disinterested director. A conflict of interests transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

1. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;
2. The material facts of the transaction and the director's interest were disclosed to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or
3. The transaction was fair to the corporation.

B. For purposes of subdivision A 1, a conflict of interests transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the disinterested directors on the board of directors, or on the committee. A transaction shall not be authorized, approved, or ratified under this section by a single director. If a majority of the disinterested directors vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director who is not disinterested does not affect the validity of any action taken under subdivision A 1 if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

C. For purposes of subdivision A 2, a conflict of interests transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who is not disinterested may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interests transaction under subdivision A 2. The vote of those shares, however, shall be counted in determining whether the transaction is approved under other sections of this chapter. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

Code 1950, § 13.1-39.1; 1975, c. 500; 1980, c. 341; 1985, c. 522; 2005, c. [765](#).

§13.1-691.1. Business opportunities.

A. A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:

1. Directors' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 1 of § [13.1-691](#), as if the decision being made concerned a director's conflict of interests transaction; or
2. Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in subdivision A 2 of § [13.1-691](#), as if the decision being made concerned a director's conflict of interests transaction.

B. In any proceeding seeking equitable relief or other remedies, based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ one of the procedures described in subsection A before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

2005, c. [765](#).

§13.1-692. Liability for unlawful distributions.

A. A director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation and its creditors for the amount of the distribution that exceeds what could have been distributed without violating this chapter or the articles of incorporation if the party asserting liability establishes that when taking the action the director did not comply with § [13.1-690](#).

B. A director held liable for an unlawful distribution under subsection A is entitled to:

1. Contribution from every other director who could be held liable under subsection A for the unlawful distribution; and

2. Recoupment from the shareholders who received the unlawful distribution in proportion to the amounts of such unlawful distribution received by them respectively.

C. No suit shall be brought against any director for any liability imposed by subsection A except within two years after the right of action shall accrue.

D. Contribution or recoupment under subsection B is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection A.

Code 1950, §§ 13-206, 13-207, 13.1-44; 1956, c. 428; 1985, c. 522; 2005, c. [765](#).

§13.1-692.1. Limitation on liability of officers and directors; exception.

A. In any proceeding brought by or in the right of a corporation or brought by or on behalf of shareholders of the corporation, the damages assessed against an officer or director arising out of a single transaction, occurrence or course of conduct shall not exceed the lesser of:

1. The monetary amount, including the elimination of liability, specified in the articles of incorporation or, if approved by the shareholders, in the bylaws as a limitation on or elimination of the liability of the officer or director; or

2. The greater of (i) \$100,000 or (ii) the amount of cash compensation received by the officer or director from the corporation during the twelve months immediately preceding the act or omission for which liability was imposed.

B. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law or of any federal or state securities law, including, without limitation, any claim of unlawful insider trading or manipulation of the market for any security.

C. No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

1987, cc. 59, 257; 1988, c. 561.

§13.1-693. Required officers.

A. Except as provided in an agreement authorized by § [13.1-671.1](#), a corporation shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors that is not inconsistent with the bylaws and

as may be necessary to enable it to execute documents that comply with subsection F of § [13.1-604](#).

B. The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

C. The secretary or any other officer as designated in the bylaws or by resolution of the board shall have the responsibility for preparing and maintaining custody of minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

D. The same individual may simultaneously hold more than one office in a corporation.

Code 1950, § 13.1-45; 1956, c. 428; 1972, c. 606; 1975, c. 500; 1982, c. 372; 1985, c. 522; 1994, c. [189](#); 2005, c. [765](#).

§13.1-694. Duties of officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

Code 1950, § 13.1-45; 1956, c. 428; 1972, c. 606; 1975, c. 500; 1982, c. 372; 1985, c. 522.

§13.1-695. Resignation and removal of officers.

A. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time, the corporation may fill the pending vacancy before the effective time if the successor does not take office until the effective time.

B. A board of directors may remove any officer at any time with or without cause and any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer. Election or appointment of an officer shall not of itself create any contract rights in the officer or the corporation. An officer's removal does not affect such officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

C. Any person who has resigned as an officer of a corporation, or whose name is incorrectly on file with the Commission as an officer of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation or removal of an officer, the corporation may file an amended annual report with the Commission indicating the resignation or removal of the officer and the successor in office, if any.

Code 1950, § 13.1-46; 1956, c. 428; 1985, c. 522; 1990, c. 282; 1991, cc. 124, 146; 2005, c. [765](#).

§13.1-696. Definitions.

In this article:

"Corporation" includes any domestic corporation and any domestic or foreign predecessor entity of a domestic corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

"Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee, or agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

"Expenses" includes counsel fees.

"Liability" means the obligation to pay a judgment, settlement, penalty, fine, including any excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

"Official capacity" means, (i) when used with respect to a director, the office of director in a corporation; or (ii) when used with respect to an officer, as contemplated in § [13.1-702](#), the office in a corporation held by the officer. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

"Party" means an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

"Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 2005, c. [765](#); 2009, c. [587](#).

§13.1-697. Authority to indemnify.

A. Except as provided in subsection D, a corporation may indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if the director:

1. Conducted himself in good faith; and

2. Believed:

a. In the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

b. In all other cases, that his conduct was at least not opposed to its best interests; and

3. In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

B. A director's conduct with respect to an employee benefit plan for a purpose he believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subdivision A 2 b.

C. The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

D. Unless ordered by a court under subsection C of § [13.1-700.1](#), a corporation may not indemnify a director under this section:

1. In connection with a proceeding by or in the right of the corporation except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard under subsection A; or

2. In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 2005, c. [765](#).

§13.1-698. Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who entirely prevails in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522.

§13.1-699. Advance for expenses.

A. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if the director furnishes the corporation a signed written undertaking, executed personally or on his behalf, to repay any funds advanced if the director is not entitled to mandatory indemnification under § [13.1-698](#) and it is ultimately determined under § [13.1-700.1](#) or [13.1-701](#) that the director has not met the relevant standard of conduct.

B. The undertaking required by subsection A shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

C. Authorizations of payments under this section shall be made by:

1. The board of directors:

a. If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote; or

b. If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with subsection C of § [13.1-688](#), in which authorization directors who do not qualify as disinterested directors may participate; or

2. By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 2005, c. [765](#); 2010, c. [782](#); 2015, c. [611](#).

§13.1-700. Repealed.

Repealed by Acts 1987, cc. 59, 257.

§13.1-700.1. Court orders for advances, reimbursement or indemnification.

A. An individual who is made a party to a proceeding because he is a director of the corporation may apply to a court for an order directing the corporation to make advances or reimbursement for expenses or to provide indemnification. Such application may be made to the court conducting the proceeding or to another court of competent jurisdiction.

B. The court shall order the corporation to make advances and/or reimbursement for expenses or to provide indemnification if it determines that the director is entitled to such advances, reimbursement or indemnification and shall also order the corporation to pay the director's reasonable expenses incurred to obtain the order.

C. With respect to a proceeding by or in the right of the corporation, the court may (i) order indemnification of the director to the extent of his reasonable expenses if it determines that, considering all the relevant circumstances, the director is entitled to indemnification even though he was adjudged liable to the corporation and (ii) also order the corporation to pay the director's reasonable expenses incurred to obtain the order of indemnification.

D. Neither (i) the failure of the corporation, including its board of directors, its independent legal counsel and its shareholders, to have made an independent determination prior to the commencement of any action permitted by this section that the applying director is entitled to receive advances and/or reimbursement nor (ii) the determination by the corporation, including its board of directors, its independent legal counsel and its shareholders, that the applying director is not entitled to receive advances and/or reimbursement or indemnification shall create a presumption to that effect or otherwise of itself be a defense to that director's application for advances for expenses, reimbursement or indemnification.

1987, cc. 59, 257; 2005, c. [765](#).

§13.1-701. Determination and authorization of indemnification.

A. A corporation may not indemnify a director under § [13.1-697](#) unless authorized in the specific case after a determination has been made that indemnification of the director is permissible because he has met the relevant standard of conduct set forth in § [13.1-697](#).

B. The determination shall be made:

1. If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;

2. By special legal counsel:

a. Selected in the manner prescribed in subdivision 1 of this subsection; or

b. If there are fewer than two disinterested directors, selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate; or

3. By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

C. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subdivision B 2 to select counsel.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 2005, c. [765](#).

§13.1-702. Indemnification of officers.

Unless limited by a corporation's articles of incorporation:

1. An officer of the corporation is entitled to mandatory indemnification under § [13.1-698](#), and is entitled to apply for court-ordered indemnification under § [13.1-700.1](#), in each case to the same extent as a director; and

2. The corporation may indemnify and advance expenses under this article to an officer of the corporation to the same extent as to a director.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 2005, c. [765](#).

§13.1-703. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director or officer of the corporation, or who, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by him in that capacity or arising from his status as a director or officer, whether or not the corporation would have power to indemnify him against the same liability under § [13.1-697](#) or [13.1-698](#).

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 2005, c. [765](#).

§13.1-704. Application of article.

A. Unless the articles of incorporation or bylaws expressly provide otherwise, any authorization of indemnification or advances or reimbursement of expenses in the articles of incorporation or bylaws shall not be deemed to prevent the corporation from providing indemnity or advances or reimbursement of expenses permitted or mandated by this article. A corporation, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, may obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with § [13.1-697](#) and advance funds to pay for or reimburse expenses in accordance with § [13.1-699](#). Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsection C of § [13.1-699](#) and subsection C of § [13.1-701](#).

B. Any corporation shall have power to make any further indemnity, including indemnity with respect to a proceeding by or in the right of the corporation, and to make additional provision for advances and reimbursement of expenses, to any director or officer that may be authorized by the articles of incorporation or any bylaw made by the shareholders or any resolution adopted, before or after the event, by the shareholders, except an indemnity against (i) his willful misconduct, or (ii) a knowing violation of the criminal law. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed,

unless the articles of incorporation or any such bylaw or resolution expressly provides otherwise, also to obligate the corporation to advance funds to pay for or reimburse expenses to the fullest extent permitted by law in accordance with § [13.1-699](#) except that the applicable standard shall be conduct that does not constitute willful misconduct or a knowing violation of criminal law, rather than the standard of conduct prescribed in § [13.1-697](#). Unless the articles of incorporation, or any such bylaw or resolution expressly provide otherwise, any determination as to the right to any further indemnity shall be made in accordance with subsection B of § [13.1-701](#). Each such indemnity may continue as to a person who has ceased to have the capacity referred to above and may inure to the benefit of the heirs, executors and administrators of such a person.

C. No right provided to any person pursuant to this section may be reduced or eliminated by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

D. This article does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his or her appearance as a witness in a proceeding at a time when he or she is not a party.

E. This article does not limit a corporation's power to provide indemnity to, advance or reimburse expenses incurred by, or provide or maintain insurance on behalf of an agent or an employee who is not a director or officer.

Code 1950, § 13.1-3.1; 1968, c. 570; 1975, c. 500; 1979, c. 99; 1985, c. 522; 1987, cc. 59, 257; 1988, c. 561; 2005, c. [765](#); 2007, c. [165](#); 2010, c. [782](#).

§13.1-705. Authority to amend articles of incorporation.

A. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

B. A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, purpose, or duration of the corporation.

Code 1950, § 13.1-55; 1956, c. 428; 1958, c. 564; 1985, c. 522.

§13.1-706. Amendment of articles of incorporation by directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

1. To delete the names and addresses of the initial directors;
2. To delete the name of the initial registered agent or the address of the initial registered office, if a statement of change described in § [13.1-635](#) is on file with the Commission;
3. If the corporation has only one class of shares outstanding:
 - a. To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or
 - b. To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;
4. To eliminate or change the par value of the shares of any class or series;
5. To change the corporate name by substituting the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co." or "ltd.," or a similar word or abbreviation in the name, or by adding, deleting, or changing a geographic attribution for the name;
6. If the corporation has or will become a holding company under § [13.1-719.1](#), to change the corporate name to the former name of the constituent corporation;
7. If the corporation is registered as an open-end management investment company under the Investment Company Act of 1940, to increase or decrease the aggregate number of shares or the number of shares of any class or series within any class that the corporation is authorized to issue; or
8. To make any other change expressly permitted by this chapter to be made without shareholder action.

1985, c. 522; 1989, c. 483; 1990, c. 292; 2005, c. [765](#); 2006, c. [330](#); 2015, c. [623](#).

§13.1-707. Amendment of articles of incorporation by directors and shareholders.

A. Except where shareholder approval of an amendment of the articles of incorporation is not required by this chapter, an amendment to the articles of incorporation shall be adopted in the following manner:

1. The proposed amendment shall be adopted by the board of directors.
 2. After adopting the proposed amendment the board of directors shall submit the amendment to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination; and
 3. The shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection D.
- B. The board of directors may condition its submission of the proposed amendment on any basis.
- C. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § [13.1-658](#). The notice of meeting shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.
- D. Unless this chapter or the board of directors, acting pursuant to subsection B, requires a greater vote, the amendment to be adopted shall be approved by each voting group entitled to vote on the amendment by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the amendment by each voting group entitled to vote on the amendment at a meeting at which a quorum of the voting group exists.
- E. When an exchange, reclassification or change of shares is effected by amendment of the articles of incorporation, and a material difference in right results, or the par value of the shares is changed or the corporate name is changed, the action of the shareholders authorizing the amendment may prescribe a time after which the holders of the old shares shall no longer be entitled to receive distributions or to vote or to exercise any other rights as shareholders until certificates representing the old shares are surrendered in exchange for certificates representing the new shares. But

upon such surrender all distributions not paid because of this provision shall be paid without interest.

Code 1950, §§ 13-37, 13.1-19, 13.1-56; 1956, c. 428; 1972, c. 580; 1975, c. 500; 1985, c. 522; 2005, c. [765](#).

§13.1-708. Voting on amendments by voting groups.

A. Except as otherwise provided in the articles of incorporation, if a corporation has more than one class of shares outstanding, the outstanding shares of a class are entitled to vote as a separate voting group on a proposed amendment of the articles of incorporation if shareholder voting is otherwise required by this chapter and if the amendment would:

1. Increase or decrease the aggregate number of authorized shares of the class;
2. Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
3. Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;
4. Change the rights, preferences, or limitations of all or part of the shares of the class, but such class shall not be entitled to vote as a separate voting group on an amendment increasing the number of authorized shares of a subordinate class solely because both such classes vote on some or all matters as a single voting group;
5. Change the shares of all or part of the class into a different number of shares of the same class;
6. Create a new class of shares or change a class of shares with subordinate and inferior rights into a class of shares, having rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class, or increase the rights, preferences, or number of authorized shares of any class that after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;
7. In the case of a class of shares with preferential rights, divide the shares into a series, designate the series, and determine, or, unless authority was conferred at the time the class was created, authorize the board of directors to determine, variations in the rights, preferences and limitations among the shares of the respective series;

8. Limit or deny an existing preemptive right of all or part of the shares of the class;
or

9. Cancel or otherwise affect rights to distributions that have accumulated but not yet been declared on all or part of the shares of the class.

B. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection A, the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

C. If a proposed amendment that entitles two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected shall vote together as a single voting group on the proposed amendment, unless the articles of incorporation provide for different voting rights for shares of the different classes or series.

D. Except as otherwise provided in the articles of incorporation, shares that are convertible into shares of another class or series shall not have any right, prior to conversion, to vote on any matter because it affects the class or series into which such shares are convertible.

Code 1950, § 13.1-57; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1996, c. [238](#); 1997, c. [400](#); 2005, c. [765](#); 2008, c. [91](#).

§13.1-709. Amendment before issuance of shares.

If a corporation has not yet issued shares, its board of directors or incorporators, in the event that there is no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

1985, c. 522.

§13.1-710. Articles of amendment.

A. A corporation amending its articles of incorporation shall file with the Commission articles of amendment setting forth:

1. The name of the corporation;
2. The text of each amendment adopted or the information required by subdivision L 5 of § [13.1-604](#);
3. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the

amendment itself, which may be made dependent upon facts objectively ascertainable outside the articles of amendment in accordance with subsection L of § [13.1-604](#);

4. The date of each amendment's adoption;

5. If an amendment was adopted by the board of directors or the incorporators without shareholder approval, a statement that the amendment was duly approved by the board of directors or by a majority of the incorporators, as the case may be, including the reason shareholder and, if applicable, director approval was not required; and

6. If an amendment was approved by the shareholders, either:

a. A statement that the amendment was adopted by unanimous consent of the shareholders, or

b. A statement that the amendment was proposed by the board of directors and submitted to the shareholders in accordance with this chapter and a statement of:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the amendment;

(2) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

B. If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

Code 1950, §§ 13.1-58, 13.1-59; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 2002, c. [497](#); 2005, c. [765](#); 2015, c. [623](#).

§13.1-711. Restated articles of incorporation.

A. A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder approval.

B. The restatement may include one or more new amendments to the articles. If the restatement includes one or more new amendments requiring shareholder approval,

the new amendment or amendments shall be adopted and approved as provided in § [13.1-707](#).

C. If the board of directors submits a restatement for shareholder approval, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § [13.1-658](#). The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any new amendment it would make in the articles.

D. A corporation restating its articles of incorporation shall file with the Commission articles of restatement setting forth:

1. The name of the corporation immediately prior to restatement;
2. Whether the restatement contains a new amendment to the articles;
3. The text of the restated articles of incorporation or amended and restated articles of incorporation, as the case may be;
4. If the restatement includes a new amendment that provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment, which may be made dependent upon facts objectively ascertainable outside the articles of restatement in accordance with subsection L of § [13.1-604](#);
5. The date of the restatement's adoption;
6. If the restatement does not contain a new amendment to the articles, that the board of directors adopted the restatement;
7. If the restatement contains a new amendment to the articles not requiring shareholder approval, the information required by subdivision A 5 of § [13.1-710](#); and
8. If the restatement contains a new amendment to the articles requiring shareholder approval, the information required by subdivision A 6 of § [13.1-710](#).

E. If the Commission finds that the articles of restatement comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of restatement is effective the restated articles of incorporation or amended and restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

F. The Commission may certify restated articles of incorporation or amended and restated articles of incorporation as the articles of incorporation currently in effect.

1985, c. 522; 2002, c. [497](#); 2005, c. [765](#); 2007, c. [165](#); 2012, c. [706](#).

§13.1-712. Repealed.

Repealed by Acts 1988, c. 194.

§13.1-713. Effect of amendment of articles of incorporation.

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Code 1950, § 13.1-60; 1956, c. 428; 1985, c. 522; 2005, c. [765](#).

§13.1-714. Amendment of bylaws by board of directors or shareholders.

A. A corporation's shareholders may amend or repeal the corporation's bylaws.

B. A corporation's board of directors may amend or repeal the corporation's bylaws except to the extent that:

1. The articles of incorporation or this chapter reserves that power exclusively to the shareholders; or
2. Except as provided in subsection D of § [13.1-624](#), the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

Code 1950, §§ 13-10, 13.1-24; 1956, c. 428; 1985, c. 522; 2005, c. [765](#); 2010, c. [782](#).

§13.1-715. Bylaw provisions increasing quorum or voting requirements for directors.

A. A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

1. If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or
2. If adopted by the board of directors, either by the shareholders or by the board of directors.

B. A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it shall be amended or repealed only by a specified vote of either the shareholders or the board of directors.

C. Action by the board of directors under subsection A to amend or repeal a bylaw that changes the quorum or voting requirement applicable to meetings of the board of directors must meet the quorum requirement and be adopted by the vote required to take action under the quorum and voting requirement then in effect.

1985, c. 522; 2005, c. [765](#).

§13.1-715.1. Definitions.

As used in this article:

"Merger" means a business combination pursuant to § [13.1-716](#).

"Party to a merger" or "party to a share exchange" means any domestic or foreign corporation or eligible entity that will:

1. Merge under a plan of merger;
2. Acquire shares of another domestic or foreign corporation or eligible interests in an eligible entity in a share exchange; or
3. Have all of its shares or eligible interests or all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

"Share exchange" means a business combination pursuant to § [13.1-717](#).

"Survivor" in a merger means the domestic or foreign corporation or the eligible entity into which one or more other domestic or foreign corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

2005, c. [765](#).

§13.1-716. Merger.

A. One or more domestic corporations may merge with one or more domestic or foreign corporations or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or foreign eligible entities may merge into a new domestic or foreign corporation or eligible entity to be created in the merger. When a domestic corporation is the survivor of a merger with a domestic nonstock corporation, it may become, pursuant to subdivision C 5, a domestic nonstock

corporation, provided that the only parties to the merger are domestic corporations and domestic nonstock corporations.

B. A foreign corporation or a foreign eligible entity may be a party to a merger with a domestic corporation, or may be created pursuant to the terms of the plan of merger, only if the merger is permitted by the laws under which the foreign corporation or eligible entity is organized or by which it is governed.

C. The plan of merger shall include:

1. The name of each domestic or foreign corporation or eligible entity that will merge and the name of the domestic or foreign corporation or eligible entity that will be the survivor of the merger;

2. The terms and conditions of the merger;

3. The manner and basis of converting the shares of each merging domestic or foreign corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property or any combination of the foregoing;

4. The manner and basis of converting any rights to acquire the shares of each merging domestic or foreign corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property or any combination of the foregoing;

5. The articles of incorporation of any domestic or foreign corporation or nonstock corporation, or the organic document of any domestic or foreign unincorporated entity, to be created by the merger, or if a new domestic or foreign corporation or nonstock corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic document; and

6. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organic document of any such party.

D. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection L of § [13.1-604](#).

E. The plan of merger may also include a provision that the plan may be amended prior to the effective date of the certificate of merger, but if the shareholders of a domestic corporation that is a party to the merger are required by any provision of this chapter to vote on the plan, the plan may not be amended subsequent to approval of the plan by such shareholders to change any of the following, unless the amendment is approved by the shareholders:

1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash or other property to be received under the plan by the shareholders of or owners of eligible interests in any party to the merger;
2. The articles of incorporation of any domestic or foreign corporation or nonstock corporation, or the organic document of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by § [13.1-706](#); or
3. Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

F.1. One or more domestic corporations may merge pursuant to this section into another domestic corporation if the articles of incorporation of each of them could lawfully contain all the corporate powers and purposes of all of them.

2. Any corporation authorized by its articles of incorporation to engage in a special kind of business enumerated in § [13.1-620](#) may be merged with another corporation authorized by its articles of incorporation to engage in the same special kind of business, including mergers authorized under § [6.2-1146](#), whether or not either or both of such corporations are actually engaged in the transaction of such business, and the shareholders of the corporations parties to the merger may receive shares of a corporation not authorized by its articles of incorporation to engage in such special kind of business.

Code 1950, § 13.1-68; 1956, c. 428; 1968, c. 111; 1973, c. 441; 1975, c. 500; 1980, c. 90; 1985, c. 522; 1991, c. 228; 2005, c. [765](#); 2006, c. [663](#); 2008, c. [509](#); 2009, c. [216](#); 2015, c. [611](#).

§13.1-717. Share exchange.

A. Through a share exchange:

1. A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the eligible

interests of one or more classes or series of eligible interests of a domestic or foreign eligible entity, as well as rights to acquire any such shares or eligible interests, in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing, pursuant to a plan of share exchange; or

2. All of the shares of one or more classes or series of shares of a domestic corporation, as well as rights to acquire any such shares or eligible interests, may be acquired by another domestic or foreign corporation or other eligible entity, in exchange for shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing, pursuant to a plan of share exchange.

B. A foreign corporation or eligible entity may be a party to a share exchange only if the share exchange is permitted by the laws under which the corporation or eligible entity is organized or by which it is governed.

C. If the organic law of a domestic eligible entity does not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved, and the share exchange effectuated, in accordance with the procedures, if any, for a merger.

D. The plan of share exchange shall include:

1. The name of each domestic or foreign corporation or eligible entity whose shares or eligible interests will be acquired and the name of the domestic or foreign corporation or other eligible entity that will acquire those shares or eligible interests;

2. The terms and conditions of the share exchange;

3. The manner and basis of exchanging shares of a domestic or foreign corporation or eligible interests in an eligible entity whose shares or eligible interests will be acquired under the share exchange into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing;

4. The manner and basis for exchanging any rights to acquire shares of a domestic or foreign corporation or eligible interests in an eligible entity whose shares or eligible interests will be acquired under the share exchange into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing; and

5. Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organic document of any such party.

E. Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with subsection L of § [13.1-604](#).

F. The plan of share exchange may also include a provision that the plan may be amended prior to the effective date of the certificate of share exchange, but if the shareholders of a domestic corporation that is a party to the share exchange are required by any provision of this chapter to vote on the plan, the plan may not be amended subsequent to approval of the plan by such shareholders to change any of the following, unless the amendment is approved by the shareholders:

1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property or any combination of the foregoing to be issued by the corporation or to be received under the plan by the shareholders of or owners of eligible interests in any party to the share exchange; or

2. Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

G. This section does not limit the power of a domestic corporation to acquire shares of another domestic or foreign corporation or eligible interests in an eligible entity in a transaction other than a share exchange.

Code 1950, § 13.1-69.1; 1975, c. 500; 1980, c. 90; 1985, c. 522; 2005, c. [765](#); 2015, c. [611](#).

§13.1-718. Action on a plan of merger or share exchange.

A. In the case of a domestic corporation that is a party to a merger or share exchange:

1. The plan of merger or share exchange shall be adopted by the board of directors.

2. Except as provided in subsections F and H and in §§ [13.1-719](#) and [13.1-719.1](#), after adopting the plan of merger or share exchange the board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in

which case the board of directors shall transmit to the shareholders the basis for that determination.

B. The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

C. If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing domestic or foreign corporation or eligible entity and its shareholders are to receive shares or other interests or the right to receive shares or other interests in the surviving corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organic document of that corporation or eligible entity. If the corporation is to be merged into a domestic or foreign corporation or eligible entity that is to be created pursuant to the merger and its shareholders are to receive shares or other interests or the right to receive shares or other interests in the surviving corporation or eligible entity, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organic document of the new domestic or foreign corporation or eligible entity.

D. Unless the articles of incorporation, or the board of directors acting pursuant to subsection B, require a greater vote, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the transaction at a meeting at which a quorum of the voting group exists.

E. Separate voting by voting groups is required:

1. Except as otherwise provided in the articles of incorporation, on a plan of merger by each class or series of shares that:

a. Is to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any combination of the foregoing, or is proposed to be eliminated without being converted into any of the foregoing; or

b. Would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under § [13.1-708](#);

2. Except as otherwise provided in the articles of incorporation, on a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group;

3. On a plan of merger, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger; and

4. On a plan of share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of share exchange.

F. Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

1. The corporation will survive the merger or is the acquiring corporation in a share exchange;

2. Except for amendments permitted by § [13.1-706](#), its articles of incorporation will not be changed;

3. Each shareholder of the corporation whose shares were outstanding immediately before the effective time of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and rights immediately after the effective time of the merger or share exchange; and

4. With respect to shares of the surviving corporation in a merger that are entitled to vote unconditionally in the election of directors, the number of shares outstanding immediately after the merger, plus the number of shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of options, rights, and warrants issued pursuant to the merger, will not exceed by more than 20 percent the total number of shares of the surviving corporation outstanding immediately before the merger.

G. Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

1. The corporation is a public corporation;
2. The plan of merger or share exchange expressly (i) permits or requires such a merger or share exchange to be effected under this subsection and (ii) provides that such merger or share exchange be effected as soon as practicable following the consummation of the offer referred to in subdivision 3 if such merger or share exchange is effected under this subsection;
3. A corporation or limited liability company irrevocably accepts for payment shares tendered pursuant to a tender or exchange offer for any and all of the outstanding shares of a constituent corporation, as defined in § [13.1-719.1](#), on the terms provided in such plan of merger or share exchange that, absent this subsection, would be entitled to vote on the adoption of the plan of merger or share exchange; however, the offer may exclude shares of the constituent corporation that are owned at the commencement of the offer by:
 - a. The corporation or limited liability company making the offer;
 - b. Any person that owns, directly or indirectly, all of the outstanding shares or eligible interests of the corporation or limited liability company making the offer; or
 - c. Any direct or indirect wholly-owned subsidiary of any corporation or limited liability company described in subdivision a or person described in subdivision b;
4. Following the acceptance of shares referred to in this subsection, the shares irrevocably accepted for payment pursuant to the offer and received by the depository prior to expiration of the offer, plus the shares otherwise owned by the corporation or limited liability company consummating the offer, equals at least the percentage of the shares, and of each class or series thereof, that, absent this subsection, would be required to adopt a plan of merger or share exchange under this chapter and by the articles of incorporation of the constituent corporation;
5. The corporation or limited liability company accepting the shares referred to in subdivision 3 merges with or into the constituent corporation or acquires all of the outstanding shares of the constituent corporation pursuant to the plan; and

6. Each outstanding share of each class or series of stock of the constituent corporation that is the subject of, and is not irrevocably accepted for payment in, the offer referred to in subdivision 3 is either:

- a. To be converted in such merger into, or into the right to receive, the same amount and kind of consideration to be paid for shares of such class or series of stock of such constituent corporation irrevocably accepted for payment in the offer; or
- b. Exchanged in such share exchange for, or for the right to receive, the same amount and kind of consideration to be paid for shares of such class or series of stock of such constituent corporation irrevocably accepted for payment in the offer.

As used in this subsection:

"Depository" means an agent appointed in connection with an offer referred to in subdivision 3 by the corporation or limited liability company consummating the offer.

"Person" means any individual, corporation, partnership, limited liability company, unincorporated association, or other entity.

"Received" means (i) with respect to certificated shares, the physical receipt of a stock certificate and (ii) with respect to uncertificated shares, (a) the transfer into the depository's account or (b) the receipt by the depository of an agent's message.

H. If a corporation has not yet issued shares and its articles of incorporation do not otherwise provide, its board of directors may adopt and approve a plan of merger or share exchange on behalf of the corporation without shareholder action.

I. If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution, by each shareholder, of a separate written consent to become subject to such owner liability.

Code 1950, § 13.1-70; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1991, c. 109; 2005, c. [765](#); 2006, cc. [363](#), [663](#); 2007, c. [165](#); 2010, c. [782](#); 2015, c. [611](#).

§13.1-719. Merger between parent and subsidiary or between subsidiaries.

A. A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that possess at least 90 percent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into

the subsidiary, without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

B. A foreign parent corporation that owns shares of a domestic subsidiary corporation that possess at least 90 percent of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another domestic or foreign subsidiary, or merge itself into the subsidiary if permitted by the laws under which any such foreign parent or subsidiary corporation is organized or by which it is governed, without the approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of the corporations, or in the case of a foreign corporation, its equivalent governing document, otherwise provide. A foreign corporation may be a party to a merger pursuant to this subsection only if the merger is permitted by the laws under which the foreign corporation is organized.

C. If under subsection A or B approval of the merger by the subsidiary's shareholders is not required, the parent corporation shall, within 10 days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

D. Except as provided in subsections A, B, and C, a merger between a parent and a subsidiary shall be governed by the provisions of this article applicable to mergers generally.

E. The articles of incorporation of the survivor shall not be altered or amended by a merger pursuant to this section, except for amendments permitted by § [13.1-706](#).

F. Two or more subsidiaries may be merged into a parent corporation pursuant to this section.

Code 1950, § 13.1-76; 1956, c. 428; 1964, c. 417; 1968, c. 115; 1975, c. 500; 1985, c. 522; 1990, c. 230; 2005, c. [765](#); 2015, c. [611](#).

§13.1-719.1. Formation of a holding company.

A. As used in this section:

"Constituent corporation" means a corporation which, from the incorporation of the holding company until consummation of a merger governed by this section, was at

all times the sole direct parent of the holding company and whose shares are converted into shares of the holding company in such merger.

"Holding company" means a corporation which, from its incorporation until consummation of a merger governed by this section, was at all times a direct wholly owned subsidiary of the constituent corporation and whose shares are issued in such merger in exchange for the shares of the constituent corporation.

"Indirect subsidiary" means a corporation which, from its incorporation until consummation of a merger governed by this section, was at all times a direct wholly owned subsidiary of the holding company.

B. Unless its articles of incorporation otherwise provide, a constituent corporation may merge an indirect subsidiary into itself, or may merge itself into an indirect subsidiary, without the approval of the shareholders of the constituent corporation or the board of directors or shareholders of the indirect subsidiary, if:

1. Such constituent corporation and indirect subsidiary are the only parties to the merger;
2. The provisions in the articles of incorporation and bylaws of the constituent corporation and the holding company at the effective time of the merger are identical as they relate to:
 - a. The designation, number, and par value of each class and series of shares that are authorized, and the preferences, rights and limitations of each class and series of shares;
 - b. Any terms of the shares that are dependent upon facts objectively ascertainable outside of the articles of incorporation or that vary among the holders of the same class or series;
 - c. The preemptive right of the shareholders to acquire unissued shares, provided, however, that if the constituent corporation was formed on or before December 31, 2005, and its articles of incorporation do not deny the preemptive right of its shareholders, and the holding company was formed after December 31, 2005, the articles of incorporation of the holding company must provide that its shareholders have the preemptive right to acquire the holding company's unissued shares to the same extent the shareholders of the constituent corporation had a preemptive right to acquire unissued shares of the constituent corporation;

d. The definition, limitation, and regulation of the powers of the corporation, its directors, and shareholders;

e. The management of the business and regulation of the affairs of the corporation; and

f. For purposes of subdivision 2 c of this subsection, shares include any warrants, rights or options to acquire any such shares or any security or other obligation of the corporation convertible into any such shares or into warrants, rights or options to acquire any such shares;

3. Each share or fraction of a share of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of a share of the holding company having the same preferences, rights, and limitations as the share or fraction of a share of the constituent corporation being converted in the merger;

4. Each right to acquire shares of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a right to acquire shares of the holding company having the same preferences, rights, and limitations as the right to acquire shares of the constituent corporation being converted in the merger; and

5. The directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger.

C. Notwithstanding any provision in this chapter to the contrary, a plan of merger adopted pursuant to this section may include:

1. If the indirect subsidiary is the survivor:

a. An amendment or restatement of the indirect subsidiary's articles of incorporation to change the name of the indirect subsidiary to a name that satisfies the requirements of this chapter; and

b. A provision that the shares of the holding company into which the shares of the constituent corporation are converted in the merger may be represented by the share certificates that previously represented shares of the constituent corporation, if the holding company adopts the former name of the constituent corporation by filing articles of amendment that are effective immediately following consummation of the merger; and

2. If the constituent corporation is the survivor:

a. An amendment or restatement of the constituent corporation's articles of incorporation:

(1) To change the name of the constituent corporation to a name that satisfies the requirements of this chapter;

(2) To delete any existing provisions that authorize the issuance of or relate to multiple classes or series of shares and to add one or more provisions that authorize a new, single class of shares with unlimited voting rights in lieu thereof;

(3) To delete any existing provision that provides for staggering the terms of directors pursuant to § [13.1-678](#); or

(4) To make any change permitted by § [13.1-706](#);

b. A provision that one or more of the directors of the constituent corporation immediately prior to the effective time of the merger will no longer be directors of the constituent corporation immediately following the effective time of the merger; and

c. A provision that the shares of the holding company into which the shares of the constituent corporation are converted in the merger may be represented by the share certificates that previously represented shares of the constituent corporation, if the constituent corporation adopts a new name in the merger that is distinguishable upon the records of the Commission and if the board of directors of the holding company, acting pursuant to § [13.1-706](#), adopts the former name of the constituent corporation by filing articles of amendment that are effective immediately following consummation of the merger.

D. Articles of merger filed with respect to a merger authorized by this section shall include a statement that the plan of merger did not require approval by the shareholders of the constituent corporation or by the board of directors or shareholders of the indirect subsidiary because the merger was authorized by this section and that the conditions specified in subsection B have been satisfied.

E. Except as provided in this section, a merger governed by this section shall comply with the provisions of this article applicable to mergers generally.

F. From and after the effective time of a merger adopted by a constituent corporation pursuant to this section:

1. To the extent the restrictions of § [13.1-725.1](#) or § [13.1-728.2](#) applied to the constituent corporation and its shareholders immediately prior to the merger, such restrictions shall apply to the holding company and its shareholders immediately after the effective time of the merger as though it were the constituent corporation, and all shares of the holding company acquired in the merger shall for purposes of §§ [13.1-725.1](#) and [13.1-728.2](#) be deemed to have been acquired at the time that the shares of the constituent corporation converted in the merger were acquired, and provided further that:

a. Any shareholder who immediately prior to the effective time of the merger was not an interested shareholder within the meaning of § [13.1-725](#) shall not solely by reason of the merger become an interested shareholder of the holding company; and

b. Any shares which immediately prior to the effective time of the merger were not interested shares within the meaning of § [13.1-728.1](#) shall not solely by reason of the merger become interested shares of the holding company; and

2. To the extent a shareholder of the constituent corporation immediately prior to the effective time of the merger had standing to institute or maintain a derivative proceeding on behalf of the constituent corporation, consummation of the merger shall not be deemed to limit or extinguish such standing.

3. To the extent a voting trust authorized by § [13.1-670](#), a voting agreement authorized by § [13.1-671](#), a shareholder agreement authorized by § [13.1-671.1](#), a proxy or any similar agreement or instrument applied to the constituent corporation, its shares or its shareholders immediately prior to the merger, such voting trust, voting agreement, shareholder agreement, proxy or other agreement or instrument shall apply to the holding company and its shares and shareholders immediately following consummation of the merger to the same extent that it applied to the constituent corporation and its shares and shareholders immediately prior to consummation of the merger.

2006, c. [363](#); 2015, c. [611](#).

§13.1-720. Articles of merger or share exchange.

A. After a plan of merger or share exchange has been adopted and approved as required by this chapter, articles of merger or share exchange shall be signed on behalf of each party to the merger or share exchange. The articles shall set forth:

1. The plan of merger or share exchange, the names of the parties to the merger or share exchange and, for each party that is a foreign corporation or eligible entity, the name of the state or country under whose law it is incorporated or formed;
2. If the articles of incorporation of a domestic corporation that is the survivor of a merger are amended, or if a new domestic corporation is created as a result of a merger, as an attachment to the articles of merger or share exchange, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;
3. The date the plan of merger or share exchange was adopted by each domestic corporation that was a party to the merger or share exchange;
4. If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, either:
 - a. A statement that the plan was approved by the unanimous consent of the shareholders; or
 - b. A statement that the plan was submitted to the shareholders by the board of directors in accordance with this chapter, and a statement of:
 - (1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and
 - (2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group;
5. If the plan of merger or share exchange was adopted by the directors without approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan of merger or share exchange was duly approved by the directors including the reason shareholder approval was not required and, in the case of a merger pursuant to § [13.1-719.1](#), the additional statements required by subsection D of § [13.1-719.1](#); and
6. As to each foreign corporation or eligible entity that was a party to the merger or share exchange, a statement that the participation of the foreign corporation or eli-

gible entity was duly authorized as required by the organic law of the corporation or eligible entity.

B. Articles of merger or share exchange shall be filed with the Commission by the survivor of the merger or the acquiring corporation in a share exchange. If the Commission finds that the articles of merger or share exchange comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger or share exchange. Articles of merger or share exchange filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

C. In the case of a merger pursuant to § [13.1-719](#) or § [13.1-719.1](#):

1. The articles shall recite that the merger is being effected pursuant to § [13.1-719](#) or § [13.1-719.1](#), as the case may be; and

2. The articles need only be signed on behalf of the parent corporation or the constituent corporation, as the case may be.

Code 1950, §§ 13.1-72, 13.1-73; 1956, c. 428; 1968, c. 114; 1975, c. 500; 1985, c. 522; 1992, c. 575; 2000, c. [53](#); 2003, c. [597](#); 2005, c. [765](#); 2006, c. [363](#); 2009, c. [216](#); 2010, c. [782](#); 2015, c. [611](#).

§13.1-721. Effect of merger or share exchange.

A. When a merger becomes effective:

1. The domestic or foreign corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence as the case may be;

2. The separate existence of every domestic or foreign corporation or eligible entity that is merged into the survivor ceases;

3. Property owned by, and, except to the extent that assignment would violate a contractual prohibition on assignment by operation of law, every contract right possessed by, each domestic or foreign corporation or eligible entity that merges into the survivor is vested in the survivor without reversion or impairment;

4. All liabilities of each domestic or foreign corporation or eligible entity that is merged into the survivor are vested in the survivor;

5. The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;
 6. The articles of incorporation or organic document of the survivor is amended to the extent provided in the plan of merger;
 7. The articles of incorporation or organic document of a survivor that is created by the merger becomes effective; and
 8. The shares of each domestic or foreign corporation that is a party to the merger, and the eligible interests in an eligible entity that is a party to the merger, that are to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire securities, other securities, or eligible interests, cash, other property or any combination of the foregoing, are converted, and the former holders of such shares or eligible interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Article 15 (§ [13.1-729](#) et seq.) of this chapter or the organic law of the eligible entity.
- B. When a share exchange becomes effective, the shares of each domestic or foreign corporation that are to be exchanged for shares and other securities, eligible interests, obligations, rights to acquire shares, other securities, eligible interests, cash, other property or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under Article 15 (§ [13.1-729](#) et seq.) of this chapter.
- C. Upon a merger becoming effective, a foreign corporation or a foreign eligible entity that is the survivor of the merger is deemed to:
1. Appoint the clerk of the Commission as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and
 2. Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under Article 15 (§ [13.1-729](#) et seq.) of this chapter.
- D. No corporation that is required by law to be a domestic corporation, may, by merger, cease to be a domestic corporation, but every such corporation, even though a corporation of some other state, the United States or another country, shall also be a domestic corporation of the Commonwealth.

Code 1950, § 13.1-74; 1956, c. 428; 1962, c. 44; 1975, c. 500; 1985, c. 522; 2005, c. [765](#).

§13.1-721.1. Abandonment of a merger or share exchange.

A. Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation or a domestic or foreign eligible entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this article, and at any time before the certificate of merger or share exchange has become effective, it may be abandoned by a domestic corporation that is a party thereto without action by shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or share exchange.

B. If a merger or share exchange is abandoned under subsection A after articles of merger or share exchange have been filed with the Commission but before the certificate of merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, signed on behalf of a party to the merger or share exchange, shall be delivered to the Commission for filing prior to the effective date of the certificate of merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

2005, c. [765](#); 2010, c. [782](#).

§13.1-722. Repealed.

Repealed by Acts 2005, c. [765](#), cl. 2.

§13.1-722.2. Domestication.

A. A foreign corporation may become a domestic corporation if the laws of the jurisdiction in which the foreign corporation is incorporated authorize it to domesticate in another jurisdiction. The laws of the Commonwealth shall govern the effect of domesticating in the Commonwealth pursuant to this article.

B. A domestic corporation not required by law to be a domestic corporation may become a foreign corporation if the jurisdiction in which the corporation intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication

shall be approved in the manner provided in this article. The laws of the jurisdiction in which the corporation domesticates shall govern the effect of domesticating in that jurisdiction.

C. The plan of domestication shall set forth:

1. A statement of the jurisdiction in which the corporation is to be domesticated;
2. The terms and conditions of the domestication, provided that such terms and conditions may not alter the designation, rights, preferences or limitations of all or part of the authorized shares except to the extent required to conform to the requirements of this chapter; and
3. For a foreign corporation that is to become a domestic corporation, as a referenced attachment, amended and restated articles of incorporation that comply with the requirements of § [13.1-619](#) as they will be in effect upon consummation of the domestication.

D. The plan of domestication may include any other provision relating to the domestication.

E. The plan of domestication may also include a provision that the board of directors may amend the plan at any time prior to issuance of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication. An amendment made subsequent to the submission of the plan to the shareholders of the corporation shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the shares of any class or series of the corporation.

2001, c. [545](#); 2002, c. [1](#); 2012, c. [130](#).

§13.1-722.3. Action on plan of domestication by a domestic corporation.

In the case of a domestic corporation:

- A. The board of directors of the corporation shall adopt the plan of domestication.
- B. After adopting the plan of domestication the board of directors shall submit the plan of domestication for approval by the shareholders.
- C. For the plan of domestication to be approved:
 1. The board of directors shall recommend the plan to the shareholders unless the board of directors determines that because of conflicts of interest or other special

circumstances it should make no recommendation and communicates the basis of its determination to the shareholders with the plan; and

2. The shareholders shall approve the plan as provided in subsection F.

D. The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.

E. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § [13.1-658](#) at which the plan of domestication is to be submitted for approval. The notice shall state that a purpose of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan.

F. Unless this chapter or the board of directors, acting pursuant to subsection D, requires a greater vote, the plan of domestication shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

2001, c. [545](#); 2002, c. [1](#).

§13.1-722.4. Articles of domestication.

A. After the domestication of a foreign corporation is approved in the manner required by the laws of the jurisdiction in which the corporation is incorporated, the corporation shall file with the Commission articles of domestication setting forth:

1. The name of the corporation immediately prior to the filing of the articles of domestication and, if that name is unavailable for use in the Commonwealth or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of § [13.1-630](#);

2. The plan of domestication;

3. The original jurisdiction of the corporation and the date the corporation was incorporated in that jurisdiction, and each subsequent jurisdiction and the date the corporation was domesticated in each such jurisdiction, if any, prior to the filing of the articles of domestication; and

4. A statement that the domestication is permitted by the laws of the jurisdiction in which the corporation is incorporated and that the corporation has complied with those laws in effecting the domestication.

B. If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

C. The certificate of domestication shall become effective pursuant to § [13.1-606](#).

D. A foreign corporation's existence as a domestic corporation shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign corporation have been complied with and that the corporation has been incorporated under this chapter.

E. If the foreign corporation is authorized to transact business in the Commonwealth under Article 17 (§ [13.1-757](#) et seq.), its certificate of authority shall be canceled automatically on the effective date of the certificate of domestication issued by the Commission.

2001, c. [545](#); 2002, c. [1](#); 2012, c. [130](#).

§13.1-722.5. Surrender of articles of incorporation upon domestication.

A. Whenever a domestic corporation has adopted and approved, in the manner required by this article, a plan of domestication providing for the corporation to be domesticated under the laws of another jurisdiction, the corporation shall file with the Commission articles of incorporation surrender setting forth:

1. The name of the corporation;
2. The jurisdiction in which the corporation is to be domesticated and the name of the corporation upon its domestication under the laws of that jurisdiction;
3. The plan of domestication;
4. A statement that the articles of incorporation surrender are being filed in connection with the domestication of the corporation as a foreign corporation to be incorporated under the laws of another jurisdiction and that the corporation is surrendering its charter under the laws of this Commonwealth;
5. A statement:
 - a. That the plan was adopted by the unanimous consent of the shareholders; or

b. That the plan was submitted to the shareholders by the board of directors in accordance with this chapter, and a statement of:

(1) The designation, number of outstanding shares and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group;

6. A statement that the corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in the Commonwealth;

7. A mailing address to which the clerk may mail a copy of any process served on the clerk under subdivision 6; and

8. A commitment by the corporation to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

B. If the Commission finds that the articles of incorporation surrender comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation surrender.

C. The corporation shall automatically cease to be a domestic corporation when the certificate of incorporation surrender becomes effective.

D. If the former domestic corporation intends to continue to transact business in the Commonwealth, then, within 30 days after the effective date of the certificate of incorporation surrender, it shall deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth pursuant to § [13.1-759](#) together with a copy of its instrument of domestication and articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated or domesticated.

E. Service of process on the clerk of the Commission is service of process on a former domestic corporation that has surrendered its charter pursuant to this section. Service

on the clerk shall be made in accordance with § [12.1-19.1](#) and service on the former domestic corporation may be made in any other manner permitted by law.

2001, c. [545](#); 2002, c. [1](#); 2015, c. [623](#).

§13.1-722.6. Effect of domestication.

A. When a foreign corporation's certificate of domestication in this Commonwealth becomes effective, with respect to that corporation:

1. The title to all real estate and other property remains in the corporation without reversion or impairment;

2. The liabilities remain the liabilities of the corporation;

3. A proceeding pending may be continued by or against the corporation as if the domestication did not occur;

4. The articles of incorporation attached to the articles of domestication constitute the articles of incorporation of the corporation; and

5. The corporation is deemed to:

a. Be incorporated under the laws of this Commonwealth for all purposes;

b. Be the same corporation as the corporation that existed under the laws of the jurisdiction or jurisdictions in which it was originally incorporated or formerly domiciled; and

c. Have been incorporated on the date it was originally incorporated or organized.

B. Any shareholder of a foreign corporation that domesticates into this Commonwealth who, prior to the domestication, was liable for the liabilities or obligations of the corporation is not released from those liabilities or obligations by reason of the domestication.

2001, c. [545](#); 2002, c. [1](#).

§13.1-722.7. Abandonment of domestication.

A. Unless otherwise provided in a plan of domestication of a domestic corporation to become a foreign corporation, after the plan has been approved and adopted as required by this article, and at any time before the certificate of incorporation surrender has become effective, the domestication may be abandoned by the domestic corporation without action by the shareholders in accordance with any procedures set

forth in the plan of domestication or, if no such procedures are set forth in the plan of domestication, in the manner determined by the board of directors.

B. If a domestication is abandoned under subsection A after articles of incorporation surrender have been filed with the Commission but before the certificate of incorporation surrender has become effective, written notice that the domestication has been abandoned in accordance with this section shall be filed with the Commission prior to the effective time and date of the certificate of incorporation surrender. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

C. If the domestication of a foreign corporation into the Commonwealth is abandoned in accordance with the laws of the jurisdiction in which the foreign corporation is incorporated after articles of domestication have been filed with the Commission but before the certificate of domestication has become effective, written notice that the domestication has been abandoned shall be filed with the Commission prior to the effective time and date of the certificate of domestication. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

2001, c. [545](#); 2002, c. [1](#); 2015, c. [623](#).

§13.1-722.8. Definitions.

As used in this article, unless the context requires a different meaning :

"Articles of organization" has the same meaning specified in § [13.1-1002](#).

"Converting entity" means the domestic corporation that adopts a plan of entity conversion pursuant to this article.

"Corporation" has the same meaning specified in § [13.1-603](#).

"Limited liability company" has the same meaning specified in § [13.1-1002](#).

"Member" has the same meaning specified in § [13.1-1002](#).

"Membership interest" or "interest" has the same meaning specified in § [13.1-1002](#).

"Resulting entity" means the limited liability company that is in existence upon consummation of an entity conversion pursuant to this article.

2001, c. [545](#); 2002, c. [1](#); 2016, c. [288](#).

§13.1-722.9. Entity conversion.

A. A domestic corporation may become a domestic limited liability company pursuant to a plan of entity conversion that is adopted and approved by the corporation in accordance with the provisions of this article.

B. A domestic limited liability company may become a domestic corporation pursuant to a plan of entity conversion that is approved by the limited liability company in accordance with the provisions of Article 15 (§ [13.1-1081](#) et seq.) of Chapter 12.

2001, c. [545](#); 2002, c. [1](#); 2016, c. [288](#).

§13.1-722.10. Plan of entity conversion.

A. To become a domestic limited liability company, a domestic corporation shall adopt a plan of entity conversion setting forth:

1. A statement of the corporation's intention to convert to a limited liability company;
2. The terms and conditions of the conversion, including the manner and basis of converting the shares of the corporation into interests of the resulting entity preserving the ownership proportion and relative rights, preferences, and limitations of each such share;
3. As a separate attachment to the plan, the full text of the articles of organization of the resulting entity as they will be in effect upon consummation of the conversion; and
4. Any other provision relating to the conversion that may be desired.

B. The plan of entity conversion may also include a provision that the board of directors may amend the plan before the effective time and date of the certificate of entity conversion. An amendment made after the submission of the plan to the shareholders shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the shares of any class or series of the converting entity, unless the amendment has been approved by the shareholders in the manner set forth in § [13.1-722.11](#).

2001, c. [545](#); 2002, c. [1](#); 2003, c. [598](#); 2016, c. [288](#).

§13.1-722.11. Action on plan of entity conversion.

A. Except as provided in subsection B, the plan of entity conversion shall be adopted by the corporation in the following manner:

1. The board of directors shall adopt the plan of entity conversion.

2. After adopting the plan of entity conversion, the board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan of entity conversion, unless the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation and communicates the basis of its determination to the shareholders with the plan.

3. The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § [13.1-658](#) at which the plan of entity conversion is to be submitted for approval. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan.

5. Unless this chapter or the board of directors, acting pursuant to subdivision 3, requires a greater vote, the plan of entity conversion shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

B. If a corporation has not yet issued shares, a majority of its initial board of directors or incorporators, in the event that there is no board of directors, may adopt the plan of entity conversion.

2001, c. [545](#); 2002, c. [1](#); 2012, c. [130](#); 2016, c. [288](#).

§13.1-722.12. Articles of entity conversion.

A. After the plan of entity conversion of a corporation into a limited liability company has been adopted and approved as required by this article, the converting entity shall deliver to the Commission for filing articles of entity conversion setting forth:

1. The name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which name shall satisfy the requirements of the laws of this Commonwealth;

2. The date on which the corporation was originally incorporated, organized, or formed; its original name, entity type, and jurisdiction of incorporation, organization, or formation; and, for each subsequent change of entity type or jurisdiction of incorporation, organization, or formation made before the filing of the articles of entity conversion, the effective date of the change and the corporation's name, entity type, and jurisdiction of incorporation, organization, or formation upon consummation of the change;
 3. The plan of entity conversion, including the full text of the articles of organization of the resulting entity that comply with the requirements of Chapter 12 (§ [13.1-1000](#) et seq.), as they will be in effect upon consummation of the conversion;
 4. The date the plan of entity conversion was approved;
 5. If the plan of entity conversion was adopted by the board of directors or the incorporators without shareholder approval, a statement that the plan was duly approved by the board of directors or by a majority of the incorporators, as the case may be, including the reason shareholder and, if applicable, director approval was not required; and
 6. If the plan of entity conversion was approved by the shareholders, either:
 - a. A statement that the plan was adopted by the unanimous consent of the shareholders; or
 - b. A statement that the plan was submitted to the shareholders by the board of directors in accordance with this chapter, and a statement of:
 - (1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and
 - (2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.
- B. If the Commission finds that the articles of entity conversion comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of entity conversion.

2001, c. [545](#); 2002, c. [1](#); 2003, c. [598](#); 2015, c. [623](#); 2016, c. [288](#).

§13.1-722.13. Effect of entity conversion.

A. When an entity conversion under this article becomes effective, with respect to that entity:

1. The title to all real estate and other property remains in the resulting entity without reversion or impairment;
2. The liabilities remain the liabilities of the resulting entity;
3. A pending proceeding may be continued by or against the resulting entity as if the conversion did not occur;
4. The articles of organization attached to the articles of entity conversion constitute the articles of organization of the resulting entity;
5. The shares of the converting entity are reclassified into interests in accordance with the plan of entity conversion; and the shareholders of the converting entity are entitled only to the rights provided in the plan of entity conversion or to the rights, if any, they may have under subdivision A 5 of § [13.1-730](#);
6. The resulting entity is deemed to:
 - a. Be a limited liability company for all purposes;
 - b. Be the same entity without interruption as the converting entity that existed before the conversion;
 - c. Have been organized on the date that the converting entity was originally incorporated, organized, or formed; and
7. The converting entity shall cease to be a corporation when the certificate of entity conversion becomes effective.

B. Any shareholder of a converting entity who, before the conversion, was liable for the liabilities or obligations of the converting entity is not released from those liabilities or obligations by reason of the conversion.

2001, c. [545](#); 2002, c. [1](#); 2005, c. [765](#); 2015, c. [623](#); 2016, c. [288](#).

§13.1-722.14. Abandonment of entity conversion.

A. Unless otherwise provided in a plan of entity conversion of a domestic corporation to become a domestic limited liability company, after the plan has been approved and adopted as required by this article, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned by the

corporation without action by the shareholders in accordance with any procedures set forth in the plan of entity conversion or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

B. If an entity conversion is abandoned under subsection A after articles of entity conversion have been filed with the Commission but before the certificate of entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section shall be delivered to the Commission for filing before the effective time and date of the certificate of entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

2001, c. [545](#); 2002, c. [1](#); 2015, c. [623](#); 2016, c. [288](#).

§13.1-723. Disposition of assets not requiring shareholder approval.

Unless the articles of incorporation otherwise provide, no approval of the shareholders of a corporation is required:

1. To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;
2. To mortgage, pledge or dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business;
3. To transfer any or all of the corporation's assets to one or more domestic or foreign corporations or eligible entities all the shares or eligible interests of which are owned by the corporation; or
4. To distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

Code 1950, §§ 13-83, 13-84, 13.1-77; 1954, c. 499; 1956, c. 428; 1968, c. 109; 1971, Ex. Sess., c. 117; 1975, c. 500; 1985, c. 522; 1994, c. [710](#); 2003, c. [728](#); 2005, c. [765](#).

§13.1-724. Shareholder approval of certain dispositions.

A. A sale, lease, exchange or other disposition of the corporation's assets, other than a disposition described in § [13.1-723](#), requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. Unless the articles of incorporation or a shareholder-approved bylaw otherwise provide, if a corporation retains a business activity that

represented at least 20 percent of total assets at the end of the most recently completed fiscal year, and 20 percent of either (i) income from continuing operations before taxes or (ii) revenues from continuing operations for that fiscal year, in each case of the corporation and any of its subsidiaries that are consolidated for purposes of federal income taxes, the corporation will conclusively be deemed to have retained a significant continuing business activity.

B. A disposition that requires approval of the shareholders under subsection A shall be initiated by adoption of a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also submit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

C. The board of directors may condition its submission of the proposed disposition on any basis.

D. If a disposition is required to be approved by shareholders and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with [§ 13.1-658](#). The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain or be accompanied by a copy or summary of the agreement pursuant to which the disposition will be effected. If only a summary of the agreement is sent to shareholders, the corporation also shall send a copy of the agreement to any shareholder who requests it.

E. Unless the board of directors, acting pursuant to subsection C, requires a greater vote, the disposition to be authorized shall be approved by the holders of more than two-thirds of all the votes entitled to be cast on the disposition. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the disposition by each voting group entitled to vote on the disposition at a meeting at which a quorum of the voting group exists.

F. Unless the parties to the disposition have agreed otherwise, after a disposition has been approved by shareholders, and at any time before the disposition has been consummated, it may be abandoned, subject to any contractual rights, without further shareholder action in accordance with the procedure set forth in the resolution proposing the disposition or, if none is set forth, by the board of directors.

G. A disposition of assets in the course of dissolution under Article 16 (§ [13.1-742](#) et seq.) is not governed by this section.

H. The assets of a consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this section.

I. Notwithstanding any other provision of this section, no corporation organized to conduct the business of a railroad or other public service or a banking business, or a savings institution, an industrial loan association or a credit union may sell, lease or exchange its properties for the conduct of such business in the Commonwealth except to a corporation of the Commonwealth organized for the same purpose or in the case of a bank to a savings and loan association or a corporation of the United States, and in the case of a savings and loan association to a bank or a corporation of the United States.

Code 1950, §§ 13-83, 13-84, 13.1-77; 1954, c. 499; 1956, c. 428; 1968, c. 109; 1971, Ex. Sess., c. 117; 1975, c. 500; 1985, c. 522; 1987, c. 181; 1996, c. [77](#); 2005, c. [765](#).

§13.1-725. Definitions.

For purposes of this article:

An "affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

An "affiliated transaction" means any of the following transactions:

1. Any merger of the corporation or any of its subsidiaries with any interested shareholder or with any other corporation that immediately after the merger would be an affiliate of an interested shareholder that was an interested shareholder immediately before the merger;
2. Any share exchange pursuant to § [13.1-717](#) in which any interested shareholder acquires one or more classes or series of voting shares of the corporation or any of its subsidiaries;

3. Except for transactions in the ordinary course of business, (i) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any interested shareholder of any assets of the corporation or of any of its subsidiaries having an aggregate fair market value in excess of five percent of the corporation's consolidated net worth as of the date of the most recently available financial statements, or (ii) any guaranty by the corporation or any of its subsidiaries (in one transaction or a series of transactions) of indebtedness of any interested shareholder in an amount in excess of five percent of the corporation's consolidated net worth as of the date of the most recently available financial statements;

4. The sale or other disposition by the corporation or any of its subsidiaries to an interested shareholder (in one transaction or a series of transactions) of any voting shares of the corporation or any of its subsidiaries having an aggregate market value in excess of five percent of the aggregate market value of all outstanding voting shares of the corporation except pursuant to a share dividend or the exercise of rights or warrants distributed or offered on a basis affording substantially proportionate treatment to all holders of the same class or series of voting shares;

5. The dissolution of the corporation if proposed by or on behalf of an interested shareholder; or

6. Any reclassification of securities, including any reverse stock split, or recapitalization of the corporation, or any merger of the corporation with any of its subsidiaries or any distribution or other transaction, whether or not with or into or otherwise involving an interested shareholder, which has the effect, directly or indirectly (in one transaction or a series of transactions), of increasing by more than five percent the percentage of the outstanding voting shares of the corporation or any of its subsidiaries beneficially owned by any interested shareholder.

The "announcement date" means the date of the first general public announcement of the proposed affiliated transaction or of the intention to propose an affiliated transaction or the date on which the proposed affiliated transaction or the intention to propose an affiliated transaction is first communicated generally to shareholders of the corporation, whichever is earlier.

An "associate" means as to any specified person:

1. Any entity, other than the corporation and any of its subsidiaries, of which such person is an officer, director, manager, or general partner or is the beneficial owner of 10 percent or more of any class of voting shares or other interests;
2. Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and
3. Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is an officer or director of the corporation or any of its affiliates.

A person is deemed to be a "beneficial owner" of voting shares as to which such person and such person's affiliates and associates, individually or in the aggregate, have or share directly, or indirectly through any contract, arrangement, understanding, relationship, or otherwise:

1. Voting power, which includes the power to vote or to direct the voting of the voting shares, unless such power results solely from a revocable proxy given in response to a proxy solicitation made to 10 or more persons and in accordance with the Securities Exchange Act of 1934;
2. Investment power, which includes the power to dispose or to direct the disposition of the voting shares; or
3. The right to acquire voting power or investment power, whether such right is exercisable immediately or only after the passage of time, pursuant to any contract, arrangement, or understanding, upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise; provided, that (i) a person shall not be deemed to be a beneficial owner of voting shares tendered pursuant to a tender or exchange offer made by such person or such person's affiliates or associates until such tendered voting shares are accepted for purchase or exchange, (ii) a member of a national securities exchange shall not be deemed to be a beneficial owner of shares held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange may direct the vote of such shares, without instructions, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the shares to be voted but is otherwise precluded by the rules of such exchange from voting without instructions and (iii) a director of the corporation shall not be deemed to be a beneficial owner of voting shares beneficially owned by another director of

the corporation solely by reason of actions undertaken by such persons in their capacity as directors of the corporation.

"Control" means the possession, directly or indirectly, through the ownership of voting securities, by contract, arrangement, understanding, relationship or otherwise, of the power to direct or cause the direction of the management and policies of a person. The beneficial ownership of 10 percent or more of a corporation's voting shares shall be deemed to constitute control.

The "determination date" means the date on which an interested shareholder became an interested shareholder.

Unless otherwise specified in the articles of incorporation initially filed with the Commission, for purposes of this article a "disinterested director" means as to any particular interested shareholder (i) any member of the board of directors of the corporation who was a member of the board of directors before the later of January 1, 1988, and the determination date and (ii) any member of the board of directors of the corporation who was recommended for election by, or was elected to fill a vacancy and received the affirmative vote of, a majority of the disinterested directors then on the board.

"Fair market value" means:

1. In the case of shares, the highest closing sale price of a share quoted during the 30-day period immediately preceding the date in question on the composite tape for shares listed on the New York Stock Exchange, or, if such shares are not quoted on the composite tape on the New York Stock Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such shares are listed, or, if such shares are not listed on any such exchange, the highest closing bid quotation with respect to a share during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc., automated quotations system or any similar system then in general use, or, if no such quotations are available, the fair market value of a share on the date in question as determined by a majority of the disinterested directors; and
2. In the case of property other than cash or shares, the fair market value of such property on the date in question as determined by a majority of the disinterested directors.

An "interested shareholder" means any person that is:

1. The beneficial owner of more than 10 percent of any class of the outstanding voting shares of the corporation; however, the term "interested shareholder" shall not include the corporation or any of its subsidiaries, any savings, employee stock ownership, or other employee benefit plan of the corporation or any of its subsidiaries, or any fiduciary with respect to any such plan when acting in such capacity. For the purpose of determining whether a person is an interested shareholder, the number of voting shares deemed to be outstanding shall include shares deemed owned by the interested shareholder through application of subdivision 3 under the definition of "beneficial owner" but shall not include any other voting shares that may be issuable pursuant to any contract, arrangement, or understanding, upon the exercise of any conversion right, exchange right, warrant, or option, or otherwise; or

2. An affiliate or associate of the corporation and at any time within the preceding three years was an interested shareholder of such corporation.

"Valuation date" means, if the affiliated transaction is voted upon by shareholders, the day before the date of the vote of shareholders or, if the affiliated transaction is not voted upon by shareholders, the date of the consummation of the transaction.

"Voting shares" means the outstanding shares of all classes or series of the corporation entitled to vote generally in the election of directors.

1985, c. 522; 1988, c. 442; 2005, c. [765](#); 2010, c. [782](#).

§13.1-725.1. Affiliated transactions.

Notwithstanding any provision to the contrary contained in this chapter, except as provided in subsection B of § [13.1-727](#), no corporation shall engage in any affiliated transaction with any interested shareholder for a period of three years following such interested shareholder's determination date unless approved by the affirmative vote of a majority (but not less than two) of the disinterested directors and by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by the interested shareholder. A corporation may engage in an affiliated transaction with an interested shareholder beginning three years after such interested shareholder's determination date, provided such transaction complies with the provisions of § [13.1-726](#).

1988, c. 442.

§13.1-726. Voting requirements for affiliated transactions.

Except as provided in § [13.1-727](#) and notwithstanding the provisions of subsection A of § [13.1-638](#), in addition to any affirmative vote required by any other section of this Act or by the articles of incorporation, an affiliated transaction shall be approved by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by the interested shareholder.

1985, c. 522; 1988, c. 442.

§13.1-726.1. Determination by disinterested directors.

A majority of the disinterested directors shall have the power to determine for the purposes of this article:

1. Whether a person is an interested shareholder;
2. The number of voting shares beneficially owned by any person;
3. Whether a person is an affiliate or associate of another;
4. Whether the securities to be issued or transferred by the corporation or any of its subsidiaries to any interested shareholder have an aggregate fair market value equal to or greater than five percent of the aggregate fair market value of all of the outstanding voting shares of the corporation or any of its subsidiaries as of the determination date; and
5. Whether the assets or amount of indebtedness guaranteed that may be the subject of any affiliated transaction constitutes more than five percent of the consolidated net worth of the corporation.

1988, c. 442.

§13.1-727. Exceptions.

A. The voting requirements set forth in § [13.1-726](#) do not apply to a particular affiliated transaction if the conditions specified in either of the following subdivisions are met:

1. The affiliated transaction has been approved by a majority of the disinterested directors; or
2. In the affiliated transaction consideration will be paid to the holders of each class or series of voting shares and the following conditions will be met:
 - a. The aggregate amount of the cash and the fair market value as of the valuation date of consideration other than cash to be received per share by holders of each class or

series of voting shares in such affiliated transaction is at least equal to the highest of the following:

- (1) If applicable, the highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees paid by the interested shareholder for any shares of such class or series acquired by it (i) within the two-year period immediately preceding the determination date or (ii) in the transaction in which it became an interested shareholder, whichever is higher, plus, in either case, interest compounded annually from the earliest date on which such highest per share acquisition price was paid, being the "share acquisition date," through the date the affiliated transaction is effected at the rate for one-year United States Treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series, since the share acquisition date, up to the amount of such interest;
 - (2) The fair market value per share of such class or series on the announcement date or on the determination date, whichever is higher being the "measuring date," plus, in either case, interest compounded annually from the measuring date through the date the affiliated transaction is effected at the rate for one-year United States Treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series, since the measuring date, up to the amount of such interest;
 - (3) If applicable, the price per share equal to the per share amount determined pursuant to subdivision 2 a (2) of this subsection, multiplied by the ratio of (i) the highest per share price including any brokerage commissions, transfer taxes and soliciting dealers' fees paid by the interested shareholder for any shares of such class or series acquired by it within the two-year period immediately preceding the determination date to (ii) the fair market value per share of such class or series on the first day in such two-year period on which the interested shareholder acquired any shares of such class or series; and
 - (4) If applicable, the highest preferential amount, if any, per share to which the holders of such class or series are entitled in the event of any voluntary or involuntary dissolution of the corporation;
- b. The consideration to be received by holders of outstanding shares shall be in cash or in the same form as the interested shareholder has previously paid for shares of

the same class or series and if the interested shareholder has paid for shares with varying forms of consideration, the form of the consideration will be either cash or the form used to acquire the largest number of shares of such class or series previously acquired by the interested shareholder;

c. During such portion of the three-year period preceding the announcement date that such interested shareholder has been an interested shareholder, except as approved by a majority of the disinterested directors:

(1) There shall have been no failure to declare and pay at the regular date therefor any full periodic dividends, whether or not cumulative, on any outstanding shares of the corporation;

(2) There shall have been (i) no reduction in the annual rate of dividends paid on any class or series of voting shares, except as necessary to reflect any subdivision of the class or series, and (ii) an increase in such annual rate of dividends as necessary to reflect any reclassification, including any reverse stock split, recapitalization, reorganization, or similar transaction that has the effect of reducing the number of outstanding shares of the class or series; and

(3) Such interested shareholder shall not have become the beneficial owner of any additional voting shares except as part of the transaction that results in such interested shareholder becoming an interested shareholder;

d. During such portion of the three-year period preceding the announcement date that such interested shareholder has been an interested shareholder, except as approved by a majority of the disinterested directors, such interested shareholder shall not have received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges, or other financial assistance or any tax credits or other tax advantages provided by the corporation, whether in anticipation of or in connection with such affiliated transaction or otherwise; and

e. Except as otherwise approved by a majority of the disinterested directors, a proxy or information statement describing the affiliated transaction and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules, or regulations) is mailed to holders of voting shares of the corporation at least 25 days before the consummation of such affiliated transaction, whether or not such proxy or

information statement is required to be mailed pursuant to such Act, rules, regulations, or subsequent provisions.

B. The provisions of this article do not apply to a particular affiliated transaction if the conditions specified in any one of the following subdivisions are met:

1. The affiliated transaction is with (i) an interested shareholder who has been an interested shareholder continuously or who would have been such but for the unilateral action of the corporation since the latest of (a) January 26, 1988, (b) the date the corporation first became subject to this article by virtue of its having 300 shareholders of record, or (c) the date such person became an interested shareholder with the prior or contemporaneous approval of a majority of the disinterested directors, (ii) any person who becomes an interested shareholder as a result of acquiring shares from a person specified in (i) of this subdivision by gift, testamentary bequest or the laws of descent and distribution or in a transaction in which consideration was not exchanged and who continues thereafter to be an interested shareholder, or who would have so continued but for the unilateral action of the corporation, (iii) a person who became an interested shareholder inadvertently or as a result of the unilateral action of the corporation and who, as soon as practicable thereafter, divested beneficial ownership of sufficient shares so that such person ceased to be an interested shareholder, and who would not, at any time within the three-year period immediately preceding the announcement date have been an interested shareholder but for such inadvertency or the unilateral action of the corporation, or (iv) an interested shareholder whose acquisition of voting shares making such person an interested shareholder was approved by a majority of the disinterested directors prior to such shareholder's determination date.

2. The corporation does not have more than 300 shareholders of record, unless the foregoing results from action taken by or on behalf of an interested shareholder or a transaction in which a person becomes an interested shareholder.

3. The corporation is an investment company registered under the Investment Company Act of 1940.

4. The corporation's articles of incorporation initially filed with the Commission expressly provide that the corporation shall not be governed by this article.

5. The corporation, by action of its shareholders, adopts an amendment to its articles of incorporation or bylaws expressly electing not to be governed by this article,

provided that, in addition to any other vote required by law, such amendment to the articles of incorporation or bylaws shall be approved by the affirmative vote of a majority of the shares entitled to vote that are not owned by an interested shareholder. An amendment adopted pursuant to this subdivision shall not be effective until 18 months after the date such amendment was approved by the shareholders and shall not apply to any affiliated transaction between such corporation and any person who became an interested shareholder of such corporation on or prior to the date of such amendment. A bylaw amendment adopted pursuant to this subdivision shall not be further amended by the board of directors. In the event the articles of incorporation or bylaws are subsequently amended to eliminate a prior amendment electing not to be governed by this article, such subsequent amendment shall not restrict an affiliated transaction between the corporation and any person who became an interested shareholder at a time after such prior amendment became effective and who continued to be an interested shareholder immediately before and immediately after the adoption of such subsequent amendment, provided such person thereafter remains an interested shareholder continuously, or would have so remained but for the unilateral action of the corporation.

1985, c. 522; 1988, c. 442; 2005, c. [765](#).

§13.1-727.1. Nonexclusivity.

Except as expressly provided in this article, the provisions of this article shall not limit actions that may be taken, or require the taking of any action, by the board of directors or shareholders with respect to any potential change in control of the corporation. With respect to any action or any failure to act by the board of directors, the provisions of § [13.1-690](#) shall apply. In determining the best interests of the corporation, a director may consider the possibility that those interests may best be served by the continued independence of the corporation.

1988, c. 442.

§13.1-728. Repealed.

Repealed by Acts 1988, c. 442.

§13.1-728.1. Definitions.

As used in this article:

"Acquiring person," with respect to any public corporation, means any person who has made or proposes to make a control share acquisition of shares of such public corporation.

"Beneficial ownership" means the sole or shared power to dispose or direct the disposition of shares, or the sole or shared power to vote or direct the voting of shares, or the sole or shared power to acquire shares, including any such power which is not immediately exercisable, whether such power is direct or indirect or through any contract, arrangement, understanding, relationship or otherwise. A person shall not be deemed to be a beneficial owner of shares tendered pursuant to a tender or exchange offer made by such person until the tendered shares are accepted for purchase or exchange. A person shall not be deemed to be a beneficial owner of shares as to which such person may exercise voting power solely by virtue of a revocable proxy conferring the right to vote. A member of a national securities exchange shall not be deemed to be a beneficial owner of shares held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange, may direct the vote of such shares, without instructions, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the shares to be voted but is otherwise precluded by the rules of such exchange from voting without instructions.

"Control share acquisition" means the direct or indirect acquisition, other than in an excepted acquisition, by any person of beneficial ownership of shares of a public corporation that, except for this article, would have voting rights and would, when added to all other shares of such public corporation which then have voting rights and are beneficially owned by such person, would cause such person to become entitled, immediately upon acquisition of such shares, to vote or direct the vote of, shares having voting power within any of the following ranges of the votes entitled to be cast in an election of directors: (i) one-fifth or more but less than one-third of such votes; (ii) one-third or more but less than a majority of such votes; or (iii) a majority or more of such votes. If voting rights are granted pursuant to this article in respect of any such range to shares so acquired by any person, any acquisition by such person of additional shares shall not, for purposes of the preceding sentence, constitute a control share acquisition unless, as a result of such acquisition, the voting power of the shares beneficially owned by such person would be in excess of such range in respect of which voting rights had previously been granted. If this article applies to acquisitions of shares of a public corporation at the time of a control share

acquisition of any shares of such corporation, then shares acquired by the same person within 90 days before or after such control share acquisition and shares acquired by the same person pursuant to a plan to make a control share acquisition are deemed to have been acquired in the same control share acquisition for the purposes of this article, regardless of the applicability of this article at the time of any other acquisitions of shares during such periods or pursuant to such a plan.

"Excepted acquisition" means the acquisition of shares of a public corporation in any of the following circumstances:

1. Before January 26, 1988;
2. Pursuant to a binding contract in effect before January 26, 1988;
3. Pursuant to the laws of wills and decedents' estates;
4. Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this article;
5. Pursuant to a merger or plan of share exchange effected in compliance with Article 12 (§ [13.1-715.1](#) et seq.) of this chapter if the public corporation is a party to the agreement of merger or plan of share exchange;
6. Pursuant to a tender or exchange offer that is made pursuant to an agreement to which the public corporation is a party;
7. Directly from the public corporation, or from any of its wholly owned subsidiaries, or from any corporation having beneficial ownership of shares of the public corporation having at least a majority, before such transaction, of the votes entitled to be cast in the election of directors of such public corporation; or
8. In good faith and not for the purpose of circumventing this chapter by or from any person (a "transferor") whose voting rights had previously been authorized by shareholders in compliance with this article, or whose previous acquisition of beneficial ownership of shares would have constituted a control share acquisition but for any of subdivisions 1 through 7 in this definition; however, any acquisition described in this subdivision 8 shall constitute a control share acquisition if as a result thereof any person acquires beneficial ownership of shares of such issuing public corporation having voting power in the election of directors in excess of the range of votes within which the transferor was authorized by this article to exercise voting power immediately before such acquisition.

"Interested shares" means the shares of a public corporation the voting of which in an election of directors may be exercised or directed by any of the following persons: (i) an acquiring person with respect to a control share acquisition; (ii) any officer of such public corporation; or (iii) any employee of such public corporation who is also a director of the corporation.

"Person" includes an associate of any person. For this purpose, "associate" shall mean (i) any other person who directly or indirectly controls, or is controlled by or under common control with, any such person or who is acting or intends to act jointly or in concert with any such person in connection with the acquisition of or exercise of beneficial ownership over shares; (ii) any corporation or organization of which any such person is an officer, director, manager or partner or as to which any such person performs a similar function; (iii) any other person having direct or indirect beneficial ownership of 10 percent or more of any class of equity securities of any such person; (iv) any trust or estate in which any such person has a beneficial interest or as to which any such person serves as trustee or in a similar fiduciary capacity; and (v) any relative or spouse of any such person, or any relative of such spouse, any one of whom has the same residence as any such person. For this purpose, "control" shall mean the possession, direct or indirect, of the power to direct or to cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, arrangement or understanding, or otherwise.

The "votes" entitled to be cast by any share shall, if any voting group is entitled to vote for less than the total number of directors to be elected at any election, be determined by multiplying the number of votes entitled to be cast by the holder of such share by the number of directors for whom such holder is entitled to vote; however, beneficial ownership of a majority of the shares comprising any such voting group shall be deemed to entitle such beneficial owner to cast all the votes of the shares in such voting group.

1989, c. 14; 1990, c. 252; 2005, c. [765](#).

§13.1-728.2. Application.

Unless, at the time of any control share acquisition with respect to a public corporation, such corporation's articles of incorporation or bylaws provide that this article does not apply to acquisitions of shares of such corporation, shares of such corporation acquired in such control share acquisition have only such voting rights as are conferred by § [13.1-728.3](#). Unless by midnight of the fourth day following (i) the

receipt by the secretary of the corporation at the principal office of the corporation, of a notice expressly and specifically describing a proposed control share acquisition, or (ii) in case the proposed control share acquisition is to be made by tender offer, a public announcement, the corporation's articles of incorporation or bylaws provide that this article does not apply, then the provisions of § [13.1-728.3](#) shall apply to shares to be acquired in such control share acquisition.

1989, c. 14; 1990, c. 252; 2005, c. [765](#).

§13.1-728.3. Voting rights.

A. Notwithstanding any contrary provision of this chapter, shares acquired in a control share acquisition have no voting rights unless voting rights are granted by resolution adopted by the shareholders of the public corporation. If such a resolution is adopted, such shares shall thereafter have the voting rights they would have had in the absence of this article.

B. To be adopted under this section, the resolution shall be approved by a majority of all the votes which could be cast in a vote on the election of directors by all the outstanding shares other than interested shares. Interested shares shall not be entitled to vote on the matter, and in determining whether a quorum exists, all interested shares shall be disregarded. For the purpose of this subsection, the interested shares shall be determined as of the record date for determining the shareholders entitled to vote at the meeting.

C. If no resolution is adopted under this section in respect of shares acquired in a control share acquisition and beneficial ownership of such shares is subsequently transferred in circumstances where the transferor no longer has beneficial ownership of such shares and the transferee is not engaged in a control share acquisition, then such shares shall thereafter have the voting rights they would have had in the absence of this article.

1989, c. 14; 2005, c. [765](#).

§13.1-728.4. Control share acquisition statement.

Any acquiring person may, after any control share acquisition or before any proposed one, deliver a control share acquisition statement to the public corporation at its principal office. The control share acquisition statement shall set forth all of the following:

1. The identity of the acquiring person and each other member of any group of which the person is a part for purposes of determining the shares owned or to be owned, beneficially, by the acquiring person.
2. A statement that the control share acquisition statement is given pursuant to this article.
3. The number of shares of the issuing public corporation beneficially owned by the acquiring person and each other member of the group.
4. The range of voting power under which the control share acquisition falls or would, if consummated, fall.
5. A description in reasonable detail of the terms of the control share acquisition or the proposed control share acquisition, including but not limited to:
 - a. The source of funds or other consideration and the material terms of the financial arrangements for the control share acquisition;
 - b. Any plans or proposals of the acquiring person to liquidate the public corporation, to sell all or substantially all of its assets, to merge it or exchange its shares with any other person, to change the location of its principal executive office or a material portion of its business activities, to change materially its management or policies of employment, to alter materially its relations with suppliers or customers or the communities in which it operates, or to make any other material change in its business, corporate structure, management or personnel;
 - c. Any plans or proposals of the acquiring person to acquire additional shares (including additional shares within the range set forth in the statement) or to dispose of any shares; and
 - d. Such other information which could reasonably be expected to affect materially the decision of a shareholder with respect to granting voting rights to shares acquired or proposed to be acquired in the control share acquisition.
6. If the control share acquisition has not taken place, representations of the acquiring person, together with a statement in reasonable detail of the facts upon which they are based, that the control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition. For this purpose, financial capacity shall only be deemed to include (i) cash and cash equivalents in excess of normal working capital

requirements and (ii) funds to be provided under legally binding commitments from financial institutions having the capability to advance such funds. If the funds to be provided under such commitments are included in the demonstration of financial capacity, the control share acquisition statement shall be accompanied by complete copies of all such commitments and a written description of all oral understandings concerning the terms and conditions of such commitments.

1989, c. 14; 2005, c. [765](#).

§13.1-728.5. Meeting of shareholders.

A. If the acquiring person so requests at the time of delivery of a control share acquisition statement and gives an undertaking to pay the corporation's expenses of a special meeting, within 10 days thereafter the directors of the public corporation shall call a special meeting of shareholders for the purpose of considering the voting rights to be granted the shares acquired or to be acquired in the control share acquisition.

B. Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within 50 days after receipt by the public corporation of the request.

C. If the acquiring person so requests in writing at the time of delivery of the control share acquisition statement, the special meeting shall not be held sooner than 30 days after receipt by the public corporation of the acquiring person's statement.

D. If the acquiring person makes no request under subsection A but delivers, no later than 30 days before the intended date of notice of an annual meeting of shareholders, a control share acquisition statement with respect to shares acquired in a control share acquisition, the voting rights to be granted such shares shall be considered by any such annual meeting.

E. Notwithstanding any contrary provision of this chapter, an appointment of a proxy that confers authority to vote on the granting of voting rights pursuant to this article shall be solicited separately from any offer to purchase, or from any solicitation of an offer to sell, shares of the public corporation, and may not be solicited sooner than 30 days before the meeting unless otherwise agreed to in writing by the acquiring person and the public corporation. No such appointment may be solicited or voted unless the appointment expressly provides that it is revocable at all times until the completion of the vote.

F. Notwithstanding subsection A, the directors of the public corporation may decline to call a special meeting of shareholders requested under such subsection if they determine that, at the time of such request, the acquiring person does not beneficially own shares having at least five percent of the votes entitled to be cast at an election of directors. If the directors so decline and if the control share acquisition statement accompanying such request was delivered no later than 30 days before the intended date of notice of an annual meeting of shareholders, the voting rights to be granted shares acquired or to be acquired in the control share acquisition described in the control share acquisition statement shall be considered at such annual meeting.

G. The control share acquisition statement required pursuant to subsections A, C, D and E shall be delivered under and meet the requirements of § [13.1-728.4](#).

1989, c. 14; 2005, c. [765](#).

§13.1-728.6. Notice to shareholders.

A. If a special meeting of shareholders is required to be called pursuant to § [13.1-728.5](#), notice of the special meeting shall be given as promptly as reasonably practicable by the public corporation to all shareholders of record as of the record date set for the meeting, whether or not entitled to vote at the meeting.

B. Notice of the special or annual shareholders' meeting at which the voting rights are to be considered shall include or be accompanied by the following:

1. A copy of the control share acquisition statement delivered pursuant to this article.
2. A statement by the board of directors of the corporation, authorized by its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the granting of voting rights to shares acquired in the control share acquisition or the proposed control share acquisition.

1989, c. 14; 2005, c. [765](#).

§13.1-728.7. Redemption.

A. If authorized in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, the shares acquired in such control share acquisition with respect to which no control share acquisition statement has been filed with the public corporation may, at any time during the period ending 60 days after the last acquisition of such shares by the acquiring person, be redeemed by the corporation at the redemption price specified in subsection C.

B. If authorized in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, shares acquired in such control share acquisition with respect to which the shareholders have failed to grant voting rights at a special meeting or, if no special meeting for such purpose has been convened, at an annual meeting may, at any time during the period ending 60 days after such meeting, be redeemed by the corporation at the redemption price specified in subsection C.

C. The redemption price for shares to be redeemed under this section shall be the number of such shares multiplied by the dollar amount (rounded to the nearest cent) equal to the average per share price, including any brokerage commissions, transfer taxes and soliciting dealer's fees, paid by the acquiring person for such shares. The corporation may rely conclusively on public announcements by, or filings with the Securities and Exchange Commission by, the acquiring person as to the prices so paid.

1989, c. 14; 2005, c. [765](#).

§13.1-728.8. Appraisal rights.

A. Unless otherwise provided in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, in the event shares acquired in a control share acquisition are accorded full voting rights and the acquiring person has beneficial ownership of shares entitled to cast a majority of the votes which could be cast in an election of directors, all shareholders of the public corporation other than the acquiring person have the right to appraisal rights and to obtain payment of the fair value of their shares under Article 15 (§ [13.1-729](#) et seq.) of this chapter as though such granting of voting rights were a corporate action described in subsection A of § [13.1-730](#), except that the provisions of subsection B of § [13.1-730](#) shall not be applicable and the failure to vote in favor of the granting of voting rights shall be deemed to constitute compliance with the requirements of subsection A of § [13.1-733](#).

B. For the purposes of this section, "fair value" shall in no event be less than the highest price per share paid in the control share acquisition, as adjusted for any subsequent share dividends or reverse share splits or similar changes.

1989, c. 14; 2005, c. [765](#).

§13.1-728.9. Nonexclusivity.

Except as expressly provided in this article, neither the provisions of this article nor their application to any acquiring person shall limit actions that may be taken, or require the taking of any action, by the board of directors or shareholders with respect to any potential changes in control of any public corporation. In the case of any action taken or not taken by directors, the provisions of § [13.1-690](#) shall apply, and, in determining the best interests of the corporation, a director may consider the possibility that those interests may best be served by the continued independence of the corporation.

1989, c. 14; 2005, c. [765](#).

§13.1-729. Definitions.

In this article:

"Affiliate" means a person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive officer thereof.

"Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

"Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered by §§ [13.1-734](#) through [13.1-740](#), includes the surviving entity in a merger.

"Fair value" means the value of the corporation's shares determined:

- a. Immediately before the effectuation of the corporate action to which the shareholder objects;
- b. Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and
- c. Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to subdivision A 5 of § [13.1-730](#).

"Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

"Interested transaction" means a corporate action described in subsection A of § [13.1-730](#), other than a merger pursuant to § [13.1-719](#) or [13.1-719.1](#), involving an

interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition:

1. "Beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.

2. "Interested person" means a person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:

a. Was the beneficial owner of 20% or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action;

b. Had the power, contractually or otherwise, to cause the appointment or election of 25% or more of the directors to the board of directors of the corporation; or

c. Was a senior executive officer or director of the corporation or a senior executive officer of any affiliate thereof, and that senior executive officer or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(1) Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

(2) Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been

approved on behalf of the corporation in the same manner as is provided in § [13.1-691](#); or

(3) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

"Preferred shares" means a class or series of shares whose holders have preference over any other class or series of shares with respect to distributions.

"Record shareholder" means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

"Senior executive officer" means the chief executive officer, chief operating officer, chief financial officer and anyone in charge of a principal business unit or function.

"Shareholder" means both a record shareholder and a beneficial shareholder.

1985, c. 522; 1992, c. 575; 2005, c. [765](#); 2007, c. [165](#).

§13.1-730. Right to appraisal.

A. A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

1. Consummation of a merger to which the corporation is a party (i) if shareholder approval is required for the merger by § [13.1-718](#), or would be required but for the provisions of subsection G of § [13.1-718](#); however, appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger or (ii) if the corporation is a subsidiary and the merger is governed by § [13.1-719](#);
2. Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;
3. Consummation of a disposition of assets pursuant to § [13.1-724](#) if shareholder approval is required for the disposition, except that appraisal rights shall not be

available to any shareholder of the corporation with respect to shares of any class or series if:

a. Under the terms of the corporate action approved by the shareholders there is to be distributed to the shareholders in cash the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in § [13.1-746](#) or [13.1-746.1](#):

(1) Within one year after the shareholders' approval of the action; and

(2) In accordance with their respective interests determined at the time of distribution; and

b. The disposition of assets is not an interested transaction;

4. An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

5. Any other amendment to the articles of incorporation, or any other merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors; or

6. Consummation of a domestication in which a domestic corporation becomes a foreign corporation if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest in the total voting rights of the outstanding shares of the domestic corporation, as the shares held by the shareholder immediately before the domestication.

B. Notwithstanding subsection A, the availability of appraisal rights under subdivisions A 1 through A 4 shall be limited in accordance with the following provisions:

1. Appraisal rights shall not be available for the holders of shares of any class or series of shares that is:

a. A covered security under § 18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended;

b. Traded in an organized market and has at least 2,000 shareholders and a market value of at least \$20 million, exclusive of the value of such shares held by the

corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than 10 percent of such shares; or

c. Issued by an open end management investment company registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 and may be redeemed at the option of the holder at net asset value.

2. The applicability of subdivision 1 shall be determined as of:

a. The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

b. The day before the effective date of such corporate action if there is no meeting of shareholders.

3. Subdivision 1 shall not be applicable and appraisal rights shall be available pursuant to subsection A for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subdivision 1 at the time the corporate action becomes effective.

4. Subdivision 1 shall not be applicable and appraisal rights shall be available pursuant to subsection A for the holders of any class or series of shares where the corporate action is an interested transaction.

C. Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one year of that date if such action would otherwise afford appraisal rights.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 1986, c. 540; 1988, c. 442; 1990, c. 229;

1992, c. 575; 1996, c. [246](#); 1999, c. [288](#); 2005, c. [765](#); 2007, c. [165](#); 2010, c. [782](#); 2015, c. [611](#).

§13.1-731. Assertion of rights by nominees and beneficial owners.

A. A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

B. A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

1. Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in subdivision B 2 b of § [13.1-734](#); and

2. Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. [765](#).

§13.1-732. Notice of appraisal rights.

A. Where any corporate action specified in subsection A of § [13.1-730](#) is to be submitted to a vote at a shareholders' meeting and the corporation has concluded that shareholders are or may be entitled to assert appraisal rights under this article, the meeting notice shall state the corporation's position as to the availability of appraisal rights.

A copy of this article shall accompany the meeting notice sent to those record shareholders who are or may be entitled to exercise appraisal rights.

B. In a merger pursuant to § [13.1-719](#), the parent corporation shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice shall be sent within 10 days

after the corporate action became effective and include the materials described in § [13.1-734](#).

C. Where any corporate action specified in subsection A of § [13.1-730](#) is to be approved by written consent of the shareholders pursuant to § 13.1-657:

1. Written notice that appraisal rights are, are not, or may be available must be given to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article; and

2. Written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by subsections F and G of § [13.1-657](#), may include the materials described in § [13.1-734](#), and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article.

D. Where corporate action described in subsection A of § [13.1-730](#) is proposed, or a merger pursuant to § [13.1-719](#) is effected, the notice referred to in subsection A or C, if the corporation concludes that appraisal rights are or may be available, and in subsection B shall be accompanied by:

1. The annual financial statements specified in subsection A of § [13.1-774](#) of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than 16 months before the date of the notice and shall comply with subsection B of § [13.1-774](#); provided that, if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

2. The latest available quarterly financial statements of such corporation, if any.

E. A public corporation, or a corporation that ceased to be a public corporation as a result of the corporate action specified in subsection A of § [13.1-730](#), may fulfill its responsibilities under subsection D by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the U.S. Securities and Exchange Commission if the corporation was a public corporation as of the date of the specified financial statements.

F. The right to receive the information described in subsection D may be waived in writing by a shareholder before or after the corporate action.

1985, c. 522; 2005, c. [765](#); 2007, c. [165](#); 2012, c. [706](#); 2015, c. [611](#).

§13.1-733. Notice of intent to demand payment.

A. If a corporate action specified in subsection A of § [13.1-730](#) is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

1. Must deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and
2. Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

B. If a corporate action specified in subsection A of § [13.1-730](#) is to be approved by shareholders by written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

1. Shall deliver to the corporation before the proposed action becomes effective written notice of the shareholder's intent to demand payment if the proposed action is effectuated, except that such written notice is not required if the notice required by subsection C of § [13.1-732](#) is given less than 25 days prior to the date such proposed action is effectuated; and
2. Shall not sign a consent in favor of the proposed action with respect to that class or series of shares.

C. A shareholder who fails to satisfy the requirements of subsection A or B is not entitled to payment under this article.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. [765](#); 2007, c. [165](#); 2010, c. [782](#); 2015, c. [611](#).

§13.1-734. Appraisal notice and form.

A. If proposed corporate action requiring appraisal rights under § [13.1-730](#) becomes effective, the corporation shall deliver an appraisal notice and the form required by subdivision B 1 to all shareholders who satisfied the requirements of § [13.1-733](#). In the case of a merger under § [13.1-719](#), the parent corporation shall deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

B. The appraisal notice shall be sent no earlier than the date the corporate action specified in subsection A of § [13.1-730](#) became effective and no later than 10 days after such date and shall:

1. Supply a form that (i) specifies the first date of any announcement to shareholders made prior to the date the corporate action became effective of the principal terms of the proposed corporate action, (ii) if such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date, and (iii) requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction;

2. State:

a. Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subdivision 2 b of this subsection;

b. A date by which the corporation must receive the form which date may not be fewer than 40 nor more than 60 days after the date the subsection A appraisal notice and form were sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

c. The corporation's estimate of the fair value of the shares;

d. That, if requested in writing, the corporation will provide, to the shareholder so requesting, within 10 days after the date specified in subdivision 2 b of this subsection, the number of shareholders who returned the form by the specified date and the total number of shares owned by them; and

e. The date by which the notice to withdraw under § [13.1-735.1](#) must be received, which date must be within 20 days after the date specified in subdivision 2 b of this subsection; and

3. Be accompanied by a copy of this article.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. [765](#); 2007, c. [165](#); 2010, c. [782](#); 2012, c. [706](#).

§13.1-735. Repealed.

Repealed by Acts 2005, c. [765](#), cl. 2.

§13.1-735.1. Perfection of rights; right to withdraw.

A. A shareholder who receives notice pursuant to § [13.1-734](#) and who wishes to exercise appraisal rights must complete, sign, and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subdivision B 2 b of § [13.1-734](#). If the form requires the shareholder to certify whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to subdivision B 1 of § [13.1-734](#), and the shareholder fails to make the certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under § [13.1-738](#). Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed form, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection B.

B. A shareholder who has complied with subsection A may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to subdivision B 2 e of § [13.1-734](#). A shareholder who fails to withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

C. A shareholder who does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in subsection B of § [13.1-734](#), shall not be entitled to payment under this article.

2005, c. [765](#); 2007, c. [165](#).

§13.1-736. Repealed.

Repealed by Acts 2005, c. [765](#), cl. 2.

§13.1-737. Payment.

A. Except as provided in § [13.1-738](#), within 30 days after the form required by subsection B 2 b of § [13.1-734](#) is due, the corporation shall pay in cash to those shareholders who complied with subsection A of § [13.1-735.1](#) the amount the corporation estimates to be the fair value of their shares plus interest.

B. The payment to each shareholder pursuant to subsection A shall be accompanied by:

1. The (i) annual financial statements specified in subsection A of § [13.1-774](#) of the corporation that issued the shares to be appraised, which shall be as of a date ending not more than 16 months before the date of payment and shall comply with subsection B of § [13.1-774](#); provided that, if such annual financial statements are not available, the corporation shall provide reasonably equivalent information, and (ii) the latest available quarterly financial statements of such corporation, if any;

2. A statement of the corporation's estimate of the fair value of the shares, which estimate shall equal or exceed the corporation's estimate given pursuant to subdivision B 2 c of § [13.1-734](#); and

3. A statement that shareholders described in subsection A have the right to demand further payment under § [13.1-739](#) and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this article.

C. A public corporation, or a corporation that ceased to be a public corporation as a result of the corporate action specified in subsection A of § [13.1-730](#), may fulfill its responsibilities under subdivision B 1 by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the U.S. Securities and Exchange Commission if the corporation was a public corporation as of the date of the specified financial statements.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. [765](#); 2007, c. [165](#); 2012, c. [706](#).

§13.1-738. After-acquired shares.

A. A corporation may elect to withhold payment required by § [13.1-737](#) from any shareholder who was required to, but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subdivision B 1 of § [13.1-734](#).

B. If the corporation elected to withhold payment under subsection A, it shall, within 30 days after the form required by subdivision B 2 b of § [13.1-734](#) is due, notify all shareholders who are described in subsection A:

1. Of the information required by subdivision B 1 of § [13.1-737](#);
2. Of the corporation's estimate of fair value pursuant to subdivision B 2 of § [13.1-737](#) and its offer to pay such value plus interest;
3. That they may accept the corporation's estimate of fair value plus interest in full satisfaction of their demands or demand for appraisal under § [13.1-739](#);
4. That those shareholders who wish to accept such offer must so notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and
5. That those shareholders who do not satisfy the requirements for demanding appraisal under § [13.1-739](#) shall be deemed to have accepted the corporation's offer.

C. Within 10 days after receiving a shareholder's acceptance pursuant to subsection B, the corporation shall pay in cash the amount it offered under subdivision B 2 to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

D. Within 40 days after sending the notice described in subsection B, the corporation shall pay in cash the amount it offered to pay under subdivision B 2 to each shareholder described in subdivision B 5.

1985, c. 522; 2005, c. [765](#); 2007, c. [165](#).

§13.1-739. Procedure if shareholder dissatisfied with payment or offer.

A. A shareholder paid pursuant to § [13.1-737](#) who is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's stated estimate of the fair value of the shares and demand payment of that estimate plus interest (less any payment under § [13.1-737](#)). A shareholder offered payment under § [13.1-738](#) who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's estimate of the fair value of the shares plus interest.

B. A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection A within 30 days after receiving the corporation's payment or offer of payment under § [13.1-737](#) or [13.1-738](#), respectively, waives the right to demand

payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. [765](#).

§13.1-740. Court action.

A. If a shareholder makes a demand for payment under § [13.1-739](#) that remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to § [13.1-737](#) plus interest.

B. The corporation shall commence the proceeding in the circuit court of the city or county where the corporation's principal office, or, if none in the Commonwealth, where its registered office, is located. If the corporation is a foreign corporation without a registered office in the Commonwealth, it shall commence the proceeding in the circuit court of the city or county in the Commonwealth where the principal office, or, if none in the Commonwealth, where the registered office of the domestic corporation merged with the foreign corporation was located at the time the transaction became effective.

C. The corporation shall make all shareholders, whether or not residents of the Commonwealth, whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

D. The corporation may join as a party to the proceeding any shareholder who claims to have demanded an appraisal but who has not, in the opinion of the corporation, complied with the provisions of this article. If the court determines that a shareholder has not complied with the provisions of this article, that shareholder shall be dismissed as a party.

E. The jurisdiction of the court in which the proceeding is commenced under subsection B is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them,

or in any amendment to it. The shareholders demanding appraisal are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

F. Each shareholder made a party to the proceeding is entitled to judgment (i) for the amount, if any, by which the court finds the fair value of the shareholder's shares plus interest exceeds the amount paid by the corporation to the shareholder for such shares or (ii) for the fair value plus interest of the shareholder's shares for which the corporation elected to withhold payment under § [13.1-738](#).

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. [765](#).

§13.1-741. Court costs and counsel fees.

A. The court in an appraisal proceeding commenced under § [13.1-740](#) shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this article.

B. The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

1. Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of § [13.1-732](#), [13.1-734](#), [13.1-737](#) or [13.1-738](#); or
2. Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this article.

C. If the court in an appraisal proceeding finds that the services of counsel for any shareholder were of substantial benefit to other shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the shareholders who were benefited.

D. To the extent the corporation fails to make a required payment pursuant to § [13.1-737](#), [13.1-738](#) or [13.1-739](#), the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all costs and expenses of the suit, including counsel fees.

Code 1950, §§ 13-85, 13.1-75, 13.1-78; 1956, c. 428; 1968, c. 733; 1972, c. 425; 1975, c. 500; 1984, c. 613; 1985, c. 522; 2005, c. [765](#).

§13.1-741.1. Limitations on other remedies for fundamental transactions.

A. Except for action taken before the Commission pursuant to § [13.1-614](#) or as provided in subsection B, the legality of a proposed or completed corporate action described in subsection A of § [13.1-730](#) may not be contested, nor may the corporate action be enjoined, set aside or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

B. Subsection A does not apply to a corporate action that:

1. Was not authorized and approved in accordance with the applicable provisions of:

a. Article 11 (§ [13.1-705](#) et seq.), Article 12 (§ [13.1-715.1](#) et seq.), or Article 13 (§ [13.1-723](#) et seq.);

b. The articles of incorporation or bylaws; or

c. The resolutions of the board of directors authorizing the corporate action;

2. Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

3. Is an interested transaction, unless it has been authorized, approved or ratified by the board of directors in the same manner as is provided in subsection B of § [13.1-691](#) and has been authorized, approved or ratified by the shareholders in the same manner as is provided in subsection C of § [13.1-691](#) as if the interested transaction were a director's conflict of interests transaction; or

4. Is adopted or taken by less than unanimous consent of the voting shareholders pursuant to § [13.1-657](#) if:

a. The challenge to the corporate action is brought by a shareholder who did not consent to the corporate action; and

b. The proceeding challenging the corporate action is commenced within 10 days after notice of the adoption or taking of the corporate action is effective as to the shareholder bringing the proceeding.

C. Any remedial action with respect to corporate action described in subsection A of § [13.1-730](#) shall not limit the scope of, or be inconsistent with, any provision of § [13.1-614](#).

2007, c. [165](#); 2008, c. [91](#); 2015, c. [611](#).

§13.1-742. Dissolution by directors and shareholders.

A. A corporation's board of directors may propose dissolution for submission to the shareholders.

B. For a proposal to dissolve to be adopted:

1. The board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

2. The shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection E.

C. The board of directors may condition its submission of the proposal for dissolution on any basis.

D. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § [13.1-658](#). The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

E. Unless the board of directors, acting pursuant to subsection C, requires a greater vote, dissolution to be authorized must be approved by the holders of more than two-thirds of all votes entitled to be cast on the proposal to dissolve. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast by each voting group entitled to vote on the proposed dissolution at a meeting at which a quorum of the voting group exists.

Code 1950, § 13.1-81; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. [765](#).

§13.1-743. Articles of dissolution.

A. At any time after dissolution is approved by the shareholders, the corporation may dissolve by filing with the Commission articles of dissolution setting forth:

1. The name of the corporation;
2. The date dissolution was authorized;
3. Either (i) a statement that dissolution was authorized by unanimous consent of the shareholders, or (ii) a statement that the proposed dissolution was submitted to the shareholders by the board of directors in accordance with this article, and a statement of:
 - a. The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on dissolution; and
 - b. Either the total number of votes cast for and against dissolution by each voting group entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution separately by each voting group and a statement that the number cast for dissolution by each voting group was sufficient for approval by that voting group.

B. If the Commission finds that the articles of dissolution comply with the requirements of law and that the corporation has paid all fees and taxes, and delinquencies thereof, imposed by laws administered by the Commission, it shall issue a certificate of dissolution.

C. A corporation is dissolved upon the effective date of the certificate of dissolution.

D. For purposes of §§ [13.1-742](#) through [13.1-746.2](#), "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

Code 1950, §§ 13.1-80 to 13.1-82, 13.1-87, 13.1-88, 13.1-90; 1956, c. 428; 1975, c. 500; 1985, cc. 522, 528; 2005, c. [765](#).

§13.1-744. Revocation of dissolution.

A. A corporation may revoke its dissolution at any time prior to the effective date of its certificate of termination of corporate existence.

B. Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action by

the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

C. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by filing with the Commission articles of revocation of dissolution that set forth:

1. The name of the corporation;
2. The effective date of the dissolution that was revoked;
3. The date that the revocation of dissolution was authorized;
4. If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
5. If shareholder action was required to revoke the dissolution, the information required by subdivision 3 of subsection A of § [13.1-743](#).

D. If the Commission finds that the articles of revocation of dissolution comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of revocation of dissolution.

E. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if the dissolution had never occurred.

Code 1950, §§ 13.1-85, 13.1-86; 1956, c. 428; 1975, c. 500; 1985, c. 522.

§13.1-745. Effect of dissolution.

A. A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

1. Collecting its assets;
2. Disposing of its properties that will not be distributed in kind to its shareholders;
3. Discharging or making provision for discharging its liabilities;
4. Distributing its remaining property among its shareholders according to their interests; and
5. Doing every other act necessary to wind up and liquidate its business and affairs.

B. Dissolution of a corporation does not:

1. Transfer title to the corporation's property;
2. Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
3. Subject its directors to standards of conduct different from those prescribed in Article 9 (§ [13.1-673](#) et seq.);
4. Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;
5. Prevent commencement of a proceeding by or against the corporation in its corporate name;
6. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
7. Terminate the authority of the registered agent of the corporation.

Code 1950, §§ 13.1-83, 13.1-84; 1956, c. 428; 1985, c. 522.

§13.1-746. Known claims against dissolved corporation.

A. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

B. The dissolved corporation shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:

1. Provide a reasonable description of the claim that the claimant may be entitled to assert;
2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an instrument of indebtedness;
3. Provide a mailing address where a claim may be sent;
4. State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which confirmation of the claim must be delivered to the dissolved corporation; and

5. State that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not delivered by the deadline.

C. A claim against the dissolved corporation is barred to the extent that it is not admitted:

1. If the dissolved corporation delivered written notice to the claimant in accordance with subsection B and the claimant does not deliver written confirmation of the claim to the dissolved corporation by the deadline; or

2. If the dissolved corporation delivered written notice to the claimant that his claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within 90 days from the effective date of such notice.

D. For purposes of this section, "claim" does not include (i) a contingent liability or a claim based on an event occurring after the effective date of dissolution or (ii) a liability or claim the ultimate maturity of which is more than 60 days after the delivery of written notice to the claimant pursuant to subsection B. Nothing in this section shall prevent acceleration of liability for an unmatured claim or liability by operation of the agreement under which it was created or exercise of any discretionary right of the claimant thereunder.

E. If a liability exists but the full extent of any damages is or may not be ascertainable, and a proceeding to enforce the claim is commenced pursuant to subdivision C 2, the claimant may amend the pleadings after filing to include any damages that occurred or are alleged to have occurred after filing, and the court having jurisdiction of such claim may continue such proceeding during its pendency if it appears that further damages are or may be still occurring.

1985, c. 522; 2005, c. [765](#); 2007, c. [165](#); 2008, c. [91](#).

§13.1-746.1. Other claims against dissolved corporation.

A. A dissolved corporation may also (i) deliver notice of its dissolution to any known claimant with a liability or claim that pursuant to subsection D of § [13.1-746](#) is not treated as a claim for purposes of § [13.1-746](#) and (ii) publish notice of its dissolution one time in a newspaper of general circulation in the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located. The notice of dissolution shall request that persons with claims against the dissolved corporation present them in accordance with the notice.

B. The notice shall:

1. Describe the information that is required to be included in a claim and provide a mailing address where the claim may be sent; and
2. State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of limitations or three years after the date of delivery of notice to the claimant, or the date of publication of the notice, as appropriate.

C. If the dissolved corporation provides notice of its dissolution in accordance with this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation prior to the earlier of the expiration of any applicable statute of limitations or three years after the date on which notice was delivered to the claimant or published, as appropriate:

1. A claimant who was not given written notice under § [13.1-746](#);
2. A claimant whose claim was timely sent to the dissolved corporation but not acted on; and
3. A claimant whose claim pursuant to subsection D of § [13.1-746](#) is not treated as a claim for purposes of § [13.1-746](#).

D. A claim that is not barred by subsection C of § [13.1-746](#) or subsection C of this section may be enforced:

1. Against the dissolved corporation, to the extent of its undistributed assets; or
2. Except as provided in subsection D of § [13.1-746.2](#), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

2005, c. [765](#); 2007, c. [165](#); 2008, c. [91](#); 2015, c. [611](#).

§13.1-746.2. Court proceedings.

A. A dissolved corporation that has complied with the notice requirements of § [13.1-746.1](#) may file an application with the circuit court of the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located for a determination of the amount and form of security

to be provided for payment of claims that (i) are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution or (ii) are based on a liability the ultimate maturity of which is more than 60 days after delivery of written notice to the claimant pursuant to subsection B of § [13.1-746](#). Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § [13.1-746.1](#).

B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each known claimant whose claim is covered by the application.

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

D. Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved corporation's obligations with respect to claims covered by that order, and such claims may not be enforced against a shareholder who received assets in liquidation.

2005, c. [765](#); 2008, c. [91](#).

§13.1-746.3. Director duties.

A. The board of directors shall cause the dissolved corporation to apply its remaining assets to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

B. Directors of a dissolved corporation that has disposed of claims under § [13.1-746](#), [13.1-746.1](#) or [13.1-746.2](#) shall not be liable for breach of subsection A with respect to claims against the dissolved corporation that are barred or satisfied under § [13.1-746](#), [13.1-746.1](#) or [13.1-746.2](#).

2005, c. [765](#).

§13.1-747. Grounds for judicial dissolution.

A. The circuit court in any city or county described in subsection C may dissolve a corporation:

1. In a proceeding by a shareholder of a corporation that is not a public corporation if it is established that:

a. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock; or

b. The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent; or

c. The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

d. The corporate assets are being misapplied or wasted;

2. In a proceeding by a creditor if it is established that:

a. The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

b. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

3. In a proceeding by the corporation to have its voluntary dissolution continued under court supervision;

4. In a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and terminate its corporate existence;

5. Upon application by the board of directors when it is established that circumstances make it impossible to obtain a representative vote by shareholders on the question of dissolution and that the continuation of the business of the corporation is not in the interest of the shareholders but it is in their interest that the assets and business be liquidated; or

6. When the Commission has instituted a proceeding for the involuntary termination of corporate existence and entered an order finding that the corporate existence of the corporation should be terminated but that liquidation of its business and affairs should precede the entry of an order of termination of corporate existence.

B. The circuit court in the city or county named in subsection C shall have full power to liquidate the assets and business of the corporation at any time after the termination of corporate existence, pursuant to the provisions of this article upon the application of any person, for good cause, with regard to any assets or business that may remain. The jurisdiction conferred by this clause may also be exercised by any such court in any city or county where any property may be situated whether of a domestic or a foreign corporation that ceased to exist.

C. Venue for a proceeding brought under this section lies in the city or county where the corporation's principal office is or was located, or, if none in the Commonwealth, where its registered office is or was last located.

D. It is not necessary to make directors or shareholders parties to a proceeding to be brought under this section unless relief is sought against them individually.

E. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with such powers and duties as the court may direct, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

Code 1950, § 13.1-94; 1956, c. 428; 1959, Ex. Sess., c. 57; 1968, c. 112; 1985, c. 522; 2005, c. [765](#); 2007, c. [165](#).

§13.1-748. Receivership or custodianship.

A. Unless an election to purchase has been filed under § [13.1-749.1](#), a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage while the proceeding is pending, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

B. The court may appoint an individual, a domestic corporation, or a foreign corporation authorized to transact business in the Commonwealth, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

C. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

1. The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in his own name as receiver of the corporation in all courts of the Commonwealth; and

2. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interest of its shareholders and creditors.

D. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interest of the corporation, its shareholders, and creditors.

E. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

Code 1950, §§ 13.1-94 to 13.1-96; 1956, c. 428; 1959, Ex. Sess., c. 57; 1968, c. 112; 1974, c. 291; 1975, c. 500; 1985, c. 522; 2005, c. [765](#); 2007, c. [165](#).

§13.1-749. Decree of dissolution.

A. If after a hearing the court determines that one or more grounds for judicial dissolution described in § [13.1-747](#) exist, it may enter a decree directing that the corporation shall be dissolved. The clerk of the court shall deliver a certified copy of the decree to the Commission, which shall enter an order of involuntary dissolution.

B. After the order of involuntary dissolution has been entered, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with § [13.1-745](#) and the notification of claimants in accordance with §§ [13.1-746](#), [13.1-746.1](#), and [13.1-746.2](#). When all of the assets of the corporation have been distributed to its creditors and shareholders, the court shall so advise the Commission, which shall enter an order of termination of corporate existence.

Code 1950, § 13.1-99; 1956, c. 428; 1985, c. 522; 2005, c. [765](#).

§13.1-749.1. Election to purchase in lieu of dissolution.

A. Unless otherwise provided in the articles of incorporation, in a proceeding under subdivision A 1 of § [13.1-747](#) to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to

this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

B. An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under subdivision A 1 of § [13.1-747](#) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders, other than the petitioner. The notice shall state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and shall advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than 30 days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under subdivision A 1 of § [13.1-747](#) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of the petitioner's shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

C. If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

D. If the parties are unable to reach an agreement as provided for in subsection C, the court, upon application of any party, shall stay the proceedings under subdivision A 1 of § [13.1-747](#) and determine the fair value of the petitioner's shares as of the day before the date on which the petition under subdivision A 1 of § [13.1-747](#) was filed or as of such other date as the court deems appropriate under the circumstances. The determination of fair value shall include consideration of all relevant facts and circumstances, including, unless the court determines it would be unjust or inequitable to do so, (i) the petitioner's minority status, (ii) the marketability of the petitioner's

shares, (iii) the relevant terms of any shareholders' agreement, and (iv) if the court finds that the value of the corporation has been diminished by the wrongful conduct of controlling shareholders, the petitioner's proportionate claim for any compensable corporate injury. In determining the fair value, the court may, in its discretion, select an appraiser to appraise the fair value of the petitioner's shares and shall assess the cost of any such appraisal to the parties, to the corporation, or both, as the equities may appear to the court.

E. Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under subdivision A 1 b or d of § [13.1-747](#), it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by the shareholder.

F. Upon entry of an order under subsection C or E, the court shall dismiss the petition to dissolve the corporation under subdivision A 1 of § [13.1-747](#) and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court, which shall be enforceable in the same manner as any other judgment.

G. The purchase ordered pursuant to subsection E shall be made within 10 days after the date the order becomes final.

H. Any payment by the corporation pursuant to an order under subsection C or E, other than an award of fees and expenses pursuant to subsection E, is subject to the provisions of § [13.1-653](#).

2005, c. [765](#); 2007, c. [165](#); 2012, c. [706](#); 2015, c. [611](#).

§13.1-750. Articles of termination of corporate existence.

A. When a corporation has distributed all of its assets to its creditors and shareholders and voluntary dissolution proceedings have not been revoked, it shall file articles of termination of corporate existence with the Commission. The articles shall set forth:

1. The name of the corporation;
2. That all the assets of the corporation have been distributed to its creditors and shareholders; and
3. That the dissolution of the corporation has not been revoked.

B. With the articles of termination of corporate existence, the corporation shall file a statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate. In contemplation of submitting the required statement, the corporation may file returns and pay taxes before such returns and taxes would otherwise be due.

C. If the Commission finds that the articles of termination of corporate existence comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of termination of corporate existence. Upon the issuance of such certificate, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this chapter.

D. The statement "that all the assets of the corporation have been distributed to its creditors and shareholders" means that the corporation has divested itself of all its assets by the payment of claims or liquidating dividends or by assignment to a trustee or trustees for the benefit of claimants or shareholders. If any shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative who is entitled to a share in the distribution of the assets cannot be found, the corporation may thereupon, and without awaiting the one year mentioned in § [55-210.7](#), pay such person's share to the State Treasurer as abandoned property on complying with all applicable requirements of § [55-210.12](#) except subdivision B 4.

Code 1950, § 13.1-89; 1956, c. 428; 1966, c. 343; 1975, c. 500; 1985, c. 522; 1994, c. [291](#); 2004, c. [162](#); 2005, c. [765](#).

§13.1-751. Termination of corporate existence by incorporators or initial directors.

A majority of the initial directors, or, if initial directors were not named in the articles of incorporation and have not been elected, the incorporators of a corporation that has not issued shares or has not commenced business may dissolve the corporation and terminate its corporate existence by filing with the Commission articles of termination of corporate existence that set forth:

1. The name of the corporation;
2. [Repealed.]
3. Either (i) that none of the corporation's shares have been issued or (ii) that the corporation has not commenced business;
4. That no debt of the corporation remains unpaid;
5. That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
6. That a majority of the initial directors authorized the dissolution or that initial directors were not named in the articles of incorporation and have not been elected and a majority of the incorporators authorized the dissolution.

Code 1950, § 13.1-79; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, c. 234.

§13.1-752. Automatic termination of corporate existence.

A. If any domestic corporation fails to file its annual report or pay its annual registration fee in a timely manner as required by this chapter, the Commission shall mail to each such corporation a notice of the impending termination of its corporate existence. Whether or not such notice is mailed, if any corporation fails to file its annual report or pay its annual registration fee on or before the last day of the fourth month immediately following its annual report or annual registration fee due date each year, the corporate existence of the corporation shall be automatically terminated as of that day.

B. If any domestic corporation whose registered agent has filed with the Commission a statement of resignation pursuant to § [13.1-636](#) fails to file a statement of change pursuant to § [13.1-635](#) within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of the impending termination of its corporate existence. If the corporation fails to file the

statement of change before the last day of the second month immediately following the month in which the impending termination notice was mailed, the corporate existence of the corporation shall be automatically terminated as of that day.

C. The properties and affairs of a corporation whose corporate existence has been terminated pursuant to this section shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the corporation, (ii) sell, convey, and dispose of such of its properties that are not to be distributed in kind to its shareholders, (iii) pay, satisfy, and discharge its liabilities and obligations, and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

D. No officer, director, or agent of a corporation shall have any personal obligation for any of the liabilities of the corporation whether such liabilities arise in contract, tort, or otherwise, solely by reason of the termination of the corporation's existence pursuant to this section.

Code 1950, § 13.1-91; 1956, c. 428; 1970, c. 4; 1974, c. 72; 1975, c. 500; 1985, cc. 522, 528; 1987, c. 2; 1988, c. 405; 1991, c. 125; 1997, c. [216](#); 2000, c. [52](#); 2005, c. [765](#); 2010, c. [753](#).

§13.1-753. Involuntary termination of corporate existence.

A. The corporate existence of a corporation may be terminated involuntarily by order of the Commission when it finds that the corporation (i) has continued to exceed or abuse the authority conferred upon it by law; (ii) has failed to maintain a registered office or a registered agent in this Commonwealth as required by law; (iii) has failed to file any document required by this chapter to be filed with the Commission; or (iv) has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth. Upon termination, the properties and affairs of the corporation shall pass automatically to its directors as trustees in liquidation. The trustees then shall proceed to collect the assets of the corporation; sell, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders; pay, satisfy and discharge its liabilities and obligations; and do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its

assets, either in cash or in kind, among its shareholders according to their respective rights and interests. A corporation whose existence is terminated pursuant to clause (iv) shall not be eligible for reinstatement for a period of not less than one year.

B. Any corporation convicted of the offense listed in clause (iv) of subsection A shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

Code 1950, § 13.1-93; 1956, c. 428; 1958, c. 506; 1968, c. 116; 1975, cc. 88, 500; 1985, c. 522; 1991, c. 310; 2008, cc. [588](#), [770](#).

§13.1-754. Reinstatement of a corporation that has ceased to exist.

A. A corporation that has ceased to exist pursuant to this article may apply to the Commission for reinstatement within five years thereafter unless the corporate existence was terminated by order of the Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law or (ii) entered pursuant to § [13.1-749](#) and the circuit court's decree directing dissolution contains no provision for reinstatement of corporate existence.

B. To have its corporate existence reinstated, the corporation shall provide the Commission with the following:

1. An application for reinstatement, which shall include the identification number issued by the Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit signed by an agent of any shareholder's interests stating that after diligent search by such agent, no officer or director can be found;
2. A reinstatement fee of \$100;
3. All annual registration fees and penalties that were due before the corporation ceased to exist and that would have been assessed or imposed to the date of reinstatement if the corporation's existence had not been terminated;

4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;

5. If the name of the corporation does not comply with the provisions of § [13.1-630](#) at the time of reinstatement, articles of amendment to the articles of incorporation to change the corporation's name to a name that satisfies the provisions of § [13.1-630](#), with the fee required by this chapter for the filing of articles of amendment; and

6. If the corporation's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § [13.1-635](#).

C. If the corporation complies with the provisions of this section, the Commission shall enter an order of reinstatement of corporate existence. Upon entry of the order, the corporate existence shall be deemed to have continued from the date of termination as if the termination had never occurred, and any liability incurred by the corporation or a director, officer, or other agent after the termination and before the reinstatement is determined as if the termination of the corporation's existence had never occurred.

Code 1950, § 13.1-92; 1956, c. 428; 1958, c. 564; 1975, c. 88; 1978, c. 804; 1980, c. 654; 1982, c. 648; 1984, c. 69; 1985, c. 522; 1986, c. 234; 1988, c. 405; 2004, c. [601](#); 2005, c. [379](#); 2006, c. [663](#); 2015, c. [623](#).

§13.1-755. Survival of remedy after termination of corporate existence.

The termination of corporate existence shall not take away or impair any remedy available to or against the corporation, its directors, officers or shareholders, for any right or claim existing or any liability incurred, prior to such termination. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

Code 1950, § 13.1-101; 1956, c. 428; 1985, c. 522.

§13.1-756. Repealed.

Repealed by Acts 1988, c. 405.

§13.1-757. Authority to transact business required.

A. A foreign corporation may not transact business in the Commonwealth until it obtains a certificate of authority from the Commission.

B. The following activities, among others, do not constitute transacting business within the meaning of subsection A:

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
3. Maintaining bank accounts;
4. Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;
5. Selling through independent contractors;
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;
7. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;
8. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;
9. Owning, without more, real or personal property;
10. Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;
11. For a period of less than 90 consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films which are sent outside of the Commonwealth for processing, editing, marketing and distribution. The term "transacting business" as used in this subsection shall have no effect on personal jurisdiction under § [8.01-328.1](#); or
12. Serving, without more, as a general partner of, or as a partner in a partnership which is a general partner of, a domestic or foreign limited partnership that does not otherwise transact business in the Commonwealth.

C. The list of activities in subsection B is not exhaustive.

Code 1950, §§ 13.1-102 to 13.1-102.2; 1956, c. 428; 1962, c. 239; 1980, c. 630; 1985, c. 522; 1990, c. 428; 2005, c. [765](#).

§13.1-758. Consequences of transacting business without authority.

A. A foreign corporation transacting business in the Commonwealth without a certificate of authority may not maintain a proceeding in any court in the Commonwealth until it obtains a certificate of authority.

B. The successor to a foreign corporation that transacted business in the Commonwealth without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in the Commonwealth until the foreign corporation or its successor obtains a certificate of authority.

C. A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court shall further stay the proceeding until the foreign corporation or its successor obtains the certificate.

D. If a foreign corporation transacts business in the Commonwealth without a certificate of authority, each officer, director and employee who does any of such business in the Commonwealth knowing that a certificate of authority is required shall be liable for a penalty of not less than \$500 and not more than \$5,000. Any such penalty may be imposed by the Commission or by any court in the Commonwealth before which an action against the corporation may lie, after the corporation and the individual have been given notice and an opportunity to be heard.

E. Notwithstanding subsections A and B, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in the Commonwealth.

F. Suits, actions and proceedings may be begun against a foreign corporation that transacts business in the Commonwealth without a certificate of authority by serving process on any director, officer or agent of the corporation doing such business, or, if none can be found, on the clerk of the Commission or on the corporation in any other manner permitted by law. If any foreign corporation transacts business in the Commonwealth without a certificate of authority, it shall by transacting such business be deemed to have thereby appointed the clerk of the Commission its attorney

for service of process. Service upon the clerk shall be made in accordance with § [12.1-19.1](#).

Code 1950, §§ 13-218, 13.1-119; 1956, c. 428; 1981, c. 320; 1985, c. 522; 1986, c. 571; 1990, c. 325; 1991, c. 672; 2005, c. [765](#).

§13.1-759. Application for certificate of authority.

A. A foreign corporation may apply to the Commission for a certificate of authority to transact business in the Commonwealth. The application shall be made on forms prescribed and furnished by the Commission. The application shall set forth:

1. The name of the corporation, and if the corporation is prevented by § [13.1-762](#) from using its name in the Commonwealth, a designated name that satisfies the requirements of subsection B of § [13.1-762](#);
2. The name of the state or other jurisdiction under whose law it is incorporated, and if the corporation was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization, or formation; and (iv) the entity identification number issued to it by the Commission;
3. The date of incorporation and period of duration;
4. The street address of the foreign corporation's principal office;
5. The address of the proposed registered office of the foreign corporation in the Commonwealth (including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located) and the name of its proposed registered agent in the Commonwealth at such address and that the registered agent is either (a) an individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar or (b) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office;
6. The names and usual business addresses of the current directors and principal officers of the foreign corporation; and
7. The number of shares the corporation is authorized to issue, itemized by class.

B. The foreign corporation shall deliver with the completed application a copy of its articles of incorporation and all amendments thereto duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated.

C. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of authority to transact business in the Commonwealth.

Code 1950, §§ 13.1-106, 13.1-107; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1994, c. [348](#); 2001, cc. [517](#), [541](#); 2002, c. [497](#); 2004, c. [274](#); 2015, c. [623](#).

§13.1-760. Amended certificate of authority.

A. A foreign corporation authorized to transact business in this Commonwealth shall obtain an amended certificate of authority from the Commission:

1. If it changes its corporate name or the state or other jurisdiction of its incorporation; or

2. To abandon or change the designated name adopted by the corporation for use in the Commonwealth pursuant to subsection B of § [13.1-762](#).

B. The requirements of § [13.1-759](#) for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

C. Whenever the articles of incorporation of a foreign corporation that is authorized to transact business in the Commonwealth are amended, within 30 days after the amendment becomes effective, the foreign corporation shall file with the Commission a copy of such amendment duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated.

Code 1950, §§ 13.1-112, 13.1-113; 1956, c. 428; 1976, c. 159; 1985, c. 522; 1986, c. 571; 1987, c. 431; 2015, c. [623](#).

§13.1-761. Effect of certificate of authority.

A. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this Commonwealth subject, however, to the right of the Commonwealth to revoke the certificate as provided in this Act.

B. A foreign corporation holding a valid certificate of authority shall have no greater rights and privileges than a domestic corporation. The certificate of authority shall

not be deemed to authorize it to exercise any of its corporate powers or purposes that a foreign corporation is forbidden by law to exercise in this Commonwealth.

C. This chapter does not authorize this Commonwealth to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this Commonwealth.

Code 1950, §§ 13.1-102, 13.1-103, 13.1-108; 1956, c. 428; 1985, c. 522.

§13.1-762. Corporate name of foreign corporation.

A. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such foreign corporation satisfies the requirements of § [13.1-630](#).

B. If the corporate name of a foreign corporation does not satisfy the requirements of § [13.1-630](#), to obtain or maintain a certificate of authority to transact business in the Commonwealth:

1. The foreign corporation may use a designated name that adds the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," to its corporate name or, if it is a professional corporation, the words "professional corporation" or "a professional corporation" or the initials "P.C." or "PC" at the end of its corporate name, if it informs the Commission of the designated name; or

2. If its real name is unavailable, the foreign corporation may use a designated name that is available, and that satisfies the requirements of § [13.1-630](#), if it informs the Commission of the designated name.

Code 1950, §§ 13.1-104, 13.1-105, 13.1-114; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, cc. 232, 571; 2003, c. [592](#); 2005, cc. [379](#), [765](#); 2012, c. [63](#); 2015, c. [623](#).

§13.1-763. Registered office and registered agent of foreign corporation.

A. Each foreign corporation authorized to transact business in this Commonwealth shall continuously maintain in this Commonwealth:

1. A registered office that may be the same as any of its places of business; and

2. A registered agent, who shall be:

a. An individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The sole duty of the registered agent is to forward to the corporation at its last known address any process, notice or demand that is served on the registered agent.

Code 1950, § 13.1-109; 1956, c. 428; 1985, c. 522; 1994, c. [348](#); 2000, c. [162](#); 2001, cc. [517](#), [541](#).

§13.1-764. Change of registered office or registered agent of a foreign corporation.

A. A foreign corporation authorized to transact business in the Commonwealth may change its registered office or registered agent, or both, upon filing with the Commission a statement of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the foreign corporation;
2. The address of its current registered office;
3. If the current registered office is to be changed, the post office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the corporation will be in compliance with the requirements of § [13.1-763](#).

B. A statement of change shall forthwith be filed with the Commission by a foreign corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § [13.1-763](#).

C. A foreign corporation's registered agent may sign a statement as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A foreign corporation's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § [13.1-763](#). In either instance, the registered agent or surviving entity shall forthwith file a statement as required above, which shall recite that a copy of the statement shall be mailed to the principal office of the foreign corporation on or before the business day following the day on which the statement is filed.

Code 1950, § 13.1-110; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1985, c. 522; 1986, c. 622; 2003, c. [597](#); 2010, c. [434](#).

§13.1-765. Resignation of registered agent of foreign corporation.

A. The registered agent of a foreign corporation may resign the agency appointment by signing and filing with the Commission a statement of resignation accompanied by a certification that the registered agent shall mail a copy thereof to the principal office of the corporation by certified mail on or before the business day following the day on which the statement is filed. The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

1985, c. 522; 2005, c. [765](#); 2010, c. [434](#).

§13.1-766. Service of process on foreign corporation.

A. The registered agent of a foreign corporation authorized to transact business in this Commonwealth shall be an agent of such corporation upon whom any process, notice, order or demand required or permitted by law to be served upon the corporation may be served. The registered agent may by instrument in writing, acknowledged before a notary public, designate a natural person or persons in the office of the registered agent upon whom any such process, notice, order or demand may be served. Whenever any such person accepts service of process, a photographic copy of such instrument shall be attached to the return.

B. Whenever a foreign corporation authorized to transact business in this Commonwealth fails to appoint or maintain a registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the clerk of the Commission shall be an agent of the corporation upon whom service may be made in accordance with § [12.1-19.1](#).

C. Nothing in this section shall limit or affect the right to serve any process, notice, order or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

Code 1950, §§ 13-214 to 13-217, 13.1-111; 1956, c. 428; 1975, c. 500; 1985, c. 522; 1986, cc. 571, 622; 1991, c. 672; 2001, cc. [517](#), [541](#).

§13.1-766.1. Merger of foreign corporation authorized to transact business in Commonwealth.

A. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it is incorporated, and such corporation is the surviving entity of the merger, it shall, within 30 days after such merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated; however, the filing shall not be required when a foreign corporation merges with a domestic corporation or eligible entity, the foreign corporation's articles of incorporation are not amended by said merger, and the articles or statement of merger filed on behalf of the domestic corporation or eligible entity pursuant to § [13.1-720](#), [13.1-1072](#), [13.1-1261](#), [50-73.48:3](#), or [50-73.131](#) contains a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign corporation is incorporated and that the foreign corporation has complied with that law in effecting the merger.

B. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the laws of which it is incorporated, and such corporation is not the surviving entity of the merger or, whenever such a foreign corporation is a party to a consolidation so permitted, the surviving or resulting domestic or foreign corporation, limited liability company, business trust, partnership or limited partnership shall, if not continuing to transact business in the Commonwealth, within 30 days after such merger or consolidation becomes effective, deliver to the Commission a

copy of the instrument of merger or consolidation duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it was incorporated, and comply in behalf of the predecessor corporation with the provisions of § [13.1-767](#). If a surviving or resulting corporation or limited liability company, business trust, registered limited liability partnership or limited partnership is to continue to transact business in the Commonwealth and has not received a certificate of authority to transact business in the Commonwealth or registered as a foreign limited liability company under § [13.1-1052](#), as a foreign business trust under § [13.1-1242](#), as a foreign registered limited liability partnership under § [50-73.138](#), or as a foreign limited partnership under § [50-73.54](#), then, within such 30 days, it shall deliver to the Commission an application, if a foreign corporation, for a certificate of authority to transact business in the Commonwealth, if a foreign limited liability company, for registration as a foreign limited liability company, if a foreign business trust, for registration as a foreign business trust, if a foreign registered limited liability partnership, for registration as a foreign registered limited liability partnership, or, if a foreign limited partnership, for registration as a foreign limited partnership, together with a duly authenticated copy of the instrument of merger or consolidation and also, in case of a merger, a copy of its articles of incorporation, certificate of limited partnership, partnership certificate, statement of registered limited liability partnership, articles of trust, or articles of organization and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate, limited partnership, registered limited liability partnership, business trust, or limited liability company records in the state or other jurisdiction under whose laws it is incorporated, formed, registered, or organized.

C. Upon the merger or consolidation of a foreign corporation with one or more foreign corporations, partnerships, limited partnerships, business trusts, or limited liability companies, all property in the Commonwealth owned by any of the foreign corporations, partnerships, limited partnerships, business trusts, or limited liability companies shall pass to the surviving or resulting foreign corporation, limited liability company, business trust, or limited partnership except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of merger or consolidation is filed with the Commission.

1986, c. 571; 1990, c. 283; 1992, c. 575; 1997, c. [190](#); 2004, c. [274](#); 2006, c. [663](#); 2015, c. [623](#).

§13.1-766.2. Entity conversion of foreign corporation authorized to transact business in Commonwealth.

A. Whenever a foreign corporation that is authorized to transact business in the Commonwealth converts to another type of entity, the surviving or resulting entity shall, within 30 days after such entity conversion becomes effective, file with the Commission a copy of the instrument of entity conversion duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws such entity conversion was effected; and

1. If the surviving or resulting entity is not continuing to transact business in the Commonwealth or is not a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership, then, within 30 days after such entity conversion, it shall comply on behalf of the predecessor corporation with the provisions of § [13.1-767](#); or

2. If the surviving or resulting entity is a foreign limited liability company, business trust, limited partnership, or registered limited liability partnership and is to continue to transact business in the Commonwealth, then, within such 30 days, it shall deliver to the Commission an application for a certificate of registration to transact business in the Commonwealth or, in the case of a foreign registered limited liability partnership, a statement of registration.

B. Upon the entity conversion of a foreign corporation that is authorized to transact business in the Commonwealth, all property in the Commonwealth owned by the foreign corporation shall pass to the surviving or resulting entity except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of entity conversion is filed with the Commission.

2004, c. [274](#).

§13.1-767. Withdrawal of foreign corporation.

A. A foreign corporation authorized to transact business in the Commonwealth may not withdraw from the Commonwealth until it obtains a certificate of withdrawal from the Commission.

B. A foreign corporation authorized to transact business in the Commonwealth may apply to the Commission for a certificate of withdrawal. The application shall be on a form prescribed and furnished by the Commission, which shall set forth:

1. The name of the foreign corporation and the name of the state or other jurisdiction under whose law it is incorporated;
2. If applicable, a statement that the foreign corporation was a party to a merger permitted by the laws of the state or other jurisdiction under whose law it was incorporated and that it was not the surviving entity of the merger, has consolidated with another entity, or has converted to another type of entity under the laws of the state or other jurisdiction under whose law it was incorporated;
3. That the foreign corporation is not transacting business in the Commonwealth and that it surrenders its authority to transact business in the Commonwealth;
4. That the foreign corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;
5. A mailing address to which the clerk of the Commission may mail a copy of any process served on the clerk under subdivision 4; and
6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

C. The Commission shall not allow any foreign corporation to withdraw from the Commonwealth unless such corporation files with the Commission a statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate or a statement that no such returns are required to be filed or taxes are required to be paid. In such case the corporation may file returns and pay taxes before they would otherwise be due. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of withdrawal.

D. Before any foreign corporation authorized to transact business in the Commonwealth terminates its corporate existence, it shall file with the Commission an application for withdrawal. Whether or not such application is filed, the termination of the corporate existence of such foreign corporation shall not take away or impair any remedy available against such corporation for any right or claim existing or any

liability incurred prior to such termination. Any such action or proceeding against such foreign corporation may be defended by such corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. The right of a foreign corporation that has terminated its corporate existence to institute and maintain in its corporate name actions, suits or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its incorporation.

E. Service of process on the clerk of the Commission is service of process on a foreign corporation that has withdrawn pursuant to this section. Service upon the clerk shall be made in accordance with § [12.1-19.1](#) and service upon the foreign corporation may be made in any other manner permitted by law.

Code 1950, §§ 13-211.1, 13.1-115 to 13.1-116, 13.1-118; 1956, c. 428; 1958, cc. 506, 564; 1975, cc. 88, 500; 1985, c. 522; 1991, c. 672; 1994, c. [291](#); 2005, c. [765](#); 2012, c. [130](#); 2015, c. [623](#).

§13.1-768. Automatic revocation of certificate of authority.

A. If any foreign corporation fails to file its annual report or pay its annual registration fee in a timely manner as required by this chapter, the Commission shall mail to each such corporation a notice of the impending revocation of its certificate of authority to transact business in the Commonwealth. Whether or not such notice is mailed, if any foreign corporation fails to file its annual report or pay its annual registration fee on or before the last day of the fourth month immediately following its annual report or annual registration fee due date each year, such foreign corporation shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of authority shall be automatically revoked as of that day.

B. Every foreign corporation authorized to transact business in the Commonwealth shall pay the annual registration fee required by law on or before the foreign corporation's annual registration fee due date determined in accordance with subsection A of § [13.1-775.1](#) of each year.

C. If any foreign corporation whose registered agent has filed with the Commission a statement of resignation pursuant to § [13.1-765](#) fails to file a statement of change pursuant to § [13.1-764](#) within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the foreign corporation of the impending revocation of its certificate of authority. If the foreign corporation fails to file the statement of change before the last day of the second month immediately

following the month in which the impending revocation notice was mailed, the corporation shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of authority shall be automatically revoked as of that day.

D. The automatic revocation of a foreign corporation's certificate of authority pursuant to this section constitutes the appointment of the clerk of the Commission as the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § [12.1-19.1](#).

E. Revocation of a foreign corporation's certificate of authority pursuant to this section does not terminate the authority of the registered agent of the corporation.

Code 1950, § 13.1-117; 1956, c. 428; 1970, c. 4; 1980, c. 192; 1985, cc. 522, 528; 1987, c. 2; 1988, c. 405; 1991, c. 125; 1997, c. [216](#); 2000, c. [52](#); 2005, c. [765](#); 2010, c. [753](#).

§13.1-769. Involuntary revocation of certificate of authority.

A. The certificate of authority to do business in the Commonwealth of any foreign corporation may be revoked by order of the Commission when it finds that the corporation:

1. Has continued to exceed the authority conferred upon it by law;
2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;
3. Has failed to file any document required by this chapter to be filed with the Commission;
4. No longer exists under the laws of the state or country of its incorporation; or
5. Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

A certificate revoked pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

B. Any foreign corporation convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

D. The authority of a foreign corporation to transact business in the Commonwealth ceases on the date shown on the order revoking its certificate of authority.

E. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk of the Commission the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § [12.1-19.1](#).

F. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

1985, c. 522; 1991, c. 672; 1995, c. [76](#); 2005, c. [765](#); 2008, cc. [588](#), [770](#); 2015, c. [623](#).

§13.1-769.1. Reinstatement of a foreign corporation whose certificate of authority has been withdrawn or revoked.

A. A foreign corporation whose certificate of authority to transact business in the Commonwealth has been withdrawn or revoked may be relieved of the withdrawal or revocation and have its certificate of authority reinstated by the Commission within five years after the date of withdrawal or revocation unless the certificate of authority was revoked by order of the Commission pursuant to subdivision A 1 of § [13.1-769](#).

B. To have its certificate of authority reinstated, a foreign corporation shall provide the Commission with the following:

1. An application for reinstatement, which shall include the identification number issued by the Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit signed by an agent of any shareholder's interests stating that after diligent search by such agent, no officer or director can be found;

2. A reinstatement fee of \$100;

3. All annual registration fees and penalties that were due before the certificate of withdrawal was issued or the certificate of authority was revoked and that would have been assessed or imposed to the date of reinstatement if the corporation had not withdrawn or had its certificate of authority revoked;
4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;
5. A duly authenticated copy of any amendments or corrections made to the articles of incorporation or other constituent documents of the foreign corporation and any mergers entered into by the foreign corporation from the date of withdrawal or revocation of its certificate of authority to the date of its application for reinstatement, along with an application for an amended certificate of authority if required as a result of an amendment or a correction, and all fees required by this chapter for the filing of such instruments;
6. If the name of the foreign corporation does not comply with the provisions of § [13.1-762](#) at the time of reinstatement, an application for an amended certificate of authority to adopt a designated name for use in the Commonwealth that satisfies the requirements of § [13.1-762](#), with the fee required by this chapter for the filing of an application for an amended certificate of authority; and
7. If the foreign corporation's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § [13.1-764](#).

C. If the foreign corporation complies with the provisions of this section, the Commission shall enter an order of reinstatement, reinstating the foreign corporation's certificate of authority to transact business in the Commonwealth.

1987, c. 431; 1988, c. 405; 2004, c. [274](#); 2005, c. [765](#); 2015, c. [623](#).

§13.1-770. Corporate records.

A. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class and series, if any, of shares showing the number and class and series, if any, of shares held by each. However, the foregoing shall not require the corporation or its agent to maintain, as part of such record of shareholders, beneficial owners whose shares are held by a nominee on the shareholder's behalf except to the extent that the corporation has established and maintains a procedure for registration of such rights under § [13.1-664](#).

D. A corporation shall maintain its records in the form of a document, including an electronic record, or in another form capable of conversion into paper form within a reasonable time.

E. A corporation shall keep a copy of the following records:

1. Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in subdivision L 5 of § [13.1-604](#) regarding facts on which a filed document is dependent;
2. Its bylaws or restated bylaws and all amendments to them currently in effect;
3. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
4. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;
5. All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under § [13.1-774](#);
6. A list of the names and business addresses of its current directors and officers; and
7. Its most recent annual report delivered to the Commission under § [13.1-775](#).

Code 1950, § 13.1-47; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. [765](#); 2008, c. [91](#); 2010, c. [782](#).

§13.1-771. Inspection of records by shareholders.

A. Subject to subsection C of § [13.1-772](#), a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection E of § [13.1-770](#) if the

shareholder gives the corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

B. For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting, unless the corporation has made such information generally available to shareholders by posting it on its website or by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of action taken at the meeting.

C. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection D and gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

1. Excerpts from minutes of any meeting of the board of directors or a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders, board of directors, or a committee of the board without a meeting, to the extent not subject to inspection under subsection A;
2. Accounting records of the corporation; and
3. The record of shareholders of record.

D. A shareholder may inspect and copy the records identified in subsection C only if:

1. The shareholder has been a shareholder for at least six months immediately preceding the shareholder's demand or is the holder of record or beneficial owner of at least five percent of all of the outstanding shares;
2. The shareholder's demand is made in good faith and for a proper purpose;
3. The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and
4. The records are directly connected with the shareholder's purpose.

E. The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

F. This section does not affect:

1. The right of a shareholder to inspect records under § [13.1-661](#) or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;
2. The power of a court, independently of this chapter, to compel the production of corporate records for examination.

G. For purposes of this section, other than subdivision C 3, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

Code 1950, § 13.1-47; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. [765](#); 2008, c. [91](#); 2010, c. [782](#).

§13.1-772. Scope of inspection right.

A. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder the agent or attorney represents.

B. The right to copy records under § [13.1-771](#) includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

C. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production, reproduction, and transmission of the records.

D. The corporation may comply with a shareholder's demand to inspect the record of shareholders under subdivision C 3 of § [13.1-771](#) by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

Code 1950, § 13.1-47; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. [765](#); 2010, c. [782](#).

§13.1-773. Court-ordered inspection.

A. If a corporation does not allow a shareholder who complies with subsection A of § [13.1-771](#) to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the city or county where the corporation's principal

office is located, or, if none in this Commonwealth, where its registered office is located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

B. If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with subsections C and D of § [13.1-771](#) may apply to the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. If the court orders inspection and copying of the records demanded, it may also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order if the shareholder proves that the corporation refused inspection without a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

D. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

1985, c. 522; 2010, c. [782](#).

§13.1-773.1. Inspection of records by directors.

A. A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

B. The circuit court of the city or county where the corporation's principal office, or if none in the Commonwealth, its registered office, is located may order inspection and copying of the books, records and documents upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

C. If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information

obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's reasonable costs, including reasonable counsel fees, incurred in connection with the application if the director proves that the corporation refused inspection without a reasonable basis for doubt about the director's right to inspect the records demanded.

2005, c. [765](#).

§13.1-774. Financial statements for shareholders.

A. If requested in writing by any shareholder, a corporation shall furnish the shareholder with the financial statements for the most recent fiscal year, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

B. If the annual financial statements are reported upon by a certified public accountant, the accountant's report must accompany them. If the annual financial statements are not reported upon by a certified public accountant, the president or the person responsible for the corporation's accounting records shall provide the shareholder with a statement of the basis of accounting used in preparation of the annual financial statements and a description of any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

C. If a corporation does not comply with a shareholder's request for financial statements within 30 days of delivery of such request to the corporation, the circuit court in the city or county where the corporation's principal office is located, or, if none in the Commonwealth, where its registered office is located may, upon application of the shareholder, summarily order the corporation to furnish such financial statements.

D. A public corporation may fulfill its responsibilities under this section by delivering the specified financial statements, or otherwise making them available, in any man-

ner permitted by the applicable rules and regulations of the United States Securities and Exchange Commission.

Code 1950, § 13.1-47; 1956, c. 428; 1975, c. 500; 1985, c. 522; 2005, c. [765](#); 2010, c. [782](#).

§13.1-775. Annual report of domestic and foreign corporations.

A. Each domestic corporation, and each foreign corporation authorized to transact business in the Commonwealth, shall file, within the time prescribed by this section, an annual report setting forth:

1. The name of the corporation, the address of its principal office and the state or country under whose laws it is incorporated;
2. The address of the registered office of the corporation in the Commonwealth, including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located, and the name of its registered agent in the Commonwealth at such address;
3. The names and post office addresses of the directors and the principal officers of the corporation; and
4. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by class.

B. The report shall be made on forms prescribed and furnished by the Commission and shall supply the information as of the date of the report.

C. Except as otherwise provided in this subsection, the annual report of a domestic or foreign corporation shall be filed with the Commission on or before the last day of the twelfth month next succeeding the month in which it was incorporated or authorized to transact business in the Commonwealth, and on or before such date in each year thereafter. The report shall be filed no earlier than three months prior to its due date each year. If the report appears to be incomplete or inaccurate, the Commission shall return it for correction or explanation. Otherwise the Commission shall file it in the clerk's office. At the discretion of the Commission the annual report due date for a corporation may be extended, on a monthly basis for a period of not less than one month nor more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual report due dates of corporations as equally as practicable throughout the year on a monthly basis.

Code 1950, §§ 13-9, 13-11, 13-32, 13-213, 13.1-120, 13.1-121; 1956, c. 428; 1958, c. 564; 1975, c. 500; 1981, c. 523; 1985, c. 522; 1986, c. 233; 1987, c. 2; 1997, c. [216](#); 2005, c. [765](#); 2010, c. [753](#).

§13.1-775.1. Annual registration fees to be paid by domestic and foreign corporations; penalty for failure to pay timely.

A. Every domestic corporation and every foreign corporation authorized to transact business in the Commonwealth shall pay into the state treasury on or before the last day of the twelfth month next succeeding the month in which it was incorporated or authorized to transact business in the Commonwealth, and by such date in each year thereafter, an annual registration fee as prescribed by this section, provided that the initial annual registration fee to be paid by a domestic corporation created by entity conversion shall be due in the year after the calendar year in which it converted. At the discretion of the Commission, the annual registration fee due date for a corporation may be extended, on a monthly basis for a period of not less than one month nor more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual registration fee due dates of corporations as equally as practicable throughout the year on a monthly basis.

Any such corporation whose number of authorized shares is 5,000 or less shall pay an annual registration fee of \$50. Any such corporation whose number of authorized shares is more than 5,000 shall pay an annual registration fee of \$50 plus \$15 for each 5,000 shares or fraction thereof in excess of 5,000 shares, up to a maximum of \$850.

The annual registration fee shall be irrespective of any specific license tax or other tax or fee imposed by law upon the corporation for the privilege of carrying on its business in the Commonwealth or upon its franchise, property or receipts.

B. Each year, the Commission shall ascertain from its records the number of authorized shares of each domestic corporation and each foreign corporation authorized to transact business in the Commonwealth, as of the first day of the second month next preceding the month in which it was incorporated or authorized to transact business in the Commonwealth and, except as provided in subsection A, shall assess against each such corporation the annual registration fee herein imposed. In any year in which a corporation's annual registration fee due date is extended pursuant to subsection A, the annual registration fee assessment shall be increased by a prorated amount to cover the period of extension. A statement of the assessment, when made,

shall be forwarded by the clerk of the Commission to the Comptroller and to each such corporation.

C. Any domestic or foreign corporation that fails to pay the annual registration fee herein imposed within the time prescribed shall incur a penalty of 10 percent of the annual registration fee, or \$10, whichever is greater, which shall be added to the amount of the annual registration fee due. The penalty shall be in addition to any other penalty or liability imposed by law.

D. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the clerk of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 5 (§ [8.9A-501](#) et seq.) of Title 8.9A, this title, except for Chapters 5 (§ [13.1-501](#) et seq.) and 8 (§ [13.1-557](#) et seq.) and Article 6 (§ [55-142.1](#) et seq.) of Chapter 6 of Title 55, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year.

1988, c. 405; 1991, c. 311; 1997, c. [216](#); 2005, c. [765](#); 2010, c. [753](#).

§13.1-775.2. Collection of unpaid bills for registration fees.

The registration fee with penalty and interest shall be enforceable, in addition to existing remedies for the collection of taxes, levies and fees, by action in equity, in the name of the Commonwealth, in the appropriate circuit court. Venue shall be in accordance with § [8.01-261](#).

1988, c. 405.

§13.1-776. Definitions.

As used in this article, unless the context otherwise requires, the term:

"Asserted shareholder" means an entity holding a certificate for one or more shares of stock of a corporation on which it is stated to be the owner thereof but which is not listed as a shareholder on the records of the corporation.

"Corporation" shall have the meaning provided in § [13.1-603](#).

"Entity" means one or more persons, partnerships, unincorporated associations, corporations or other organizations entitled to hold property in its own name.

"Lost shareholder" means a shareholder shown by the records of a corporation to have been a shareholder for more than seven years but who, throughout that period, neither claimed a dividend or other sum nor corresponded in writing with the corporation or otherwise indicated an interest as evidenced by a memorandum or other record on file with the corporation and the corporation does not know the location of the shareholder at the end of such seven-year period.

"Shareholder" means an entity shown by the records of a corporation to be the owner of one or more shares of its outstanding capital stock.

Code 1950, § 13.1-156; 1979, c. 90; 1983, c. 190; 1985, c. 522; 2005, c. [765](#).

§13.1-777. Institution of proceeding to determine shareholders.

A. Whenever the records of a corporation are such that its board of directors determines that there are entities that appear to be lost shareholders who may or may not be entitled to the shares of stock shown by its records or that there may be asserted shareholders, the board of directors may, by a suit in equity brought in the circuit court of the city or county in which its registered office is located, begin a proceeding for a determination of the identity of its proper shareholders.

B. Each lost shareholder shall be named a party defendant. Asserted shareholders shall be joined as defendants as persons unknown. Service shall be effected by order of publication pursuant to § [8.01-316](#). The Commonwealth shall be named a party defendant and service shall be effected on the Attorney General.

C. The court shall hear all evidence that shall be available as to the identity of lost shareholders and asserted shareholders and whether or not they are entitled to own shares of stock of the corporation.

D. The court, on the basis of such evidence, shall determine, to the best of its ability, the identity of the lost shareholders and asserted shareholders of the corporation. Such determination shall be final, subject to appeal to the Supreme Court of Virginia.

E. The court, in its final decree, shall declare that the shares owned by lost shareholders or asserted shareholders and any dividends declared thereon and unpaid shall be the property of the Commonwealth in accordance with § [55-210.6:1](#) of the Code of Virginia .

Code 1950, §§ 13.1-157 to 13.1-161; 1979, c. 90; 1985, c. 522.

§13.1-778. Application to existing corporations.

Unless otherwise provided, the provisions of this chapter shall apply to all domestic and foreign corporations existing at the time this chapter takes effect and their shareholders. The charter of every corporation heretofore or hereafter organized in this Commonwealth shall be subject to the provisions of this chapter. In the case of foreign corporations, the certificate of authority to transact business in this Commonwealth issued by the Commission under any prior act of this Commonwealth shall continue in effect subject to the provisions hereof.

Code 1950, § 13.1-128; 1956, c. 428; 1959, Ex. Sess., c. 57; 1975, c. 500; 1985, c. 522.

§13.1-779. Savings provision.

A. Except as provided in subsection B of this section, the repeal of a statute by this chapter does not affect:

1. The operation of the statute or any action taken under it before its repeal;
2. Any ratification, right, remedy, privilege, obligation or liability acquired, accrued, or incurred under the statute before its repeal;
3. Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal; or
4. Any proceeding commenced, or reorganization or dissolution authorized by the board of directors, under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

B. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by this Act, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

C. If any provision of this chapter is deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., the provisions of this chapter shall control to the maximum extent permitted by 15 U.S.C. § 7002(a)(2).

Code 1950, § 13.1-130; 1956, c. 428; 1985, c. 522; 2010, c. [782](#).

§13.1-780. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§13.1-781. Property title records.

A. Whenever the records in the office of the clerk of the Commission reflect that a domestic or foreign corporation has changed or corrected its name, merged into a domestic or foreign corporation or eligible entity, converted into a domestic or foreign eligible entity, or domesticated in or from another jurisdiction, the clerk of the Commission, upon request, shall issue a certificate reciting such change, correction, merger, conversion or domestication. The certificate may be admitted to record in the deed books, in accordance with § [17.1-227](#), of any clerk's office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever a foreign corporation has changed or corrected its name, merged into another business entity, converted into another type of business entity, or domesticated in another jurisdiction, and it cannot or chooses not to obtain a certificate reciting such change, correction, merger, conversion or domestication from the clerk of the Commission pursuant to subsection A, a similar certificate by any competent authority of the foreign corporation's jurisdiction of incorporation may be admitted to record in the deed books, in accordance with § [17.1-227](#), of any clerk's office within the jurisdiction of which any property of the corporation is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

2007, c. [771](#).

§13.1-782. Definitions.

As used in this article:

"Benefit corporation" means a corporation organized pursuant to the provisions of this chapter:

1. That has elected to become subject to this article; and
2. The status of which as a benefit corporation has not been terminated under § [13.1-786](#).

"Benefit enforcement proceeding" means any claim or action brought directly by a benefit corporation, or derivatively on behalf of a benefit corporation, against a director or officer for (i) failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles of

incorporation or bylaws or otherwise adopted by its board of directors or (ii) a violation of a duty or standard of conduct under this article.

"General public benefit" means a material positive impact on society and the environment taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation.

"Independent" means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation, either directly as a shareholder of the benefit corporation or as a partner, a member, or an owner of a subsidiary of the benefit corporation or indirectly as a director, an officer, an owner, or a manager of an entity that has a material relationship with the benefit corporation or a subsidiary of the benefit corporation. A material relationship between a person and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

1. The person is, or has been within the last three years, an employee of the benefit corporation or a subsidiary of the benefit corporation;
2. An immediate family member of the person is, or has been within the last three years, an executive officer of the benefit corporation or its subsidiary; or
3. There is beneficial ownership of five percent or more of the outstanding shares of the benefit corporation by:

- a. The person; or

- b. An entity:

- (1) Of which the person is a director, an officer, or a manager; or

- (2) In which the person owns beneficially five percent or more of the outstanding equity interests, which percentage shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

"Specific public benefit" means a benefit that serves one or more public welfare, religious, charitable, scientific, literary, or educational purposes, or other purpose or benefit beyond the strict interest of the shareholders of the benefit corporation, including:

1. Providing low-income or underserved individuals or communities with beneficial products or services;

2. Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
3. Preserving or improving the environment;
4. Improving human health;
5. Promoting the arts, sciences, or advancement of knowledge;
6. Increasing the flow of capital to entities with a public benefit purpose; and
7. Conferring any other particular benefit on society or the environment.

"Subsidiary" means, in relation to an individual, an entity in which the individual either (i) owns directly or indirectly equity interests entitled to cast a majority of the votes entitled to be cast generally in an election of directors or members of the governing body of the entity or (ii) otherwise owns or controls voting or contractual power to exercise effective governing control of the entity. The percentage of ownership of equity interests or ownership or control of power to exercise control shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

"Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that:

1. Is developed by a person that is independent of the benefit corporation; and
2. Is transparent because the following information about the standard is publicly available:
 - a. The factors considered when measuring the performance of a business;
 - b. The relative weightings of those factors; and
 - c. The identity of the persons that develop and control changes to the standard and the process by which those changes are made.

2011, c. [698](#).

§13.1-783. Application and effect of article.

- A. This article shall apply to all benefit corporations.
- B. The existence of a provision of this article shall not of itself create an implication that a contrary or different rule of law applies to a corporation organized pursuant to the provisions of this chapter that is not a benefit corporation. This article shall not

affect a statute or rule of law that applies to a corporation that is not a benefit corporation.

C. The specific provisions of this article shall control over the general provisions of other articles of this chapter.

2011, c. [698](#).

§13.1-784. Formation of benefit corporations.

A benefit corporation shall be formed in accordance with Article 3 (§ [13.1-618](#) et seq.), and its articles, as initially filed with the Commission or as amended, shall state that it is a benefit corporation.

2011, c. [698](#).

§13.1-785. Election of status after formation.

A corporation that was not formed as a benefit corporation may become a benefit corporation by amending its articles so that they contain, in addition to matters required by § [13.1-619](#), a statement that the corporation is a benefit corporation. Any such amendment to the articles of incorporation shall be adopted in accordance with the procedures set forth in § [13.1-707](#); however, the amendment shall be approved by all shareholders entitled to vote on the amendment, or if no shares have yet been issued, in accordance with § [13.1-709](#).

2011, c. [698](#).

§13.1-786. Termination of status.

A benefit corporation may terminate its status as such and cease to be subject to this article by amending its articles to delete the provision required by § [13.1-784](#) to be set forth in the articles of incorporation, which amendment shall be adopted in accordance with the procedures set forth in § [13.1-707](#), or if no shares have yet been issued, in accordance with § [13.1-709](#).

2011, c. [698](#).

§13.1-787. Corporate purposes.

A. A benefit corporation shall have as one of its purposes the purpose of creating a general public benefit. The articles of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create. A specific public benefit may also be specified in the bylaws or oth-

erwise adopted by the board of directors. This purpose is in addition to its purpose under § [13.1-626](#).

B. The creation of a general public benefit and one or more specific public benefits, if any, under subsection A is in the best interests of the benefit corporation.

C. A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create, which amendment shall be adopted in accordance with the procedures set forth in § [13.1-707](#).

2011, c. [698](#).

§13.1-788. Standard of conduct for directors.

A. Subject to § [13.1-690](#), in discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

1. Shall consider the effects of any corporate action upon:

a. The shareholders of the benefit corporation;

b. The employees and workforce of the benefit corporation, its subsidiaries, and suppliers;

c. The interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit corporation;

d. Community and societal considerations, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or suppliers are located;

e. The local and global environment;

f. The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests and the general and specific public benefit purposes of the benefit corporation may be best served by the continued independence of the benefit corporation; and

g. The ability of the benefit corporation to accomplish its general and any specific public benefit purpose;

2. May consider:

a. The resources; intent; and past, stated, and potential conduct of any person seeking to acquire control of the benefit corporation; and

b. Other pertinent factors or the interests of any other person that they deem appropriate; and

3. Need not give priority to the interests of a particular person referred to in subdivisions 1 and 2 over the interests of any other person unless the benefit corporation has stated its intention to give priority to interests related to a specific public benefit purpose identified in its articles.

B. The consideration of interests and factors in the manner required by subsection A shall not constitute a violation of § [13.1-690](#) or a director conflict of interests under § [13.1-691](#).

C. In any proceeding brought by or in the right of a benefit corporation or brought by or on behalf of the shareholders of a benefit corporation, a director is not personally liable for monetary damages for:

1. Any action taken as a director if the director performed the duties of office in compliance with § [13.1-690](#) and this section; or

2. Failure of the benefit corporation to create general public benefit or any specific public benefit specified in its articles of incorporation or bylaws or otherwise adopted by the board of directors.

2011, c. [698](#).

§13.1-789. Limitation upon liability of officers.

An officer of a benefit corporation shall have no liability for actions taken that the officer believes, in his good faith business judgment, are consistent with (i) the general public benefit or specific public benefit specified in the articles of incorporation or bylaws or otherwise adopted by the board of directors and (ii) the requirements of any third-party standard then in effect for the corporation.

2011, c. [698](#).

§13.1-790. Right of action.

A. The duties of directors and officers under this article, the obligation of a benefit corporation to prepare and make available the annual benefit report required under § [13.1-791](#), and the general and any specific public benefit purpose of a benefit corporation may be enforced only in a benefit enforcement proceeding. No person may

bring an action or assert a claim against a benefit corporation or its directors or officers with respect to the duties of directors and officers under this article and the general and any specific public benefit purpose of the benefit corporation except in a benefit enforcement proceeding.

B. A benefit enforcement proceeding may be commenced or maintained only:

1. Directly by the benefit corporation; or
2. Derivatively by:
 - a. A shareholder of the benefit corporation;
 - b. A director of the benefit corporation; or
 - c. Other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

2011, c. [698](#).

§13.1-791. Annual benefit report.

A. A benefit corporation shall prepare an annual benefit report that includes all of the following:

1. A narrative description of:
 - a. The ways in which the benefit corporation pursued the general public benefit during the year and the extent to which the general public benefit was created; and
 - b. Both:
 - (1) The ways in which the benefit corporation pursued any specific public benefit that the articles of incorporation or bylaws, or other action taken by the board of directors, state it is the purpose of the benefit corporation to create; and
 - (2) The extent to which that specific public benefit was created; and
 - c. Any circumstances that have hindered the creation by the benefit corporation of the general or any specific public benefit;
2. An assessment of the social and environmental performance of the benefit corporation. The assessment shall be:
 - a. Prepared in accordance with a third-party standard specified in the articles of incorporation, the bylaws, or otherwise adopted by the board of directors and applied consistently with any application of that standard in prior benefit reports; or

b. Accompanied by an explanation of the reasons for any inconsistent application;
and

3. Any other information or disclosures that may be required under any third-party standard adopted by the directors of the benefit corporation.

B. The benefit report shall be made available annually to each shareholder of the benefit corporation:

1. Within 120 days following the end of the fiscal year of the benefit corporation; or
2. At the same time that the benefit corporation delivers any other annual report to its shareholders.

C. A benefit corporation shall post its most recent benefit report on a publicly accessible portion of its Internet website, if any. If a benefit corporation does not have an Internet website, it shall make a written or electronic copy of its most recent benefit report available upon written request from any person. A benefit corporation shall not be required to publicly disclose to persons other than its shareholders any proprietary, confidential, or individual compensation information contained in its benefit report to the extent that any third-party standard adopted by the directors of the benefit corporation permits the omission of such information from public disclosure.

2011, c. [698](#).

§13.1-792. Reserved.

Reserved.

Virginia Telephone Privacy Protection Act

§59.1-510. Definitions.

As used in this chapter:

"Established business relationship" means a relationship between the called person and the person on whose behalf the telephone solicitation call is being made based on: (i) the called person's purchase from, or transaction with, the person on whose behalf the telephone solicitation call is being made within the 18 months immediately preceding the date of the call or (ii) the called person's inquiry or application

regarding any property, good, or service offered by the person on whose behalf the telephone solicitation call is being made within the three months immediately preceding the date of the call.

"Personal relationship" means the relationship between a telephone solicitor making a telephone solicitation call and any family member, friend, or acquaintance of that telephone solicitor.

"Telephone solicitation call" means any telephone call made to any natural person's residence in the Commonwealth, or to any wireless telephone with a Virginia area code, for the purpose of offering or advertising any property, goods or services for sale, lease, license or investment, including offering or advertising an extension of credit.

"Telephone solicitor" means any person who makes, or causes another person to make, a telephone solicitation call.

2001, cc. [528](#), [553](#); 2004, cc. [202](#), [224](#).

§59.1-511. Calling time restrictions.

No telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation call at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location, unless the telephone solicitor has obtained the prior consent of the called person.

2001, cc. [528](#), [553](#); 2004, cc. [202](#), [224](#).

§59.1-512. Identification of telephone solicitor required.

A telephone solicitor who makes a telephone solicitation call shall identify himself by his first and last names and the name of the person on whose behalf the telephone solicitation call is being made promptly upon making contact with the called person.

2001, cc. [528](#), [553](#).

§59.1-513. Transmission of caller identification information required.

A. A telephone solicitor who makes a telephone solicitation call shall transmit the telephone number, and, when available by the telephone solicitor's carrier, the name of the telephone solicitor. It shall not be a violation of this section to substitute (for the name and telephone number used in, or billed for, making the call) the name of the person on whose behalf the telephone solicitation call is being made and that person's customer service telephone number. The number so provided must permit,

during regular business hours, any individual to make a request not to receive telephone solicitation calls.

B. No telephone solicitor shall take any intentional action to prevent the transmission of the telephone solicitor's name or telephone number to any person receiving a telephone solicitation call.

2001, cc. [528](#), [553](#); 2004, cc. [202](#), [224](#).

§59.1-513.1. Abandoned telephone solicitation calls.

Whenever a live sales representative is not available to speak with the person answering a telephone solicitation call within two seconds of the person's completed greeting, the telephone solicitor shall play a prerecorded identification message that states the name and telephone number of the person on whose behalf the telephone solicitation call was being made. The number so provided shall permit, during regular business hours, any individual to make a request not to receive telephone solicitation calls.

2004, cc. [202](#), [224](#).

§59.1-514. Unwanted telephone solicitation calls prohibited.

A. No telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation call to a telephone number when a person at such telephone number previously has stated that he does not wish to receive a telephone solicitation call made by or on behalf of the person on whose behalf the telephone solicitation call is being made. Such statement may be made to a telephone solicitor or to the person on whose behalf the telephone solicitation call is being made if that person is different from the telephone solicitor. Any such request not to receive telephone solicitation calls shall be honored for at least 10 years from the time the request is made.

B. No telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation call to a telephone number on the National Do Not Call Registry maintained by the federal government pursuant to the Telemarketing Sales Rule, 16 C.F.R. Part 310, and 47 C.F.R. § 64.1200 .

C. It shall be an affirmative defense in any action brought under § [59.1-515](#) or [59.1-517](#) for a violation of this section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitation calls in violation of this section, including using in accordance with applicable federal regulations a version of the National Do Not Call Registry

obtained from the administrator of the registry no more than 31 days prior to the date any telephone solicitation call is made.

D. For purposes of this section, "telephone solicitation call" shall not include a telephone call made to any person: (i) with that person's prior express invitation or permission as evidenced by a signed, written agreement stating that the person agrees to be contacted by or on behalf of a specific party and including the telephone number to which the call may be placed, (ii) with whom the person on whose behalf the telephone call is made has an established business relationship, or (iii) with whom the telephone solicitor making the telephone call has a personal relationship. The exemption for an established business relationship or a personal relationship shall not apply when the person called previously has stated that he does not wish to receive telephone solicitation calls as provided in subsection A.

2001, cc. [528](#), [553](#); 2004, cc. [202](#), [224](#); 2005, c. [296](#).

§59.1-515. Individual action for damages.

A. Any natural person who is aggrieved by a violation of this chapter shall be entitled to initiate an action to enjoin such violation and to recover damages in the amount of \$500 for each such violation.

B. If the court finds a willful violation, the court may, in its discretion, increase the amount of the award to an amount not exceeding \$1,500.

C. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person may be awarded reasonable attorneys' fees and court costs.

D. An action for damages, attorneys' fees, and costs brought under this section may be filed in an appropriate general district court or small claims court so long as the amount claimed does not exceed the jurisdictional limits set forth in § [16.1-77](#) or § [16.1-122.2](#), as applicable. Any action brought under this section that includes a request for an injunction shall be filed in an appropriate circuit court.

2001, cc. [528](#), [553](#).

§59.1-516. Investigative authority.

A. The Commissioner of the Department of Agriculture and Consumer Services, or his duly authorized representative, shall have the power to inquire into possible violations of this chapter, and to request, but not to require, an appropriate legal official to bring an action under § [59.1-517](#) with respect to such violation.

B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, is engaging in or is about to engage in any violation of this chapter, the Attorney General is empowered to issue a civil investigative demand. The provisions of § [59.1-9.10](#) shall apply mutatis mutandis to civil investigative demands issued pursuant to this section.

2001, cc. [528](#), [553](#).

§59.1-517. Enforcement; penalties.

A. The Attorney General, an attorney for the Commonwealth or the attorney for any county, city or town may cause an action to be brought in the name of the Commonwealth or of the county, city or town to enjoin any violation of this chapter by any person and to recover damages for aggrieved persons in the amount of \$500 for each such violation.

B. If the court finds a willful violation, the court may, in its discretion, also award a civil penalty of not more than \$1,000 for each such violation.

C. In any action brought under this section, the Attorney General, the attorney for the Commonwealth or the attorney for the county, city or town may recover reasonable expenses incurred by the state or local agency in investigating and preparing the case, and attorneys' fees.

D. Any civil penalties awarded under this section in an action brought in the name of the Commonwealth shall be paid into the Literary Fund. Any civil penalties awarded under this section in an action brought in the name of a county, city or town shall be paid into the general fund of the county, city or town.

2001, cc. [528](#), [553](#).

§59.1-518. Effect on other remedies, causes of action or penalties.

Nothing in this chapter shall be construed to limit any remedies, causes of action or penalties available to any person or governmental agency under any other federal or state law.

2001, cc. [528](#), [553](#).

Virginia Uniform Partnership Act

§50-73.79. Definitions.

In this chapter:

"Business" includes every trade, occupation, and profession.

"Commission" means the State Corporation Commission of Virginia.

"Debtor in bankruptcy" means a person who is the subject of:

(i) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) a comparable order under federal, state, or foreign law governing insolvency.

"Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

"Foreign registered limited liability partnership" means a limited liability partnership or registered limited liability partnership, or the functional equivalent thereof, formed pursuant to an agreement governed by the laws of any state or jurisdiction other than this Commonwealth and registered as a limited liability partnership under the laws of that state or jurisdiction.

"Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under § [50-73.88](#), predecessor law, or comparable law of another jurisdiction, and includes, for all purposes of the laws of this Commonwealth, a registered limited liability partnership.

"Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

"Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

"Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Principal office" means the office, in or out of the Commonwealth, where the chief executive offices of a domestic or foreign partnership or registered limited liability partnership are located.

"Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

"Registered limited liability partnership" means a partnership formed pursuant to an agreement governed by the laws of this Commonwealth and registered under § [50-73.132](#).

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

"Statement" means a statement of partnership authority under § [50-73.93](#), a statement of denial under § [50-73.94](#), a statement of dissociation under § [50-73.115](#), a statement of dissolution under § [50-73.121](#), a statement of merger under § [50-73.131](#), a statement of registration as a registered limited liability partnership under § [50-73.132](#), a statement of registration as a foreign registered limited liability partnership under § [50-73.138](#), an amendment or cancellation of any of the foregoing or a renewal of a statement of partnership authority.

"Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

1996, c. [292](#); 2003, c. [567](#); 2006, c. [912](#); 2007, c. [631](#).

§50-73.80. Knowledge and notice.

A. A person knows a fact if the person has actual knowledge of it.

B. A person has notice of a fact if the person:

1. Knows of it;
2. Has received a notification of it; or
3. Has reason to know it exists from all of the facts known to the person at the time in question.

C. A person notifies or gives a notification to another by taking steps reasonably calculated to inform the other person in ordinary course, whether or not the other person learns of it.

D. A person receives a notification when the notification:

1. Comes to the person's attention; or
2. Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

E. Except as otherwise provided in subsection F, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

F. A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

1996, c. [292](#).

§50-73.81. Effect of partnership agreement; nonwaivable provisions.

A. Except as otherwise provided in subsection B, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

B. The partnership agreement may not:

1. Vary the rights and duties in § [50-73.83](#) except to eliminate the duty to provide copies of statements to all of the partners;
2. Unreasonably restrict the right of access to books and records in subsection B of § [50-73.101](#);

3. Eliminate the obligation of good faith and fair dealing in subsection D of § [50-73.102](#), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
4. Vary the power to dissociate as a partner in subsection A of § [50-73.110](#), except to require the notice in subdivision 1 of § [50-73.109](#) to be in writing;
5. Vary the right of a court to expel a partner in the events specified in subdivision 5 of § [50-73.109](#);
6. Vary the requirement to wind up the partnership business in cases specified in subdivisions 4, 5 or 6 of § [50-73.117](#);
7. Restrict rights of third parties under this chapter without the consent of those third parties; or
8. Vary the law applicable to registered limited liability partnerships as set forth in subsection B of § [50-73.84](#).

1996, c. [292](#).

§50-73.82. Supplemental principles of law.

A. Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

B. If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in § [6.2-302](#).

1996, c. [292](#).

§50-73.83. Execution, filing, and recording of statements; refunds; penalty.

A. A statement may be filed with the Commission. A duly authenticated copy of a statement that is filed in an office in another state may be filed with the Commission. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in the Commonwealth.

B. A duly authenticated copy of a statement that has been filed with the Commission and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a duly authenticated copy of a statement filed with the Commission does not have the effect provided for recorded statements in this chapter.

C. A statement filed by a partnership shall be executed by at least two partners, except as provided in subdivision A 1 of § [50-73.78](#). Other statements shall be executed by a partner or other person authorized by this chapter. The person executing a statement shall sign it and state beneath or opposite his signature his name and the capacity in which he executes the document. Any person may execute a statement by an attorney-in-fact. It shall be unlawful for any person to sign a document he knows is false in any material respect with intent that the document be delivered to the Commission for filing, and any person who violates this provision shall be guilty of a Class 1 misdemeanor.

D. A person authorized by this chapter to file a statement may:

1. Amend or cancel the statement by filing an amendment or cancellation that names the partnership, states the identification number issued by the Commission to the partnership, identifies the statement, and states the substance of the amendment or cancellation; and
2. Renew a statement of partnership authority by filing during the 90-day period preceding the date of the statement's cancellation by operation of law, a renewal of a statement of partnership authority that names the partnership, states the identification number issued by the Commission to the partnership, states the partnership's desire to renew the statement of partnership authority, and states that all of the information set forth in the statement of partnership authority is true and correct as of the execution date of the renewal.

E. A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

F. The fees paid into the state treasury under this section shall be set aside and paid into the special fund created under § [13.1-775.1](#), subject to that section. The Commission shall have the authority to certify to the Comptroller directing refund of any overpayment of a fee or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment. The Commission shall charge and collect the following fees:

1. The fee shall be \$100 for filing any one of the following:
 - a. A statement of registration as a registered limited liability partnership; or

- b. A statement of registration as a foreign registered limited liability partnership.
- 2. The fee shall be \$50 for filing an annual continuation report pursuant to § [50-73.134](#).
- 3. The fee shall be \$25 for filing any one of the following:
 - a. An amendment to a statement of registration as a registered limited liability partnership;
 - b. An amendment to a statement of registration as a foreign registered limited liability partnership; or
 - c. A statement of partnership authority or any other statement or an amendment thereto or cancellation thereof, or a renewal of a statement of partnership authority.
- 4. For issuing a certificate pursuant to § [50-73.150](#), the fee shall be \$6.

The court responsible for recording transfers of real property may collect a fee for recording a statement.

G. The Commission may provide forms for statements and reports.

H. Any statement filed with the Commission under this chapter shall be typewritten or printed. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed statements may be filed. In every case, information in the statement shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality. The statement shall be in the English language. A partnership name need not be in English if written in English letters or Arabic or Roman numerals. Any signature on a statement may be a facsimile.

I. The Commission may accept the electronic filing of any information required or permitted to be filed under this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § [59.1-496](#).

J. A statement shall be effective at the time of the filing of the statement with the Commission as set forth in this section unless the statement states that it shall become effective at a later time and date specified in the statement. In that event, the statement shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the fifteenth day after the date on which the statement is filed with the Commission.

K. Notwithstanding the terms of subsection J, any statement that has a delayed effective time and date shall not become effective if, prior to the effective time and date, the parties to which the statement relates file a written notice of abandonment with the Commission.

1996, c. [292](#); 1997, c. [188](#); 2000, cc. [5](#), [995](#); 2002, c. [441](#); 2003, c. [567](#); 2004, cc. [316](#), [601](#); 2007, cc. [631](#), [771](#); 2009, c. [716](#); 2010, c. [675](#).

§50-73.84. Law governing internal relations.

A. Except as provided in subsection B, the law of the jurisdiction in which a partnership has its principal office governs relations among the partners and between the partners and the partnership.

B. The law of this Commonwealth shall govern relations among the partners and between the partners and the partnership, and the liability of partners for debts, obligations and liabilities chargeable to the partnership, in a partnership that has filed a statement of registration as a registered limited liability partnership in this Commonwealth.

C. Sections 9-406 and 9-408 of the Uniform Commercial Code, including §§ [8.9A-406](#) and [8.9A-408](#), do not apply to any interest in a partnership, including all rights, powers, and interests arising under the partnership agreement of a partnership, Chapter 2.1 (§ [50-73.1](#) et seq.) of this title, or this chapter. This provision prevails over §§ [8.9A-406](#) and [8.9A-408](#), and is expressly intended to permit the enforcement as a fundamental matter of contract among the partners of a partnership of any provision of a partnership agreement that would otherwise be ineffective under § 9-406 or § 9-408 of the Uniform Commercial Code .

1996, c. [292](#); 2003, c. [340](#); 2007, c. [631](#).

§50-73.85. Transactions between partner and partnership.

A partner may lend money to and transact other business with the partnership, and as to each loan or transaction, the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

1996, c. [292](#).

§50-73.86. Partnership subject to amendment or repeal of chapter.

A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.

1996, c. [292](#).

§50-73.87. Partnership as entity.

A partnership is an entity distinct from its partners.

1996, c. [292](#).

§50-73.88. Formation of partnership.

A. Except as otherwise provided in subsection B, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

B. An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

C. In determining whether a partnership is formed, the following rules apply:

1. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

2. The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

3. A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

a. Of a debt by installments or otherwise;

b. For services as an independent contractor or of wages or other compensation to an employee;

c. Of rent;

d. Of an annuity or other retirement benefit to a beneficiary, representative, or designee of a deceased or retired partner;

e. Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

f. For the sale of the goodwill of a business or other property by installments or otherwise.

D. Each person to be admitted as a partner to a partnership formed under subsection A may be admitted as a partner and may receive a partnership interest in the partnership without making a contribution or being obligated to make a contribution to the partnership. Each person to be admitted as a partner to a partnership formed under subsection A may be admitted as a partner without acquiring a transferable interest in the partnership. Nothing contained in this subsection shall affect a partner's liability under § [50-73.96](#).

1996, c. [292](#); 2015, c. [616](#).

§50-73.89. Partnership property.

Property acquired by a partnership is property of the partnership and not of the partners individually.

1996, c. [292](#).

§50-73.90. When property is partnership property.

A. Property is partnership property if acquired in the name of:

1. The partnership; or
2. One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

B. Property is acquired in the name of the partnership by a transfer to:

1. The partnership in its name; or
2. One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

C. Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

D. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

1996, c. [292](#).

§50-73.91. Partner agent of partnership.

Subject to the effect of a statement of partnership authority under § [50-73.93](#):

1. Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.
2. An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

1996, c. [292](#).

§50-73.92. Transfer of partnership property.

A. Partnership property may be transferred as follows:

1. Subject to the effect of a statement of partnership authority under § [50-73.93](#), partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.
2. Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.
3. Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

B. A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under § [50-73.91](#) and:

1. As to a subsequent transferee who gave value for property transferred under subdivisions A 1 or A 2, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or
 2. As to a transferee who gave value for property transferred under subdivision A 3, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.
- C. A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection B, from any earlier transferee of the property.
- D. If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

1996, c. [292](#).

§50-73.93. Statement of partnership authority.

A. A partnership may file a statement of partnership authority, which:

1. Shall include:

- a. The name of the partnership;
- b. The name of the state or other jurisdiction under whose law it is formed, and if the partnership was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization, or formation; and (iv) the entity identification number issued to it by the Commission;
- c. The street address of its principal office and of one office in the Commonwealth, if there is one;
- d. The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection B; and

e. The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

2. May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

B. If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

C. If a filed statement of partnership authority is executed pursuant to subsection C of § [50-73.83](#) and states the name of the partnership but does not contain all of the other information required by subsection A, the statement nevertheless operates with respect to a person not a partner as provided in subsections D and E.

D. Except as otherwise provided in subsection G, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

1. Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

2. A grant of authority to transfer real property held in the name of the partnership contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then of record with the Commission. The filing of a cancellation of a limitation on authority revives the previous grant of authority.

E. A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a filed statement containing the limitation on authority is of record with the Commission.

F. Except as otherwise provided in subsections D and E and §§ [50-73.115](#) and [50-73.121](#), a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

G. Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, the most recent renewal, or the most recent amendment, was filed with the Commission.

H. A partnership that changes its name shall promptly amend its statement of partnership authority to reflect its new name unless its statement of partnership authority has been canceled.

1996, c. [292](#); 2002, c. [441](#); 2003, c. [567](#); 2004, c. [274](#); 2007, c. [631](#).

§50-73.94. Statement of denial.

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to subsection B of § [50-73.93](#) may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in subsections D and E of § [50-73.93](#).

1996, c. [292](#).

§50-73.95. Partnership liable for partner's actionable conduct.

A. A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

B. If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

1996, c. [292](#).

§50-73.96. Partner's liability.

A. Except as otherwise provided in subsection B or subsection C, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

B. A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

C. A person is not, solely by reason of being a partner, liable, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for debts, obligations or liabilities of, or chargeable to, the partnership, whether sounding in tort, contract or otherwise, that are incurred, created or assumed by the partnership while the partnership is a registered limited liability partnership.

D. A person is not, solely by reason of being a partner, a proper party to a proceeding by or against a registered limited liability partnership, the object of which is to recover damages, collect the debts or liabilities or enforce the obligations of the partnership with respect to which the partner is not liable under subsection C.

1996, c. [292](#).

§50-73.97. Actions by and against partnership and partners.

A. A partnership may sue and be sued in the name of the partnership.

B. An action may be brought against the partnership and, except as provided in § [50-73.96](#), against any or all of the partners in the same action or in separate actions.

C. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

D. A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

1. The claim is for a debt, obligation or liability for which the partner is liable as provided in § [50-73.96](#) and either:

a. A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

b. The partnership is a debtor in bankruptcy;

c. The partner has agreed that the creditor need not exhaust partnership assets; or

d. A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

2. Liability is imposed on the partner by law or contract independent of the existence of the partnership.

E. This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under § [50-73.98](#).

1996, c. [292](#).

§50-73.98. Liability of purported partner.

A. If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

B. If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

C. A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

D. A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

E. Except as otherwise provided in subsections A and B, persons who are not partners as to each other are not liable as partners to other persons.

1996, c. [292](#).

§50-73.99. Partner's rights and duties.

A. Each partner is deemed to have an account that is:

1. Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and
2. Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

B. Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

C. A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property; however, no person shall be required as a consequence of the indemnification to make any payment to the extent that the payment would be inconsistent with subsections B and C of § [50-73.96](#).

D. A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

E. A payment or advance made by a partner which gives rise to a partnership obligation under subsections C or D constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

F. Each partner has equal rights in the management and conduct of the partnership business.

G. A partner may use or possess partnership property only on behalf of the partnership.

H. A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

I. A person may become a partner only with the consent of all of the partners.

J. A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

K. This section does not affect the obligations of a partnership to other persons under [§ 50-73.91](#).

1996, c. [292](#).

§50-73.100. Distributions in kind.

A partner has no right to receive, and may not be required to accept, a distribution in kind.

1996, c. [292](#).

§50-73.101. Partner's rights and duties with respect to information.

A. A partnership shall keep its books and records, if any, at its principal office.

B. A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

C. Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

1. Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter; and

2. On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

1996, c. [292](#); 2007, c. [631](#).

§50-73.102. General standards of partner's conduct.

A. The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections B and C.

B. A partner's duty of loyalty to the partnership and the other partners is limited to the following:

1. To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

2. To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

3. To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

C. A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

D. A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

E. A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

F. This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

1996, c. [292](#).

§50-73.103. Actions by partnership and partners.

A. A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

B. A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

1. Enforce that partner's rights under the partnership agreement;
2. Enforce that partner's rights under this chapter, including:
 - a. That partner's rights under §§ [50-73.99](#), [50-73.101](#), or § [50-73.102](#);
 - b. That partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to § [50-73.112](#) or enforce any other right under Article 6 or Article 7; or
 - c. That partner's right to compel a dissolution and winding up of the partnership business under § [50-73.117](#) or enforce any other right under Article 8; or
3. Enforce the rights and otherwise protect the interests of that partner, including rights and interests arising independently of the partnership relationship.

C. The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

1996, c. [292](#).

§50-73.104. Continuation of partnership beyond definite term or particular undertaking.

A. If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

B. If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

1996, c. [292](#).

§50-73.105. Partner not co-owner of partnership property.

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

1996, c. [292](#).

§50-73.106. Partner's transferable interest in partnership.

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

1996, c. [292](#).

§50-73.107. Transfer of partner's transferable interest.

A. A transfer, in whole or in part, of a partner's transferable interest in the partnership:

1. Is permissible;
2. Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and
3. Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

B. A transferee of a partner's transferable interest in the partnership has a right:

1. To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
2. To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and
3. To seek under subdivision 6 of § [50-73.117](#) a judicial determination that it is equitable to wind up the partnership business.

C. In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

D. Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

E. A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

F. A transfer of a partner's transferable interest in the partnership in violation of a restriction or prohibition on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

1996, c. [292](#).

§50-73.108. Partner's transferable interest subject to charging order.

A. On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. To the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of the interest.

B. A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership.

C. This chapter does not deprive a partner or a partner's assignee of a right under exemption laws with respect to the judgment debtor's interest in the partnership.

D. The entry of a charging order is the exclusive remedy by which a judgment creditor of a partner or of a partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

E. No creditor of a partner or of a partner's assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the partnership.

1996, c. [292](#); 2006, c. [912](#).

§50-73.109. Events causing partner's dissociation.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

1. The partnership's having notice of the partner's express will to withdraw as a partner on a later date specified by the partner in the notice or, if no later date is specified, the date of notice;
2. An event agreed to in the partnership agreement as causing the partner's dissociation;
3. The partner's expulsion pursuant to the partnership agreement;
4. The partner's expulsion by the unanimous vote of the other partners if:

- a. It is unlawful to carry on the partnership business with that partner; or
 - b. There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes or a court order charging the partner's interest which, in either case has not been foreclosed.
5. On application by the partnership or another partner, the partner's expulsion by judicial determination because:
- a. The partner engaged in wrongful conduct that adversely and materially affected the partnership business;
 - b. The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under [§ 50-73.102](#); or
 - c. The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;
6. The partner's:
- a. Becoming a debtor in bankruptcy;
 - b. Executing an assignment for the benefit of creditors;
 - c. Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or
 - d. Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;
7. In the case of a partner who is an individual:
- a. The partner's death;
 - b. The appointment of a guardian, committee or conservator for the partner; or
 - c. A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

8. In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;
9. In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative;
10. Termination of a partner who is not an individual, partnership, corporation, limited liability company, trust, or estate;
11. The expiration of ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed articles of dissolution or the equivalent, its existence has been terminated or its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, if there is no revocation of the certificate of dissolution or no reinstatement of its existence, its charter or its right to conduct business; or
12. A partnership or limited liability company that is a partner has been dissolved and its business is being wound up.

1996, c. [292](#); 1997, c. [801](#).

§50-73.110. Partner's power to dissociate; wrongful dissociation.

- A. A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to subdivision 1 of § [50-73.109](#).
- B. A partner's dissociation is wrongful only if:
 1. It is in breach of an express provision of the partnership agreement; or
 2. In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:
 - a. The partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under subdivisions 6 through 10 and 12 of § [50-73.109](#) or wrongful dissociation under this subsection;
 - b. The partner is expelled by judicial determination under subdivision 5 of § [50-73.109](#);
 - c. The partner is dissociated under subdivision 6 of § [50-73.109](#); or

d. In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

C. A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

1996, c. [292](#).

§50-73.111. Effect of partner's dissociation.

A. If a partner's dissociation results in a dissolution and winding up of the partnership business, Article 8 applies; otherwise, Article 7 applies.

B. Upon a partner's dissociation:

1. The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in § [50-73.119](#);

2. The partner's duty of loyalty under subdivision B 3 of § [50-73.102](#) terminates; and

3. The partner's duty of loyalty under subdivisions B 1 and B 2 of § [50-73.102](#) and duty of care under subsection C of § [50-73.102](#) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to § [50-73.119](#).

1996, c. [292](#).

§50-73.112. Purchase of dissociated partner's interest.

A. If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under § [50-73.117](#), the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection B.

B. The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subsection B of § [50-73.123](#) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest shall be paid from the date of dissociation to the date of payment.

C. Damages for wrongful dissociation under subsection B of § [50-73.110](#), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

D. A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under § [50-73.113](#).

E. If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection C.

F. If a deferred payment is authorized under subsection H, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection C, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

G. The payment or tender required by subsection E or subsection F shall be accompanied by the following:

1. A statement of partnership assets and liabilities as of the date of dissociation;
2. The latest available partnership balance sheet and income statement, if any;
3. An explanation of how the estimated amount of the payment was calculated; and
4. Written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection C, or other terms of the obligation to purchase.

H. A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment

shall bear interest and, to the extent it would not cause undue hardship to the partnership, be adequately secured.

I. A dissociated partner may maintain an action against the partnership, pursuant to subdivision B 2 a of § [50-73.103](#), to determine the buyout price of that partner's interest, any offsets under subsection C, or other terms of the obligation to purchase. The action shall be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection C, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection H, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection G.

1996, c. [292](#).

§50-73.113. Dissociated partner's power to bind partnership.

A. For one year after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Article 9, is bound by an act of the dissociated partner which would have bound the partnership under § [50-73.91](#) before dissociation only if at the time of entering into the transaction the other party:

1. Reasonably believed that the dissociated partner was then a partner;
2. Did not have notice of the partner's dissociation; and
3. Is not deemed to have had knowledge under subsection E of § [50-73.93](#) or notice under subsection C of § [50-73.115](#).

B. A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection A.

1996, c. [292](#).

§50-73.114. Dissociated partner's liability to other persons.

A. A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection B.

B. A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Article 9, within one year after the partner's dissociation, only if the obligation is one for which he would be liable under § [50-73.96](#) if he were a partner and at the time of entering into the transaction the other party:

1. Reasonably believed that the dissociated partner was then a partner;
2. Did not have notice of the partner's dissociation; and
3. Is not deemed to have had knowledge under subsection E of § [50-73.93](#) or notice under subsection C of § [50-73.115](#).

C. By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

D. A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

1996, c. [292](#).

§50-73.115. Statement of dissociation.

A. A dissociated partner named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to subsection B of § [50-73.93](#) or a partnership that has filed a statement of partnership authority that has not been canceled may file a statement of dissociation stating the name of the partnership, the identification number issued by the Commission to the partnership, and that the partner is dissociated from the partnership.

B. A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of subsections D and E of § [50-73.93](#).

C. For the purposes of subdivision A 3 of § [50-73.113](#) and subdivision B 3 of § [50-73.114](#), a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

1996, c. [292](#); 2003, c. [567](#).

§50-73.116. Continued use of partnership name.

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

1996, c. [292](#).

§50-73.117. Events causing dissolution and winding up of partnership business.

A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of the following events:

1. In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under subdivisions 2 through 12 of § [50-73.109](#), of that partner's express will to withdraw as a partner, on a later date specified by the partner in the notice or, if no later date is specified, the date of notice;
2. In a partnership for a definite term or particular undertaking:
 - a. Within 90 days after a partner's dissociation by death or otherwise under subdivisions 6 through 12 of § [50-73.109](#) or wrongful dissociation under subsection B of § [50-73.110](#), the express will of at least one half of the remaining partners to wind up the partnership's business, for which purpose a partner's rightful dissociation pursuant to subdivision B 2 a of § [50-73.110](#) constitutes the expression of that partner's will to wind up the partnership business;
 - b. The express will of all of the partners to wind up the partnership business; or
 - c. The expiration of the term or the completion of the undertaking;
3. An event agreed to in the partnership agreement resulting in the winding up of the partnership business;
4. An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;
5. On application by a partner, a judicial determination that:

- a. The economic purpose of the partnership is likely to be unreasonably frustrated;
 - b. Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or
 - c. It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or
6. On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:
- a. After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or
 - b. At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

1996, c. [292](#); 2006, c. [912](#).

§50-73.118. Partnership continues after dissolution.

A. Subject to subsection B, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

B. At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

- 1. The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and
- 2. The rights of a third party accruing under subdivision 1 of § [50-73.120](#) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

1996, c. [292](#).

§50-73.119. Right to wind up partnership business.

A. After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the circuit court, for good cause shown, may order judicial supervision of the winding up.

B. The legal representative of the last surviving partner may wind up a partnership's business.

C. A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to § [50-73.123](#), settle disputes by mediation or arbitration, and perform other necessary acts.

1996, c. [292](#).

§50-73.120. Partner's power to bind partnership after dissolution.

Subject to § [50-73.121](#), a partnership is bound by a partner's act after dissolution that:

1. Is appropriate for winding up the partnership business; or
2. Would have bound the partnership under § [50-73.91](#) before dissolution, if the other party to the transaction did not have notice of the dissolution.

1996, c. [292](#).

§50-73.121. Statement of dissolution.

A. After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution for a partnership that has filed a statement of partnership authority that has not been canceled stating the name of the partnership, the identification number issued by the Commission to the partnership, and that the partnership has dissolved and is winding up its business.

B. A statement of dissolution cancels a filed statement of partnership authority for the purposes of subsection D of § [50-73.93](#) and is a limitation on authority for the purposes of subsection E of § [50-73.93](#).

C. For the purposes of §§ [50-73.91](#) and [50-73.120](#), a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

D. After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in subsections D and E of § [50-73.93](#) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

1996, c. [292](#); 2003, c. [567](#).

§50-73.122. Partner's liability to other partners after dissolution.

A. Except as otherwise provided in subsection B of this section or in subsection C of § [50-73.96](#), after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under § [50-73.120](#).

B. A partner who, with knowledge of the dissolution, causes the partnership to incur a liability under subdivision 2 of § [50-73.120](#) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

1996, c. [292](#).

§50-73.123. Settlement of accounts and contributions among partners.

A. In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, shall be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection B.

B. Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets shall be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account that is attributable to an obligation for which the partner is liable under § [50-73.96](#).

C. If a partner fails or is not obligated to contribute, each other partner shall contribute, in the proportion in which that partner shares partnership losses, the additional amount necessary to satisfy any partnership obligations for which the partner is liable under § [50-73.96](#).

D. A partner or partner's legal representative may recover from the other partners any contributions on account of obligations for which the other partners are liable under § [50-73.96](#) that the partner or legal representative makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner or legal representative is personally liable under § [50-73.96](#).

E. After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations for which the partner is liable under § [50-73.96](#) and that were not known at the time of the settlement.

F. The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

G. An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

1996, c. [292](#).

§50-73.124. Definitions.

In this article:

"General partner" means a partner in a partnership and a general partner in a limited partnership.

"Limited partner" means a limited partner in a limited partnership.

"Limited partnership" means a limited partnership created under the Virginia Revised Uniform Limited Partnership Act, predecessor law, or comparable law of another jurisdiction.

"Partner" includes both a general partner and a limited partner.

1996, c. [292](#).

§50-73.125. Repealed.

Repealed by Acts 2007, c. [631](#), cl. 4.

§50-73.126. Conversion of limited partnership to partnership.

A. A limited partnership may be converted to a partnership pursuant to this section.

B. Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership shall be approved by all of the partners.

C. After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

D. The conversion takes effect when the certificate of limited partnership is canceled.

E. A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Subject to § [50-73.96](#), the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

1996, c. [292](#).

§50-73.127. Effect of conversion; entity unchanged.

A. A limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

B. When a conversion takes effect:

1. All property owned by the converting limited partnership remains vested in the resulting partnership;

2. All obligations of the converting limited partnership continue as obligations of the resulting partnership; and

3. An action or proceeding pending against the converting limited partnership may be continued as if the conversion had not occurred.

1996, c. [292](#); 2007, c. [631](#).

§50-73.128. Merger of partnerships.

A. Pursuant to a written plan of merger approved as provided in subsection C, a partnership may be merged with one or more domestic or foreign partnerships, limited partnerships, limited liability companies, business trusts, or corporations if:

1. The merger is not prohibited by the partnership agreement of any domestic partnership that is a party to the merger, and each domestic partnership party to the

merger approves the plan of merger in accordance with subsection C and complies with the terms of its partnership agreement;

2. Each domestic limited partnership that is a party to the merger complies with the applicable provisions of Article 7.1 (§ [50-73.48:1](#) et seq.) of Chapter 2.1 of this title;

3. Each domestic limited liability company that is a party to the merger complies with the applicable provisions of Article 13 (§ [13.1-1069.1](#) et seq.) of Chapter 12 of Title 13.1;

4. Each domestic business trust that is a party to the merger complies with the applicable provisions of Article 11 (§ [13.1-1257](#) et seq.) of Chapter 14 of Title 13.1;

5. Each domestic corporation that is a party to the merger complies with the applicable provisions of Article 12 (§ [13.1-715.1](#) et seq.) of Chapter 9 or Article 11 (§ [13.1-893.1](#) et seq.) of Chapter 10 of Title 13.1; and

6. The merger is permitted by the laws under which each foreign limited liability company, foreign partnership, foreign limited partnership, foreign business trust, and foreign corporation party to the merger is organized, formed or incorporated, and each such foreign limited liability company, partnership, limited partnership, business trust, or corporation complies with those laws in effecting the merger.

B. The plan of merger shall set forth:

1. The name of each partnership, limited partnership, limited liability company, business trust, or corporation that is a party to the merger;

2. The name of the surviving entity into which the other partnerships, limited partnerships, limited liability companies, business trusts, or corporations will merge;

3. Whether the surviving entity is a partnership, a limited partnership, a limited liability company, a business trust, or a corporation and the status of each partner;

4. The terms and conditions of the merger;

5. The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

6. The street address of the surviving entity's principal office.

C. The plan of merger shall be approved:

1. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

2. In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

D. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

E. The merger takes effect on the later of:

1. The approval of the plan of merger by all parties to the merger, as provided in subsection C;

2. The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

3. Any later effective date stated pursuant to subsection J of § [50-73.83](#) in a statement of merger filed pursuant to § [50-73.131](#) or, if no statement of merger is filed, any effective date specified in the plan of merger.

1996, c. [292](#); 2000, c. [58](#); 2003, c. [340](#); 2005, c. [765](#); 2007, c. [631](#); 2016, c. [288](#).

§50-73.129. Effect of merger.

A. When a merger takes effect:

1. The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

2. All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

3. All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

4. An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

B. The clerk of the Commission is the agent for service of process in an action or proceeding against a surviving foreign partnership, limited partnership, limited liability

company or corporation to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly file with the Commission the mailing address of its principal office and of any change of address. Service on the surviving foreign partnership or limited partnership shall be made on the clerk of the Commission in accordance with § [12.1-19.1](#).

C. Subject to § [50-73.96](#), a partner of the surviving partnership or limited partnership is liable for:

1. All obligations of a party to the merger for which the partner was personally liable before the merger;
2. All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and
3. All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

D. If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, as provided in § [50-73.123](#) or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

E. A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under § [50-73.112](#) or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under § [50-73.113](#) by an act of a general partner dissociated under this subsection, and the partner is liable under § [50-73.114](#) for transactions entered into by the surviving entity after the merger takes effect.

1996, c. [292](#); 2007, c. [631](#).

§50-73.130. Repealed.

Repealed by Acts 2007, c. [771](#), cl. 2.

§50-73.131. Statement of merger.

A. After a plan of merger is approved, the surviving partnership or limited partnership shall file with the Commission a statement of merger on behalf of the partnerships that have filed either a statement of partnership authority or a statement of registration as a registered limited liability partnership that is not canceled.

B. A statement of merger executed by each party to the merger shall contain:

1. The name of each partnership or limited partnership that is a party to the merger;
2. The name of the surviving entity into which the other partnerships or limited partnership were merged;
3. The identification number issued by the Commission to each partnership that has filed a statement of partnership authority that has not been canceled;
4. The street address of the surviving entity's principal office and of an office in this Commonwealth, if any; and
5. Whether the surviving entity is a partnership or a limited partnership.

C. Except as otherwise provided in subsection D, for the purposes of § [50-73.92](#), property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

D. For the purposes of § [50-73.92](#), real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

E. A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to subsection C of § [50-73.83](#), stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection B, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections C and D.

1996, c. [292](#); 2000, c. [58](#); 2003, c. [567](#); 2007, c. [631](#); 2013, c. [18](#).

§50-73.132. Registered limited liability partnerships.

A. To become a registered limited liability partnership, a partnership formed under the laws of the Commonwealth shall file with the Commission a statement of registration as a registered limited liability partnership stating:

1. The name of the partnership that satisfies the requirements of § [50-73.133](#);
2. If the partnership is of record with the Commission, the identification number issued by the Commission to the partnership;
3. The address, including the street and number, if any, of its principal office (which may, but need not be, located within the Commonwealth);
4. The post office address, including the street and number, if any, of its initial registered office, which in the case of a limited partnership formed pursuant to Chapter 2.1 (§ [50-73.1](#) et seq.) shall be identical to the limited partnership's registered office address on record with the Commission;
5. The name of the city or county in which the registered office is located;
6. The name of its initial registered agent at that office, which in the case of a limited partnership formed pursuant to Chapter 2.1 (§ [50-73.1](#) et seq.) shall be identical to the limited partnership's registered agent on record with the Commission, and that the agent is either (i) an individual who is a resident of Virginia and is either a general partner of the registered limited liability partnership, an officer or director of a corporate general partner of the registered limited liability partnership, a general partner of a partnership or limited partnership that is a general partner of the registered limited liability partnership, a member or manager of a limited liability company that is a general partner of the registered limited liability partnership, a trustee of a trust that is a general partner of the registered limited liability partnership, or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in this Commonwealth;
7. Any other matters that the partnership determines to include; and
8. The manner in which the registration was approved by the partners.

A partnership becomes a registered limited liability partnership at the time of the filing of the initial statement of registration with the Commission or at any later date or time specified in the statement of registration as provided in subsection J of § [50-73.83](#).

B. The Commission shall register as a registered limited liability partnership any partnership that submits a completed statement of registration with the required fee.

C. The registration of a partnership as a registered limited liability partnership shall be approved by the partners in the manner provided in the partnership's partnership agreement for amendments to the partnership agreement or, if no provision is made in the partnership agreement, by all of the partners.

D. A partnership that has registered shall continue to be a registered limited liability partnership until its registration is canceled pursuant to subsection C of § [50-73.134](#), subsection F of § [50-73.135](#), § [50-73.137](#), or [50-73.137:1](#).

E. A partnership that has been registered as a registered limited liability partnership under this chapter is, for all purposes, the same entity that existed before it registered.

1996, c. [292](#); 2000, c. [162](#); 2001, cc. [517](#), [541](#); 2002, c. [441](#); 2003, c. [378](#); 2004, c. [601](#); 2007, c. [631](#); 2009, c. [716](#); 2013, c. [18](#).

§50-73.133. Name of registered limited liability partnership.

A. The name of a partnership that is also a registered limited liability partnership shall contain the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviation "R.L.L.P." or "L.L.P." or the designation "RLLP" or "LLP."

B. The name of a limited partnership that is also a registered limited liability partnership shall comply with the requirements of subdivision A 2 of § [50-73.78](#).

1996, c. [292](#); 1998, c. [163](#); 2007, c. [631](#).

§50-73.134. Registered limited liability partnership annual continuation reports; automatic cancellation of registration; restoration of status.

A. On or before July 1 of each year after the calendar year in which it became registered under § [50-73.132](#), each registered limited liability partnership and each foreign registered limited liability partnership authorized to transact business in this Commonwealth shall file an annual continuation report with the Commission setting forth the name of the partnership, the partnership's current principal office address and, if a foreign registered limited liability partnership, the jurisdiction in which it is registered as a registered limited liability partnership. If the report appears to be incomplete or inaccurate, the Commission shall return it for correction or explanation. Otherwise, it shall be deemed filed in the office of the clerk of the Commission.

The report shall be made on forms furnished by the Commission and shall be forwarded by the clerk of the Commission, before June 1, to each registered limited liability partnership.

B. The information required shall be given as of the date of the execution of the report, and it shall be executed by a partner in the registered limited liability partnership or foreign registered limited liability partnership or, if a receiver or trustee has been appointed for the partnership, by the receiver or trustee on behalf of the registered limited liability partnership or foreign registered limited liability partnership. The report shall be accompanied by the fee prescribed in subdivision F 2 of § [50-73.83](#).

C. If any registered limited liability partnership or foreign registered limited liability partnership fails to pay the fee or file any report required by this section on or before September 1 of the year due, the Commission shall mail notice to the partnership of the impending cancellation of its registration. Whether or not such notice is mailed, if the partnership fails to file the report or pay the fee on or before November 1 of the year it is due, the registration of the partnership shall be automatically canceled and the partnership shall automatically cease to be a registered limited liability partnership or foreign registered limited liability partnership as of November 1, but shall continue to be a partnership or limited partnership, as the case may be, under this title.

D. Any partnership formed under the laws of the Commonwealth that has ceased to be a registered limited liability partnership under subsection C shall not be considered to have dissolved as a result of ceasing to be a registered limited liability partnership.

E. A registered limited liability partnership or foreign registered limited liability partnership that has ceased to be a registered limited liability partnership or a foreign registered limited liability partnership under subsection C, subsection F of § [50-73.135](#), § [50-73.137](#), [50-73.137:1](#), or [50-73.139](#), as the case may be, may apply to the Commission to have its status as a registered limited liability partnership or foreign registered limited liability partnership restored within five years of the date on which its status was canceled. To have its status restored, a registered limited liability partnership or foreign registered limited liability partnership shall provide the Commission with the following:

1. An application for restoration signed by a partner of a partnership or a general partner of a limited partnership, as the case may be;
 2. A restoration fee of \$100;
 3. An annual continuation report and payment of the fee due upon filing the annual continuation report for the year in which restoration is sought, unless the report previously was filed;
 4. All fees that were due before its status as a registered limited liability partnership or foreign registered limited liability partnership was canceled and that would have become due thereafter for the filing of its annual continuation reports if its status had not been canceled;
 5. Any amendment to its statement of registration with the Commission as required by subsection D of § [50-73.136](#); and
 6. If the registered limited liability partnership's or foreign registered limited liability partnership's registered agent has filed a certificate of resignation and a new registered agent has not been appointed, a certificate of change pursuant to § [50-73.135](#).
- F. The automatic cancellation of a foreign registered limited liability partnership's registration constitutes the appointment of the clerk of the Commission as the foreign registered limited liability partnership's agent for service of process in any proceeding based on a cause of action arising during the time the foreign registered limited liability partnership was registered to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign registered limited liability partnership and shall be made on the clerk in accordance with § [12.1-19.1](#).
- G. Cancellation of a foreign registered limited liability partnership's registration does not terminate the authority of the registered agent of the foreign registered limited liability partnership.
- H. A registered limited liability partnership or foreign registered limited liability partnership that has ceased to be a registered limited liability partnership or foreign registered limited liability partnership under this section, subsection F of § [50-73.135](#), § [50-73.137](#), [50-73.137:1](#), or [50-73.139](#) that restores its status as a registered limited liability partnership or foreign registered limited liability partnership shall be

deemed not to have lost its status as a registered limited liability partnership or foreign registered limited liability partnership under this article.

I. The Commission shall not file with respect to any domestic or foreign registered limited liability partnership any statement referred to in this chapter until all annual continuation reports required to be filed with the Commission under this article have been filed.

1996, c. [292](#); 2000, c. [5](#); 2002, c. [441](#); 2004, c. [601](#); 2007, c. [631](#); 2009, c. [716](#); 2013, c. [18](#).

§50-73.135. Registered office and registered agent.

A. Each registered limited liability partnership and each foreign registered limited liability partnership registered pursuant to this article shall continuously maintain in this Commonwealth:

1. A registered office that may be the same as any of its places of business; and

2. A registered agent who shall be either:

a. An individual who is a resident of this Commonwealth and is either (i) a general partner of the registered limited liability partnership, (ii) an officer or director of a corporate general partner of the registered limited liability partnership, (iii) a general partner of a partnership or limited partnership that is a general partner of the registered limited liability partnership, (iv) a member or manager of a limited liability company that is a general partner of the registered limited liability partnership, (v) a trustee of a trust that is a general partner of the registered limited liability partnership, or (vi) a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The registered agent of a registered limited liability partnership or foreign registered limited liability partnership is the partnership's agent for service of process, notice, or demand required or permitted by law to be served on the partnership. The sole duty of the registered agent is to forward to the registered limited liability partnership or foreign registered limited liability partnership at its last known address any process, notice or demand that is served on the registered agent.

C. A registered limited liability partnership or a foreign registered limited liability partnership that is registered to transact business in the Commonwealth may change its registered office or registered agent, or both, upon filing with the Commission a certificate of change on a form prescribed and furnished by the Commission that sets forth:

1. The name of the registered limited liability partnership or foreign registered limited liability partnership;
2. The address of its current registered office;
3. If the current address of its registered office is to be changed, the post-office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is located;
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the registered limited liability partnership or foreign registered limited liability partnership will be in compliance with the requirements of this section.

D. A certificate of change shall forthwith be filed with the Commission by a registered limited liability partnership or foreign registered limited liability partnership whenever its registered agent dies, resigns or ceases to satisfy the requirements of subsection A.

E. A registered limited liability partnership's or foreign registered limited liability partnership's registered agent may sign a certificate as required above if (i) the business address of the registered agent changes to another post office address within the Commonwealth or (ii) the name of the registered agent has been legally changed. A registered limited liability partnership's or foreign registered limited liability

partnership's new registered agent may sign and submit for filing a certificate as required above if (a) the former registered agent is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to subsection A. In either instance, the registered agent or surviving entity shall forthwith file a certificate of change as required in subsection D, which shall recite that a copy of the certificate shall be mailed to the principal office of the registered limited liability partnership or foreign registered limited liability partnership on or before the business day following the day on which the certificate is filed.

F. A registered agent may resign the agency appointment by signing and filing with the Commission a certificate of resignation accompanied by a certification that the registered agent shall mail a copy thereof to the principal office of the registered limited liability partnership or foreign registered limited liability partnership by certified mail on or before the business day following the day on which the certificate is filed. The certificate of resignation may include a statement that the registered office is also discontinued. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the certificate was filed. If any registered limited liability partnership or foreign registered limited liability partnership whose registered agent has filed with the Commission a certificate of resignation fails to file a certificate of change pursuant to subsection C within 31 days after the date on which the certificate of resignation was filed, the Commission shall mail notice to the registered limited liability partnership or foreign registered limited liability partnership of the impending cancellation of its status as a registered limited liability partnership. If the registered limited liability partnership or foreign registered limited liability partnership fails to file a certificate of change on or before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the registered limited liability partnership's or foreign registered limited liability partnership's status as a registered limited liability partnership shall be automatically canceled as of that day.

G. Whenever a registered limited liability partnership or a foreign registered limited liability partnership fails to appoint or maintain a registered agent in this Commonwealth or whenever its registered agent cannot with reasonable diligence be found at his address, the clerk of the Commission shall be the agent of the partnership upon whom service may be made in accordance with § [12.1-19.1](#).

H. This section does not prescribe the only means, or necessarily the required means, of serving a registered limited liability partnership or a foreign registered limited liability partnership.

1996, c. [292](#); 2000, c. [537](#); 2001, cc. [517](#), [541](#); 2003, c. [597](#); 2009, c. [716](#); 2010, c. [434](#); 2013, c. [18](#).

§50-73.136. Amendment of statement of registration; effect of statement of registration.

A. Notwithstanding the provisions of subsection D or any other provision of this chapter, the status of a partnership as a registered limited liability partnership or a foreign registered limited liability partnership, and the liability of the partners thereof, shall not be affected by (i) errors in the information stated in the statement of registration, if the statement was filed in good faith, or (ii) changes after the filing of a statement of registration in the information stated in the statement.

B. A statement of registration or any amendment thereto may also serve as a statement of partnership authority under § [50-73.93](#), a statement of denial under § [50-73.94](#), a statement of dissociation under § [50-73.115](#), or a statement of dissolution under § [50-73.121](#) if (i) the title of the statement indicates each purpose for which it is filed and (ii) if the statement of registration otherwise meets the requirements of the particular other statement and, to the extent that it serves as such an other statement, it may be amended, canceled or limited, in accordance with §§ [50-73.93](#), [50-73.94](#), [50-73.115](#) and [50-73.121](#), but any amendment, cancellation or limitation shall not affect the validity of the statement of registration of the partnership as a registered limited liability partnership, which may be amended only as provided in § [50-73.136](#) or canceled in accordance with § [50-73.137](#) or [50-73.139](#).

C. The filing of a statement of registration shall be conclusive as to third parties, and it shall be incontestable by third parties that all conditions precedent to registration as a registered limited liability partnership or foreign registered limited liability partnership have been met.

D. A statement of registration for a registered limited liability partnership or foreign limited liability partnership is amended by filing an amendment thereto with the Commission. The amendment shall set forth: the name of the registered limited liability partnership or foreign registered limited liability partnership, the date of filing of the initial statement of registration; in the case of a foreign registered limited liability partnership, the jurisdiction in which it is registered as a limited liability

partnership; and the amendment to the statement of registration. An amendment to the statement of registration shall be filed by a registered limited liability partnership or foreign registered limited liability partnership not later than thirty days after (i) a change in the name of the partnership or (ii) the partnership has knowledge that a material statement in the statement of registration was false or inaccurate when made or that any facts described therein have changed, making the statement of registration inaccurate in any material respect. An amendment to the statement of registration may be filed for any other proper purpose. Unless otherwise provided in this chapter or in the amendment to the statement of registration, an amendment to a statement of registration shall be effective at the time of its filing with the Commission.

E. Whenever a limited partnership that is registered as a registered limited liability partnership files a certificate of amendment to its certificate of limited partnership to change its name or the address of its principal office, or whenever a foreign limited partnership that is registered as a registered limited liability partnership files an amended application pursuant to subsection B of § [50-73.57](#) to amend its name or the address of its principal office in its application for registration as a foreign limited partnership, the domestic or foreign limited partnership's statement of registration as a registered limited liability partnership shall be deemed likewise amended.

1996, c. [292](#); 2000, c. [58](#); 2009, c. [716](#); 2013, c. [18](#).

§50-73.137. Cancellation of a registered limited liability partnership.

A. A registered limited liability partnership registered under this chapter may cancel its registration by filing with the Commission a statement of cancellation of registration as a registered limited liability partnership, which shall set forth:

1. The name of the registered limited liability partnership;
2. The date of filing of the initial statement of registration;
3. The effective date (which shall be a date certain) of cancellation of registration if it is not to be effective on the filing of the statement of cancellation, but any effective date other than the date of filing of the statement of cancellation shall be a date subsequent to the filing; and
4. Any other information the partners determine to include therein.

B. The filing of a statement of cancellation of registration by or on behalf of a partnership pursuant to this section shall be effective only to cancel the partnership's registration as a limited liability partnership, and shall not, unless it specifically so provides, indicate the dissolution of the partnership.

C. Cancellation of the registration of a partnership as a registered limited liability partnership shall require the consent of all of the partners in the partnership at the time the statement of cancellation of registration is filed.

1996, c. [292](#).

§50-73.137:1. Effect of cancellation of limited partnership certificate or registration.

A. Whenever the certificate of limited partnership of a domestic limited partnership that is registered as a registered limited liability partnership is canceled, the limited partnership's registration as a registered limited liability partnership shall thereupon be automatically canceled unless the certificate of limited partnership was canceled pursuant to a conversion to a partnership under § [50-73.126](#).

B. Whenever the certificate of registration to transact business in this Commonwealth of a foreign limited partnership that is registered as a foreign registered limited liability partnership is canceled, the foreign limited partnership's registration as a foreign registered limited liability partnership shall thereupon be automatically canceled.

C. A registered limited liability partnership or foreign registered limited liability partnership that has ceased to be a registered limited liability partnership or a foreign registered limited liability partnership under subsection A or B may restore its status as such by complying with the requirements of subsection E of § [50-73.134](#).

2003, c. [378](#); 2004, c. [601](#); 2009, c. [716](#).

§50-73.137:2. Known claims against dissolved registered limited liability partnership.

A. A partnership that is dissolved pursuant to § [50-73.117](#) that is a registered limited liability partnership at the time of its dissolution may dispose of the known claims against it by following the procedure described in this section.

B. The dissolved registered limited liability partnership shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:

1. Provide a reasonable description of the claim that the claimant may be entitled to assert;
2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an instrument of indebtedness;
3. Provide a mailing address where a claim may be sent;
4. State a deadline, which may not be fewer than 120 days from the effective date of the written notice, by which confirmation of the claim shall be delivered to the dissolved registered limited liability partnership; and
5. State that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not delivered by the deadline.

C. A claim against the dissolved registered limited liability partnership is barred to the extent that it is not admitted:

1. If the dissolved registered limited liability partnership delivered written notice to the claimant in accordance with subsection B of this section and the claimant does not deliver written confirmation of the claim to the dissolved registered limited liability partnership by the deadline; or
2. If the dissolved registered limited liability partnership delivered written notice to the claimant that its claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within 90 days from the delivery of written confirmation of the claim to the dissolved registered limited liability partnership.

D. For purposes of this section, "claim" does not include (i) a contingent liability or a claim based on an event occurring after the effective date of dissolution or (ii) a liability or claim the ultimate maturity of which is more than 60 days after the delivery of written notice to the claimant pursuant to subsection B of this section.

E. If a liability exists but the full extent of any damages is or may not be ascertainable, and a proceeding to enforce the claim is commenced pursuant to subdivision C 2 of this section, the claimant may amend the pleadings after filing to include any damages that occurred or are alleged to have occurred after filing, and the court having jurisdiction of such claim may continue such proceeding during its pendency if it appears that further damages are or still may be occurring.

2004, c. [601](#).

§50-73.137:3. Other claims against dissolved registered limited liability partnership.

A. A dissolved partnership that is a registered limited liability partnership at the time of its dissolution may also publish notice of its dissolution and request that persons with claims against the dissolved partnership present them in accordance with the notice.

B. The notice shall:

1. Be published one time in a newspaper of general circulation in the city or county where the dissolved partnership's principal office, or, if none in the Commonwealth, its registered office, is or was last located;
2. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
3. State that a claim against the dissolved partnership will be barred unless a proceeding to enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of limitations or three years after the date of publication of the notice.

C. If the dissolved partnership publishes a newspaper notice in accordance with subsection B, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved partnership prior to the earlier of the expiration of any applicable statute of limitations or three years after the publication date of the newspaper notice:

1. A claimant who was not given written notice under § [50-73.137:2](#);
2. A claimant whose claim was timely sent to the dissolved partnership but not acted on; and
3. A claimant whose claim does not meet the definition of a claim in subsection D of § [50-73.137:2](#).

D. A claim that is not barred by subsection C of § [50-73.137:2](#) or subsection C of § [50-73.137:3](#) may be enforced:

1. Against the dissolved partnership, to the extent of its undistributed assets; or

2. Except as provided in subsection D of § [50-73.137:4](#), if the assets have been distributed in liquidation, against a partner of the dissolved partnership to the extent of the partner's pro rata share of the claim or the partnership assets distributed to the partner in liquidation, whichever is less, but a partner's total liability for all claims under this section may not exceed the total amount of assets distributed to the partner.

2006, c. [912](#).

§50-73.137:4. Court proceedings.

A. A dissolved limited liability partnership that has published a notice under § [50-73.137:3](#) may file an application with the circuit court of the city or county where the dissolved partnership's principal office, or, if none in the Commonwealth, its registered office, is or was last located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved partnership or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved partnership, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § [50-73.137:3](#).

B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved partnership to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved partnership.

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved partnership.

D. Provision by the dissolved partnership for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved partnership's obligations with respect to claims that do not meet the definition of a claim in subsection D of § [50-73.137:2](#), and such claims may not be enforced against a partner who received assets in liquidation.

2006, c. [912](#).

§50-73.138. Registration of foreign registered limited liability partnerships.

A. Before transacting business in the Commonwealth, a foreign registered limited liability partnership shall register with the Commission. An applicant for registration as a foreign registered limited liability partnership shall file with the Commission a certificate of status from the filing office in the jurisdiction in which the foreign registered limited liability partnership is registered and a statement of registration as a foreign limited liability partnership setting forth the information described in subsection B.

B. A statement of registration as a foreign registered limited liability partnership shall set forth the following:

1. The name of the foreign registered limited liability partnership and, if the name of the foreign registered limited liability partnership does not comply with § [50-73.133](#), a designated name for use in the Commonwealth that satisfies the requirements of § [50-73.133](#);
2. The name of the state or other jurisdiction under whose law it is formed and registered as a limited liability partnership, and if the registered limited liability partnership was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization or formation; and (iv) the entity identification number issued to it by the Commission;
3. If the partnership is of record with the Commission, the identification number issued by the Commission to the partnership;
4. The address, including the street and number, if any, of its principal office;
5. The post office address, including the street and number, if any, of its initial registered office, which in the case of a foreign limited partnership registered pursuant to Chapter 2.1 (§ [50-73.1](#) et seq.) of this title shall be identical to the foreign limited partnership's registered office address on record with the Commission;
6. The name of the city or county in which the registered office is located;
7. The name of its initial registered agent at that office, which in the case of a foreign limited partnership registered pursuant to Chapter 2.1 (§ [50-73.1](#) et seq.) of this title shall be identical to the foreign limited partnership's registered agent on record with the Commission, and that the agent is either (i) an individual who is a resident of

Virginia and is either a general partner of the registered limited liability partnership, an officer or director of a corporate general partner of the registered limited liability partnership, a general partner of a general partner of the registered limited liability partnership, a member or manager of a limited liability company that is a general partner of the registered limited liability partnership, a trustee of a trust that is a general partner of the registered limited liability partnership, or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth; and

8. That the partnership thereby applies for status as a foreign registered limited liability partnership.

C. The Commission shall register as a foreign registered limited liability partnership any partnership that submits a completed statement of registration with the required fee.

D. The registration of a foreign registered limited liability partnership shall continue until its registration is canceled pursuant to subsection C of § [50-73.134](#), subsection F of § [50-73.135](#), § [50-73.137:1](#), or [50-73.139](#).

1996, c. [292](#); 2002, c. [441](#); 2003, c. [378](#); 2004, c. [274](#); 2009, c. [716](#).

§50-73.139. Withdrawal of a foreign registered limited liability partnership.

A foreign registered limited liability partnership authorized to transact business in this Commonwealth may withdraw from this Commonwealth by filing with the Commission a statement of cancellation of registration as a foreign registered limited liability partnership that shall set forth:

1. The name of the foreign registered limited liability partnership and the state or other jurisdiction under whose jurisdiction it was registered as a limited liability partnership and the laws of which govern the agreement pursuant to which it was formed;
2. That the foreign registered limited liability partnership is not transacting business in this Commonwealth and that it surrenders its registration to transact business in this Commonwealth;
3. That the foreign registered limited liability partnership revokes the authority of its registered agent in this Commonwealth to accept service of process and appoints the clerk of the Commission as its agent for service of process in any action, suit, or

proceeding based upon any cause of action arising during the time the foreign registered limited liability partnership was authorized to transact business in this Commonwealth; and

4. A mailing address to which the clerk of the Commission may mail a copy of any process served on him under subdivision 3.

1996, c. [292](#).

§50-73.140. Effect of failure of foreign registered limited liability partnership to register.

The failure of a foreign registered limited liability partnership to file a statement of registration or to maintain that registration or to appoint and maintain a registered agent in this Commonwealth as required in § [50-73.135](#) shall not impair the validity of any contract or act of the foreign registered limited liability partnership and shall neither prevent the foreign registered limited liability partnership from defending any action or proceeding in any court of this Commonwealth nor affect the application of the laws of the jurisdiction governing the agreement under which it was formed as provided in subsection E of § [50-73.141](#), but the foreign registered limited liability partnership may not maintain any action or proceeding in any court of this Commonwealth until it has filed an application for registration. A foreign registered limited liability partnership, by transacting business in this Commonwealth without registration, appoints the clerk of the Commission as its agent for service of process with respect to causes of action arising out of the transaction of business in this Commonwealth. Service on that foreign registered limited liability partnership shall be made on the clerk of the Commission in accordance with § [12.1-19.1](#).

1996, c. [292](#).

§50-73.141. Applicability of chapter to foreign and interstate commerce.

A. A registered limited liability partnership may conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country.

B. It is the policy of this Commonwealth that registered limited liability partnerships formed pursuant to agreements governed by the laws of this Commonwealth be recognized outside this Commonwealth and that the laws of this Commonwealth governing registered limited liability partnerships transacting business outside this

Commonwealth be granted the protection of full faith and credit under the Constitution of the United States.

C. It is the policy of this Commonwealth that in the case of a registered limited liability partnership the relations among the partners and between the partners and the partnership, and the liability of partners for debts, obligations and liabilities chargeable to the partnership, shall be subject to and governed by the laws of this Commonwealth.

D. Subject to any statutes for the regulation and control of specific types of business, foreign registered limited liability partnerships may do business in this Commonwealth.

E. It is the policy of this Commonwealth that in the case of a foreign registered limited liability partnership (whether or not registered under § [50-73.140](#)) the relations among the partners and between the partners and the partnership, and the liability of partners for debts, obligations and liabilities chargeable to the partnership, shall be subject to and governed by the laws of the jurisdiction that govern the agreement under which it was formed.

1996, c. [292](#).

§50-73.142. Limited partnerships as registered limited liability partnerships.

A domestic limited partnership may become a registered limited liability limited partnership by complying with the applicable provisions of the Virginia Revised Uniform Limited Partnership Act.

1996, c. [292](#).

§50-73.143. Registration certificate required for registered limited liability partnership engaged in practice of law.

Before any registered limited liability partnership may engage in the practice of law in this Commonwealth, it shall first obtain and maintain a registration certificate required for that registered limited liability partnership by Chapter 39 (§ [54.1-3900](#) et seq.) of Title 54.1.

1996, c. [292](#).

§50-73.144. Application and construction.

A. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among States enacting it.

B. This chapter shall be construed in furtherance of the policies of giving maximum effect to the principle of freedom of contract and of enforcing partnership agreements.

1996, c. [292](#); 2003, c. [340](#).

§50-73.145. Short title.

This chapter may be cited as the Virginia Uniform Partnership Act (1996).

1996, c. [292](#).

§50-73.146. Repealed.

Repealed by Acts 2015, c. [709](#), cl. 2.

§50-73.147. Applicability.

A. Before January 1, 2000, this chapter governs only a partnership formed:

1. On and after July 1, 1997, unless that partnership is continuing the business of a dissolved partnership under § [50-41](#) of the Uniform Partnership Act as it existed on July 1, 1997; and

2. Before July 1, 1997, that elects, as provided by subsection C, to be governed by this chapter.

B. Effective January 1, 2000, this chapter governs all partnerships.

C. Before January 1, 2000, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year preceding the partnership's election to be governed by this chapter, only if the third party knows or has received a notification of the partnership's election to be governed by this chapter.

1996, c. [292](#).

§50-73.148. Transition.

Before January 1, 2000, a limited partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year preceding the partnership's election to be governed by this chapter, only if the third party knows or has received a notification of the partnership's election to be governed by this chapter.

1996, c. [292](#).

§50-73.149. Savings clause.

This chapter does not affect an action or proceeding commenced or right accrued before July 1, 1997.

1996, c. [292](#).

§50-73.150. Property title records.

A. Whenever the records in the office of the clerk of the Commission reflect that a partnership has changed or corrected its name, merged into a domestic or foreign corporation, limited liability company, business trust, limited partnership or partnership, converted into a domestic or foreign corporation, limited liability company, business trust or limited partnership, or domesticated in or from another jurisdiction, the clerk of the Commission, upon request, shall issue a certificate reciting such change, correction, merger, conversion or domestication. The certificate may be admitted to record in the deed books, in accordance with § [17.1-227](#), of any clerk's office within the jurisdiction of which any property of the partnership is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever a partnership formed under the laws of another jurisdiction has changed or corrected its name, merged into a corporation, limited liability company, business trust, limited partnership or partnership, converted into another type of business entity, or domesticated in another jurisdiction, and it cannot or chooses not to obtain a certificate reciting such change, correction, merger, conversion or domestication from the clerk of the Commission pursuant to subsection A, a similar certificate by any competent authority of the foreign partnership's jurisdiction of formation may be admitted to record in the deed books, in accordance with § [17.1-227](#), of any clerk's office within the jurisdiction of which any property of the

partnership is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

2007, c. [771](#).

Virginia Water and Waste Authorities Act

§15.2-5100. Title of chapter.

This chapter shall be known and may be cited as the "Virginia Water and Waste Authorities Act." This chapter shall constitute full and complete authority, without regard to the provisions of any other law for the doing of the acts herein authorized, and shall be liberally construed to effect the purposes of the chapter.

Code 1950, § 15-764.1; 1950, p. 1312; 1962, c. 623, § 15.1-1239; 1997, c. 587.

§15.2-5101. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authority" means an authority created under the provisions of § [15.2-5102](#) or Article 6 (§ [15.2-5152](#) et seq.) of this chapter or, if any such authority has been abolished, the entity succeeding to the principal functions thereof.

"Bonds" and "revenue bonds" include notes, bonds, bond anticipation notes, and other obligations of an authority for the payment of money.

"Cost," as applied to a system, includes the purchase price of the system or the cost of acquiring all of the capital stock of the corporation owning such system and the amount to be paid to discharge all of its obligations in order to vest title to the system or any part thereof in the authority; the cost of improvements; the cost of all land, properties, rights, easements, franchises and permits acquired; the cost of all labor, machinery and equipment; financing and credit enhancement charges; interest prior to and during construction and for one year after completion of construction; any deposit to any bond interest and principal reserve account, start-up costs and reserves and expenditures for operating capital; cost of engineering and legal services, plans, specifications, surveys, estimates of costs and revenues; other expenses necessary or incident to the determining of the feasibility or practicability of any

such acquisition, improvement, or construction; administrative expenses and such other expenses as may be necessary or incident to the financing authorized in this chapter and to the acquisition, improvement, or construction of any such system and the placing of the system in operation by the authority. Any obligation or expense incurred by an authority in connection with any of the foregoing items of cost and any obligation or expense incurred by the authority prior to the issuance of revenue bonds under the provisions of this chapter for engineering studies, for estimates of cost and revenues, and for other technical or professional services which may be utilized in the acquisition, improvement or construction of such system is a part of the cost of such system.

"Cost of improvements" means the cost of constructing improvements and includes the cost of all labor and material; the cost of all land, property, rights, easements, franchises, and permits acquired which are deemed necessary for such construction; interest during any period of disuse during such construction; the cost of all machinery and equipment; financing charges; cost of engineering and legal expenses, plans, specifications; and such other expenses as may be necessary or incident to such construction.

"Federal agency" means the United States of America or any department, agency, instrumentality, or bureau thereof.

"Green roof" means a roof or partially covered roof consisting of plants, soil, or another lightweight growing medium that is installed on top of a waterproof membrane and designed in accordance with the Virginia Stormwater Management Program's standards and specifications for green roofs, as set forth in the Virginia BMP Clearinghouse.

"Improvements" means such repairs, replacements, additions, extensions and betterments of and to a system as an authority deems necessary to place or maintain the system in proper condition for the safe, efficient and economical operation thereof or to provide service in areas not currently receiving such service.

"Owner" includes persons, federal agencies, and units of the Commonwealth having any title or interest in any system, or the services or facilities to be rendered thereby.

"Political subdivision" means a locality or any institution or commission of the Commonwealth of Virginia.

"Refuse" means solid waste, including sludge and other discarded material, such as solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations or from community activities or residences. "Refuse" does not include (i) solid and dissolved materials in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954 (42 U.S.C. § 2011, et seq.), as amended.

"Refuse collection and disposal system" means a system, plant or facility designed to collect, manage, dispose of, or recover and use energy from refuse and the land, structures, vehicles and equipment for use in connection therewith.

"Sewage" means the water-carried wastes created in and carried, or to be carried, away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public buildings, together with such surface or ground water and household and industrial wastes as may be present.

"Sewage disposal system" means any system, plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes.

"Sewer system" or "sewage system" means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage, industrial wastes or other wastes to a plant of ultimate disposal.

"Stormwater control system" means a structural system of any type that is designed to manage the runoff from land development projects or natural systems designated for such purposes, including, without limitation, retention basins, ponds, wetlands, sewers, conduits, pipelines, pumping and ventilating stations, and other plants, structures, and real and personal property used for support of the system.

"System" means any sewage disposal system, sewer system, stormwater control system, water or waste system, and for authorities created under Article 6 (§ [15.2-5152](#) et seq.) of this chapter, such facilities as may be provided by the authority under § [15.2-5158](#).

"Unit" means any department, institution or commission of the Commonwealth; any public corporate instrumentality thereof; any district; or any locality.

"Water or waste system" means any water system, sewer system, sewage disposal system, or refuse collection and disposal system, or any combination of such systems.

"Water system" means all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, or facilities incident thereto, and any integral part thereof, including water supply systems, water distribution systems, dams and facilities for the generation or transmission of hydroelectric power, reservoirs, wells, intakes, mains, laterals, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves and equipment, appurtenances, and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof but not including dams or facilities for the generation or transmission of hydroelectric power that are not incident to plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water.

Code 1950, § 15-764.2; 1950, p. 1312; 1952, c. 430; 1962, c. 623, § 15.1-1240; 1970, c. 617; 1979, c. 280; 1982, c. 469; 1997, cc. [527](#), [573](#), 587; 2006, c. [219](#); 2009, cc. [402](#), [473](#).

§15.2-5102. One or more localities may create authority.

A. The governing body of a locality may by ordinance or resolution, or the governing bodies of two or more localities may by concurrent ordinances or resolutions or by agreement, create a water authority, a sewer authority, a sewage disposal authority, a stormwater control authority, a refuse collection and disposal authority, or any combination or parts thereof. The name of the authority shall contain the word "authority." The authority shall be a public body politic and corporate and a political subdivision of the Commonwealth. The ordinance, resolution or agreement creating the authority shall not be adopted or approved until a public hearing has been held on the question of its adoption or approval, and after approval at a referendum if one has been ordered pursuant to this chapter.

B. Any authority, or any subsidiary thereof, organized pursuant to this section to operate a refuse collection and disposal system that, pursuant to statute, is specifically authorized to include in the system (i) facilities for processing solid waste as a fuel and (ii) facilities for generating steam and electricity for sale, shall not be

subject to regulation under the Utilities Facilities Act (§ [56-265.1](#) et seq.), provided that sales of electricity generated at such facilities are made only to a federal agency whose primary responsibility is national defense and the energy is delivered directly from the generator to the customer's facilities or to a public utility.

Code 1950, § 15-764.3; 1950, p. 1315; 1962, c. 623, § 15.1-1241; 1972, c. 370; 1973, c. 478; 1993, c. 850; 1995, c. [402](#); 1996, c. [897](#); 1997, cc. [527](#), [573](#), 587; 1999, cc. [896](#), [925](#); 2011, c. [199](#).

§15.2-5102.1. (For contingent expiration, see Editor's note) Hampton Roads area refuse collection and disposal system authority.

Any authority, or any subsidiary thereof, organized pursuant to § [15.2-5102](#) to operate a refuse collection and disposal system that has among its members the Cities of Norfolk, Virginia Beach, Portsmouth, Chesapeake, and Franklin, and the Counties of Isle of Wight, Southampton, and Suffolk, shall, notwithstanding any other law to the contrary, comply with the following requirements:

1. Each locality that is a member of the authority shall be entitled to nominate individuals to fill one position on the Board of Directors (the Board) by submitting a list of three potential directors, each of whom shall possess general business knowledge and shall not be an elected official, to the Governor. The Governor shall then select and appoint one director from each of the lists of nominees prepared by the member localities. In addition, each member locality shall be authorized to directly appoint, upon a majority vote of the governing body of the member locality, one ex officio member of the Board who shall be an employee of the member locality. The members of the Board shall be appointed for terms of four years each. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Vacancies shall be filled in the same manner as the original appointments. No member shall serve for more than two consecutive four-year terms, except that any member appointed to the unexpired term of another shall be eligible to serve two consecutive four-year terms.
2. The authority shall develop and maintain an overall strategic plan that shall cover a period of at least five years forward from the year in which it is submitted and approved by the Board. The plans shall be reviewed annually to determine whether amendments are needed. Any such amendments shall be submitted to the board of directors for approval.

3. The authority's core purpose shall be defined as "management of the safe and environmentally sound disposal of regional waste." The authority shall devote its time and effort to activities associated with its core purpose. A vote of a majority of the Board shall be required prior to undertaking any activities not associated with the authority's core purpose.
4. The authority shall develop and maintain a strategic operating plan identifying all elements of its core business units and core purpose, how each business and administrative unit will support the overall strategic plan, and how the authority will achieve its stated mission and core purpose. The strategic operating plan shall be subject to review and approval of the Board on an annual basis.
5. The authority shall consider outsourcing any or all functions that may result in reduced costs to the authority, and the authority shall annually issue requests for proposals that potentially reduce the costs of any of its programs. In addition, the authority shall accept and review any proposals under the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) that potentially reduce the costs of any of the authority's programs.
6. The authority shall evaluate its landfill capacity annually, taking into consideration and projecting future changes in the quantity of waste disposed of in its landfill, or landfills reasonably situated or contractually obligated to accept its waste.
7. The authority shall keep records of its costs, revenue, debts, and capital expenses by fiscal year for each program. The authority shall also keep records of costs for each individual capital project.
8. The authority shall maintain a detailed financing plan that shall include a plan for the retirement of all debt and a plan for the funding of all planned capital projects. The plan for the funding of all planned capital projects shall specify the amount of debt the authority will issue in furtherance of the projects and the debt repayment plan for any new debt created by the capital projects, including the revenue source that will be used to repay the debt. The detailed financing plan shall be updated and approved annually by the Board and reviewed and certified annually by an external certified public accountant.
9. Prior to issuance of new debt, the Board shall perform a due diligence investigation of the appropriateness of issuing the debt, including an analysis of the costs of repaying the debt. Such analysis shall be certified by an external certified public

accountant, reviewed by the Board, and approved by a vote of a minimum of 75 percent of the Board. The issuance of new debt shall require a vote of a minimum of 75 percent of the Board of Directors of the authority. The authority shall not issue long-term bond indebtedness to fund operational expenses. The provisions of this subdivision shall not apply to the issuance of new debt issued for the purpose of refunding or refinancing debt incurred by the authority prior to September 30, 2009.

10. In the interest of open and transparent government, the authority shall adhere strictly to the requirements of the Freedom of Information Act (§ [2.2-3700](#) et seq.).

11. The executive director of the authority shall not be permitted to execute or commit the authority to any contract, memorandum of agreement or memorandum of understanding without an informed vote of approval by the Board. This subdivision shall not apply in the case of (i) contracts for the purchase of goods and services for an aggregate sum of less than \$30,000, which are subject to the Virginia Procurement Act (Va. Code § [2.2-4300](#) et seq.) but exempted from competitive negotiation or competitive sealed bidding by a duly adopted policy of the Board and (ii) sole source and emergency procurements made pursuant to subsections E and F of § [2.2-4303](#).

2009, c. [742](#).

§15.2-5103. Ordinance, agreement or resolution creating authority to include articles of incorporation.

A. The ordinance, agreement or resolution creating an authority shall include articles of incorporation which shall set forth:

1. The name of the authority and address of its principal office.
2. The name of each participating locality and the names, addresses and terms of office of the first members of the board of the authority.
3. The purposes for which the authority is being created and, to the extent that the governing body of the locality determines to be practicable, preliminary estimates of capital costs, proposals for any specific projects to be undertaken by the authority, and preliminary estimates of initial rates for services of such projects as certified by responsible engineers.
4. If there is more than one participating locality, the number of board members who shall exercise the powers of the authority and the number from each participating locality.

B. Any such ordinance, agreement or resolution that does not set forth the information required in subdivision 3 of subsection A regarding capital cost estimates, project proposals and project service rate estimates shall set forth a finding by the governing body that inclusion of such information is impracticable.

C. Any ordinance, agreement or resolution adopted pursuant to §§ [15.2-5152](#) through [15.2-5157](#) shall provide that any bonds issued by the community development authority shall be a debt of the authority, not the local government. Unless otherwise provided in the ordinance which establishes the authority, the local government shall not retire any part of the bonds or pay any debt service of an authority out of revenues or funds derived from sources other than those set out in § [15.2-5158](#), except that, where the authority finances improvements not contemplated by the original ordinance, the local government may, by ordinance or resolution, make such provisions for repayment as are otherwise permitted under general law. This subsection shall have no effect upon authorities formed pursuant to § [15.2-5102](#).

Code 1950, § 15-764.4; 1950, p. 1315; 1962, c. 623, § 15.1-1242; 1972, cc. 370, 544; 1984, c. 239; 1997, cc. [363](#), 587.

§15.2-5104. Advertisement of ordinance, agreement or resolution and notice of hearing.

The governing body of each participating locality shall cause to be advertised at least one time in a newspaper of general circulation in such locality a copy of the ordinance, agreement or resolution creating an authority, or a descriptive summary of the ordinance, agreement or resolution and a reference to the place within the locality where a copy of the ordinance, agreement or resolution can be obtained, and notice of the day, not less than thirty days after publication of the advertisement, on which a public hearing will be held on the ordinance, agreement or resolution.

Code 1950, § 15-764.5; 1950, p. 1315; 1962, c. 623, § 15.1-1243; 1972, c. 370; 1983, c. 80; 1997, c. 587.

§15.2-5105. Hearing; referendum.

If at the hearing, in the judgment of the governing body of the participating locality, substantial opposition is heard, the governing body may at its discretion petition the circuit court to order a referendum on the question of adopting or approving the ordinance, agreement or resolution. The provisions of § [24.2-684](#) shall govern the order for a referendum. When two or more localities are participating in the formation of such authority, the referendum, if ordered, shall be held on the same date in

all participating localities. If ten percent of the qualified voters in a locality file a petition with the governing body at the hearing calling for a referendum, such governing body shall petition the circuit court to order a referendum in that locality as provided in this section.

Code 1950, § 15-764.6; 1950, p. 1315; 1962, c. 623, § 15.1-1244; 1970, c. 617; 1972, c. 370; 1973, c. 478; 1975, c. 517; 1997, c. 587.

§15.2-5106. Voters' petition requesting agreement and referendum.

The qualified voters of any locality whose governing body has not acted to create an authority under § [15.2-5102](#) may file with the governing body of such locality a petition asking the governing body to effect an agreement in accordance with § [15.2-5102](#) with the localities named in the petition. Such petition shall be signed by at least ten percent of the number of the locality's voters who voted in the last presidential election and in no case be signed by fewer than fifty voters. The petition shall ask the governing body to petition the circuit court for a referendum on the question of the creation of the authority.

If the governing body is unable, or for any reason fails, to perfect such agreement within three months of the day the petition was filed with such governing body, then the circuit court for the locality shall appoint a committee of five representative citizens of the locality to act for and in lieu of the governing body in perfecting the agreement and in petitioning for a referendum. The agreement shall not take effect unless approved in the referendum by a majority of the voters voting in the referendum.

1972, c. 370, § 15.1-1244.1; 1975, c. 517; 1997, c. 587.

§15.2-5107. Filing articles of incorporation.

After adoption or approval of an ordinance, resolution or agreement creating an authority, the governing bodies of the participating localities shall file with the State Corporation Commission the authority's articles of incorporation.

Code 1950, § 15-764.7; 1950, p. 1316; 1962, c. 623, § 15.1-1245; 1973, c. 478; 1997, c. 587.

§15.2-5108. Issuance of certificate or charter.

The State Corporation Commission shall issue a certificate of incorporation or charter to the authority if it finds that:

1. The articles of incorporation conform to law; and

2. The estimated costs and rates for services of the proposed projects are fair and equitable, and have been advertised under § [15.2-5104](#) or subsection A of § [15.2-5156](#), as applicable.

Upon the issuance of the certificate or charter such authority shall be conclusively deemed to have been lawfully and properly created and established and authorized to exercise its powers under this chapter.

Code 1950, § 15-764.8; 1950, p. 1316; 1962, c. 623, § 15.1-1246; 1973, c. 478; 1983, c. 80; 1984, c. 239; 1997, c. 587; 2009, c. [473](#).

§15.2-5109. Dissolution and termination of authority.

Whenever the board of an authority determines that the purposes for which it was created have been completed or are impractical or impossible or that its functions have been taken over by one or more political subdivisions and that all its obligations have been paid or have been assumed by one or more of such political subdivisions or any authority created thereby or that cash or United States government securities have been deposited for their payment, it shall adopt and file with the governing body of each political subdivision which is a member of the authority a resolution declaring such facts. If all the governing bodies adopt resolutions concurring in such declaration and finding that the authority should be dissolved, they shall file appropriate articles of dissolution with the State Corporation Commission. When the affairs of the authority have been wound up and all of its assets have been distributed, the governing bodies shall file appropriate articles of termination of corporate existence with the State Corporation Commission.

If any of the governing bodies refuse to adopt resolutions concurring in such declaration, then the authority may petition the circuit court for any locality which is a member of the authority to order one or more of such governing bodies to create a new authority. The circuit court may order the governing body of the political subdivision requesting dissolution of the existing authority to adopt an ordinance establishing a new authority to which the provisions of §§ [15.2-5102](#) through [15.2-5106](#) shall not apply. Thereafter, the court may order that the assets be divided among the authorities and, subject to the approval of any debt holder, require the assumption of a proportionate share of the obligations of the existing authority by the new authority.

Notwithstanding the provisions of subdivision 1 of § [15.2-5114](#), an authority shall continue in existence and shall not be dissolved because the term for which it was

created, including any extensions thereof, has expired, unless all of such authority's functions have been taken over and its obligations have been paid or have been assumed by one or more political subdivisions or by an authority created thereby, or cash or United States government securities have been deposited for their payment.

1970, c. 617, § 15.1-1269.1; 1982, c. 662; 1997, c. 587; 2009, c. [216](#).

§15.2-5110. Amendment of articles of incorporation.

The articles of incorporation of any authority created under the provisions of this chapter may be amended with respect to the name or powers of such authority or in any other manner not inconsistent with this chapter by following the procedure prescribed by law for the creation of an authority.

Code 1950, § 15-764.12; 1950, p. 1318; 1954, c. 554; 1958, cc. 400, 402; 1960, c. 430; 1962, cc. 130, 623, § 15.1-1250; 1968, cc. 355, 556; 1970, cc. 444, 617; 1972, c. 161; 1979, c. 280; 1980, c. 159; 1981, c. 610; 1983, c. 422; 1984, c. 554; 1994, c. [477](#); 1997, c. 587.

§15.2-5111. Specification of projects.

If they have specified the initial purpose or purposes of the authority and insofar as practicable, any project or projects to be undertaken by the authority, the governing bodies of any of the localities organizing an authority may, at any time by ordinance or resolution, after a public hearing, and with or without a referendum, specify further projects to be undertaken by the authority. No other projects shall be undertaken by the authority than those so specified. If the governing bodies of the localities organizing the authority fail to specify any project or projects to be undertaken, then the authority shall be deemed to have all the powers granted by this chapter.

Code 1950, § 15-764.9; 1950, p. 1316; 1962, c. 623, § 15.1-1247; 1984, c. 239; 1997, c. 587.

§15.2-5112. Joinder of another locality or authority; withdrawal from authority.

A. Any locality may become a member of any existing authority, and any locality which is a member of an existing authority may withdraw therefrom upon unanimous consent of the remaining members of the authority in accordance with this section. However, no locality may withdraw from any authority that has outstanding bonds without the unanimous consent of all the holders of such bonds unless all such bonds have been paid or cashed or United States government obligations have been deposited for their payment.

B. The governing body of any locality wishing to withdraw from an existing authority shall signify its desire by resolution or ordinance.

C. The governing body of any locality wishing to become a member of an existing authority and the governing bodies of the political subdivisions then members of the authority shall by concurrent resolutions or ordinances or by agreement provide for the joinder of such locality. The resolutions, ordinances or agreement creating the expanded authority shall specify the number and terms of office of members of the board of the expanded authority which are to be appointed by each of the participating political subdivisions, and the names, addresses and terms of office of initial appointments to board membership. Upon the date of issuance of the certificate by the State Corporation Commission as provided in this section, the terms of office of the board members of the existing authority shall terminate and the appointments made in the resolutions, ordinances or agreement creating the expanded authority shall become effective.

D. If the authority by resolution expresses its consent to withdrawal or joinder of a locality, the governing body of such locality and the governing bodies of the political subdivisions then members of the authority shall advertise the ordinance, resolution or agreement and hold a public hearing in accordance with § [15.2-5104](#).

Upon adoption or approval of the ordinance, resolution or agreement, the governing body seeking to withdraw or join the authority shall file either an application to withdraw from or an application to become a member of the authority, whichever applies, with the State Corporation Commission. A joinder application shall set forth all of the information required in the case of original incorporation and shall be accompanied by certified copies of the resolutions, ordinances or agreement described in subsection B. Joinder and withdrawal applications shall be executed by the proper officers of the withdrawing or incoming locality under its official seal, and shall be joined in by the proper officers of the governing board of the authority, and in the case of a locality seeking to become a member of the authority also by the proper officers of each of the political subdivisions that are then members of the authority, pursuant to resolutions by the governing bodies of such political subdivisions.

E. If the State Corporation Commission finds that the application conforms to law it shall approve the application. When all proper fees and charges have been paid, it shall file the approved application and issue to the applicant a certificate of withdrawal or a certificate of joinder, whichever applies, attached to a copy of the

approved application. The withdrawal or joinder shall become effective upon the issuing of such certificate.

F. Any authority may join an existing authority if the joinder is approved by concurrent ordinances or resolutions of the localities which created the joining authority, notwithstanding any contrary provisions of § [15.2-5150](#). However, if the localities, at the time of the creation of an authority, state that the authority is created with the intention of joining an existing authority, such concurrent ordinances or resolutions shall not be necessary. The provisions of this section pertaining to a locality becoming a member or withdrawing from an authority shall also apply, mutatis mutandis, to an authority becoming a member or withdrawing.

Code 1950, § 15-764.10; 1950, p. 1316; 1960, c. 313; 1962, c. 623, § 15.1-1248; 1968, c. 355; 1973, c. 478; 1993, cc. 670, 690; 1995, cc. [414](#), [415](#), [634](#); 1997, c. 587.

§15.2-5113. Members of authority board; chief administrative or executive officer.

A. The powers of each authority created by the governing body of a single locality shall be exercised by an authority board of five members, or at the option of the board of supervisors of a county, a number of board members equal to the number of members of the board of supervisors. The powers of each authority created by the governing bodies of two or more localities shall be exercised by the number of authority board members specified in its articles of incorporation, which shall be not less than one member from each participating locality and not less than a total of five members. The board members of an authority shall be selected in the manner and for the terms provided by the agreement or ordinance or resolution or concurrent ordinances or resolutions creating the authority. One or more members of the governing body or one or more directors of an industrial or economic development authority of a locality may be appointed board members of the authority, the provisions of any other law to the contrary notwithstanding. No board member shall be appointed for a term of more than four years. When one or more additional political subdivisions join an existing authority, each of such joining political subdivisions shall have at least one member on the board. Board members shall hold office until their successors have been appointed and may succeed themselves. The board members of the authority shall elect one of their number chairman, and shall elect a secretary and treasurer who need not be members. The offices of secretary and treasurer may be combined.

B. A majority of board members shall constitute a quorum and the vote of a majority of board members shall be necessary for any action taken by the authority. An authority may, by bylaw, provide a method to resolve tie votes or deadlocked issues.

C. No vacancy in the board membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. If a vacancy occurs by reason of the death, disqualification or resignation of a board member, the governing body of the political subdivision which appointed the authority board member shall appoint a successor to fill the unexpired term. Whenever a political subdivision withdraws its membership from an authority, the term of any board member appointed to the board of the authority from such political subdivision shall immediately terminate. Board members shall receive such compensation as fixed by resolution of the governing body or bodies which are members of the authority, and shall be reimbursed for any actual expenses necessarily incurred in the performance of their duties.

D. Alternate board members may also be selected. Such alternates shall be selected in the same manner and shall have the same qualifications as the board members except that an alternate for an elected board member need not be an elected official. The term of each alternate shall be the same as the term of the board member for whom each serves as an alternate; however, the alternate's term shall not expire because of the board member's death, disqualification, resignation, or termination of employment with the member's political subdivision. If a board member is not present at a meeting of the authority, the alternate for that board member shall have all the voting and other rights of a board member and shall be counted for purposes of determining a quorum.

E. The board members may appoint a chief administrative or executive officer who shall serve at the pleasure of the board members. He shall execute and enforce the orders and resolutions adopted by the board members and perform such duties as may be delegated to him by the board members.

Code 1950, § 15-764.11; 1950, p. 1317; 1962, c. 623, § 15.1-1249; 1968, c. 355; 1972, c. 544; 1973, cc. 135, 521; 1974, c. 276; 1979, cc. 273, 280; 1980, c. 67; 1995, c. [285](#); 1997, c. 587; 2009, c. [655](#).

§15.2-5114. Powers of authority.

Each authority is an instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each authority may:

1. Exist for a term of 50 years as a corporation, and for such further period or periods as may from time to time be provided by appropriate resolutions of the political subdivisions which are members of the authority; however, the term of an authority shall not be extended beyond a date 50 years from the date of the adoption of such resolutions;
2. Adopt, amend or repeal bylaws, rules and regulations, not inconsistent with this chapter or the general laws of the Commonwealth, for the regulation of its affairs and the conduct of its business and to carry into effect its powers and purposes;
3. Adopt an official seal and alter the same at pleasure;
4. Maintain an office at such place or places as it may designate;
5. Sue and be sued;
6. Acquire, purchase, lease as lessee, construct, reconstruct, improve, extend, operate and maintain any system or any combination of systems within, outside, or partly within and partly outside one or more of the localities which created the authority, or which after February 27, 1962, joined such authority; acquire by gift, purchase or the exercise of the right of eminent domain lands or rights in land or water rights in connection therewith, within, outside, or partly within and partly outside one or more of the localities which created the authority, or which after February 27, 1962, joined such authority; and sell, lease as lessor, transfer or dispose of all or any part of any property, real, personal or mixed, or interest therein, acquired by it; however, in the exercise of the right of eminent domain the provisions of § [25.1-102](#) shall apply. In addition, the authority in any county or city to which §§ [15.2-1906](#) and [15.2-2146](#) are applicable shall have the same power of eminent domain and shall follow the same procedure provided in §§ [15.2-1906](#) and [15.2-2146](#). No property or any interest or estate owned by any political subdivision shall be acquired by an authority by the exercise of the power of eminent domain without the consent of the governing body of such political subdivision. Except as otherwise provided in this section, each authority is hereby vested with the same authority to exercise the power of eminent domain as is set out in Chapter 2 (§ [25.1-200](#) et seq.) or Chapter 3 (§ [25.1-300](#) et seq.) of Title 25.1. In acquiring personal property or any interest, right, or estate therein by purchase, lease as lessee, or installment purchase contract, an authority may grant security interests in such personal property or any interest, right, or estate therein;

7. Issue revenue bonds of the authority, such bonds to be payable solely from revenues to pay all or a part of the cost of a system;
8. Combine any systems as a single system for the purpose of operation and financing;
9. Borrow at such rates of interest as authorized by the general law for authorities and as the authority may determine and issue its notes, bonds or other obligations therefor. Any political subdivision that is a member of an authority may lend, advance or give money to such authority;
10. Fix, charge and collect rates, fees and charges for the use of, or for the services furnished by, or for the benefit derived from, any facilities or systems owned, operated or financed by the authority. Such rates, fees, rents and charges shall be charged to and collected by such persons and in such manner as the authority may determine from (i) any person contracting for any such services and/or (ii) the owners or tenants who own, use or occupy any real estate or improvements that are served by, or benefit from, any such facilities or systems, and, if authorized by the authority, customers of facilities within a community development authority district. Water and sewer connection fees established by any authority shall be fair and reasonable, and each authority may establish and offer rate incentives designed to encourage the use of green roofs. If established, the incentives shall be based on the percentage of storm-water runoff reduction the green roof provides. Such fees and incentives shall be reviewed by the authority periodically and shall be adjusted, if necessary, to assure that they continue to be fair and reasonable. Nothing herein shall affect existing contracts with bondholders that are in conflict with any of the foregoing provisions;
11. Enter into contracts with the federal government, the Commonwealth, the District of Columbia or any adjoining state or any agency or instrumentality thereof, any unit or any person. Such contracts may provide for or relate to the furnishing of services and facilities of any system of the authority or in connection with the services and facilities rendered by any like system owned or controlled by the federal government, the Commonwealth, the District of Columbia or any adjoining state or any agency or instrumentality thereof, any unit or any person, and may include contracts providing for or relating to the right of an authority, created for such purpose, to receive and use and dispose of all or any portion of the refuse generated or collected by or within the jurisdiction or under the control of any one or more of them. In the implementation of any such contract, an authority may exercise the powers set forth

in §§ [15.2-927](#) and [15.2-928](#). The power granted authorities under this chapter to enter into contracts with private entities includes the authority to enter into public-private partnerships for the establishment and operation of systems, including the authority to contract for, and contract to provide, meter reading, billing and collections, leak detection, meter replacement and any related customer service functions;

12. Contract with the federal government, the Commonwealth, the District of Columbia, any adjoining state, any person, any locality or any public authority or unit thereof, on such terms as the authority deems proper, for the construction, operation or use of any project which is located partly or wholly outside the Commonwealth;

13. Enter upon, use, occupy, and dig up any street, road, highway or private or public lands in connection with the acquisition, construction or improvement, maintenance or operation of a system, or streetlight system in King George County, subject, however, to such reasonable local police regulation as may be established by the governing body of any unit having jurisdiction;

14. Contract with any person, political subdivision, federal agency, or any public authority or unit, on such terms as the authority deems proper, for the purpose of acting as a billing and collecting agent for rates, fees, rents or charges imposed by any such authority;

15. Install, own and lease pipe or conduit for the purpose of carrying fiber optic cable, provided that such pipe or conduit and the rights-of-way in which they are contained are made available on a nondiscriminatory, first-come, first-served basis to retail providers of broadband and other telecommunications services unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities; and

16. Create, acquire, purchase, own, maintain, use, license, and sell intellectual property rights, including any patent, trademark, or copyright, relating to the business of the authority.

Code 1950, § 15-764.12; 1950, p. 1318; 1954, c. 554; 1958, cc. 400, 402; 1960, c. 430; 1962, cc. 130, 623, § 15.1-1250; 1968, cc. 355, 556; 1970, cc. 444, 617; 1972, c. 161; 1979, c. 280; 1980, c. 159; 1981, c. 610; 1983, c. 422; 1984, c. 554; 1994, c.

[477](#); 1997, cc. [12](#), [527](#), [573](#), 587; 2001, c. [120](#); 2002, c. [446](#); 2003, c. [940](#); 2004, c. [545](#); 2005, c. [666](#); 2007, c. [813](#); 2008, c. [542](#); 2009, cc. [402](#), [473](#); 2011, c. [653](#).

§15.2-5115. Same; contracts relating to use of systems.

An authority may make and enter into all contracts or agreements, as the authority may determine, which are necessary or incidental to the performance of its duties and to the execution of the powers granted by this chapter, including contracts with any federal agency, the Commonwealth, the District of Columbia or any adjoining state or any unit thereof, on such terms and conditions as the authority may approve, relating to (i) the use of any system, or streetlight system in King George County acquired or constructed by the authority under this chapter, or the services therefrom or the facilities thereof, or (ii) the use by the authority of the services or facilities of any system, or streetlight system in King George County owned or operated by an owner other than the authority.

The contract shall be subject to such provisions, limitations or conditions as may be contained in the resolution of the authority authorizing revenue bonds of the authority or the provisions of any trust agreement securing such bonds. Such contract may provide for the collecting of fees, rates or charges for the services and facilities rendered to a unit or to the inhabitants thereof, by such unit or by its agents or by the agents of the authority, and for the enforcement of delinquent charges for such services and facilities. The provisions of the contract and of any ordinance or resolution of the governing body of a unit enacted pursuant thereto shall not be repealed so long as any of the revenue bonds issued under the authority of this chapter are outstanding and unpaid. The provisions of the contract, and of any ordinance or resolution enacted pursuant thereto, shall be for the benefit of the bondholders. The aggregate of any fees, rates or charges which are required to be collected pursuant to any such contract, ordinance or resolution shall be sufficient to pay all obligations which may be assumed by the other contracting party.

Code 1950, § 15-764.12; 1950, p. 1318; 1954, c. 554; 1958, cc. 400, 402; 1960, c. 430; 1962, cc. 130, 623, § 15.1-1250; 1968, cc. 355, 556; 1970, cc. 444, 617; 1972, c. 161; 1979, c. 280; 1980, c. 159; 1981, c. 610; 1983, c. 422; 1984, c. 554; 1994, c. [477](#); 1997, cc. [527](#), [573](#), 587; 2007, c. [813](#); 2009, c. [473](#).

§15.2-5116. Same; effect of annexation.

In the event of any annexation by a municipality not a member of the authority of lands, areas, or territory served by the authority, an authority may continue to do

business and exercise its jurisdiction over its properties and facilities in and upon or over such lands, areas or territory as long as any bonds or indebtedness remain outstanding or unpaid, or any contracts or other obligations remain in force.

Code 1950, § 15-764.12; 1950, p. 1318; 1954, c. 554; 1958, cc. 400, 402; 1960, c. 430; 1962, cc. 130, 623, § 15.1-1250; 1968, cc. 355, 556; 1970, cc. 444, 617; 1972, c. 161; 1979, c. 280; 1980, c. 159; 1981, c. 610; 1983, c. 422; 1984, c. 554; 1994, c. [477](#); 1997, c. 587.

§15.2-5117. Same; insurance for employees.

An authority may establish retirement, group life insurance, and group accident and sickness insurance plans or systems for its employees in the same manner as localities are permitted under §§ [51.1-801](#) and [51.1-802](#).

Code 1950, § 15-764.12; 1950, p. 1318; 1954, c. 554; 1958, cc. 400, 402; 1960, c. 430; 1962, cc. 130, 623, § 15.1-1250; 1968, cc. 355, 556; 1970, cc. 444, 617; 1972, c. 161; 1979, c. 280; 1980, c. 159; 1981, c. 610; 1983, c. 422; 1984, c. 554; 1994, c. [477](#); 1997, c. 587.

§15.2-5118. Same; streetlights in King George County [Not set out].

Not set out. (1997, c. 587 .)

§15.2-5119. Power to provide and operate electric energy systems.

Notwithstanding any contrary provision of law in this chapter, an authority operating a water supply impoundment facility may, in connection with such facility, generate, produce, transmit, deliver, exchange, purchase or sell electric power and energy at wholesale and enter into contracts for such purposes.

1982, c. 469, § 15.1-1250.2; 1997, c. 587.

§15.2-5120. Powers of authority in certain counties and cities [Not set out].

Not set out. (1997, c. 587 .)

§15.2-5121. Operation of refuse collection systems; displacement of private companies.

A. No authority shall operate or contract for the operation of a refuse collection and disposal system for any political subdivision, or collect service charges therefor, unless the authority, and subsequently the locality's governing body find: (i) that privately owned and operated refuse collection and disposal services are not available on a voluntary basis by contract or otherwise, (ii) that the use of such privately owned services has substantially endangered the public health or has resulted in

substantial public nuisance, (iii) that the privately owned refuse collection and disposal service is not able to perform the service in a reasonable and cost-efficient manner, or (iv) that operation by such authority or the contract for such operation, in spite of any potential anti-competitive effect, is important in order to provide for the development and/or operation of a regional system of refuse collection and disposal for two or more units.

B. Notwithstanding the provisions of subsection A, an authority formed under this chapter shall not operate or contract for the operation of a refuse collection and disposal system which displaces a private company engaged in the provision of refuse collection and disposal unless it provides the company with five years' notice of its decision to operate such a system. As an alternative to delaying displacement five years, the governing body or authority may pay a displaced company an amount equal to the company's preceding twelve months' gross receipts for the displaced service in the displacement area. Such five-year period shall lapse as to any private company being displaced when such company ceases to provide service within the displacement area.

C. For purposes of this section, "displace" or "displacement" means an authority's provision of a system which prohibits a private company from providing the same service and which it is providing at the time the decision that will result in the displacement is made. Displace or displacement does not mean: (i) competition between the public sector and private companies for individual contracts; (ii) situations in which an authority, at the end of a contract with a private company, does not renew the contract and either awards the contract to another private company or, following a competitive process conducted in accordance with the Virginia Public Procurement Act, decides for any reason to provide such service itself; (iii) situations in which action is taken against a private company because the company has acted in a manner threatening to the public health and safety or resulting in a substantial public nuisance; (iv) situations in which action is taken against a private company because the company has materially breached its contract with the political subdivision; (v) entering into a contract with a private company to provide refuse collection and disposal so long as such contract is not entered into pursuant to an ordinance which displaces or authorizes the displacement of another private company providing refuse collection and disposal; or (vi) situations in which a private company refuses to continue operations under the terms and conditions of its existing agreement during the five-year notice period.

D. An authority shall not make the findings required by subsection A or proceed to seek to operate a refuse collection and disposal system for any political subdivision that would displace a private company pursuant to subsection B until it has provided (i) public notice; (ii) a public hearing; and (iii) no less than forty-five days prior to the public hearing, written notice mailed first class to all private companies providing a refuse collection and disposal system in the political subdivision that can be identified through the political subdivision's records.

E. The requirements and restrictions of this section shall not apply in any political subdivision wherein refuse collection and disposal services are being operated or contracted for by any sanitary district located therein, as of July 1, 1983.

F. Notwithstanding the provisions of this section, a political subdivision need not comply with the requirements of this section if:

1. The authority proposes to contract with the private sector for services or systems involving discarded or waste materials removed from the nonhazardous solid waste stream for recycling; or

2. The authority proposes to contract with the private sector for services or systems involving collection and disposal of nonhazardous solid waste and (i) the collected waste will be disposed of in a state-permitted waste management facility; (ii) the authority has a contract for services which shall be paid for through a supporting financial agreement approved by the participating locality's governing body; and (iii) such action will not displace a private company engaged in refuse collection and disposal. For purposes of this section, "recycling" means the process of separating a particular nonhazardous waste material from the waste stream and processing it so that it may be used again as a new material.

1983, c. 155, § 15.1-1250.01; 1992, c. 247; 1993, c. 497; 1994, c. [190](#); 1995, c. [660](#); 1997, c. 587.

§15.2-5122. Approval for certain water supply impoundment facilities.

No locality or authority shall construct, provide or operate outside its boundaries any water supply impoundment system without first obtaining the consent of the governing body of the locality in which such system is to be located; however, no consent shall be required for the operation of any such water supply impoundment system in existence on July 1, 1976, or in the process of construction or for which the site has been purchased or for the orderly expansion of such water supply system.

In any case in which the approval by such governing body is withheld, the party seeking such approval may petition for the convening of a special court, pursuant to §§ [15.2-2135](#) through [15.2-2141](#).

1975, c. 573, § 15.1-1250.1; 1976, c. 69; 1997, c. 587.

§15.2-5123. Sewage treatment plants to include certain capability.

Whenever an authority is constructing a new sewage treatment plant, the facility shall be designed and constructed so that it has the capability to treat the sewage from all onsite sewage disposal systems which are not served by another approved disposal site located within the area of the locality or localities which created the authority to be served by such plant.

1986, c. 329, § 15.1-1239.1; 1997, c. 587.

§15.2-5124. Repealed.

Repealed by Acts 2015, cc. [263](#) and [284](#), cl. 1.

§15.2-5125. Issuance of revenue bonds.

An authority may provide by resolution for the issuance of revenue bonds of the authority for the purpose of paying the whole or any part of the cost of any system. A community development authority created under Article 6 (§ [15.2-5152](#) et seq.) of this chapter may provide by resolution for the issuance of revenue bonds of the authority for the purpose of paying the whole or any part of the cost of such facilities which may be provided by the authority under § [15.2-5158](#). The principal of and the interest on the bonds shall be payable solely from the funds provided for in this chapter for such payment. The full faith and credit of a political subdivision shall not be pledged to support the bonds. The bonds of each issue may be dated, may mature at any time or times not exceeding forty years from their date or dates, may be subject to redemption or repurchase at such price or prices and under such terms and conditions, and may contain such other provisions, all as determined before their issuance by the authority or in such manner as the authority may provide. The bonds may bear interest payable at such time or times and at such rate or rates as determined by the authority or in such manner as the authority may provide, including the determination by reference to indices or formulas or by agents designated by the authority under guidelines established by it. The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at

any bank or trust company within or outside the Commonwealth. If any officer whose signature or a facsimile of whose signature appears on any bonds or coupons, ceases to be an officer before the delivery of such bonds, his signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery. All revenue bonds issued under the provisions of this chapter shall have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth. The bonds may be issued in coupon, bearer, registered or book entry form, or any combination of such forms, as the authority may determine. Provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The issuance of such bonds shall not be subject to any limitations or conditions contained in any other law, and the authority may sell such bonds in such manner, either at a public or a private sale, and for such price, as it may determine to be for the best interest of the authority and the political subdivisions to be served thereby.

Code 1950, § 15-764.14; 1950, p. 1321; 1958, c. 484; 1962, c. 623, § 15.1-1252; 1970, c. 617; 1993, c. 850; 1997, cc. [527](#), [573](#), 587; 2009, c. [473](#).

§15.2-5126. Time for contesting validity of proposed bond issue; when bonds presumed valid.

For a period of thirty days after the date of the filing with the circuit court having jurisdiction over any of the political subdivisions which are members of the authority a certified copy of the initial resolution of the authority authorizing the issuance of bonds, any person in interest may contest the validity of the bonds, the rates, fees and other charges for the services and facilities furnished by, for the use of, or in connection with, any water or waste system or, for authorities created under Article 6 (§ [15.2-5152](#) et seq.) of this chapter, such other facilities which may be provided by the authority under § [15.2-5158](#), the pledge of the revenues of any water or waste system, or any combination of any thereof or, for authorities created under Article 6 of this chapter, such other facilities which may be provided by the authority under § [15.2-5158](#), any provisions which may be recited in any resolution, trust agreement, indenture or other instrument authorizing the issuance of bonds, or any matter contained in, provided for or done or to be done pursuant to the foregoing. If such contest is not given within the thirty-day period, the authority to issue the bonds, the validity of the pledge of revenues necessary to pay the bonds, the validity of any

other provision contained in the resolution, trust agreement, indenture or other instrument, and all proceedings in connection with the authorization and the issuance of the bonds shall be conclusively presumed to have been legally taken and no court shall have authority to inquire into such matters and no such contest shall thereafter be instituted.

Upon the delivery of any bonds reciting that they are issued pursuant to this chapter and a resolution or resolutions adopted under this chapter, the bonds shall be conclusively presumed to be fully authorized by all the laws of the Commonwealth and to have been sold, executed and delivered by the authority in conformity with such laws, and the validity of the bonds shall not be questioned by a party plaintiff, a party defendant, the authority, or any other interested party in any court, anything in this chapter or in any other statutes to the contrary notwithstanding.

1997, c. 587.

§15.2-5127. Proceeds of bonds.

The proceeds of bonds issued pursuant to § [15.2-5125](#) shall be used solely for the payment of the cost of the system or systems for which they were issued and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the authorizing resolution or in any trust agreement. If the proceeds of the bonds, by error of estimates or otherwise, are less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the authorizing resolution or in the trust agreement securing them, shall be deemed to be of the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue exceed the amount required for the purpose for which such bonds were issued, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Code 1950, § 15-764.15; 1950, p. 1322; 1962, c. 623, § 15.1-1253; 1997, c. 587.

§15.2-5128. Interim receipts and temporary bonds; bonds mutilated, lost or destroyed.

Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

If any bond issued under this chapter is mutilated, lost or destroyed, the authority may cause a new bond of like date, number and tenor to be executed and delivered upon the cancellation in exchange or substitution for a mutilated bond and its interest coupons, or in lieu of and in substitution for a lost or destroyed bond and its unmatured interest coupons. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost or destroyed bond has (i) paid the reasonable expense and charges in connection therewith and, in the case of a lost or destroyed bond, has filed with the authority and its treasurer evidence satisfactory to such authority and its treasurer that such bond was lost or destroyed and that the holder was the owner and (ii) furnished indemnity satisfactory to the treasurer of the authority.

Code 1950, § 15-764.16; 1950, p. 1322; 1962, cc. 206, 623, § 15.1-1254; 1997, c. 587.

§15.2-5129. Provisions of chapter only requirements for issue.

Bonds may be issued under the provisions of this chapter without obtaining the approval or consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceeding or the happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this chapter.

Code 1950, § 15-764.17; 1950, p. 1322; 1962, c. 623, § 15.1-1255; 1997, c. 587.

§15.2-5130. Limitations in bond resolution or trust agreement.

The resolution providing for the issuance of revenue bonds of the authority, and any trust agreement securing such bonds, may contain such limitations upon the issuance of additional revenue bonds as the authority deems proper. Such additional revenue bonds shall be issued under such limitations.

Code 1950, § 15-764.18; 1950, p. 1323; 1962, c. 623, § 15.1-1256; 1997, c. 587.

§15.2-5131. Bonds not debts of Commonwealth or participating political subdivision.

A. Revenue bonds issued under the provisions of this chapter shall not constitute a pledge of the faith and credit of the Commonwealth or of any political subdivision. All bonds shall contain a statement on their face substantially to the effect that neither the faith and credit of the Commonwealth nor the faith and credit of any political subdivision are pledged to the payment of the principal of or the interest on

the bonds. The issuance of revenue bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the Commonwealth or any political subdivision to levy any taxes or to make any appropriation for their payment except from the funds pledged under the provisions of this chapter.

B. Unless otherwise provided in the ordinance which forms the authority or in a subsequent ordinance or resolution authorizing additional improvements, neither the Commonwealth nor any locality shall pay any part of the principal or interest of any bonds issued by a community development authority formed pursuant to §§ [15.2-5152](#) through [15.2-5157](#), nor shall any locality carry any part of such bonds on its financial statements as a contingent obligation; except that if a community development authority fails to pay such bonds, to the extent that a locality has imposed a real property tax surcharge or a special assessment at the request of a community development authority pursuant to subdivisions A 3 or A 5 of § [15.2-5158](#), funds collected from such sources may be paid against such debt.

C. Debt issued by a community development authority formed pursuant to §§ [15.2-5152](#) through [15.2-5157](#) shall not be considered in determining the debt limit of any locality.

Code 1950, § 15-764.19; 1950, p. 1323; 1962, c. 623, § 15.1-1257; 1997, cc. [363](#), 587.

§15.2-5132. Exemption from taxation.

No authority shall be required to pay any taxes or assessments upon any system acquired or constructed by it under the provisions of this chapter or upon the income therefrom. The bonds issued under the provisions of this chapter, their transfer and the income therefor, including any profit made on their sale, shall be free from taxation within the Commonwealth.

Code 1950, § 15-764.20; 1950, p. 1323; 1962, c. 623, § 15.1-1258; 1997, cc. [527](#), [573](#), 587; 2009, c. [473](#).

§15.2-5133. Trust agreement; bond resolution.

In the discretion of the authority, any revenue bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside the Commonwealth. The resolution authorizing the issuance of the bonds or the trust agreement may pledge or assign the revenues to be

received. The resolution or trust agreement shall not convey or mortgage any storm-water control system or water or waste system or any part thereof, or any improvement financed pursuant to § [15.2-5158](#) which is, or will be, dedicated to a public entity other than the authority financing such improvement. However, a bond issued by a community development authority pursuant to subdivision A 2 of § [15.2-5158](#) may pledge or assign a mortgage in other real property or improvements not otherwise proscribed hereunder and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law. Such provisions may include covenants setting forth the duties of the authority in relation to the acquisition, construction, improvement, maintenance, operation, repair and insurance of the system or systems for which such bonds are issued and provisions for the custody, safeguarding and application of all moneys and for the employment of consulting engineers in connection with such construction, reconstruction, or operation. The resolution or trust agreement may set forth the rights and remedies of the bondholders, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. The resolution or trust agreement may also contain such other provisions as the authority deems reasonable and proper for the security of the bondholders. Except as otherwise provided in this chapter, the authority may provide for the payment of the proceeds of the sale of the bonds and its revenues to such officer, board or depository as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of the resolution or trust agreement may be treated as part of the cost of operation.

Code 1950, § 15-764.21; 1950, p. 1323; 1962, c. 623, § 15.1-1259; 1993, c. 850; 1997, cc. [527](#), [573](#), 587; 2009, c. [473](#).

§15.2-5134. Disposition of unclaimed funds due on matured bonds or coupons.

Any authority having bonds outstanding on which principal, premium or interest has matured for a period of more than five years may pay any money being held to pay the matured principal, premium or interest into the general fund of the authority. Thereafter, the owners of the matured bonds may look only to the authority for payment. The authority shall maintain a record of the bonds for which the funds were held.

1997, c. 587.

§15.2-5135. Contracts concerning interest rates, currency, cash flow and other basis.

A. Any authority may enter into any contract which the authority determines to be necessary or appropriate to place the obligation or investment of the authority, as represented by the bonds or the investment of their proceeds, in whole or in part, on the interest rate, cash flow or other basis desired by the authority. Such contracts may include without limitation contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. Such contracts or arrangements may be entered into by the authority in connection with, or incidental to, entering into or maintaining any (i) agreement which secures bonds or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the authority, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency.

B. Any money set aside and pledged to secure payments of bonds or any contracts entered into pursuant to this section, may be invested in accordance with Chapter 45 (§ [2.2-4500](#) et seq.) of Title 2.2 and may be pledged to and used to service any of the contracts or agreements entered into pursuant to this section, and any other criteria as may be appropriate.

1997, c. 587.

§15.2-5136. Rates and charges.

A. The authority may fix and revise rates, fees and other charges (which shall include, but not be limited to, a penalty not to exceed 10 percent on delinquent accounts, and interest on the principal), subject to the provisions of this section, for the use of and for the services furnished or to be furnished by any system, or streetlight system in King George County, or refuse collection and disposal system or facilities incident thereto, owned, operated or maintained by the authority, or facilities incident thereto, for which the authority has issued revenue bonds as authorized by this chapter. Such rates, fees and charges shall be so fixed and revised as to provide funds, with other funds available for such purposes, sufficient at all times (i) to pay the cost of maintaining, repairing and operating the system or systems, or facilities incident thereto, for which such bonds were issued, including reserves for such purposes and

for replacement and depreciation and necessary extensions, (ii) to pay the principal of and the interest on the revenue bonds as they become due and reserves therefor, and (iii) to provide a margin of safety for making such payments. The authority shall charge and collect the rates, fees and charges so fixed or revised.

B. The rates for water (including fire protection) and sewer service (including disposal) shall be sufficient to cover the expenses necessary or properly attributable to furnishing the class of services for which the charges are made. However, the authority may fix rates and charges for the services and facilities of its water system sufficient to pay all or any part of the cost of operating and maintaining its sewer system (including disposal) and all or any part of the principal of or the interest on the revenue bonds issued for such sewer or sewage disposal system, and may pledge any surplus revenues of its water system, subject to prior pledges thereof, for such purposes.

C. Rates, fees and charges for the services of a sewer or sewage disposal system shall be just and equitable, and may be based upon:

1. The quantity of water used or the number and size of sewer connections;
2. The number and kind of plumbing fixtures in use in the premises connected with the sewer or sewage disposal system;
3. The number or average number of persons residing or working in or otherwise connected with such premises or the type or character of such premises;
4. Any other factor affecting the use of the facilities furnished; or
5. Any combination of the foregoing factors.

However, the authority may fix rates and charges for services of its sewer or sewage disposal system sufficient to pay all or any part of the cost of operating and maintaining its water system, including distribution and disposal, and all or any part of the principal of or the interest on the revenue bonds issued for such water system, and to pledge any surplus revenues of its water system, subject to prior pledges thereof, for such purposes.

D. Water and sewer rates, fees and charges established by any authority shall be fair and reasonable. An authority may charge fair and reasonable rates, fees, and charges to create reserves for expansion of its water and sewer or sewage disposal systems. Such rates, fees, and charges shall be reviewed by the authority periodically and shall

be adjusted, if necessary, to assure that they continue to be fair and reasonable. However, any authority may charge and collect rates, fees, and charges to create a reserve fund for reasonable expansion of its water, sewer, or sewage disposal system. Nothing herein shall affect existing contracts with bondholders which are in conflict with any of the foregoing provisions.

E. Rates, fees and charges for the service of a streetlight system shall be just and equitable, and may be based upon:

1. The portion of such system used;
2. The number and size of premises benefiting therefrom;
3. The number or average number of persons residing or working in or otherwise connected with such premises;
4. The type or character of such premises;
5. Any other factor affecting the use of the facilities furnished; or
6. Any combination of the foregoing factors.

However, the authority may fix rates and charges for the service of its streetlight system sufficient to pay all or any part of the cost of operating and maintaining such system.

F. The authority may also fix rates and charges for the services and facilities of a water system or a refuse collection and disposal system sufficient to pay all or any part of the cost of operating and maintaining facilities incident thereto for the generation or transmission of power and all or any part of the principal of or interest upon the revenue bonds issued for any such facilities incident thereto, and to pledge any surplus revenues from any such system, subject to prior pledges thereof, for such purposes. Charges for services to premises, including services to manufacturing and industrial plants, obtaining all or a part of their water supply from sources other than a public water system may be determined by gauging or metering or in any other manner approved by the authority.

G. No rates, fees or charges shall be fixed under subsections A through F of this section or under subdivision 10 of § [15.2-5114](#) until after a public hearing at which all of the users of the systems or facilities; the owners, tenants or occupants of property served or to be served thereby; and all others interested have had an opportunity to be heard concerning the proposed rates, fees and charges. After the adoption by the

authority of a resolution setting forth the preliminary schedule or schedules fixing and classifying such rates, fees and charges, notice of a public hearing, setting forth the proposed schedule or schedules of rates, fees and charges, shall be given by two publications, at least six days apart, in a newspaper having a general circulation in the area to be served by such systems or facilities, with the second notice being published at least 14 days before the date fixed in such notice for the hearing. The hearing may be adjourned from time to time. A copy of the notice shall be mailed to the governing bodies of all localities in which such systems or facilities or any part thereof is located. After the hearing the preliminary schedule or schedules, either as originally adopted or as amended, shall be adopted and put into effect.

H. A copy of the schedule or schedules of the final rates, fees and charges fixed in accordance with subsection G shall be kept on file in the office of the clerk or secretary of the governing body of each locality in which such systems or any part thereof is located, and shall be open to inspection by all interested parties. The rates, fees or charges so fixed for any class of users or property served shall be extended to cover any additional properties thereafter served which fall within the same class, without the necessity of a hearing or notice. Any increase in any rates, fees or charges under this section shall be made in the manner provided in subsection G. Any other change or revision of the rates, fees or charges may be made in the same manner as the rates, fees or charges were originally established as provided in subsection G.

I. No rates, fees or charges established, fixed, changed or revised before January 1, 2013, by any authority pursuant to this section or to subdivision 10 of § [15.2-5114](#) shall be invalidated because of any defect in or failure to publish or provide any notice required under this section or any predecessor provision.

Code 1950, § 15-764.22; 1950, p. 1324; 1962, c. 623, § 15.1-1260; 1978, cc. 298, 407; 1982, c. 469; 1988, c. 169; 1994, c. [477](#); 1997, cc. [12](#), [527](#), [573](#), 587; 1998, c. [869](#); 2001, c. [400](#); 2007, c. [813](#); 2009, c. [473](#); 2013, c. [51](#).

§15.2-5137. Water and sewer connections; exceptions.

A. Upon or after the acquisition or construction of any water system or sewer system under the provisions of this chapter, the owner, tenant, or occupant of each lot or parcel of land (i) which abuts a street or other public right of way which contains, or is adjacent to an easement containing, a water main or a water system, or a sanitary sewer which is a part of or which is or may be served by such sewer system and (ii)

upon which a building has been constructed for residential, commercial or industrial use, shall, if so required by the rules and regulations or a resolution of the authority, with concurrence of the locality in which the land is located, connect the building with the water main or sanitary sewer, and shall cease to use any other source of water supply for domestic use or any other method for the disposal of sewage, sewage waste or other polluting matter. All such connections shall be made in accordance with rules and regulations adopted by the authority, which may provide for a reasonable charge for making such a connection. A private water company which purchases water from a regional authority for sale or delivery to or within a municipality may impose a charge for connection to the water company's system in the same manner, and subject to the same restrictions, as an authority may impose for connection to its water system, subject to the approval of the State Corporation Commission.

B. Notwithstanding any other provision of this chapter, those persons having a domestic supply or source of potable water shall not be required to discontinue the use of such water. However, persons not served by a water supply system, as defined in § [15.2-2149](#), producing potable water meeting the standards established by the Virginia Department of Health may be required to pay a connection fee, a front footage fee, and a monthly nonuser service charge, which charge shall not be more than that proportion of the minimum monthly user charge, imposed by the authority, as debt service bears to the total operating and debt service costs, or any combination of such fees and charges. In York County and James City County, the monthly nonuser fee may be as provided by general law or not more than 85 percent of the minimum monthly user charge imposed by the authority, whichever is greater.

C. Notwithstanding any other provision of this chapter, those persons having a private septic system or domestic sewage system meeting applicable standards established by the Virginia Department of Health shall not be required under this chapter to discontinue the use of such system. However, such persons may be required to pay a connection fee, a front footage fee, and a monthly nonuser service charge, which charge shall not be more than that proportion of the minimum monthly user charge, imposed by the authority, as debt service bears to the total operating and debt service costs, or any combination of such fees and charges.

D. Persons who have obtained exemption from or deferral of taxation pursuant to an ordinance authorized by § [58.1-3210](#) may be exempted or deferred by the authority

from paying any charges and fees authorized by subsection C, to the same extent as the exemption from or deferral of taxation pursuant to such ordinance.

E. Water and sewer connection fees established by any authority shall be fair and reasonable. Such fees shall be reviewed by the authority periodically and shall be adjusted, if necessary, to assure that they continue to be fair and reasonable. Nothing herein shall affect existing contracts with bondholders which are in conflict with any of the foregoing provisions.

Code 1950, § 15-764.23; 1950, p. 1326; 1962, c. 623, § 15.1-1261; 1970, c. 617; 1980, c. 603; 1982, cc. 562, 567; 1984, c. 552; 1987, c. 75; 1997, cc. [12](#), 587; 2011, c. [642](#).

§15.2-5138. Enforcement of charges.

Any resolution or trust agreement providing for the issuance of revenue bonds under the provisions of this chapter may include any of the following provisions, and may require the authority to adopt such resolutions or to take such other lawful action as is necessary to effectuate such provisions. The authority may adopt such resolutions and take such other actions as follows:

1. Require the owner, tenant or occupant of each lot or parcel of land who is obligated to pay rates, fees or charges for the use of or for the services furnished by any system acquired or constructed by the authority under the provisions of this chapter to make a reasonable deposit with the authority in advance to insure the payment of such rates, fees or charges and to be subject to application to the payment thereof if delinquent.
2. If any rates, fees or charges for the use of and for the services furnished by any system acquired or constructed by the authority under the provisions of this chapter are not paid within thirty days after due, the authority may at the expiration of such thirty-day period disconnect the premises from the water or sewer system, or otherwise suspend services and proceed to recover the amount of any such delinquent rates, fees or charges, with interest, in a civil action.
3. If any rates, fees or charges for the use and services of any sewer system acquired or constructed by the authority under the provisions of this chapter are not paid within thirty days after they become due, require that the owner, tenant or occupant of such premises cease disposing of sewage or industrial wastes originating from or on such premises by discharge directly or indirectly into the sewer system until such

rates, fees or charges, with interest, are paid. If such owner, tenant or occupant does not cease such disposal at the expiration of the thirty-day period, the authority may require any political subdivision, district, private corporation, board, body or person supplying water to or selling water for use on such premises to cease supplying water to or selling water for use on such premises within five days after the receipt of notice of such delinquency from the authority. If such political subdivision, district, private corporation, board, body or person does not, at the expiration of such five-day period, cease supplying water to or selling water for use on such premises, then the authority may shut off the supply of water to such premises.

The water supply to or for any person, or for use on real estate of any person, shall not be shut off or stopped under this section if the State Health Commissioner, upon application of the local board of health or health officer of the locality in which such water is supplied or such real estate is located, has found and certifies to the authorities charged with the responsibility of ceasing to supply or sell such water, or to shut off the supply of such water, that ceasing to supply or shutting off such water supply will endanger the health of such person and the health of others in the locality.

Code 1950, § 15-764.24; 1950, p. 1326; 1962, c. 623, § 15.1-1262; 1997, c. 587.

§15.2-5138.1. Enforcement of certain charges when authority does not provide water services.

A. This section shall apply only to an authority operating in Planning District 1 or Planning District 2.

B. If any rates, fees or charges for the use and services of any sewer system acquired or constructed by the authority under the provisions of this chapter are not paid within 60 days after they become due, the authority may require that the owner, tenant or occupant of such premises cease disposing of sewage or industrial wastes originating from or on such premises by discharge directly or indirectly into the sewer system until such rates, fees or charges, with interest, are paid. If such owner, tenant or occupant does not cease such disposal at the expiration of the 60-day period, the authority may require any political subdivision, district, private corporation, board, body or person supplying water to or selling water for use on such premises to cease supplying water to or selling water for use on such premises within five days after the receipt of notice of such delinquency from the authority. If such political subdivision, district, private corporation, board, body or person does not, at the expiration of

such five-day period, cease supplying water to or selling water for use on such premises, then the authority may shut off the supply of water to such premises.

C. The water supply to or for any person, or for use on real estate of any person, shall not be shut off or stopped under this section if the State Health Commissioner, upon application of the local board of health or health officer of the locality in which such water is supplied or such real estate is located, has found and certifies to the authorities charged with the responsibility of ceasing to supply or sell such water, or to shut off the supply of such water, that ceasing to supply or shutting off such water supply will endanger the health of such person and the health of others in the locality.

2008, c. [452](#).

§15.2-5139. Lien for charges.

An authority may place a lien upon the real property of an owner only in the same manner provided by § [15.2-2119](#), and such lien may only be processed, recorded, and released in accordance therewith. An authority may only provide services to lessees or tenants of property owners in accordance with § [15.2-2119.4](#).

An authority may contract with a locality to collect amounts due on properly recorded utility liens in the same manner as unpaid real estate taxes due the locality.

Code 1950, § 15-764.25; 1950, p. 1327; 1958, c. 97; 1962, c. 623, § 15.1-1263; 1976, c. 243; 1983, c. 422; 1987, c. 307; 1993, c. 383; 1994, cc. [599](#), [602](#); 1997, c. [587](#); 2009, c. [420](#); 2011, cc. [529](#), [580](#); 2012, c. [766](#); 2017, c. [736](#).

§15.2-5140. Trust funds.

All moneys received pursuant to this chapter shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The resolution or trust agreement providing for the issuance of revenue bonds of the authority shall provide that any officer to whom, or any bank, trust company or other fiscal agent to which, such moneys are paid shall act as trustee of such moneys and shall hold and apply the same for the purposes provided in this chapter, subject to such regulations as such resolution or trust agreement may provide.

Code 1950, § 15-764.26; 1950, p. 1328; 1962, c. 623, § 15.1-1264; 1997, c. 587.

§15.2-5141. Bondholder's remedies.

Any holder of revenue bonds issued by an authority under this chapter, or of any of the coupons appertaining thereto, except to the extent the rights given by this chapter may be restricted by the resolution or trust agreement providing for the

issuance of such bonds, may, either at law or in equity, by suit, mandamus or other proceeding, enforce all rights under the laws of Virginia or granted by this chapter or under such resolution or trust agreement. Such holder may also compel the performance of all duties required by this chapter or by the resolution or trust agreement to be performed by the authority or by any officer thereof, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services furnished by any system.

Code 1950, § 15-764.27; 1950, p. 1328; 1962, c. 623, § 15.1-1265; 1997, c. 587; 2009, c. [473](#).

§15.2-5142. Refunding bonds.

An authority may provide by resolution for the issuance of revenue refunding bonds of the authority to refund any revenue bonds outstanding and issued under this chapter, whether or not such outstanding bonds have matured or are then subject to redemption. Proceeds of such revenue refunding bonds may be used to discharge the revenue bonds, or such revenue refunding bonds may be exchanged for the revenue bonds. Each such authority may provide by resolution for the issuance of a single issue of revenue bonds of the authority for the combined purposes of (i) paying the cost of any system, or any combination thereof, or the improvement, extension, addition or reconstruction thereof, and (ii) refunding revenue bonds of the authority which have been issued under the provisions of this chapter which are outstanding, whether or not such outstanding bonds have matured or are then subject to redemption. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the bondholders, and the rights, powers, privileges, duties and obligations of the authority with respect to such bonds, shall be governed by the foregoing provisions of this chapter to the extent that they are applicable.

Code 1950, § 15-764.28; 1950, p. 1328; 1962, c. 623, § 15.1-1266; 1974, c. 226; 1997, c. 587; 2009, c. [473](#).

§15.2-5143. Purchase in open market or otherwise.

Provision may be made in the proceedings authorizing refunding revenue bonds for the purchase of the refunded revenue bonds in the open market or pursuant to tenders made from time to time when there is available in the escrow or sinking fund for the payment of the refunded revenue bonds a surplus in an amount or amounts to be fixed in such proceedings.

1997, c. 587.

§15.2-5144. Investment in bonds.

Any bonds issued pursuant to this chapter are hereby made securities in which all public officers, bodies and political subdivisions of the Commonwealth; all insurance companies and associations; and all savings banks and savings institutions, including savings and loan associations, trust companies, beneficial and benevolent associations, administrators, guardians, executors, trustees and other fiduciaries in the Commonwealth, may properly and legally invest funds in their control.

Code 1950, § 15-764.29; 1950, p. 1329; 1962, c. 623, § 15.1-1267; 1997, c. 587.

§15.2-5145. Financial report; authority budget; audit.

Any locality may, by resolution, require an authority to:

1. Submit to it an annual financial statement in a form prescribed by the Auditor of Public Accounts; or
2. Have an audit conducted for any fiscal year according to generally accepted auditing and accounting standards or according to the audit specifications and audit program prescribed by the Auditor of Public Accounts.

1978, c. 617, § 15.1-1269.2; 1997, c. 587.

§15.2-5146. Use of state land.

A. The Commonwealth hereby consents to the use of all lands above or under water and owned or controlled by it which are necessary for the construction, improvement, operation or maintenance of any stormwater control system or water or waste system; except that the use of any portion between the right-of-way limits of any primary or secondary highway in this Commonwealth shall be subject to the approval of the Commissioner of Highways.

B. In addition to the provisions of subsection A, the Governor is authorized, at the request of an authority created pursuant to § [15.2-5102](#) and in a form approved by the Attorney General, to disclaim any and all rights, title, and interest of the Commonwealth in and to lands used pursuant to subsection A if he finds (i) there is no greater public need or purpose than such use or (ii) that public use and necessity have been established pursuant to subsection B of § [15.2-1903](#). Such disclaimer shall be filed with the appropriate court and shall have the legal force and effect of disclaiming, releasing, and renouncing all of the right, title, and interest of the Commonwealth in and to such lands.

Code 1950, § 15-764.12; 1950, p. 1318; 1954, c. 554; 1958, cc. 400, 402; 1960, c. 430; 1962, cc. 130, 623, § 15.1-1250; 1968, cc. 355, 556; 1970, cc. 444, 617; 1972, c. 161; 1979, c. 280; 1980, c. 159; 1981, c. 610; 1983, c. 422; 1984, c. 554; 1994, c. [477](#); 1997, c. 587; 2009, c. [861](#).

§15.2-5147. Powers of localities, etc., to make grants and conveyances to and contracts with authority.

Each political subdivision may:

1. Convey or lease to any authority, with or without consideration, any system or portion thereof, or any right or interest in such facilities or any property appertaining thereto, upon such terms and conditions as the governing body determines to be in the best interest of such political subdivision;
2. Contract, jointly or severally, with any authority for the collection, treatment or disposal of sewage, industrial waste or refuse; and grant to such authority the right to receive, use and dispose of all or any portion of the refuse generated or collected by or within the jurisdiction or under the control of such unit; and in implementation of such contract or grant, exercise the powers set forth in §§ [15.2-927](#) and [15.2-928](#); and
3. Contract with any authority for shutting off the supply of water furnished by any water system owned or operated by such political subdivision or under its jurisdiction or control to any premises connected with any sewer system of the authority if the owner, tenant or occupant of such premises fails to pay any rates, fees or charges for the use of or for the services furnished by such sewer system within the time or times specified in such contract.

Code 1950, § 15-764.31; 1950, p. 1330; 1962, c. 623, § 15.1-1269; 1979, c. 280; 1997, c. 587; 2009, c. [473](#).

§15.2-5148. Units may convey property.

Any unit, notwithstanding any contrary provision of law, may transfer jurisdiction over or lease, lend, grant or convey to an authority, upon the request of the authority and upon such terms and conditions to which the governing body and authority may agree, such real or personal property as may be necessary or desirable in connection with the acquisition, construction, improvement, operation or maintenance of a system by the authority, including public roads and other property already devoted to public use.

Code 1950, § 15-764.12; 1950, p. 1318; 1954, c. 554; 1958, cc. 400, 402; 1960, c. 430; 1962, cc. 130, 623, § 15.1-1250; 1968, cc. 355, 556; 1970, cc. 444, 617; 1972, c. 161; 1979, c. 280; 1980, c. 159; 1981, c. 610; 1983, c. 422; 1984, c. 554; 1994, c. [477](#); 1997, cc. [527](#), [573](#), 587; 2009, c. [473](#).

§15.2-5149. Interference with railroad structures.

Whenever any railroad tracks, pipes, poles, wires, conduits or other structures or facilities which are located in, along, across, over or under any public road, street, highway, alley or other public right-of-way become an obstruction to, interfere with or are endangered by the construction, operation or maintenance of any system of the authority, the unit having ownership, control or jurisdiction over such public road, street, highway, alley or other public right-of-way may, as the exercise of an essential governmental function, order the safeguarding, maintaining, relocating, rebuilding, removing or replacing of such railroad tracks, pipes, poles, wires, conduits or other structures or facilities by the owner thereof at the expense of the authority, subject to the provisions of § [25.1-102](#).

Code 1950, § 15-764.12; 1950, p. 1318; 1954, c. 554; 1958, cc. 400, 402; 1960, c. 430; 1962, cc. 130, 623, § 15.1-1250; 1968, cc. 355, 556; 1970, cc. 444, 617; 1972, c. 161; 1979, c. 280; 1980, c. 159; 1981, c. 610; 1983, c. 422; 1984, c. 554; 1994, c. [477](#); 1997, c. 587.

§15.2-5150. Creating or joining more than one authority.

No governing body that is a member of an authority, shall create or join with any other governing body in the creation of another authority or join another authority if the latter authority would duplicate the services being performed in any part of the areas being served by the authority of which the governing body is a member.

Code 1950, § 15-764.13; 1950, p. 1321; 1958, c. 402; 1962, c. 623, § 15.1-1251; 1968, c. 355; 1997, c. 587.

§15.2-5151. Water utilities may act as billing agents.

Any public utility supplying water to the owners, lessees or tenants of real estate which is or will be served by any sewer or sewage disposal system of an authority may act as the billing and collecting agent of the authority for any rates, fees, rents or charges imposed by the authority for the service rendered by such sewer or sewage disposal system. Such water utility shall furnish to the authority copies of its regular periodic meter reading and water consumption records and other pertinent data as may be required for the authority to act as its own billing and collecting agent. The

authority shall pay to the water utility the reasonable additional cost of clerical services and other expenses incurred by the water utility in rendering such services to the authority. Upon the inability of the authority and the water utility to agree upon the terms and conditions under which the water utility will act as the billing and collecting agent of the authority, either or both may petition the State Corporation Commission for a determination of the terms and conditions under which the water company shall act as the billing and collecting agent of the authority. If the water utility acts as the billing and collecting agent of an authority it shall set forth separately on its bills the rates, fees or charges imposed by the authority. However, both the water and sewage disposal charges shall be payable to and collected by the water utility, and payment of either shall be refused unless both are paid. The authority shall pay to the water utility the cost of shutting off any water service on account of non-payment of the sewage disposal charge. In the event of such discontinuance of water service the water service shall not be reestablished until the sewage disposal charge has been paid.

Code 1950, § 15-764.12; 1950, p. 1318; 1954, c. 554; 1958, cc. 400, 402; 1960, c. 430; 1962, cc. 130, 623, § 15.1-1250; 1968, cc. 355, 556; 1970, cc. 444, 617; 1972, c. 161; 1979, c. 280; 1980, c. 159; 1981, c. 610; 1983, c. 422; 1984, c. 554; 1994, c. [477](#); 1997, c. 587.

§15.2-5152. Localities may consider petitions for creation of authority.

A. Any city may consider petitions for the creation of community development authorities in accordance with this article.

B. Any town may by ordinance elect to assume the power to consider petitions for the creation of community development authorities in accordance with this article. A public hearing shall be held on such ordinance.

C. Any county may by ordinance elect to assume the power to consider petitions for the creation of community development authorities in accordance with this article. A public hearing shall be held on such ordinance.

D. Notwithstanding any other provision of law, community development authorities shall be created pursuant to this Article and the provisions of §§ [15.2-5103](#) and [15.2-5107](#) through [15.2-5111](#).

Code 1950, § 15-764.3; 1950, p. 1315; 1962, c. 623, § 15.1-1241; 1972, c. 370; 1973, c. 478; 1993, c. 850; 1995, c. [402](#); 1996, c. [897](#); 1997, c. 587; 2003, c. [712](#); 2005, c. [547](#); 2009, c. [473](#).

§15.2-5153. Landowners may petition localities.

The owner or owners of at least 51 percent of the land area or assessed value of land in any tract or tracts of land in any locality or localities may petition the locality or localities in which the tract or tracts are located for the creation of a community development authority, provided that before the creation of a community development authority in any town or county, the town or county has elected to consider petitions to create community development authorities pursuant to the applicable provisions of § [15.2-5152](#). Any petition for the creation of a community development authority in multiple tracts which are not contiguous shall be signed by the owner or owners of at least 51 percent of the land area or assessed value of land in each such non-contiguous tract.

Code 1950, § 15-764.3; 1950, p. 1315; 1962, c. 623, § 15.1-1241; 1972, c. 370; 1973, c. 478; 1993, c. 850; 1995, c. [402](#); 1996, c. [897](#); 1997, c. 587; 2003, c. [443](#); 2005, c. [547](#); 2009, c. [473](#).

§15.2-5154. Contents of petition.

A petition for the creation of a community development authority shall:

1. Set forth the name and describe the boundaries of the proposed district, including any provisions for adjusting the community development authority district boundaries pursuant to subsection A of § [15.2-5155](#);
2. Describe the services and facilities proposed to be undertaken by the community development authority within the district;
3. Describe a proposed plan for providing and financing such services and facilities within the district;
4. Describe the benefits which can be expected from the provision of such services and facilities by the community development authority;
5. Provide that the board members of the community development authority shall be selected under the applicable provisions of § [15.2-5113](#); and
6. Request the local governing body to establish the proposed community development authority for the purposes set forth in the petition.

Such petition may provide that the board members of the community development authority appointed pursuant to § [15.2-5113](#) shall consist of a majority of the petitioning landowners or their designees or nominees.

Code 1950, § 15-764.3; 1950, p. 1315; 1962, c. 623, § 15.1-1241; 1972, c. 370; 1973, c. 478; 1993, c. 850; 1995, c. [402](#); 1996, c. [897](#); 1997, c. 587; 2009, c. [473](#).

§15.2-5155. Ordinance or resolution creating authority.

A. Any locality authorized to consider petitions under this article may, by ordinance or resolution not inconsistent with the petition proposing the creation of the authority, create a community development authority, a public body politic and corporate and political subdivision of the Commonwealth. Community development authorities proposed for districts that are within any two or more localities may be formed by concurrent ordinances of each locality, and such localities may contract with one another for administration of the authority. If the boundaries of the proposed community development authority district are located wholly in a town, the owner or owners shall petition the town and need not petition the county and the town may create the authority without action by the county. If the petition for the creation of a community development authority so provides, the ordinance or resolution creating the community development authority may provide for the locality at any time after the creation of the community development authority to adjust the boundaries of the community development authority district to exclude certain land as long as the owners of at least 51 percent of the land area or assessed value of land remaining in the community development authority district after the adjustment petitioned for the creation of the community development authority.

B. An ordinance or resolution creating a community development authority shall not permit the community development authority to provide services which are provided by, or are obligated to be provided by, any authority already in existence whose charter requires or permits service within the proposed community development district, unless the existing authority first certifies to the governing body that the services provided by the proposed community development authority will not have a negative impact upon the existing authority's operational or financial condition. Such certification shall not be unreasonably withheld by the existing authority.

Code 1950, § 15-764.3; 1950, p. 1315; 1962, c. 623, § 15.1-1241; 1972, c. 370; 1973, c. 478; 1993, c. 850; 1995, c. [402](#); 1996, c. [897](#); 1997, c. 587; 2003, c. [712](#); 2009, c. [473](#).

§15.2-5156. Hearing; notice.

A. An ordinance or resolution creating a community development authority shall not be adopted or approved until a public hearing has been held by the governing body on the question of its adoption or approval. Notice of the public hearing shall be published once a week for three successive weeks in a newspaper of general circulation within the locality. The petitioning landowners shall bear the expense of publishing the notice. The hearing shall not be held sooner than ten days after completion of publication of the notice.

B. After the public hearing and before adoption of the ordinance or resolution, the local governing body shall mail a true copy of its proposed ordinance or resolution creating the development authority to the petitioning landowners or their attorney in fact. Unless waived in writing, any petitioning landowner shall have thirty days from mailing of the proposed ordinance or resolution in which to withdraw his signature from the petition in writing prior to the vote of the local governing body on such ordinance or resolution. If any signatures on the petition are so withdrawn, the local governing body may pass the proposed ordinance or resolution only upon certification by the petitioners that the petition continues to meet the requirements of § [15.2-5152](#). If all petitioning landowners waive the right to withdraw their signatures from the petition, the local governing body may adopt the ordinance or resolution upon compliance with the provisions of subsection A and any other applicable provisions of law.

Code 1950, § 15-764.3; 1950, p. 1315; 1962, c. 623, § 15.1-1241; 1972, c. 370; 1973, c. 478; 1993, c. 850; 1995, c. [402](#); 1996, c. [897](#); 1997, c. 587; 1998, c. [188](#).

§15.2-5157. Recording in land records.

The local governing body, upon approving the resolution or ordinance creating the district, shall direct that a copy of the resolution or ordinance be recorded in the land records of the circuit court for the locality in which the district is located for each parcel included in the district and be noted on the land books of the locality. For the purposes of this section, "parcel" is defined as tax map parcel.

Code 1950, § 15-764.3; 1950, p. 1315; 1962, c. 623, § 15.1-1241; 1972, c. 370; 1973, c. 478; 1993, c. 850; 1995, c. [402](#); 1996, c. [897](#); 1997, c. 587.

§15.2-5158. Additional powers of community development authorities.

A. Each community development authority created under this article, in addition to the powers provided in Article 3 (§ [15.2-5110](#) et seq.) of Chapter 51 of this title, may:

1. Subject to any statutory or regulatory jurisdiction and permitting authority of all applicable governmental bodies and agencies having authority with respect to any area included therein, finance, fund, plan, establish, acquire, construct or reconstruct, enlarge, extend, equip, operate, and maintain the infrastructure improvements enumerated in the ordinance or resolution establishing the district, as necessary or desirable for development or redevelopment within or affecting the district or to meet the increased demands placed upon the locality as a result of development or redevelopment within or affecting the district, including, but not limited to:

a. Roads, bridges, parking facilities, curbs, gutters, sidewalks, traffic signals, storm water management and retention systems, gas and electric lines and street lights within or serving the district which meet or exceed the specifications of the locality in which the roads are located.

b. Parks and facilities for indoor and outdoor recreational, cultural and educational uses; entrance areas; security facilities; fencing and landscaping improvements throughout the district.

c. Fire prevention and control systems, including fire stations, water mains and plugs, fire trucks, rescue vehicles and other vehicles and equipment.

d. School buildings and related structures, which may be leased, sold or donated to the school district, for use in the educational system when authorized by the local governing body and the school board.

e. Infrastructure and recreational facilities for age-restricted active adult communities, and any other necessary infrastructure improvements as provided above, with a minimum population approved under local zoning laws of 1,000 residents. Such development may include security facilities and systems or measures which control or restrict access to such community and its improvements.

2. Issue revenue bonds of the development authority as provided in § [15.2-5125](#), including but not limited to refunding bonds, subject to such limitation in amount, and terms and conditions regarding capitalized interest, reserve funds, contingent funds, and investment restrictions, as may be established in the ordinance or resolution establishing the district, for all costs associated with the improvements enumerated in subdivision 1 of this subsection. Such revenue bonds shall be payable solely from revenues received by the development authority. The revenue bonds

issued by a development authority shall not require the consent of the locality, except where consent is specifically required by the provisions of the resolution authorizing the collection of revenues and/or the trust agreement securing the same, and shall not be deemed to constitute a debt, liability, or obligation of any other political subdivision, and shall not impact upon the debt capacity of any other political subdivision.

3. Request annually that the locality levy and collect a special tax on taxable real property within the development authority's jurisdiction to finance the services and facilities provided by the authority. Notwithstanding the provisions of Article 4 (§ [58.1-3229](#) et seq.) of Chapter 32 of Title 58.1, any such special tax imposed by the locality shall be levied upon the assessed fair market value of the taxable real property. Unless requested by every property owner within the proposed district, the rate of the special tax shall not be more than \$.25 per \$100 of the assessed fair market value of any taxable real estate or the assessable value of taxable leasehold property as specified by § [58.1-3203](#). The proceeds of the special taxes collected shall be kept in a separate account and be used only for the purposes provided in this chapter. All revenues received by the locality from such special tax shall be paid over to the development authority for its use pursuant to this chapter subject to annual appropriation. No other funds of the locality shall be loaned or paid to the development authority without the prior approval of the local governing body.

4. Provide special services, including: garbage and trash removal and disposal, street cleaning, snow removal, extra security personnel and equipment, recreational management and supervision, and grounds keeping.

5. Finance the services and facilities it provides to abutting property within the district by special assessment thereon imposed by the local governing body. All assessments pursuant to this section shall be subject to the laws pertaining to assessments under Article 2 (§ [15.2-2404](#) et seq.) of Chapter 24; provided that any other provision of law notwithstanding, (i) the taxes or assessments shall not exceed the full cost of the improvements, including without limitation the legal, financial and other directly attributable costs of creating the district and the planning, designing, operating and financing of the improvements which include administration of the collection and payment of the assessments and reserve funds permitted by applicable law; (ii) the taxes or assessments may be imposed upon abutting land which is later subdivided in accordance with the terms of the ordinance forming the district, in amounts which do

not exceed the peculiar benefits of the improvements to the abutting land as subdivided; and (iii) the taxes or assessments may be made subject to installment payments for up to 40 years in an amount calculated to cover principal, interest and administrative costs in connection with any financing by the authority, without a penalty for prepayment. Notwithstanding any other provision of law, any assessments made pursuant to this section may be made effective as a lien upon a specified date, by ordinance, but such assessments may not thereafter be modified in a manner inconsistent with the terms of the debt instruments financing the improvements. All assessments pursuant to this section may also be made subject to installment payments and other provisions allowed for local assessments under this section or under Article 2 of Chapter 24. All revenues received by the locality pursuant to any such special assessments which the locality elects to impose upon request of the development authority shall be paid over to the development authority for its use under this chapter, subject to annual appropriation, and may be used for no other purposes.

6. Fix, charge, and collect rates, fees, and charges for the use of, or the benefit derived from, the services and/or facilities provided, owned, operated, or financed by the authority benefiting property within the district. Such rates, fees, and charges may be charged to and collected by such persons and in such manner as the authority may determine from (i) any person contracting for the services or using the facilities and/or (ii) the owners, tenants, or customers of the real estate and improvements that are served by, or benefit from the use of, any such services or facilities, in such manner as shall be authorized by the authority in connection with the provision of such services or facilities.

7. Purchase development rights that will be dedicated as easements for conservation, open space or other purposes pursuant to the Open-Space Land Act (§ [10.1-1700](#) et seq.). For purposes of this subdivision, "development rights" means the level and quantity of development permitted by the zoning ordinance expressed in terms of housing units per acre, floor area ratio or equivalent local measure. An authority shall not use the power of condemnation to acquire development rights.

8. Subject to any statutory or regulatory jurisdiction and permitting authority of all applicable governmental bodies and agencies having authority with respect to any area included therein, finance and fund the acquisition of land within the district. All financing authority and methods provided by subsections 2, 3, 4, 5, 6, and 7 shall be permitted for the acquisition of land as provided herein.

9. Any special tax levied pursuant to subdivision 3 and any special assessment imposed pursuant to subdivision 5, whether previously or hereafter levied or imposed, constitute a lien on real estate ranking on parity with real estate taxes, and any such delinquent special tax or delinquent special assessment may be collected in accordance with the procedures set forth in Article 4 (§ [58.1-3965](#) et seq.) of Chapter 39 of Title 58.1, provided that the enforcement of the lien for any special assessment under subdivision 5 made subject to installment payments shall be limited to the installment payments due or past due at the time the lien is enforced through sale in accordance with Article 4 (§ [58.1-3965](#) et seq.) of Chapter 39 of Title 58.1, and any sale to enforce payment of any delinquent taxes, assessments, or other levies shall not extinguish installment payments that are not yet due.

B. Nothing contained in this chapter shall relieve the local governing body of its general obligations to provide services and facilities to the district to the same extent as would otherwise be provided were the district not formed.

1993, c. 850, § 15.1-1250.03; 1995, c. [402](#); 1997, cc. [363](#), 587; 2000, cc. [724](#), [747](#); 2004, c. [637](#); 2005, c. [547](#); 2009, c. [473](#); 2015, c. [39](#).

§15.2-5159. Validation of creation of authorities; bonds issued.

All proceedings heretofore taken with respect to the creation of a community development authority by any locality pursuant to this chapter are hereby presumed to be valid and all such authorities are presumed to be legally created. All proceedings heretofore taken by any community development authority with respect to the authorization, issuance, sale, execution, delivery, and repayment of bonds by any community development authority are presumed to be valid, and any such bonds so issued are presumed valid and legal obligations of such community development authority, enforceable in accordance with law.

2009, c. [473](#).

Virginia Watercraft Sales and Use Tax

§58.1-1400. Title.

This chapter shall be known and may be cited as the "Virginia Watercraft Sales and Use Tax Act."

Code 1950, § 58-685.39; 1981, c. 405; 1984, c. 675.

§58.1-1401. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Dealer" means any watercraft dealer as defined in § [29.1-801](#).

"Gross receipts" means the amount received for the lease, charter, or other use of any watercraft. The term shall include hourly rental, maintenance, and all other charges for use of any watercraft and charges for pilots crew, or other services, unless separately stated on the invoice. The term shall also include the amount by which the price estimated under § [58.1-1403](#) exceeds the charge actually made.

"Sale" means any transfer of ownership or possession of a watercraft by exchange or barter, conditional or otherwise, in any manner. The term shall also include (i) a transaction whereby possession is transferred but title is retained by the seller as security, (ii) any lease or rental for a period of time substantially equal to the remaining life of the watercraft, and (iii) any lease or rental requiring total payments by the lessee during the lease or rental period which substantially equals the value of the watercraft. The term shall not include a transfer of ownership or possession made to secure the payment of an obligation.

"Sale price" means the total price paid for a watercraft and all attachments thereon and accessories thereto, exclusive of any federal manufacturer's excise tax, without any allowance or deduction for trade-ins or unpaid liens or encumbrances.

"Watercraft" means any vessel propelled by machinery whether or not the machinery is the principal source of propulsion. The term shall also include any sail-powered vessel which is in excess of eighteen feet in length measured along the centerline. The term shall not include a seaplane on the water or a watercraft which has a valid marine titling document issued by the United States Coast Guard.

Code 1950, § 58-685.40; 1981, c. 405; 1984, cc. 418, 675; 1997, c. [877](#).

§58.1-1401.1. When motor deemed a watercraft.

Any motor used to power a watercraft as defined in § [58.1-1401](#) and sold separately from such watercraft shall be deemed a watercraft for purposes of this chapter.

1994, c. [443](#).

§58.1-1402. Tax levied.

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale of every watercraft sold in this Commonwealth, upon the use in this Commonwealth of any watercraft and upon the gross receipts from the lease, charter or other use of any watercraft by a registered dealer in this Commonwealth. The amount of the tax to be collected shall be determined by applying the following rate against the sale price, market value or gross receipts:

1. Two percent of the sale price of each watercraft sold in the Commonwealth.
2. Two percent of the sale price of each watercraft not sold in the Commonwealth but required to be titled in the Commonwealth. However, if the watercraft is first required to be titled in the Commonwealth six months or more after its acquisition, the tax shall be two percent of the market value of such watercraft at the time it is titled.
3. Two percent of the gross receipts from the lease, charter or other use of any watercraft by a registered dealer.

The maximum tax levied under subdivisions 1 and 2 of this section shall be \$2,000. A transaction taxed under subdivision 1 shall not be taxed under subdivision 2 or 3, nor shall the same transaction be taxed more than once under either subdivision 1, 2 or 3. Use of any watercraft by a registered dealer resulting in taxation under subdivision 3 shall not exempt any subsequent sale or use of such watercraft from being taxed under subdivision 1 or 2 if applicable.

Code 1950, §§ 58-685.41, 58-685.44; 1981, c. 405; 1984, c. 675; 1987, c. 516; 1990, c. 666 .

§58.1-1403. Basis of tax; estimate of tax; penalty for misrepresentation.

A. The Tax Commissioner shall assess and collect the tax for the use or sale of a watercraft pursuant to subdivisions 1 and 2 of § [58.1-1402](#) upon the basis of the sale price of such watercraft.

Any person who sells a watercraft in this Commonwealth shall supply the buyer with an invoice, signed by the seller or his representative, which shall state the sale price of the watercraft. The buyer shall present such invoice to the Tax Commissioner with his return and payment of the tax.

B. The Tax Commissioner shall assess and collect the tax on the lease or charter of a watercraft by a registered dealer on the basis of the gross receipts arising from all

transactions pertaining to the lease, charter or other use of such watercraft during the preceding calendar month. The dealer shall submit a return to the Tax Commissioner showing the gross receipts arising from such transactions. The dealer shall remit with such return the amount of tax due.

C. In any case where (i) the invoice is not available, (ii) the Tax Commissioner has reason to believe that an invoice or return does not reflect the true sales price, or (iii) the watercraft was purchased more than six months prior to its use or storage in the Commonwealth, the Tax Commissioner may assess the tax in accordance with such publications or other data as are customarily employed in ascertaining the maximum sale price of watercraft. Where the Tax Commissioner finds that a charge for the rental, lease, charter or use of watercraft has been lower than the fair market value of such use, the Tax Commissioner may estimate a fair price in accordance with the cost of the watercraft, the cost of maintenance, the normal rental value as shown in similar transactions, or other relevant data.

Any person who knowingly misrepresents the value of a watercraft or the amount of tax due to the Tax Commissioner or any return or invoice shall be guilty of a Class 1 misdemeanor.

Code 1950, §§ 58-685.44, 58-685.47; 1981, c. 405; 1984, c. 675.

§58.1-1404. Exemptions.

A. Any watercraft sold to or used by the United States or any of the governmental agencies thereof or the Commonwealth of Virginia or any political subdivision thereof or sold to an insurance company for the sole purpose of disposition when such insurance company has paid the registered owner of such watercraft on a total loss claim shall be exempt from the tax imposed by this chapter.

B. Any person who was the owner of a watercraft that was not required to be titled prior to January 1, 1998, shall apply for a title for such watercraft without incurring liability for the tax imposed under this chapter.

C. Any watercraft constructed by a commercial waterman for his own use shall be exempt from the tax imposed under this chapter.

D. Any registered dealer in watercraft shall be exempt from the tax imposed by subdivisions 1 and 2 of § [58.1-1402](#). Such dealer shall also be exempt from titling requirements as provided in § [29.1-733.6](#).

E. Any watercraft purchased by and for the use of a volunteer fire department or volunteer emergency medical services agency not conducted for profit shall be exempt from the tax imposed under this chapter.

F. Any watercraft transferred to trustees of a revocable inter vivos trust, when the owners of the watercraft and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust following the death of the grantor, when no consideration has passed between the grantor and the beneficiaries in either case, shall be exempt from the tax imposed under this chapter.

Code 1950, §§ 58-685.44 to 58-685.46; 1981, c. 405; 1984, c. 675; 1986, c. 545; 1988, c. 314; 1997, c. [877](#); 2000, c. [602](#); 2013, c. [787](#); 2015, cc. [502](#), [503](#).

§58.1-1405. Time for payment of tax.

A. Except as provided in paragraph B of this section, the tax levied pursuant to this chapter shall be paid by the purchaser or user of such watercraft and collected by the Tax Commissioner at the time the owner is required to apply to the Department of Game and Inland Fisheries for a title. Except as otherwise provided in § [58.1-1404](#), no title shall be issued unless the applicant for title shows to the satisfaction of the Department of Game and Inland Fisheries that such tax has been paid.

B. The tax on the gross receipts from the lease or charter of watercraft shall be paid by the registered dealer collecting such receipts to the Commissioner on or before the twentieth day of each month following the month in which such receipts were collected.

Code 1950, §§ 58-685.44, 58-685.46; 1981, c. 405; 1984, c. 675; 1997, c. [877](#).

§58.1-1406. Dealers' certificates of registration.

A. Every person who qualifies as a dealer under Chapter 8 (§ [29.1-800](#) et seq.) of Title 29.1 and desires to transfer ownership in watercraft without obtaining a certificate of title shall file with the Tax Commissioner an application for a certificate of registration for each place of business in this Commonwealth.

B. Every application for a certificate of registration shall be made upon a form prescribed by the Commissioner and shall set forth (i) the name under which the applicant transacts or intends to transact business, (ii) the location of his place or places of business, and (iii) such other information as the Commissioner may require. The application shall be signed by the owner if a natural person; in the case of an

association or partnership, by a member or partner; and, in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

C. When the required application has been made the Commissioner shall issue to each applicant a separate certificate of registration for each place of business within this Commonwealth. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall be at all times conspicuously displayed at the place for which issued.

D. Whenever any person fails to comply with any provision of this chapter or any rule or regulation of the Tax Commissioner relating thereto, the Commissioner, upon hearing after giving such person ten days' notice in writing, specifying the time and place of hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend any one or more of the certificates of registration held by such person. The notice may be personally served or served by registered mail directed to the last known address of such person.

E. Only those dealers who hold a current certificate of registration hereunder shall be authorized to transfer ownership of a watercraft without obtaining a certificate of title therein, and paying the tax imposed by this chapter.

F. If the holder of a certificate of registration ceases to conduct his business at the place specified in his certificate, the certificate shall thereupon expire. The holder of such certificate shall inform the Commissioner in writing within thirty days after he has ceased to conduct business at such place that he has so ceased. However, if the holder of a certificate of registration desires to change his place of business to another place in this Commonwealth, he shall so inform the Commissioner in writing and his certificate shall be revised accordingly without charge.

Code 1950, § 58-685.43; 1981, c. 405; 1984, c. 675.

§58.1-1407. Retention of documents.

Any person who sells a watercraft in this Commonwealth shall retain a copy of the invoice required by § [58.1-1403](#) for three years following such sale. Any person taxed as a dealer under § [58.1-1402](#) shall retain a copy of all invoices for lease, charter or other usage of watercraft for three years following such transaction. Each invoice shall give an accurate description of the watercraft sold, leased or used.

Code 1950, § 58-685.48; 1981, c. 405; 1984, c. 675.

§58.1-1408. Civil penalties and interest.

When any person fails to make any return or pay the full amount of tax required by § [58.1-1402](#) within thirty days of the required filing and payment date, there shall be imposed, in addition to other penalties provided herein, a penalty to be added to the tax in the amount of six percent of the unpaid tax. An additional six percent of the tax due shall be charged for each additional thirty-day period, or fraction thereof, after sixty days, during which the failure to make any return or pay the full amount of tax continues. Such additional penalty shall not exceed thirty percent in the aggregate.

If any such failure is due to providential or other good cause, shown to the satisfaction of the Commissioner, the return, with remittance, shall be accepted exclusive of such penalties, but with interest determined in accordance with § [58.1-15](#).

In the case of a false or fraudulent return, where willful intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a penalty of fifty percent of the amount of the proper tax shall be assessed. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any purchaser or user of a watercraft reports the sale price or current market value of his watercraft, as the case may be, at fifty percent or less of the actual amount. It shall also be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports the gross receipts collected from the lease, charter or other use of watercraft at fifty percent or less of the actual amount received for such lease, charter or use.

All penalties and interest imposed by this chapter shall be payable by the purchaser or user of the watercraft and collectible by the Commissioner in the same manner as if they were a part of the tax imposed.

Interest, at a rate determined in accordance with § [58.1-15](#), on the unpaid amount of the tax from the day after the last day for timely filing and payment of the tax shall accrue until the same is paid.

Code 1950, §§ 58-685.42, 58-685.44; 1981, c. 405; 1984, c. 675; 1991, cc. 316, 331 .

§58.1-1409. Credit against tax.

A credit shall be granted against the tax imposed by this chapter with respect to a person's use in this Commonwealth of a watercraft purchased by him in another state, or purchased by him in this Commonwealth if the state sales tax was paid thereon. The amount of the credit shall be equal to the tax paid by him to another state by reason of the imposition of a similar tax on his purchase or use of the property, or the sales tax paid to this Commonwealth. The amount of the credit shall not exceed the tax imposed by this chapter.

Code 1950, § 58-685.49; 1981, c. 405; 1984, c. 675.

§58.1-1410. Disposition of funds.

Funds collected hereunder by the Tax Commissioner shall be paid into the general fund of the state treasury and allocated to the game protection fund in the following manner:

For Fiscal Year	Percentage of Collections
1996	50%
1997	50%
1998	50%
1999	75%
2000 and thereafter	100%

Not later than thirty days after the close of each quarter, the Comptroller shall transfer to the game protection fund the appropriate percentage of collections to be dedicated to such fund. The Comptroller may make such adjustments as necessary in subsequent quarters subject to the audit report of the Auditor of Public Accounts.

Such funds shall be made available only to the Department of Game and Inland Fisheries for the following: boating-related activities and expenses, and to enhance and improve recreation opportunities for boaters, including but not limited to land acquisition, capital projects, maintenance, and facilities for boating access to the waters of the Commonwealth; boating safety law enforcement, including salaries, benefits, equipment and overtime expenses for conservation police officers so assigned; boating and other aquatic resource educational activities, including personnel, and education and safety materials; boating-related expenses for required reporting to federal and state officials; information management costs, including personnel, hardware, and software needed to better serve boating customers; and related administrative costs for boating-related activities, including human resources, accounting, public

relations, administration and facilities to support and house necessary boating-related personnel and equipment.

Code 1950, § 58-685.50; 1981, c. 405; 1984, c. 675; 1994, c. [322](#); 1997, c. [877](#).

Virginia Wireless Service Authorities Act

§15.2-5431.1. Title of chapter; construction.

This chapter shall be known and may be cited as the "Virginia Wireless Service Authorities Act." This chapter shall constitute full and complete authority for the doing of the acts herein authorized, and shall be liberally construed to effect the purposes of the chapter.

2003, c. [643](#).

§15.2-5431.2. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authority" means an authority created under the provisions of this chapter or, if any such authority has been abolished, the entity succeeding to the principal functions thereof.

"Bonds" and "revenue bonds" include notes, bonds, bond anticipation notes, and other obligations of an authority for the payment of money.

"Cost" or "cost of a project" means, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto, the cost of labor and materials; the cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering and inspection expenses; financing fees, expenses and costs; working capital; interest on bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing authority; establishment of reserves; and all other expenditures of the issuing authority incidental, necessary or convenient to the acquisition, con-

struction, reconstruction, improvement, enlargement, betterment or extension of any project and the placing of the project in operation.

"Project" means any system of facilities for provision of qualifying communications services as authorized by Article 5.1 (§ [56-484.7:1](#) et seq.) of Chapter 15 of Title 56.

2003, c. [643](#).

§15.2-5431.3. Creation of authority.

The governing body of a locality may by resolution, or two or more localities may by concurrent resolutions, create an authority, the name of which shall contain the word "authority." The authority shall be a public body politic and corporate. The resolution creating the authority shall not be adopted or approved until a public hearing has been held in each participating locality on the question of its adoption or approval.

2003, c. [643](#); 2005, c. [299](#).

§15.2-5431.4. Resolution creating authority to include articles of incorporation.

The resolution creating an authority shall include articles of incorporation, which shall set forth:

1. The name of the authority and address of its principal office.
2. The name of the locality creating the authority and the names, addresses and terms of office of the first members of the board of the authority.
3. The purposes for which the authority is being created, which shall be to provide qualifying communications services as authorized by Article 5.1 (§ [56-484.7:1](#) et seq.) of Chapter 15 of Title 56.

2003, c. [643](#).

§15.2-5431.5. Advertisement of resolution and notice of hearing.

The governing body of the locality shall cause to be advertised at least one time in a newspaper of general circulation in such locality a copy of the resolution creating the authority, or a descriptive summary of the resolution and a reference to the place within the locality where a copy of the resolution can be obtained, and notice of the day, not less than 30 days after publication of the advertisement, on which a public hearing will be held on the resolution.

2003, c. [643](#).

§15.2-5431.6. Hearing; referendum.

If at the hearing, in the judgment of the governing body of the locality, substantial opposition is heard, the governing body may at its discretion petition the circuit court to order a referendum on the question of adopting or approving the ordinance, agreement or resolution. The provisions of § [24.2-684](#) shall govern the order for a referendum. If 10 percent of the qualified voters in a locality file a petition with the governing body at the hearing calling for a referendum, such governing body shall petition the circuit court to order a referendum in that locality as provided in this section.

2003, c. [643](#).

§15.2-5431.7. Filing articles of incorporation.

After adoption or approval of a resolution creating an authority, the governing body of the locality shall file with the State Corporation Commission the authority's articles of incorporation.

2003, c. [643](#).

§15.2-5431.8. Issuance of certificate or charter.

The State Corporation Commission shall issue a certificate of incorporation or charter to the authority if it finds that the articles of incorporation conform to law. Upon the issuance of the certificate or charter such authority shall be conclusively deemed to have been lawfully and properly created and established and authorized to exercise its powers under this chapter.

2003, c. [643](#).

§15.2-5431.9. Dissolution of authority.

A. Whenever the board of an authority determines that the purposes for which it was created have been completed or are impractical or impossible and that all its obligations have been paid or have been assumed by one or more of such political subdivisions or any authority created thereby or that cash or United States government securities have been deposited for their payment, it shall adopt and file with the governing body a resolution declaring such facts. If the governing body adopts a resolution concurring in such declaration and finding that the authority should be dissolved, they shall file appropriate articles of dissolution with the State Corporation Commission.

B. Notwithstanding the provisions of subdivision 1 of § [15.2-5431.11](#), an authority shall continue in existence and shall not be dissolved because the term for which it

was created, including any extensions thereof, has expired, unless all of such authority's functions have been taken over and its obligations have been paid or have been assumed by one or more political subdivisions or by an authority created thereby, or cash or United States government securities have been deposited for their payment.

2003, c. [643](#).

§15.2-5431.10. Members of authority board; chief administrative or executive officer.

A. The powers of each authority created by the governing body of a locality shall be exercised by an authority board of five members, or at the option of the board of supervisors of a county, a number of board members equal to the number of members of the board of supervisors. The board members of an authority shall be selected in the manner and for the terms provided by the agreement or ordinance or resolution or concurrent ordinances or resolutions creating the authority. One or more members of the governing body of a locality may be appointed board members of the authority, the provisions of any other law to the contrary notwithstanding. No board member shall be appointed for a term of more than four years. When one or more additional political subdivisions join an existing authority, each of such joining political subdivisions shall have at least one member on the board. Board members shall hold office until their successors have been appointed and may succeed themselves. The board members of the authority shall elect one of their number chairman, and shall elect a secretary and treasurer who need not be members. The offices of secretary and treasurer may be combined.

B. A majority of board members shall constitute a quorum and the vote of a majority of board members shall be necessary for any action taken by the authority. An authority may, by bylaw, provide a method to resolve tie votes or deadlocked issues.

C. No vacancy in the board membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. If a vacancy occurs by reason of the death, disqualification or resignation of a board member, the governing body of the locality that created the authority shall appoint a successor to fill the unexpired term. Whenever a political subdivision withdraws its membership from an authority, the term of any board member appointed to the board of the authority from such political subdivision shall immediately terminate. Board members shall receive such compensation as fixed by resolution of the gov-

erning body that created the authority, and shall be reimbursed for any actual expenses necessarily incurred in the performance of their duties.

D. The board members may appoint a chief administrative or executive officer who shall serve at the pleasure of the board members. He shall execute and enforce the orders and resolutions adopted by the board members and perform such duties as may be delegated to him by the board members.

2003, c. [643](#).

§15.2-5431.11. Powers of authority.

Each authority is an instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each authority may:

1. Exist for a term of 50 years as a corporation, and for such further period or periods as may from time to time be provided by appropriate resolutions of the political subdivision creating the authority; however, the term of an authority shall not be extended beyond a date 50 years from the date of the adoption of such resolutions;
2. Adopt, amend or repeal bylaws, rules and regulations, not inconsistent with this chapter or the general laws of the Commonwealth, for the regulation of its affairs and the conduct of its business and to carry into effect its powers and purposes;
3. Adopt an official seal and alter the same at pleasure;
4. Maintain an office at such place or places as it may designate;
5. Sue and be sued;
6. Acquire, construct, reconstruct, improve, enlarge, operate or extend any project;
7. Issue revenue bonds of the authority, such bonds to be payable solely from revenues to pay all or a part of the cost of a project;
8. Borrow at such rates of interest as authorized by the general law for authorities and as the authority may determine and issue its notes, bonds or other obligations therefor. The political subdivision creating the authority may lend, advance or give money to such authority;
9. Fix, charge and collect rates, fees and charges for the use of or for the services furnished by or for the benefit from any project operated by the authority. Such rates, fees, rents and charges shall be charged to and collected from any person contracting for the services or the lessee or tenant who uses or occupies any real estate that is

served by or benefits from any such project. Connection and service fees established by an authority shall be fair and reasonable. Such fees shall be reviewed by the authority periodically and shall be adjusted, if necessary, to assure that they continue to be fair and reasonable; and

10. Contract with any person, political subdivision, federal agency, or any public authority or unit, on such terms as the authority deems proper, for the purpose of acting as a billing and collecting agent for service fees, rents or charges imposed by an authority.

2003, c. [643](#).

§15.2-5431.12. Contracts relating to use of systems.

An authority may make and enter into all contracts or agreements, as the authority may determine, which are necessary or incidental to the performance of its duties and to the execution of the powers granted by this chapter, on such terms and conditions as the authority may approve. The contract shall be subject to such provisions, limitations or conditions as may be contained in the resolution of the authority authorizing revenue bonds of the authority or the provisions of any trust agreement securing such bonds. Such contract may provide for the collecting of fees, rates or charges for the services and facilities rendered to a subscriber thereof services provided by the authority and for the enforcement of delinquent charges for such services and facilities. The provisions of the contract and of any resolution of the governing body shall not be repealed so long as any of the revenue bonds issued under the authority of this chapter are outstanding and unpaid. The provisions of the contract, and of any resolution enacted pursuant thereto, shall be for the benefit of the bondholders.

2003, c. [643](#).

§15.2-5431.13. Insurance for employees.

An authority may establish retirement, group life insurance, and group accident and sickness insurance plans or systems for its employees in the same manner as localities are permitted under §§ [51.1-801](#) and [51.1-802](#).

2003, c. [643](#).

§15.2-5431.14. Issuance of revenue bonds.

An authority may provide by resolution for the issuance of revenue bonds of the authority for the purpose of paying the whole or any part of the cost of any project.

The principal of and the interest on the bonds shall be payable solely from the funds provided for in this chapter for such payment. The full faith and credit of the locality shall not be pledged to support the bonds. The bonds of each issue may be dated, may mature at any time or times not exceeding 40 years from their date or dates, may be subject to redemption or repurchase at such price or prices and under such terms and conditions, and may contain such other provisions, all as determined before their issuance by the authority or in such manner as the authority may provide. The bonds may bear interest payable at such time or times and at such rate or rates as determined by the authority or in such manner as the authority may provide, including the determination by reference to indices or formulas or by agents designated by the authority under guidelines established by it. The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or outside the Commonwealth. If any officer whose signature or a facsimile of whose signature appears on any bonds or coupons, ceases to be an officer before the delivery of such bonds, his signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery. All revenue bonds issued under the provisions of this chapter shall have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth. The bonds may be issued in coupon, bearer, registered or book entry form, or any combination of such forms, as the authority may determine. Provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The issuance of such bonds shall not be subject to any limitations or conditions contained in any other law, and the authority may sell such bonds in such manner, either at a public or a private sale, and for such price, as it may determine to be for the best interest of the authority and the political subdivisions to be served thereby.

2003, c. [643](#).

§15.2-5431.15. Time for contesting validity of proposed bond issue; when bonds presumed valid.

A. For a period of 30 days after the date of the filing with the circuit court having jurisdiction over the locality creating the authority, any person in interest may contest

the validity of the bonds, the rates, fees and other charges for the services and facilities furnished by, for the use of, or in connection with, any such project, the pledge of the revenues of therefrom, or any combination of any thereof. If such contest is not given within the 30-day period, the authority to issue the bonds, the validity of the pledge of revenues necessary to pay the bonds, the validity of any other provision contained in the resolution, trust agreement, indenture or other instrument, and all proceedings in connection with the authorization and the issuance of the bonds shall be conclusively presumed to have been legally taken and no court shall have authority to inquire into such matters and no such contest shall thereafter be instituted.

B. Upon the delivery of any bonds reciting that they are issued pursuant to this chapter and a resolution or resolutions adopted under this chapter, the bonds shall be conclusively presumed to be fully authorized by all the laws of the Commonwealth and to have been sold, executed and delivered by the authority in conformity with such laws, and the validity of the bonds shall not be questioned by a party plaintiff, a party defendant, the authority, or any other interested party in any court, anything in this chapter or in any other statutes to the contrary notwithstanding.

2003, c. [643](#).

§15.2-5431.16. Proceeds of bonds.

The proceeds of bonds issued pursuant to § [15.2-5431.14](#) shall be used solely for the payment of the cost of the project or projects for which they were issued and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the authorizing resolution or in any trust agreement. If the proceeds of the bonds, by error of estimates or otherwise, are less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the authorizing resolution or in the trust agreement securing them, shall be deemed to be of the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue exceed the amount required for the purpose for which such bonds were issued, the surplus shall be deposited to the credit of the sinking fund for such bonds.

2003, c. [643](#).

§15.2-5431.17. Interim receipts and temporary bonds; bonds mutilated, lost or destroyed.

A. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

B. If any bond issued under this chapter is mutilated, lost or destroyed, the authority may cause a new bond of like date, number and tenor to be executed and delivered upon the cancellation in exchange or substitution for a mutilated bond and its interest coupons, or in lieu of and in substitution for a lost or destroyed bond and its unmatured interest coupons. Such new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost or destroyed bond has (i) paid the reasonable expense and charges in connection therewith and, in the case of a lost or destroyed bond, has filed with the authority and its treasurer evidence satisfactory to such authority and its treasurer that such bond was lost or destroyed and that the holder was the owner and (ii) furnished indemnity satisfactory to the treasurer of the authority.

2003, c. [643](#).

§15.2-5431.18. Provisions of chapter only requirements for issue.

Bonds may be issued under the provisions of this chapter without obtaining the approval or consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceeding or the happening of any other condition or thing than those proceedings, conditions or things that are specifically required by this chapter.

2003, c. [643](#).

§15.2-5431.19. Limitations in bond resolution or trust agreement.

The resolution providing for the issuance of revenue bonds of the authority, and any trust agreement securing such bonds, may contain such limitations upon the issuance of additional revenue bonds as the authority deems proper. Such additional revenue bonds shall be issued under such limitations.

2003, c. [643](#).

§15.2-5431.20. Bonds not debts of Commonwealth or participating political subdivision.

Revenue bonds issued under the provisions of this chapter shall not constitute a pledge of the faith and credit of the Commonwealth or of any political subdivision or

locality. All bonds shall contain a statement on their face substantially to the effect that neither the faith and credit of the Commonwealth nor the faith and credit of any political subdivision are pledged to the payment of the principal of or the interest on the bonds. The issuance of revenue bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the Commonwealth or any political subdivision to levy any taxes or to make any appropriation for their payment except from the funds pledged under the provisions of this chapter.

2003, c. [643](#).

§15.2-5431.21. Exemption from taxation.

No authority shall be required to pay any taxes or assessments upon any project acquired or constructed by it under the provisions of this chapter or upon the income therefrom. The bonds issued under the provisions of this chapter, their transfer and the income therefor, including any profit made on their sale, shall be free from taxation within the Commonwealth.

2003, c. [643](#).

§15.2-5431.22. Trust agreement; bond resolution.

In the discretion of the authority, any revenue bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside the Commonwealth. The resolution authorizing the issuance of the bonds or the trust agreement may pledge or assign the revenues to be received. The resolution or trust agreement may set forth the rights and remedies of the bondholders, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. The resolution or trust agreement may also contain such other provisions as the authority deems reasonable and proper for the security of the bondholders. Except as otherwise provided in this chapter, the authority may provide for the payment of the proceeds of the sale of the bonds and its revenues to such officer, board or depository as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of the resolution or trust agreement may be treated as part of the cost of operation.

2003, c. [643](#).

§15.2-5431.23. Disposition of unclaimed funds due on matured bonds or coupons.

Any authority having bonds outstanding on which principal, premium or interest has matured for a period of more than five years may pay any money being held to pay the matured principal, premium or interest into the general fund of the authority. Thereafter, the owners of the matured bonds may look only to the authority for payment. The authority shall maintain a record of the bonds for which the funds were held.

2003, c. [643](#).

§15.2-5431.24. Contracts concerning interest rates, currency, cash flow and other basis.

A. Any authority may enter into any contract that the authority determines to be necessary or appropriate to place the obligation or investment of the authority, as represented by the bonds or the investment of their proceeds, in whole or in part, on the interest rate, cash flow or other basis desired by the authority. Such contracts may include without limitation contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. Such contracts or arrangements may be entered into by the authority in connection with, or incidental to, entering into or maintaining any (i) agreement that secures bonds or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the authority, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency.

B. Any money set aside and pledged to secure payments of bonds or any contracts entered into pursuant to this section, may be invested in accordance with Chapter 45 (§ [2.2-4500](#) et seq.) of Title 2.2 and may be pledged to and used to service any of the contracts or agreements entered into pursuant to this section, and any other criteria as may be appropriate.

2003, c. [643](#).

§15.2-5431.25. Rates and charges.

A. The authority may fix and revise rates, fees and other charges (which shall include, but not be limited to, a penalty not to exceed 10 percent on delinquent accounts,

and interest on the principal), subject to the provisions of this section, for the use of a project or any portion thereof and for the services furnished or to be furnished by the authority, or facilities incident thereto, owned, operated or maintained by the authority, or facilities incident thereto, for which the authority has issued revenue bonds as authorized by this chapter or received loan funding from other sources. Such rates, fees and charges shall be so fixed and revised as to provide funds, with other funds available for such purposes, sufficient at all times (i) to pay the cost of maintaining, repairing and operating the project or systems, or facilities incident thereto, for which such bonds were issued or loans obtained, including reserves for such purposes and for replacement and depreciation and necessary extensions, (ii) to pay the principal of and the interest on the revenue bonds as they become due and reserves therefor, or other loan principal and interest, and (iii) to provide a margin of safety for making such payments. The authority shall charge and collect the rates, fees and charges so fixed or revised. The authority shall maintain records demonstrating compliance with the requirements of this section concerning the fixing and revision of rates, fees, and charges that shall be made available for inspection and copying by the public pursuant to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

B. No rates, fees or charges shall be fixed under subsection A until after a public hearing at which all of the users of such facilities; the owners, tenants or occupants of property served or to be served thereby; and all others interested have had an opportunity to be heard concerning the proposed rates, fees and charges. After the adoption by the authority of a resolution setting forth the preliminary schedule or schedules fixing and classifying such rates, fees and charges, notice of a public hearing, setting forth the proposed schedule or schedules of rates, fees and charges, shall be given by two publications, at least six days apart, in a newspaper having a general circulation in the area to be served by such systems at least 60 days before the date fixed in such notice for the hearing. The hearing may be adjourned from time to time. A copy of the notice shall be mailed to the governing bodies of all localities in which such systems or any part thereof is located. After the hearing the preliminary schedule or schedules, either as originally adopted or as amended, shall be adopted and put into effect.

C. A copy of the schedule or schedules of the final rates, fees and charges fixed in accordance with subsection B shall be kept on file in the office of the clerk or secretary of the governing body of the locality, and shall be open to inspection by all interested parties. The rates, fees or charges so fixed for any class of users or property

served shall be extended to cover any additional properties thereafter served which fall within the same class, without the necessity of a hearing or notice. Any increase in any rates, fees or charges under this section shall be made in the manner provided in subsection B. Any other change or revision of the rates, fees or charges may be made in the same manner as the rates, fees or charges were originally established as provided in subsection B.

D. Connection fees established by any authority shall be fair and reasonable. Such fees shall be reviewed by the authority periodically and shall be adjusted, if necessary, to assure that they continue to be fair and reasonable. Nothing herein shall affect existing contracts with bondholders which are in conflict with any of the foregoing provisions.

2003, c. [643](#); 2017, c. [389](#).

§15.2-5431.26. Enforcement of charges.

Any resolution or trust agreement providing for the issuance of revenue bonds under the provisions of this chapter may include any of the following provisions, and may require the authority to adopt such resolutions or to take such other lawful action as is necessary to effectuate such provisions. The authority may adopt such resolutions and take such other actions as follows:

1. Require any person who subscribes to pay rates, fees or charges for the use of or for the services furnished by any system acquired or constructed by the authority under the provisions of this chapter to make a reasonable deposit with the authority in advance to insure the payment of such rates, fees or charges and to be subject to application to the payment thereof if delinquent.

2. If any rates, fees or charges for the use of and for the services furnished by any system acquired or constructed by the authority under the provisions of this chapter are not paid within 30 days after due, the authority may at the expiration of such period disconnect the premises from the system, or otherwise suspend services and proceed to recover the amount of any such delinquent rates, fees or charges, with interest, in a civil action.

2003, c. [643](#).

§15.2-5431.27. Lien for charges.

A. There shall be a lien upon real estate for the amount of any fees other charges by an authority to the owner or lessee or tenant of the real estate for the use and

services of any system of the authority by or in connection with the real estate from the time when the fees, rents or charges are due, and for the interest which may accrue thereon. Such lien shall be superior to the interest of any owner, lessee or tenant of the real estate and rank on a parity with liens for unpaid real estate taxes. An authority may contract with a locality to collect amounts due on properly recorded liens in the same manner as unpaid real estate taxes due the locality. A lien for delinquent rates or charges applicable to three or fewer delinquent billing periods not exceeding 30 days each may be placed by an authority if the authority or its billing and collection agent (i) has advised the owner of such real estate at the time of initiating service to a lessee or tenant of such real estate that a lien will be placed on the real estate if the lessee or tenant fails to pay any fees, rents or other charges when due for services rendered to the lessee or tenant; (ii) has mailed to the owner of the real estate a duplicate copy of the final bill rendered to the lessee or tenant at the time of rendering the final bill to such lessee or tenant; and (iii) employs the same collection efforts and practices to collect amounts due the authority from a lessee or a tenant as are employed with respect to collection of such amounts due from customers who are owners of the real estate for which service is provided.

B. The lien shall not bind or affect a subsequent bona fide purchaser of the real estate for valuable consideration without actual notice of the lien until the amount of such fees, rents and charges is entered in a judgment lien book in the office where deeds may be recorded in the locality in which the real estate or a part thereof is located. The clerk in whose office deeds may be recorded shall make and index the entries therein upon certification by the authority, for which he shall be entitled to a fee of \$2 per entry, to be paid by the authority and added to the amount of the lien. The authority shall give the owner of the real estate notice in writing that it has made such certification to the clerk.

C. The lien on any real estate may be discharged by the payment to the authority of the total lien amount, and the interest which has accrued to the date of the payment. The authority shall deliver a certificate thereof to the person making the payment. Upon presentation of such certificate, the clerk having the record of the lien shall mark the entry of the lien satisfied, for which he shall be entitled to a fee of \$1.

2003, c. [643](#).

§15.2-5431.28. Trust funds.

All moneys received pursuant to this chapter shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The resolution or trust agreement providing for the issuance of revenue bonds of the authority shall provide that any officer to whom, or any bank, trust company or other fiscal agent to which, such moneys are paid shall act as trustee of such moneys and shall hold and apply the same for the purposes provided in this chapter, subject to such regulations as such resolution or trust agreement may provide.

2003, c. [643](#).

§15.2-5431.29. Bondholder's remedies.

Any holder of revenue bonds issued by an authority under this chapter, or of any of the coupons appertaining thereto, except to the extent the rights given by this chapter may be restricted by the resolution or trust agreement providing for the issuance of such bonds, may, either at law or in equity, by suit, mandamus or other proceeding, enforce all rights under the laws of Virginia or granted by this chapter or under such resolution or trust agreement. Such holder may also compel the performance of all duties required by this chapter or by the resolution or trust agreement to be performed by the authority or by any officer thereof, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services furnished by any system.

2003, c. [643](#).

§15.2-5431.30. Refunding bonds.

An authority may provide by resolution for the issuance of revenue refunding bonds of the authority to refund any revenue bonds outstanding and issued under this chapter, whether or not such outstanding bonds have matured or are then subject to redemption. Proceeds of such revenue refunding bonds may be used to discharge the revenue bonds, or such revenue refunding bonds may be exchanged for the revenue bonds. Each such authority may provide by resolution for the issuance of a single issue of revenue bonds of the authority for the combined purposes of (i) paying the cost of any project or the improvement, extension, addition or reconstruction thereof, and (ii) refunding outstanding revenue bonds of the authority which have been issued under the provisions of this chapter, whether or not such outstanding bonds have matured or are then subject to redemption. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the bondholders, and the rights, powers, privileges, duties and obligations of the authority with respect

to such bonds, shall be governed by the foregoing provisions of this chapter to the extent that they are applicable.

2003, c. [643](#).

§15.2-5431.31. Purchase in open market or otherwise.

Provision may be made in the proceedings authorizing refunding revenue bonds for the purchase of the refunded revenue bonds in the open market or pursuant to tenders made from time to time when there is available in the escrow or sinking fund for the payment of the refunded revenue bonds a surplus in an amount or amounts to be fixed in such proceedings.

2003, c. [643](#).

§15.2-5431.32. Investment in bonds.

Any bonds issued pursuant to this chapter are hereby made securities in which all public officers, bodies and political subdivisions of the Commonwealth; all insurance companies and associations; and all savings banks and savings institutions, including savings and loan associations, trust companies, beneficial and benevolent associations, administrators, guardians, executors, trustees and other fiduciaries in the Commonwealth, may properly and legally invest funds in their control.

2003, c. [643](#).

§15.2-5431.33. Financial report; authority budget; audit.

Any locality may, by resolution, require an authority to:

1. Submit to it an annual financial statement in a form prescribed by the Auditor of Public Accounts; or
2. Have an audit conducted for any fiscal year according to generally accepted auditing and accounting standards or according to the audit specifications and audit program prescribed by the Auditor of Public Accounts.

2003, c. [643](#).

§15.2-5431.34. Use of state land.

The Commonwealth hereby consents to the use of all lands above or under water and owned or controlled by it which are necessary for the construction, improvement, operation or maintenance of any project; except that the use of any portion between the right-of-way limits of any primary or secondary highway in this Commonwealth shall be subject to the approval of the Commissioner of Highways.

2003, c. [643](#).

§15.2-5431.35. Powers of localities to make grants and conveyances to and contracts with authority.

Each political subdivision may:

1. Convey or lease to any authority, with or without consideration, any systems or facilities for the provision of qualifying communications services as authorized by Article 5.1 (§ [56-484.7:1](#) et seq.) of Chapter 15 of Title 56;
2. Contract, jointly or severally, with any authority for the provision of qualifying communications services as authorized by Article 5.1 (§ [56-484.7:1](#) et seq.) of Chapter 15 of Title 56;
3. Contract with any authority for terminating any service furnished by the authority to any premises that is connected to the system of the authority if the owner, tenant or occupant of such premises fails to pay any rates, fees or charges for the use of or for the services furnished by the authority within the time or times specified in such contract; and
4. In any instance in which a locality makes rights-of-way, poles, conduits or other permanent distribution facilities available to the authority, the authority shall make these facilities available to private providers of communications services in a nondiscriminatory basis unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.

2003, c. [643](#).

§15.2-5431.36. Liability of members or officers.

No member of any authority or officer of any governing body of locality creating such authority, or person or persons acting in their behalf, while acting within the scope of their authority shall be subject to any personal liability by reason of his carrying out of any of the powers expressly given in this chapter.

2003, c. [643](#).

§15.2-5431.37. Provisions of chapter cumulative; construction.

Neither this chapter nor anything herein contained shall be construed as a restriction or limitation upon any powers which an authority or governmental unit acting under the provisions of this chapter might otherwise have under any laws of the Commonwealth, but shall be construed as cumulative of any such powers. This chapter

shall be construed as complete and independent authority for the performance of each and every act and thing authorized by this chapter. No proceedings, notice or approval shall be required for the organization of an authority or the issuance of any bonds or any instrument as security therefor, except as herein provided, any other law to the contrary notwithstanding. However, nothing herein shall be construed to deprive the Commonwealth and its political subdivisions of their respective police powers over properties of an authority or to impair any power thereover of any official or agency of the Commonwealth and its political subdivisions that may be otherwise provided by law. Nothing contained in this chapter shall be deemed to authorize an authority to occupy or use any land, streets, buildings, structures or other property of any kind, owned or used by any political subdivision within its jurisdiction, or any public improvement or facility maintained by such political subdivision for the use of its inhabitants, without first obtaining the consent of the governing body thereof.

2003, c. [643](#).

Watercraft Dealer Licensing Act

§29.1-800. Short title.

The short title of this chapter is "Virginia Watercraft Dealer Licensing Act."

1988, c. 592.

§29.1-801. Definitions.

Unless the context otherwise requires, the following words and terms for the purpose of this chapter shall have the following meanings:

"Board" means the Board of Game and Inland Fisheries.

"Certificate of origin" means the document provided by the manufacturer of a new watercraft, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised new watercraft dealers, and the original purchaser not for resale.

"Department" means the Department of Game and Inland Fisheries.

"Director" means the Director of the Department.

"Distributor" means a person who sells or distributes new watercraft, pursuant to a written agreement with the manufacturer, to new watercraft dealers in this Commonwealth.

"Distributor branch" means a branch office maintained by a distributor for the sale of watercraft to watercraft dealers or for directing or supervising, in whole or in part, its representatives in this Commonwealth.

"Distributor representative" means a person employed by a distributor or wholesaler, or by a distributor branch, for the purpose of making or promoting the sale of watercraft dealt in by it or for supervising or contacting its dealers, prospective dealers, or representatives in this Commonwealth.

"Established place of business" means a salesroom in a permanent enclosed building or structure, either owned in fee or leased, at which a permanent business of bartering, trading and selling of watercraft will be carried on as such in good faith and at which place of business shall be kept and maintained the books, records, and files necessary to conduct the business at such place. "Established place of business" does not mean residences, tents, temporary stands, or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement, devoted principally to the business of a watercraft dealer, as defined in this section.

"Factory branch" means a branch office, maintained by a person for the sale of watercraft to distributors or for the sale of watercraft to watercraft dealers, or for directing or supervising, in whole or in part, its representatives in this Commonwealth.

"Factory representative" means a person employed by a person who manufactures or assembles watercraft or by a factory branch for the purpose of making or promoting the sale of its watercraft or for supervising or contacting its dealers, prospective dealers, or representatives in this Commonwealth.

"Franchise" means a written contract or agreement between two or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering, selling and servicing new watercraft manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor, the watercraft or its manufacturer or distributor.

"Manufacturer" means a person engaged in the business of constructing or assembling new watercraft.

"New watercraft" means any watercraft that (i) has not been previously sold except in good faith for the purpose of resale; (ii) has not been used as a rental or demonstration watercraft, or for the personal and business transportation of the manufacturer or dealer or any of their employees, for any use other than the limited use necessary in testing the watercraft prior to delivery to a customer; (iii) is transferred by a certificate of origin; and (iv) has the manufacturer's certification that it conforms to all applicable federal watercraft safety standards.

"New watercraft dealer" means a dealer in new watercraft or new and used watercraft.

"Person" means any natural person or individual, partnership, firm, association, corporation, or other entity.

"Retail installment sale" means and includes every sale of one or more watercraft to a buyer for his use and not for resale, in which the price thereof is payable in one or more installments over a period of time and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a conditional sale, bailment lease, chattel mortgage or otherwise.

"Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a watercraft to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to watercraft dealers or wholesalers other than to consumers or a sale to one who intends to resell.

"Used watercraft" means any watercraft other than a new watercraft as defined in this section.

"Used watercraft dealer" means a dealer in used watercraft that does not deal in new watercraft.

"Watercraft" means the same as that term is defined in § [29.1-733.2](#) except that (i) United States naval watercraft, (ii) watercraft that have a valid marine document issued by the United States Coast Guard other than recreational watercraft under 70 feet in length, and (iii) watercraft documented outside the United States are not included in such definition for purposes of this chapter.

"Watercraft dealer" means any person that:

1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise howsoever, or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in, new watercraft or new and used watercraft or used watercraft alone whether or not such watercraft are owned by such person;
2. Is engaged, wholly or in part, in the business of selling new watercraft or new and used watercraft, or used watercraft only, whether or not such watercraft are owned by such person; or
3. Sells, offers to sell, displays, or permits the display for sale of two or more watercraft within any 12 consecutive months.

For the purpose of this chapter, "watercraft dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, conservators, or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as such employees;
2. Public officers, their deputies, assistants, or employees, while performing their official duties;
3. Persons, other than corporations or other business entities primarily engaged in the leasing or renting of watercraft to others, (i) when selling or offering such watercraft for sale at retail or (ii) disposing of watercraft acquired for their own use and actually so used, when the same shall have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter;
4. Any corporation duly chartered or authorized to do a banking or trust business under the authority of the laws of this Commonwealth, or the United States, that may have received title to a watercraft in the normal course of its business by reason of a foreclosure, other taking, repossession or voluntary reconveyance to said corporation arising or occurring as a result of any loan secured by a lien on said watercraft;
5. An employee of an organization arranging for the purchase or lease by the organization of watercraft for use in the organization's business;

6. Any person who permits the operation of a watercraft show or permits the display of watercraft for sale by any watercraft dealer licensed under this chapter; or

7. An insurance company licensed or otherwise authorized to do business in this Commonwealth that sells or disposes of watercraft under a contract with its insured and in the regular course of its business.

"Watercraft demonstrator" means any person who is employed or contracted by a watercraft dealer to demonstrate watercraft to prospective buyers.

"Watercraft salesman" or "salesman" means any person who is employed as a salesman by, or has an agreement with, a watercraft dealer to sell or exchange watercraft.

"Watercraft show" means a display of watercraft to the general public at a location other than a dealer's location licensed under this chapter where such watercraft may be offered for sale or exchange during or as part of the display.

1988, c. 592; 1989, c. 140; 1997, c. [801](#); 1998, c. [515](#); 2013, c. [787](#).

§29.1-802. General powers of Board.

The Board shall promote the interest of the retail buyers of watercraft.

The Board may prevent unfair methods of competition and unfair or deceptive acts or practices.

1988, c. 592.

§29.1-803. Powers with respect to hearings, legal proceedings, witnesses, etc.

The Director may, in hearings arising under this chapter, determine the place in the Commonwealth where they shall be held; subpoena witnesses; take depositions of witnesses residing without the Commonwealth in the manner provided for in civil actions in courts of record; pay such witnesses the fees and mileage for their attendance as is provided for witnesses in civil actions in courts of record; and administer oaths.

1988, c. 592.

§29.1-804. Suit to enjoin violations.

The Director may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this chapter, in addition to any other remedy, bring action in the name of the Commonwealth against such person and any other persons concerned or in any other way participating in, or about to participate

in, practices or acts so in violation, to enjoin such person and such other persons from continuing the same.

1988, c. 592.

§29.1-805. Regulations.

The Board may make such regulations requiring persons licensed under this chapter to keep and maintain records reasonably required for the enforcement of this chapter, and such other regulations, not inconsistent with the provisions of this chapter, as it shall deem necessary or proper for the effective administration and enforcement of this chapter. A copy of such regulations shall be mailed to each watercraft dealer licensee not less than ten days prior to the effective date of such regulations.

1988, c. 592.

§29.1-806. Examination or audit of licensee; complaints; costs.

A. The Director may inspect the pertinent books, records, letters and contracts of a licensee relating to any written complaint for a violation of this chapter made to him against such licensee. If such licensee is found to have violated this chapter or any lawful order of the Director, the actual cost of such examination shall be paid by such licensee so examined within thirty days after demand therefor by the Director. The Director may maintain an action for the recovery of such costs in any court of competent jurisdiction.

B. No licensee shall be subject to examination or audit by the Director except as provided in this section.

1988, c. 592.

§29.1-807. Penalties.

Any person violating any of the provisions of this chapter shall be guilty of a Class 3 misdemeanor.

1988, c. 592.

§29.1-808. Licenses required.

It is unlawful for any person to engage in business in this Commonwealth as a new watercraft dealer, used watercraft dealer, watercraft salesman, watercraft demonstrator, manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative without first obtaining a license as provided in this chapter. If any watercraft dealer acts as a watercraft salesman, he shall obtain a watercraft

salesman's license in addition to a watercraft dealer's license. Any watercraft salesman who acts as a watercraft demonstrator shall not be required to obtain an additional license as a watercraft demonstrator. The offering or granting of a watercraft dealer franchise in this Commonwealth shall be deemed the engaging in business in this Commonwealth for purposes of this section, and no new watercraft may be sold or offered for sale in this Commonwealth unless the franchisor of watercraft dealer franchises for that line-make in this Commonwealth (whether such franchisor be a manufacturer, factory branch, distributor, distributor branch, or otherwise) is licensed under this chapter. In the event a license issued under this chapter to a franchisor of watercraft dealer franchises shall be suspended or revoked or shall not be renewed, nothing in this section shall be deemed to prevent the sale of any new watercraft of such franchisor's line-make, manufactured in or brought into this Commonwealth for sale prior to the suspension, revocation or expiration of the license.

1988, c. 592; 1998, c. [515](#).

§29.1-808.1. Boating safety education required.

It shall be unlawful for any watercraft salesman or watercraft demonstrator to engage in business in this Commonwealth as a watercraft salesman or watercraft demonstrator without first (i) completing successfully a basic boating safety education course approved by the Director or (ii) by December 31, 1998, passing a test approved by the Director; however, any watercraft salesman or demonstrator licensed after December 31, 1998, shall have a period of sixty days from the issuance of his license in which to complete the approved course.

1998, c. [515](#).

§29.1-809. Application for license.

A. Application for license shall be made to the Director at such time and in such form and shall contain such information as the Director shall require. The application shall be accompanied by the required fee. The application shall be accompanied by evidence, that the Director deems proper, showing that the applicant currently holds a valid watercraft titling tax collection certificate, a federal business identification number, a local business license and a dealer certificate of numbers issued by the Department.

B. The Director shall require in such application, or otherwise, information relating to the matters set forth in § [29.1-819](#) as grounds for the refusing of licenses and to other pertinent matters requisite for the safeguarding of the public interest in the

locality in which the applicant proposes to engage in business. If the applicant is a dealer in new watercraft with factory warranties, he shall also include with his application a copy of a current service agreement with the manufacturer or with the distributor, requiring the applicant to perform within a reasonable distance of his established place of business, the service, repair and replacement work required of the manufacturer or distributor by such watercraft warranty. All of this information shall be considered by the Director in determining the fitness of the applicant to engage in the business for which he seeks a license.

1988, c. 592.

§29.1-810. Bond of dealer; right of action for fraudulent acts.

A. Before any watercraft dealer's license shall be issued by the Director to any applicant, such applicant shall procure and file with the Director a good and sufficient bond in the amount of \$5,000 with corporate surety duly licensed to do business within the Commonwealth, in such form as approved by the Attorney General and conditioned that the applicant shall not practice fraud, make any fraudulent representation or violate any of the provisions of this chapter in the conduct of the business for which he is licensed. The Director may suspend the dealer's license without a hearing for such period as the dealer does not have a good and sufficient bond on file with the Director. Such suspension shall end when the bond is delivered to the Department.

B. If any person shall suffer any loss or damage by reason of any fraud practiced on him or fraudulent representation made to him by a licensed watercraft dealer or one of such dealer's salesmen acting for the dealer or within the scope of the employment of such salesman, or shall suffer any loss or damage by reason of the violation by such dealer or salesman of any of the provisions of this chapter, such person shall have a right of action against such dealer and the sureties upon his bond. Such person may recover such damages, as a court or jury may assess against such dealer as a proximate result of such fraud or fraudulent misrepresentation, from such surety who shall be subrogated to the rights of such person against such dealer.

1988, c. 592.

§29.1-811. Issuance, expiration and renewal of dealers' certificates of license.

All dealer certificates of license shall be issued for a period of twelve consecutive months except, at the discretion of the Director, the periods may be adjusted as is necessary to distribute the certificates as equally as practicable on a monthly basis.

The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every dealer certificate of license shall be renewed annually upon application by the owner and by payment of fees required by law, and such renewal shall take effect on the first day of the succeeding month.

1988, c. 592.

§29.1-812. Supplemental licenses.

A. Subject to the provisions of § [29.1-808](#), each place of business, operated or proposed to be operated by the licensee, that is not contiguous to other premises for which a license is issued, shall be required to obtain a supplemental license.

B. A permanent supplemental license shall be required for premises more than twenty-five yards from a principal place of business.

C. A temporary supplemental license shall be required to display for sale or sell watercraft at a show, and may be issued for a period not to exceed fourteen days. The temporary supplemental license shall be conspicuously displayed at all premises.

D. An application for a permanent or temporary supplemental license shall specify the location to be occupied by the licensee in conducting such business.

1988, c. 592; 1989, c. 206; 1992, c. 26 .

§29.1-813. License fees; additional to other licenses and fees required by law.

A. The fee for each license year or part thereof shall be as follows:

1. For watercraft dealers, manufacturers, factory branches, distributors, distributor branches and wholesalers, seventy-five dollars for each principal place of business, plus twenty-five dollars for a supplemental license for each lot more than twenty-five yards distant from a principal place of business.

2. For each temporary supplemental license, twenty-five dollars.

3. For watercraft salesmen or watercraft demonstrators, fifteen dollars.

4. For factory representatives, distributor representatives, or distributor branch representatives, fifteen dollars.

B. The licenses and fees required by this chapter are in addition to licenses, taxes and fees imposed by other provisions of law. Nothing contained in this section or in any other section of this chapter shall be construed as exempting any person, firm or corporation from any license, tax or fee imposed by any other provision of law.

1988, c. 592; 1989, c. 206; 1998, c. [515](#).

§29.1-814. Collection of license fees; appropriation; payments from fund.

All licensing fees shall be collected by the Director as provided in this chapter and by him shall be paid into the state treasury and credited to the Game Protection Fund and accounted for as a separate part known as the Motorboat and Water Safety Fund for the purpose of administering, enforcing and effectuating the purposes of this chapter.

1988, c. 592.

§29.1-815. Locations to be specified, etc.; display of license; change of location.

The licenses of new watercraft dealers, used watercraft dealers, manufacturers, factory branches, distributors and distributor branches shall specify the location of each place of business or branch or other location occupied or to be occupied by the licensee in conducting his business as such. The license or supplemental license issued shall be conspicuously displayed on each of such premises. In the event any such location is changed, the Director shall endorse the change of location on the license, without charge if the new location is within the same political subdivision. A change in location to another political subdivision shall require a new license.

1988, c. 592.

§29.1-816. Advertisement.

Unless the watercraft dealer is clearly identified by name, whenever any licensee places an advertisement in any newspaper or publication, the abbreviations "VA DLR," denoting a Virginia licensed dealer, shall appear therein.

1988, c. 592; 1995, c. [376](#).

§29.1-817. Lists of licensed salesmen.

Each dealer shall keep a current list of his licensed salesmen, showing names, addresses and serial numbers of their licenses, posted in a conspicuous place in each place of business.

1988, c. 592.

§29.1-818. Licenses of salesmen, etc., to be carried, etc.; change of employer.

Every watercraft dealer, watercraft salesman, watercraft demonstrator, factory representative and distributor representative shall carry his license when engaged in his business and shall display the same upon request. The license shall name his

employer and, in the event of a change of employer, he shall immediately mail his license to the Director, who shall endorse such change on the license without a charge.

1988, c. 592; 1998, c. [515](#).

§29.1-819. Grounds for denying, suspending or revoking licenses.

A license may be denied, suspended or revoked on any one or more of the following grounds:

1. Material misstatement in application for license.
2. Willful failure to comply with any provision of this chapter or any lawful regulation promulgated by the Board under this chapter.
3. Being a watercraft dealer, failure to have an established place of business as defined in § [29.1-801](#).
4. Willfully defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's business.
5. Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the statutes of this Commonwealth with respect to the retaking of watercraft under retail installment contracts and the redemption and resale of such watercraft.
6. Having used unfair methods of competition or unfair deceptive acts or practices.
7. Knowingly advertising by any means any assertion, representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the business licensed or for which a license is sought.
8. Having been convicted of any fraudulent act in connection with the business of selling watercraft.
9. Having been convicted of a crime involving the acquisition or transference of title to a watercraft.
10. Willfully retaining title to a watercraft that has not been completely and legally assigned.
11. Failure to submit to the Director any application or fees collected for the Department on behalf of the buyer within thirty days of receipt.

1988, c. 592.

§29.1-820. Action upon applications; hearing upon denial; denial for failure to have established place of business.

A. The Director shall act upon all applications for a license within thirty days after receipt of all required applications, documents and fees by either granting or refusing the same. Any applicant denied a license shall, upon his written request filed within thirty days, be given a hearing at such time and place as determined by the Director or person designated by him. All such hearings shall be public and shall be held with reasonable promptness. The applicant may be represented by counsel.

B. Any applicant denied a license for failure to comply with the definition of an established place of business may not, nor shall anyone, apply for a license for such premises, for which a license was denied, until the expiration of sixty days from the date of the rejection of such application.

1988, c. 592.

§29.1-821. Suspension, revocation and refusal to renew licenses; notice and hearing.

Except as provided in § [29.1-810](#), no license shall be suspended or revoked, or renewal refused, until a written copy of the complaint made has been furnished to the licensee against whom the same is directed and a public hearing thereon has been had before the Director. At least ten days' written notice of the time and place of such hearing shall be given to the licensee by registered mail addressed to his last known post office address or as shown on his license or other record of information in possession of the Director. At any such hearing the licensee shall have the right to be heard personally or by counsel. After the hearing, the Director shall have power to suspend, revoke or refuse to renew, the license in question. Immediate notice of any such action shall be given to the licensee in the manner herein provided in the case of notices of hearing.

1988, c. 592.

§29.1-822. Acts of officers, directors, partners and salesmen.

If a licensee is a partnership or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the partnership or corporation, or any member in the case of a partnership, has committed any act or omitted any duty which would be cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his salesmen while acting as his agent, if such licensee approved

of or had knowledge of such acts or other similar acts and after such approval or knowledge retained the benefit, proceeds, profits or advantages accruing from such acts or otherwise ratified the acts.

1988, c. 592.

§29.1-823. Appeals from actions of the Director; generally.

Any person aggrieved by the action of the Director in refusing to grant or renew a license or in suspending or revoking a license, or by any other action of the Director which is alleged to be improper, unreasonable or unlawful under the provisions of this chapter is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

1988, c. 592.

§29.1-824. Appeals to Court of Appeals; bond.

Either party may appeal from the decision of the court to the Court of Appeals. Such appeals shall be taken and prosecuted in the same manner and with like effect as is provided by law in other cases appealed as a matter of right to the Court of Appeals.

1988, c. 592; 1996, c. [573](#).

§29.1-825. Equitable remedies not impaired.

The remedy at law provided by §§ [29.1-823](#) and [29.1-824](#) shall not in any manner impair the right to applicable equitable relief. Such right to equitable relief is hereby preserved, notwithstanding the provisions of such sections.

1988, c. 592.

§29.1-826. Installment sales.

A. Every retail installment sale shall be evidenced by an instrument in writing, which shall contain all the agreements of the parties, including a provision stating whether or not such sale is contingent upon financing on terms which are satisfactory to the parties and shall be signed by the buyer. The purchaser of an installment sales contract shall not be charged with notice of the agreement of the parties relative to financing upon the purchase of a retail installment sales contract signed by the borrower which states no such contingency.

B. Prior to or at the time of delivery of the watercraft the seller shall deliver to the buyer a written statement describing clearly the watercraft sold to the buyer.

Whenever any charge for a summary of insurance coverage appears on such

statement, and the insurance coverage effected or to be effected thereunder does not include a policy of watercraft liability insurance, the seller or his assignee shall stamp or mark upon the face of such writing in red letters no smaller than eighteen point type the following words: "No Liability Insurance Included." The Director may determine the form of such statement to be included therein. In the event that a policy of insurance of any kind is purchased at the time of the sale of a watercraft the seller shall deliver to the purchaser the policy of insurance, or a copy of the policy, within a reasonable time.

1988, c. 592.

§29.1-827. Prohibited solicitation and compensation.

It shall be unlawful for any watercraft dealer or salesman licensed under the provisions of this chapter, directly or indirectly, to solicit the sale of a watercraft through a pecuniarily interested person. It shall be unlawful for such dealer or salesman to pay, or cause to be paid, any commission or compensation in any form whatsoever to any person in connection with the sale of a watercraft, unless such person is duly licensed as a salesman in the employ of such dealer.

1988, c. 592.

§29.1-828. Definitions.

As used in this article, unless the context requires a different meaning:

"Dealer" means any person who (i) sells, solicits, or advertises the sale of new watercraft or engines for watercraft and (ii) is authorized by a manufacturer to provide warranty services.

"Manufacturer" means any person, partnership, firm, association, or corporation that manufactures or assembles new watercraft or engines for watercraft, or imports for distribution new watercraft or engines for watercraft.

"Reasonable attorney's fees" includes the costs directly incurred in or in connection with litigation instituted under this section. Such fees shall not be determined by the amount of the recovery on behalf of the manufacturer or dealer.

"Watercraft" means any vessel used or capable of being used for navigation or flotation on or through the water.

1997, c. [13](#).

§29.1-829. Warranty work; dealers' requirements; performance of warranty work; disapproval of claims; indemnification.

A. If a manufacturer requires or permits a dealer to provide parts or to perform labor to satisfy a warranty created by the manufacturer, the manufacturer shall:

1. Properly and promptly fulfill its warranty obligations; and
2. Fairly compensate the dealer for the work and services the dealer is required to perform and for other expenses incurred to comply with a manufacturer's warranty. A manufacturer may not pay a dealer a labor rate for warranty work that is less than the lower amount that is charged by the dealer and that is charged in the relevant marketplace to retail customers for non-warranty work of the same kind by similar technicians. However, if the manufacturer or the distributor has in effect a warranty program in which the dealer can comply with reasonable and objective criteria and, as a result, obtain 100 percent of the dealer's retail labor rate or the prevailing retail labor rate in the relevant marketplace, the labor rate for warranty work shall be as the terms of the program require, but shall not be less than seventy percent of the dealer's labor rate or the prevailing retail labor rate in the relevant marketplace.

B. To be entitled to compensation from a manufacturer under this subsection, the dealer shall:

1. Employ watercraft and engine parts expressly authorized by the manufacturer for warranty work;
2. Retain a copy of the manufacturer's then current service literature, if any;
3. Record the warranty work with the manufacturer within forty-five days of completing the warranty work;
4. Complete and maintain for inspection by the manufacturer, a manufacturer's delivery checklist signed by the customer for each watercraft or watercraft engine sold by the dealer;
5. Promptly handle all warranty work in accordance with industry standards regardless of the location where the watercraft or watercraft engine was sold; and
6. Submit warranty registration cards to the manufacturers on a timely basis.

C. To ensure that warranty work is performed in accordance with industry standards, the dealer shall:

1. Take reasonable steps to ensure that the warranty work is completed by technicians who have received training in servicing the watercraft or engines for watercraft manufactured, imported, or distributed by the manufacturer; and

2. Maintain technician training and development programs authorized or provided by the manufacturer as provided in the dealer's agreement with the manufacturer.

D. A dealer shall not charge a consumer for labor or parts on warranty work when the warranty claim has been paid by the manufacturer.

E. All claims by a dealer for warranty work shall be approved or disapproved and paid, if due, within a reasonable time, but no longer than forty-five days from the date on which the manufacturer receives a properly completed claim form containing all required information.

F. If a manufacturer disapproves a claim, the manufacturer shall provide the dealer with written notice of disapproval within forty-five days from the date on which the manufacturer receives a properly completed claim form containing all required information. The notice of disapproval shall contain the specific reasons for disapproval.

G. A dealer shall hold harmless the manufacturer for any financial injuries or other damages suffered by the manufacturer and solely as a result of the negligence of the dealer in performing warranty work, including reasonable attorney's fees. A manufacturer shall hold harmless the dealer for any financial injuries or other damages suffered by the dealer solely as a result of the negligence of the manufacturer related to the manufacture or design of the watercraft, including reasonable attorney's fees.

H. If a dealer brings a legal action to collect a disapproved claim and is successful in the action, the court shall award the dealer the cost of the action and reasonable attorney's fees.

I. The manufacturer shall compensate the dealer for the cost of parts used in the warranty repair and shipping of the parts to and from the manufacturer, plus a reasonable profit, not less than fifteen percent, on authorized parts stocked by the dealer.

J. Nothing in this article shall inhibit or restrain any manufacturer or dealer from exceeding the minimum requirements of this article.

1997, c. [13](#).

Williamsburg Area Transit Authority

§15.2-6800. Repealed.

Repealed by Acts 2015, c. [256](#), cl. 9.

Wine Franchise Act

§4.1-400. Construction and purpose.

This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

The underlying purposes and policies of the chapter are:

1. To promote the interests of the parties and the public in fair business relations between wine wholesalers and wineries, and in the continuation of wine wholesalerships on a fair basis;
2. To preserve and protect the existing three-tier system for the distribution of wine, which system is deemed material to the proper regulation by the Board of the distribution of alcoholic beverages;
3. To prohibit unfair treatment of wine wholesalers by wineries, promote compliance with valid franchise agreements, and define certain rights and remedies of wineries in regard to cancellation of franchise agreements with wholesalers;
4. To establish conditions for creation and continuation of all wholesale wine distributorships, including original agreements and any renewals or amendments thereto, to the full extent consistent with the laws and Constitutions of the Commonwealth and the United States; and
5. To provide for a system of designation and registration of franchise agreements between wineries and wholesalers with the Board as an aid to Board regulation of the distribution of wine by wholesalers.

Code 1950, § 4-118.22; 1985, c. 542, § 4-118.42; 1989, c. 10; 1993, c. 866 .

§4.1-401. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a winery and wine wholesaler pursuant to which the wholesaler has been authorized to distribute one or more of the winery's brands of wine. The doing or accomplishment of any of the following acts

shall constitute prima facie evidence of an agreement within the meaning of this definition:

1. The shipment, preparation for shipment or acceptance of any order by a winery for any wine to a wine wholesaler within the Commonwealth.
2. The payment by a wine wholesaler and the acceptance of payment by any winery for the shipment of an order of wine intended for sale in the Commonwealth.

"Brand" means any word, name, group of letters, symbol or combination thereof adopted and used by a winery to identify a specific wine product and to distinguish that product from other wine produced or marketed by that winery or other wineries. The use of general corporate logos or symbols or the use of advertising messages, whether appearing on the product packaging or elsewhere, shall not be considered to be a brand, brand extension, or part thereof as these terms are used in this chapter.

"Brand extension" and "extension of a brand" mean any brand which incorporates all or a substantial part of the unique features of a preexisting brand of the same winery and which relies to a significant extent on the good will associated with such preexisting brand.

"Dual distributorships" means the existence of agreements between a single winery and more than one wholesaler, each selling a different brand, in a given territory as the result of a purchase of another winery.

"Nonsurviving winery" means any winery which is purchased by another winery as provided in § [4.1-405](#) and, as a result, ceases to exist as an independent legal entity.

"Person" means a natural person, corporation, partnership, trust, agency or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. Person also includes heirs, assigns, personal representatives and conservators.

"Purchase" includes, but is not limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

"Surviving winery" means the winery which purchases a nonsurviving winery as provided in § [4.1-405](#).

"Territory" or "sales territory" means the area of primary sales responsibility within the Commonwealth expressly or implicitly designated by any agreement between any wine wholesaler and winery for the brand or brands of any winery.

"Wine wholesaler" means any wholesale wine licensee offering wine for sale or resale to retailers or other wine wholesalers without regard to whether the business of the person is conducted under the terms of an agreement with a licensed winery.

"Winery" means every person, including any authorized representative of such person pursuant to § [4.1-218](#), which enters into an agreement with any Virginia wholesale wine licensee and (i) is licensed as a winery or is licensed as a Virginia farm winery, (ii) is licensed as a wine importer and is not simultaneously licensed as a wine wholesaler, (iii) manufactures or sells any wine products, whether licensed in the Commonwealth or not, or (iv) without regard to whether such person is licensed in the Commonwealth, has title to any wine products, excluding Virginia wholesale licensees and retail licensees, and has the manufacturer's authorization to market such products under its own brand or the manufacturer's brand.

Code 1950, §§ 4-118.21, 4-118.23; 1985, c. 542, § 4-118.43; 1986, c. 102; 1989, c. 10; 1991, c. 628; 1993, c. 866; 1997, c. [801](#).

§4.1-402. Applicability.

This chapter shall apply to all agreements in effect on or after February 18, 1989, and any renewal or amendment of such agreements. For the purposes of this chapter, an agreement shall be deemed to be in effect or renewed or continued in effect when any of the following acts occur after February 18, 1989:

1. The shipment, preparation for shipment or acceptance of any order by a winery or its agents for any wine to a wine wholesaler within the Commonwealth; and
2. The payment by a wine wholesaler and the acceptance of payment by any winery or its agents for the shipment of an order of wine intended for sale in the Commonwealth.

Code 1950, § 4-118.38; 1985, c. 542, § 4-118.58; 1989, c. 10; 1993, c. 866 .

§4.1-403. No inducement or coercion.

No winery shall:

1. Induce or coerce, or attempt to induce or coerce, any wine wholesaler to accept delivery of any wine or any other commodity which has not been ordered by the wine wholesaler.
2. Induce or coerce, or attempt to induce or coerce, any wine wholesaler to do any illegal act by any means including, but not limited to, threatening to amend, cancel,

terminate, or refuse to renew any agreement existing between a winery and wine wholesaler.

3. Require a wine wholesaler to assent to any condition, stipulation or provision limiting the wholesaler in his right to sell the product of any other winery anywhere in the Commonwealth.

Code 1950, § 4-118.24; 1985, c. 542, § 4-118.44; 1989, c. 10; 1993, c. 866 .

§4.1-404. Primary area of responsibility.

Each winery which enters into an agreement with a wine wholesaler shall designate a sales territory as the primary area of responsibility of that wholesaler which is applicable to the agreement. The term "primary area of responsibility" shall not be construed as restricting sales or sales efforts by a wine wholesaler exclusively to retailers located within the designated sales territory, and any agreement to the contrary shall be void. No winery shall enter into any agreement with more than one wholesaler for the purpose of establishing more than one agreement for its brands of wine in any territory. However, the existence of more than one such agreement as a result of a sale of a winery as contemplated by § [4.1-405](#) shall not be prohibited. Notwithstanding any other provision in this chapter, a winery may enter into agreements with more than one wholesaler in a sales territory for new brands which are not clearly extensions of existing brands. Territories served by a wine wholesaler on February 18, 1989, shall be deemed designated sales territories within the meaning of this section. Each winery shall notify the Board in writing of all designations of sales territories, the identity of the wholesaler appointed to serve such territory and a statement of any variations which exist in the designated territory in regard to a particular brand. Redesignations shall be reported to the Board within thirty days.

Code 1950, § 4-118.25; 1985, c. 542, § 4-118.45; 1989, c. 10; 1993, c. 866 .

§4.1-405. Sale of winery.

A. Except for discontinuance of a brand or for good cause as provided in § [4.1-406](#), the purchaser of a winery shall become obligated to all of the terms and conditions of the selling winery's agreements with wholesalers in effect on the date of purchase. The purchaser of a brand from a winery shall become obligated to all of the terms and conditions of the selling winery's agreements with wholesalers concerning that brand. Whenever such a purchase of a brand results in the creation of a dual distributorship, the provisions of subdivisions 1 and 2 of subsection B will determine the distribution rights to such brand or any extension thereof. For the limited

purpose of making such determination, the winery selling the brand shall be a non-surviving winery and the purchaser shall be a surviving winery.

B. For purposes of this section, when a purchase of a winery by or on behalf of another winery causes the selling winery to cease to exist as an independent legal entity, the selling winery shall be regarded as a nonsurviving winery, and the winery on whose behalf the purchase was made shall be regarded as a surviving winery. In any case in which such a purchase of a winery by or on behalf of another winery has created or will create a dual distributorship, the following rules shall apply in order to determine the allocation of any brands which are first marketed in the Commonwealth by the surviving winery after February 18, 1989:

1. If the surviving winery distributes in the Commonwealth brands of the non-surviving winery which that winery marketed anywhere prior to the purchase, these brands shall be distributed through any wholesalers who were distributors in the Commonwealth for the nonsurviving winery. If the nonsurviving winery had no distributors in the Commonwealth, then the surviving winery's brands, as well as the brands of the surviving winery which were marketed anywhere prior to the purchase, shall be distributed through those wine wholesalers who were wholesalers of the surviving winery prior to the purchase.
2. If the surviving winery decides to market in the Commonwealth a new brand which was not marketed anywhere prior to the purchase, but which is clearly an extension of a brand which did exist prior to the purchase, the new brand shall be distributed through those wholesalers who distributed the brand of which the new brand is an extension.
3. If the surviving winery decides to introduce in the Commonwealth a new brand which was not marketed anywhere prior to the purchase and which is not a brand extension, the new brand may be distributed through any distributor.

Code 1950, § 4-118.26; 1985, c. 542, § 4-118.46; 1989, c. 10; 1993, c. 866 .

§4.1-406. Cancellation.

Notwithstanding the terms, provisions or conditions of any agreement, no winery shall unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a wholesaler to resign from an agreement, unless the winery has first complied with § [4.1-407](#) and good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuance or causing a resignation. Good

cause shall not include the sale or purchase of a winery. Good cause shall include, but is not limited to the following:

1. Revocation of the wholesaler's license to do business in the Commonwealth;
2. Bankruptcy or receivership of the wholesaler;
3. Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler, other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or
4. Failure by the wholesaler to substantially comply, without reasonable cause or justification, with any reasonable and material requirement imposed upon him in writing by the winery including, but not limited to, a substantial failure by a wine wholesaler to (i) maintain a sales volume or trend of his winery's brand or brands comparable to that of other distributors of that brand in the Commonwealth similarly situated or (ii) render services comparable in quality, quantity or volume to the services rendered by other wholesalers of the same brand or brands within the Commonwealth similarly situated. In any determination as to whether a wholesaler has failed to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the winery, consideration shall be given to the relative size, population, geographical location, number of retail outlets and demand for the products applicable to the territory of the wholesaler in question and to comparable territories.

Nothing in this section shall be construed to prohibit a winery from proposing or effecting an amendment to a contract with a wine wholesaler in the Commonwealth provided that such amendment is not inconsistent with this chapter.

Good cause shall not be construed to exist without a finding of a material deficiency for which the wholesaler is responsible in any case in which good cause is alleged to exist based on circumstances not specifically set forth in subdivisions 1 through 4 of this section.

Code 1950, § 4-118.27; 1985, c. 542, § 4-118.47; 1987, c. 246; 1989, c. 10; 1993, c. 866; 1996, c. [3](#).

§4.1-407. Notice of intent to terminate.

A. Except as provided in subsection F, a winery shall provide a wholesaler at least ninety days' prior written notice of any intention to amend, terminate, cancel or not renew any agreement. The notice, a copy of which shall be mailed at the same time

to the Board, shall state all the reasons for the intended amendment, termination, cancellation or nonrenewal. After providing such notice, a winery may immediately apply to the Board for a determination that it is likely to incur substantial hardship if required to comply with the ninety-day notice requirement. If the Board makes such a determination, the ninety-day notice requirement shall be reduced to thirty days. In this event, the thirty-day notice period shall be included in the sixty-day opportunity to cure period provided in subsection B.

B. Where the reason relates to a condition which may be rectified by action of the wholesaler, he shall have sixty days in which to take such action and, within the sixty-day period, shall give written notice to the winery if and when such action is taken. A copy of the notice shall be mailed at the same time to the Board. If such condition has been rectified by action of the wholesaler, then the proposed amendment, termination, cancellation or nonrenewal shall be void and without legal effect. However, where the winery contends that action on the part of the wholesaler has not rectified one or more of such conditions, the winery must within fifteen days after the expiration of the sixty-day period request a hearing before the Board to determine if the condition has been rectified by action of the wholesaler.

C. Where the reason relates to a condition which may not be rectified by the wholesaler within the sixty-day period, the wholesaler may request a hearing before the Board to determine if there is good cause for the amendment, termination, cancellation or nonrenewal of the agreement.

D. Upon request in writing within the ninety-day period provided in subsection A from such winery or wholesaler for a hearing, the Board shall, after notice and hearing, determine if the action of the wholesaler has rectified the condition or, as the case may be, if good cause exists for the amendment, termination, cancellation or nonrenewal of the agreement.

E. In any proceeding brought pursuant to this section in which the existence of good cause is an issue, the winery shall have the burden of proving the existence of good cause. Where a petition is made to the Board for a determination, the agreement in question shall continue in effect pending the Board's decision and any judicial review thereof, except in any case in which the Board makes a finding that there is good cause, as defined in § [4.1-406](#), for the amendment, termination, cancellation, or nonrenewal, in which case the winery may, unless otherwise ordered by a court of record, discontinue the agreement in question. However, where a petition is made to the

Board after the agreement has been terminated in accordance with the procedures set forth in this section, the filing of the petition shall not cause the terminated agreement to be reinstated unless the terminated wholesaler's failure to petition in a timely manner was based upon reasonable reliance on representation or other inducements made by the winery.

F. No notice shall be required and an agreement may be immediately amended, terminated, cancelled or allowed to expire if the reason for the amendment, termination, cancellation or nonrenewal is:

1. The bankruptcy or receivership of the wholesaler;
2. An assignment for the benefit of creditors or similar disposition of the assets of the business, other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or
3. Revocation of the wholesaler's license.

Code 1950, § 4-118.28; 1985, c. 542, § 4-118.48; 1989, c. 10; 1993, c. 866; 1997, c. [183](#).

§4.1-408. Transfer of business.

A. No winery shall unreasonably withhold or delay consent to any transfer of the wholesaler's business or transfer of the stock or other interest in the wholesalership, whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of its wholesalers. Whenever a transfer of a wholesaler's business occurs, the purchaser shall assume all the obligations imposed on and succeed to all the rights held by the selling wholesaler by virtue of any agreement between the selling wholesaler and one or more wineries entered into prior to the transfer.

B. Notwithstanding any provision in subsection A, no winery shall withhold consent to, or in any manner retain a right of prior approval of, the transfer of the wholesaler's business to a member or members of the wholesaler's family. However, subsequent to such transfer, the rights and obligations of the wholesalership and its owners shall in all respects be governed by the provisions of this chapter. As used in this subsection, "family" means the wholesaler's spouse, parents, siblings, children, stepchildren, and lineal descendants, including those by adoption.

Code 1950, § 4-118.29; 1985, c. 542, § 4-118.49; 1989, c. 10; 1993, c. 866 .

§4.1-409. Remedies.

A. In addition to any other sanctions which the Board is empowered by law to impose, it may order that any act or practice constituting a violation of this chapter be ceased and, where necessary, corrective measures implemented. In addition, in any case in which a winery is found to have attempted or accomplished an amendment, termination, cancellation, or refusal to continue or renew an agreement without good cause as defined in § [4.1-406](#), the Board shall, upon the request of the wholesaler involved, enter an order requiring that (i) the agreement remain in effect or be reinstated or (ii) the winery pay the wholesaler reasonable compensation for the value of this agreement as determined pursuant to subsection B. Reasonable compensation shall include, but is not limited to, the following:

1. The fair market value of the assets used by the wholesaler specifically for the purpose of distributing the winery's products;
2. The cost of the wholesaler's inventory of the winery's products calculated as the sum of the net price paid by the wholesaler for the inventory;
3. The amount of any taxes paid by the wholesaler in connection with purchasing the inventory;
4. The cost of transporting the inventory from the winery to the wholesaler's warehouse, plus any handling costs; and
5. The goodwill of the wholesaler's business representing a value over and above the fair market value of the foregoing tangible assets.

B. In the event the winery and the wholesaler are unable to agree on the reasonable compensation to be paid for the value of the agreement, the matter shall be submitted to a neutral arbitrator to be selected by the parties, or if they cannot agree, a person qualified by experience to appraise the value of existing businesses shall be appointed arbitrator by the Secretary of the Board. The decision of the arbitrator shall be rendered within ninety days from the time the matter is submitted to arbitration unless the Board, for good cause shown, allows for an extension of time not to exceed thirty days, or unless the parties agree to an extension of time. All of the costs of the arbitration shall be paid one-half by the wholesaler and one-half by the winery. By entering into an agreement, the parties are deemed to have agreed to arbitration as provided in this subsection and, further, that such arbitration shall be governed by the provisions of Chapter 21 (§ [8.01-577](#) et seq.) of Title 8.01.

C. In addition to the foregoing remedies, in any case in which a winery is found to have violated § [4.1-407](#), the Board may, upon request of the wholesaler involved, order the winery to compensate the wholesaler for any loss proximately resulting from such violation, including but not limited to lost profits. Such losses shall be determined in the manner provided in subsection B and shall be calculated from the date of the violation by the winery to the date the winery initiates remedial action pursuant to Board order.

Code 1950, § 4-118.30; 1985, c. 542, § 4-118.50; 1987, c. 246; 1989, c. 10; 1993, c. 866 .

§4.1-410. Board proceedings and appellate review.

A. The Board, upon petition by any interested party, or upon its own motion if it has reasonable grounds to believe a violation has or may have occurred, shall have the responsibility of determining whether a violation of any provision of this chapter has occurred. The Board may, if it finds that the winery or wine wholesaler has acted in bad faith in violating any provision of this chapter or in seeking relief pursuant to this chapter, award reasonable costs and attorneys' fees to the prevailing party.

B. All proceedings under this chapter and any judicial review thereof shall be held in accordance with the Virginia Administrative Process Act (§ [2.2-4000](#) et seq.). Notwithstanding the foregoing, the Board may adopt regulations pertaining to proceedings under this chapter, including regulations authorizing or requiring the issuance of subpoenas for the production of documents, subpoenas for the attendance of witnesses, requests for admissions, interrogatories, and depositions, not inconsistent with Part 4 of the Rules of the Supreme Court of Virginia.

C. In all proceedings under this chapter, the Board or the circuit court reviewing a Board order, for good cause, shall enter an order requiring that information relating to the sale, marketing, or manufacturing practices or processes of the winery or the wholesaler be filed with the Board or the court, as the case may be, in sealed envelopes and that the information contained therein remain available only to the winery and wholesaler on condition that such information will not be disclosed by the Board, the winery or the wholesaler, or their respective agents and employees. Upon conclusion of the proceedings under this chapter, information supplied shall be returned to the party furnishing it or, in the alternative, the Board or the court may order that such information be sealed to be opened only by order of the Board or the court.

Code 1950, § 4-118.31; 1985, c. 542, § 4-118.51; 1987, c. 139; 1989, c. 10; 1993, c. 866 .

§4.1-411. Price of product.

No winery, whether by means of a term or condition of an agreement or otherwise, shall fix or maintain the prices at which the wholesaler shall sell any wine.

Code 1950, § 4-118.32; 1985, c. 542, § 4-118.52; 1989, c. 10; 1993, c. 866 .

§4.1-412. Increase of prices.

No winery or wine importer shall increase the prices charged any wholesale wine licensee for wine except by written notice to the wholesaler signed by an authorized officer or agent of the winery or wine importer, which notice shall contain the amount and effective date of the increase. A copy of the notice shall be sent to the Board and shall be treated as confidential information, except in relation to enforcement proceedings for violation of this section. No increase shall take effect prior to thirty calendar days following the date on which the notice is postmarked. The Board may authorize such price increases to take effect with less than the aforesaid thirty-calendar-day notice if a winery or wine importer so requests and demonstrates good cause therefor.

Code 1950, § 4-118.33; 1985, c. 542, § 4-118.53; 1989, c. 10; 1993, c. 866 .

§4.1-413. Retaliatory action prohibited.

A winery shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the winery with the appropriate state or federal regulatory or judicial authority. Retaliatory action shall include, but is not limited to, refusal without good cause to continue the agreement, or a material reduction in the amount and quality of services or quality of products available to the wholesaler under the agreement.

Code 1950, § 4-118.34; 1985, c. 542, § 4-118.54; 1989, c. 10; 1993, c. 866 .

§4.1-414. Management.

No winery shall require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the winery for its wholesalers.

Code 1950, § 4-118.35; 1985, c. 542, § 4-118.55; 1989, c. 10; 1993, c. 866 .

§4.1-415. Discrimination prohibited.

No winery shall discriminate among its wholesalers in any business dealings including, but not limited to, the price of wine sold to the wholesaler, unless the classification among its wholesalers is based upon reasonable grounds.

Code 1950, § 4-118.36; 1985, c. 542, § 4-118.56; 1989, c. 10; 1993, c. 866 .

§4.1-416. Waiver prohibited; conflicts of laws.

A. No winery shall require any wholesaler to waive compliance with any provision of this chapter. Any contract or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance. Nothing in this chapter shall limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

B. Any contract between a winery and a wine wholesaler pursuant to which the wholesaler is to market the winery's products in the Commonwealth shall be governed by the laws of the Commonwealth as the place of performance, notwithstanding the fact that such contract may have been made in another state or the fact that such contract may provide that it is to be governed by the laws of another state.

Code 1950, § 4-118.37; 1985, c. 542, § 4-118.57; 1989, c. 10; 1993, c. 866 .

§4.1-417. Right of free association.

No winery or wholesaler shall restrict or inhibit the right of free association among wineries or wholesalers for any lawful purpose.

Code 1950, § 4-118.39; 1985, c. 542, § 4-118.59; 1989, c. 10; 1993, c. 866 .

§4.1-418. Reasonableness and good faith.

A. Every agreement entered into under this chapter shall impose on the parties the obligation to act in good faith.

B. This chapter shall impose on every term and provision of any agreement a requirement of reasonableness. Every term or provision shall be interpreted so that the requirements or obligations imposed therein are reasonable.

Code 1950, § 4-118.40; 1985, c. 542, § 4-118.60; 1989, c. 10; 1993, c. 866 .

Workforce Transition Act of 1995

§2.2-3200. Short title; purpose.

A. This chapter shall be known as the Workforce Transition Act of 1995.

B. The purpose of this chapter is to provide a transitional severance benefit, under the conditions specified, to eligible state employees who are involuntarily separated from their employment with the Commonwealth. "Involuntary separation" includes, but is not limited to, terminations and layoffs from employment with the Commonwealth, or being placed on leave without pay-layoff or equivalent status, due to budget reductions, agency reorganizations, workforce down-sizings, or other causes not related to the job performance or misconduct of the employee, but shall not include voluntary resignations. As used in this chapter, a "terminated employee" shall mean an employee who is involuntarily separated from employment with the Commonwealth.

1995, cc. [152](#), [811](#), § 2.1-116.20; 2001, c. [844](#).

§2.2-3201. Duties of Department of Human Resource Management and executive branch agencies to involuntarily separated employees.

A. Prior to terminating or placing on leave without pay-layoff or equivalent status any employee of an agency or institution in the executive branch of state government, the management of the agency or institution shall make every effort to place the employee in any vacant position within the agency for which the employee is qualified. If reemployment within the agency or institution is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary, the name of the employee shall be forwarded to the Department of Human Resource Management (the "Department").

B. Any preferential employment rights vested in the employee under the Commonwealth's layoff policy shall not be denied, abridged, or modified in any way by the Department. The Department shall coordinate the preferential hiring of the employee, at the same salary classification, in any agency or institution of the executive branch of state government. The Department shall also establish a program to assist employees in finding employment outside of state government.

C. If, as of the date the employee is terminated from employment or placed on leave without pay-layoff or equivalent status, reemployment within his agency or institution or any other agency or institution of the executive branch of state government is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary, then the employee shall be deemed to be involuntarily separated. If such

employee is otherwise eligible, he shall be entitled, under the conditions specified, to receive the transitional severance benefit conferred by this chapter.

D. The Department shall report all involuntary separations in the executive branch of state government to the Department of Planning and Budget, which shall make an appropriate reduction, pursuant to § [2.2-1501](#), in the terminating agency's maximum employment level in preparing its executive budget for the next session of the General Assembly.

1995, cc. [152](#), [811](#), § 2.1-116.21; 2000, cc. [66](#), [657](#); 2001, c. [844](#).

§2.2-3202. (Effective July 1, 2018) Eligibility for transitional severance benefit.

A. Any full-time employee of the Commonwealth (i) whose position is covered by the Virginia Personnel Act (§ [2.2-2900](#) et seq.), (ii) whose position is exempt from the Virginia Personnel Act pursuant to subdivisions 2, 4 (except those persons specified in subsection C of this section), 7, 15 or 16 of § [2.2-2905](#), (iii) who is employed by the State Corporation Commission, (iv) who is employed by the Virginia Workers' Compensation Commission, (v) who is employed by the Virginia Retirement System, (vi) who is employed by the Virginia Lottery, (vii) who is employed by the Medical College of Virginia Hospitals or the University of Virginia Medical Center, (viii) who is employed at a state educational institution as faculty (including, but not limited to, presidents and teaching and research faculty) as defined in the Consolidated Salary Authorization for Faculty Positions in Institutions of Higher Education, 1994-95, or (ix) whose position is exempt from the Virginia Personnel Act pursuant to subdivision 3, [20](#), [23](#), or 28 of § [2.2-2905](#); and (a) for whom reemployment with the Commonwealth is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary and (b) whose involuntary separation was due to causes other than job performance or misconduct, shall be eligible, under the conditions specified, for the transitional severance benefit conferred by this chapter. The date of involuntary separation shall mean the date an employee was terminated from employment or placed on leave without pay-layoff or equivalent status.

B. An otherwise eligible employee whose position is contingent upon project grants as defined in the Catalogue of Federal Domestic Assistance, shall not be eligible for the transitional severance benefit conferred by this chapter unless the funding source had agreed to assume all financial responsibility therefor in its written contract with the Commonwealth.

C. Members of the Judicial Retirement System (§ [51.1-300](#) et seq.) and officers elected by popular vote shall not be eligible for the transitional severance benefit conferred by this chapter.

D. Eligibility shall commence on the date of involuntary separation.

E. Persons authorized by § [2.2-106](#) or [51.1-124.22](#) to appoint a chief administrative officer or the administrative head of an agency shall adhere to the same criteria for eligibility for transitional severance benefits as is required for gubernatorial appointees pursuant to subsection A.

1995, cc. [152](#), [811](#), § 2.1-116.22; 2001, c. [844](#); 2002, c. [491](#); 2003, c. [782](#); 2006, cc. [813](#), [902](#); 2014, c. [225](#); 2017, cc. [359](#), [742](#).

§2.2-3202. (Effective until July 1, 2018) Eligibility for transitional severance benefit.

A. Any full-time employee of the Commonwealth (i) whose position is covered by the Virginia Personnel Act (§ [2.2-2900](#) et seq.), (ii) whose position is exempt from the Virginia Personnel Act pursuant to subdivisions 2, 4 (except those persons specified in subsection C of this section), 7, 15 or 16 of § [2.2-2905](#), (iii) who is employed by the State Corporation Commission, (iv) who is employed by the Virginia Workers' Compensation Commission, (v) who is employed by the Virginia Retirement System, (vi) who is employed by the Virginia Lottery, (vii) who is employed by the Medical College of Virginia Hospitals or the University of Virginia Medical Center, (viii) who is employed at a state educational institution as faculty (including, but not limited to, presidents and teaching and research faculty) as defined in the Consolidated Salary Authorization for Faculty Positions in Institutions of Higher Education, 1994-95, or (ix) whose position is exempt from the Virginia Personnel Act pursuant to subdivision 3, [20](#), or 23 of § [2.2-2905](#); and (a) for whom reemployment with the Commonwealth is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary and (b) whose involuntary separation was due to causes other than job performance or misconduct, shall be eligible, under the conditions specified, for the transitional severance benefit conferred by this chapter. The date of involuntary separation shall mean the date an employee was terminated from employment or placed on leave without pay-layoff or equivalent status.

B. An otherwise eligible employee whose position is contingent upon project grants as defined in the Catalogue of Federal Domestic Assistance, shall not be eligible for

the transitional severance benefit conferred by this chapter unless the funding source had agreed to assume all financial responsibility therefor in its written contract with the Commonwealth.

C. Members of the Judicial Retirement System (§ [51.1-300](#) et seq.) and officers elected by popular vote shall not be eligible for the transitional severance benefit conferred by this chapter.

D. Eligibility shall commence on the date of involuntary separation.

E. Persons authorized by § [2.2-106](#) or [51.1-124.22](#) to appoint a chief administrative officer or the administrative head of an agency shall adhere to the same criteria for eligibility for transitional severance benefits as is required for gubernatorial appointees pursuant to subsection A.

1995, cc. [152](#), [811](#), § 2.1-116.22; 2001, c. [844](#); 2002, c. [491](#); 2003, c. [782](#); 2006, cc. [813](#), [902](#); 2014, c. [225](#); 2017, c. [359](#).

§2.2-3203. Transitional severance benefit conferred.

A. On his date of involuntary separation, an eligible employee with (i) two years' service or less to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to four weeks of salary; (ii) three years through and including nine years of consecutive service to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to four weeks of salary plus one additional week of salary for every year of service over two years; (iii) ten years through and including fourteen years of consecutive service to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to twelve weeks of salary plus two additional weeks of salary for every year of service over nine years; or (iv) fifteen years or more of consecutive service to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to two weeks of salary for every year of service, not to exceed thirty-six weeks of salary.

B. Transitional severance benefits shall be computed by the terminating agency's payroll department. Partial years of service shall be rounded up to the next highest year of service.

C. Transitional severance benefits shall be paid in the same manner as normal salary. In accordance with § [60.2-229](#), transitional severance benefits shall be allocated to the date of involuntary separation. The right of any employee who receives a transitional severance benefit to also receive unemployment compensation pursuant to §

[60.2-100](#) et seq. shall not be denied, abridged, or modified in any way due to receipt of the transitional severance benefit; however, any employee who is entitled to unemployment compensation shall have his transitional severance benefit reduced by the amount of such unemployment compensation. Any offset to a terminated employee's transitional severance benefit due to reductions for unemployment compensation shall be paid in one lump sum at the time the last transitional severance benefit payment is made.

D. For twelve months after the employee's date of involuntary separation, the employee shall continue to be covered under the (i) health insurance plan created in [§ 2.2-2818](#) for the Commonwealth's employees, if he participated in such plan prior to his date of involuntary separation, and (ii) group life insurance plan administered by the Virginia Retirement System pursuant to Chapter 5 ([§ 51.1-500](#) et seq.) of Title 51.1. During such twelve months, the terminating agency shall continue to pay its share of the terminated employee's premiums. Upon expiration of such twelve month period, the terminated employee shall be eligible to purchase continuing health insurance coverage under COBRA.

E. Transitional severance benefit payments shall cease if a terminated employee is reemployed or hired in an individual capacity as an independent contractor or consultant by any agency or institution of the Commonwealth during the time he is receiving such payments.

F. All transitional severance benefits payable pursuant to this section shall be subject to applicable federal laws and regulations.

1995, cc. [152](#), [811](#), § 2.1-116.23; 2001, c. [844](#).

§2.2-3204. Retirement program.

A. In lieu of the transitional severance benefit provided in [§ 2.2-3203](#), any otherwise eligible employee who, on the date of involuntary separation, is also (i) a vested member of the Virginia Retirement System, the State Police Officers' Retirement System, or the Virginia Law Officers' Retirement System and (ii) at least 50 years of age, may elect to have the Commonwealth purchase on his behalf years to be credited to either his age or creditable service or a combination of age and creditable service, except that any years of credit purchased on behalf of a member of the Virginia Retirement System, the State Police Officers' Retirement System, or the Virginia Law Officers' Retirement System who is eligible for unreduced retirement shall be added to his creditable service and not his age. If the otherwise eligible employee is (a) a

person who becomes a member on or after July 1, 2010, a person who does not have 60 months of creditable service as of January 1, 2013, or a person who is enrolled in the hybrid retirement program described in § [51.1-169](#); (b) not a member of the State Police Officers' Retirement System or the Virginia Law Officers' Retirement System; and (c) a person to whom the provisions of subdivision B 3 of § [51.1-153](#) do not apply, then he must be at least 60 years of age on the date of involuntary separation to be eligible for the retirement program provided in this subsection. The cost of each year of age or creditable service purchased by the Commonwealth shall be equal to 15 percent of the employee's present annual compensation. The number of years of age or creditable service to be purchased by the Commonwealth shall be equal to the quotient obtained by dividing (1) the cash value of the benefits to which the employee would be entitled under subsections A and D of § [2.2-3203](#) by (2) the cost of each year of age or creditable service. Partial years shall be rounded up to the next highest year. Deferred retirement under the provisions of subsection C of §§ [51.1-153](#), [51.1-205](#), and [51.1-216](#), and disability retirement under the provisions of § [51.1-156](#) et seq. and § [51.1-209](#), shall not be available under this section.

B. In lieu of the (i) transitional severance benefit provided in § [2.2-3203](#) and (ii) the retirement program provided in subsection A, any employee who is otherwise eligible may take immediate retirement pursuant to § [51.1-155.1](#).

C. 1. The retirement allowance for a person who (i) is not a member of the State Police Officers' Retirement System or the Virginia Law Officers' Retirement System; (ii) becomes a member on or after July 1, 2010, does not have 60 months of creditable service as of January 1, 2013, or is enrolled in the hybrid retirement program described in § [51.1-169](#); (iii) elects to retire under this section; and (iv) by adding years to his age is between ages 60 and the age at his "normal retirement date" as defined in § [51.1-124.3](#) shall be reduced on the actuarial basis provided in subdivision A 3 of § [51.1-155](#), unless the provisions of subdivision B 3 of § [51.1-153](#) apply to him.

2. The retirement allowance for any other employee electing to retire under this section who, by adding years to his age, is between ages 55 and [65](#) shall be reduced on the actuarial basis provided in subdivision A 2 of § [51.1-155](#).

1995, cc. [152](#), [811](#), § 2.1-116.24; 2000, c. [911](#); 2001, c. [844](#); 2011, c. [880](#); 2014, c. [356](#).

§2.2-3205. Costs associated with this chapter; payment.

A. The terminating agency shall pay all costs associated with the provisions of this chapter within the twelve months following the date of an employee's involuntary separation, or within such shorter period as may be required. The costs shall be paid first from appropriations available to the terminating agency. If such sums are insufficient, then, if the agency's governing authority certifies that the agency is unable to pay the costs when due from appropriations available to the terminating agency without affecting the agency's ability to deliver essential services, aid to localities, or aid to individuals, the State Treasurer shall make a treasury loan to the agency to be used to finance the unsatisfied balance of the agency's obligations.

B. As used in this section, the "governing authority" shall mean (i) for an agency in the executive branch, the Governor or his designee; (ii) for an agency in the judicial branch, the Supreme Court of Virginia; (iii) and for an agency in the legislative branch or an independent agency, the appropriate collegial body.

C. Any treasury loan made pursuant to subsection A shall be repaid by the agency in the following order: (i) first, from unexpended fund balances available to the agency; (ii) next, from the unexpended year-end balances, less mandated uses as set out in the appropriation act, of all other state agencies and institutions in the terminating agency's branch of government (i.e., judicial, legislative, or executive); and (iii) finally, from such appropriations as the General Assembly may provide for such purpose. In budgeting for the payment of these costs, the general fund shall bear its actual share of such costs.

1995, cc. [152](#), [811](#), § 2.1-116.25; 2001, c. [844](#).

§2.2-3206. Review of program.

The Senate Committee on Finance and the House Committee on Appropriations shall periodically review the transitional severance program established by this chapter and report their findings to the Governor and the members of the General Assembly every three years beginning on July 1, 1998.

1995, cc. [152](#), [811](#), § 2.1-116.26; 2001, c. [844](#).